

FINANCE COMMITTEE MEETING TARC BOARD OF DIRECTORS



Meeting Notice:

The TARC Board of Directors holds a monthly meeting of the Finance subcommittee. The next meeting will be held at:

**TARC's Headquarters, Board Room
1000 W. Broadway, Louisville, KY 40203**

Wednesday, April 16, 2025 at 10:00 a.m.

This meeting may also be held via teleconference as permitted by KRS 61.826.

Pursuant to the Americans with Disabilities Act, persons with a disability may request a reasonable accommodation for assistance with the meeting or meeting materials. Please contact Stephanie Isaacs at 502.561.5103. Requests made as early as possible will allow time to arrange accommodation.

FINANCE COMMITTEE MEETING TARC BOARD OF DIRECTORS



Agenda – April 16, 2025

- | | | |
|---|---------------------|-------------|
| 1. Quorum Call/Call to Order, Meeting Minutes | Steve Miller, Chair | 10:00 |
| a. Approval of March Meeting Minutes | | 10:00-10:05 |
| 2. Action Items | | 10:05-10:20 |
| a. Resolution 2025-7 Amendment 4 to Management Consulting Professional Services | Rob Stephens | |
| Resolution 2025-9 Procurement Policy | Maria Harris | |
| b. Resolution 2025-10 Good Year Tire & Rubber Lease | Shirley Dean | |
| c. Resolution 2025-12 Transit Bus Batteries | Shirley Dean | |
| d. Resolution 2025-11 Genfare License, Maintenance and Support Subscription | Joe Triplett | |
| 3. Staff Reports and Presentation | | 10:20-10:35 |
| a. Buses to Memphis | Rob Stephens | |
| b. Financial Statements for March | Matt Abner | |
| c. FY 26 Budget | Tonya Day | |
| d. Resolution 2025-13 FY26 Budget Resolution | Tonya Day | |
| 4. Proposed Agenda / Procurements | | 10:35-10:40 |
| a. Procurement Calendar | Tonya Day | |
| 5. Adjournment | | 10:45 |

FINANCE COMMITTEE MEETING TARC BOARD OF DIRECTORS



March 19, 2025 Finance Committee Meeting Minutes

The Finance Committee of Transit Authority of River City (TARC) met on Wednesday, March 19, 2025 at 10:00 a.m. in person at TARC's headquarters, 1000 West Broadway in the Board Room and virtually via teleconference as permitted by KRS 61.826.

Members in Person

Alice Houston
Abbie Gilbert

Members Virtual

DuWayne Gant
Alice Houston
Michael Schnuerle
Justin Brown
Steve Miller

Declined

Christy Ames
Ted Smith

Call to Order

Alice Houston called the meeting to order at 10:04 a.m.

Approved the February Finance Committee Meeting Minutes.

Action Items

Joe Triplett presented Resolution 2025-8 Sole Source (20251924) Trapeze Software Maintenance and Support.

- TARC in its annual budget plan values funding so as to keep its technology in a state of good repair and to have the most updated support and maintenance for its systems.
- With the current implementation of the new ITS system with Avail Technology, we expect to continue to use Trapeze Software and its systems for Fiscal Years 2026 and 2027.
- TARC is also working with Trapeze on a project to change several timekeeping/payroll configurations to align with our business requirements for Spread and Holiday OT Pay.
- TARC seeks to enter into a two-year agreement with Trapeze Software Group, Inc for software system support and maintenance for all of their products that TARC currently uses with a not-to-exceed amount of \$1,009,500.

The Resolutions will move on to the Board.

Staff Reports and Presentations.

Matt Abner will present the February Financials.

The MassTransit Trust Fund (MTTF) collections came in about \$5.5 million, with a shortfall in January due to two major employers switching payroll collection systems. The impact on the deficit was discussed, and the favorable position for February was noted.

FINANCE COMMITTEE MEETING TARC BOARD OF DIRECTORS



Alex Posorske presented the Adsposure Update.

- The new advertising contract with Adsposure took effect on February 1st.
- The contract term is for 5 years with 3 additional one-year options.
- The minimum guarantee is \$1,050,000 which is a significant increase from previous contract.
- Responsibilities include selling advertising on fixed route buses, bus stop shelters and some paratransit vehicles.
- The company has a solid designing team and is aware of TARC's advertising policy.
- Monthly reports from Adsposure and regular conversations with the Adsposure are planned
- Board members discussed the frequency of an advertising report and quarterly report on new information to the Board, with a detailed sheet available in the packet.

Tonya Day presented the Procurement calendar.

Alice Houston adjourned the meeting at 10:28 a.m.

ADOPTED THIS 16th DAY OF APRIL, 2025.

Alice Houston, Chair of the Finance Committee



MEMORANDUM

To: TARC Board of Directors

From: Ozzy Gibson, Executive Director

Date: April 23, 2025

Re: Resolution 2025-7 Amendment 4 to Management Consulting Professional Services - IDIQ (#20211728-A)

In November 2021, Resolution 2021-43 authorized the Executive Director to enter into an agreement with TransPro for Management Consulting Professional Services under an Indefinite Delivery Indefinite Quantity (IDIQ) services contract. The purpose of the services is for TARC to receive operational consulting support to move the agency forward to better serve the community and riders as a whole.

This Resolution is for a sole source procurement to continue the services that TransPro has already commenced and to see such tasks through to their completion, such as, executive recruitment with an immediate need to assist in the search for a new Director of Transportation, assessment and review of maintenance department, and other business support needs in the amount of \$140,000, a new total not to exceed amount of \$717,379. TARC believes in its best interest to proceed with this sole source procurement as TransPro is knowledgeable and familiar with TARC's operations, has already commenced working on such tasks, and further delay would compromise these time-sensitive tasks from being completed.

Furthermore, this sole source shall be for thirteen (13) months with a new contract expiration date of December 31, 2025.

This Resolution seeks approval for the Board of Directors to authorize the Executive Director to amend the contract with TransPro to add this additional work.

Please call me at 561-5100 if you have any questions. Thank you.



RESOLUTION 2025-7 MANAGEMENT CONSULTING PROFESSIONAL SERVICES AMENDMENT 4

A Resolution authorizing the Executive Director to amend the TransPro contract for Management Consulting Professional Services for an amount of \$140,000.

WHEREAS, TARC seeks sole source procurement for management consulting professional services to provide and assist TARC with business and operational support; and

WHEREAS, TARC has an immediate need for assistance to conduct a search for a Director of Transportation; and

WHEREAS, TARC desires to get an assessment and review of maintenance department and other business support needs; and

WHEREAS TARC conducted an independent cost estimate and a pricing analysis and deemed the tasks price is fair and reasonable; and

WHEREAS, this contract shall be extended for an additional thirteen (13) months with a new contract expiration date of December 31, 2025; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Transit Authority of River City that:

The Executive Director is hereby authorized to continue its contract with TransPro for the sole procurement services set forth herein at a cost not to exceed \$140,000 for the term of the contract through December 31, 2025.

ADOPTED THIS 23TH DAY OF APRIL 2025

Ted Smith, Chair of the TARC Board of Directors



MEMORANDUM

To: TARC Board of Directors

From: Ozzy Gibson, Executive Director

Date: April 23, 2025

Re: Resolution 2025 – 9 Amendment 3 to TARC Procurement Policy

In October 26, 2015, the TARC Board of Directors adopted a significant revision to the Procurement Regulations, which was further amended on December 11, 2018 with additional changes and modifications. This new proposed amendment 3 has new threshold limits for federally funded and non-federally funded procurements. It also includes federal updated requirement changes for simplified acquisition procurement thresholds, and Model clauses. There are also many stylistic and technical changes including but not limited to improved language in the sections of Definitions, Written Standard Code of Conduct, Written Protest, Procurement Thresholds, Authorization, Approval and Reporting Levels for both Federal Funded and non-Federal Funded procurements, removal and replacement of positions and titles. I have included a summary of the list of detailed changes for your convenience.

More importantly, this Resolution updates TARC's Procurement Policy to be consistent with changes and updates in federal, state and local law. For instance, this new policy changes the approvals for monetary spending thresholds for respective Directors, Chief Operating Officer (COO), Chief Financial and Administrative Officer (CFAO), Executive Director (CEO) and the Board and sets forth such monetary thresholds when competitive solicitation must occur.



4.2.1 Procurement funded by revenue, local and state (non-federal monies):

<u>Amount</u>	<u>Authority/Approval</u>	<u>Procurement Method</u>
Up to \$3,500	Supervisors &	Micro Purchase
Up to \$15,000	Director or Assistant Director Level	Simplified Acquisition (Small) 3 Quotes
Up to \$30,000	Director of Maintenance	
Up to \$65,000	COO or CFAO	Simplified Acquisition (Small) 3 Quotes
Up to \$100,000	Executive Director or CEO	Simplified Acquisition (Small) 3 Quotes Or Emergency Procurement
Fuel Only - Up to \$100,000	Director of Procurement	Simplified Acquisition
Greater than \$100,000	Board Review and/or Authorization	Formal - Competitively Bid

4.2.3 Procurement funded by FTA or other federal grants:

<u>Amount</u>	<u>Authority/Approval</u>	<u>Procurement Method</u>
Up to \$10,000 (\$2,001 Construction)	Procurement Official (Managers/Supervisors)	Micro Purchase
Up to \$15,000 Up to \$30,000	Director or Assistant Director Level Director of Maintenance	Simplified Acquisition (Small) 2 Quotes
Up to \$65,000	Director of Grants and Capital	Simplified Acquisition (Small) 2 Quotes
Up to \$100,000	COO or CFAO	Simplified Acquisition (Small) 2 Quotes
Up to \$250,000	Executive Director or CEO	Simplified Acquisition (Small) 2 Quotes
Greater than \$250,000	Board Review and/or approval	Formal - Competitively Bid

A new provision has been added that details contracting with Small and Minority Businesses, and Labor Surplus. It updates this Policy to reflect the model FTA Clauses and Requirements that must be included in every solicitation for goods and service. Finally, this Resolution further updates the conflicts of interest rules with respect to employees, officers and members of the Board of Directors at TARC.

This Resolution asks the Board for its approval to update and change TARC's Procurement Policy to follow and be consistent with federal, state and local law. Please feel free to call me if you have any questions at (502) 561-5100.

RESOLUTION 2025-9 Amendment 3 to TARC Procurement Policy

A Resolution for the Board of Directors to approve revisions, additions, amendments and updates to TARC's Procurement Policy.

WHEREAS, TARC wants Procurement Department and staff doing business with contractors, vendors, suppliers and consultants to know the obligations and responsibilities to follow all applicable federal, state and local laws and policies as TARC's agents as it relates to business and procurement transactions; and

WHEREAS, in order to ensure policies and laws are adhered to by TARC staff conducting and facilitating procurement process, TARC has created policies which are set forth in the Procurement Policy and which was most recently adopted by this Board in December 2018; and

WHEREAS, TARC has reviewed this Procurement Policy and is now proposing to make amendments and updates to such Policy that are consistent with changes in federal, state and local laws; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Transit Authority of River City that:

The amendments and updates to TARC's Procurement Policy are hereby approved.

ADOPTED THIS 23rd DAY OF APRIL 2025

Ted Smith, Chair of the TARC Board of Directors

Procurement Policy detailed changes list:

Cover Page nomenclature – “Regulations” to “Policy”

- Removed all verbiage relating to TARC Regulations to TARC Policy
- Section Definitions – Additional Definitions were added and/or removed
 - Changed “Purchasing” to “Procurement” Department
 - Added/changed Director of Purchasing to Director of Procurement position
 - Added Chief Financial and Administrative Officer (CFAO) position
 - Added Chief Operating Officer (COO) position
 - Added Procurement and Contract Administrator position
 - Added Buyer position
 - Added Contract Coordinator position
 - Added Assignability clause
 - Added Best and Final Offer (BAFO)
 - Added Buy America
 - Added Grants and Capital Programs Department
 - Added Director of Grants and Capital Programs
 - Removed Grants/Capital Projects Administrator
 - Added Capital Project
 - Added Cardinal Change
 - Added Certificate of Insurance
 - Added Change Order
 - Updated definition on Clarification
 - Added Competitive Bid
 - Added Competitive Range
 - Updated definition on Confidential Information
 - Updated definition on Conflict of Interest
 - Added Contingency
 - Updated definition on Construction
 - Added Contract Administration
 - Added Contract Amendment
 - Added Contract Amount/Price
 - Added Contract Award
 - Added Construction Drawings
 - Added Construction Documents
 - Added Contract Modification
 - Added Cooperative/Joint Purchasing
 - Updated definition of Cost Analysis
 - Added Davis-Bacon Act
 - Updated definition of Disadvantaged Business Enterprise
 - Added Department Directors
 - Added Emergency (or Urgent) Procurement



- Added Evaluation Process
- Added Evaluators
- Added Final Acceptance
- Added Final Payment
- Updated definition of Financial Interest
- Added General Contractor
- Added Hispanic Americans
- Added Incentive
- Added Indefinite Delivery Indefinite Quantity (IDIQ)
- Added Independent Cost Estimate (ICE)
- Updated definition of Invitation to Bid or Invitation for Bid (ITB / IFB)
- Added Job/Task Order Contract
- Added Joint Development
- Added Joint Procurement
- Added Kentucky Transportation Cabinet (KYTC)
- Added Letter of Intent
- Added Liquidated Damages
- Added Manufacturer
- Added Materials
- Updated definition of Micro Purchase (Micro Procurement)
- Added Negotiations
- Added Notice to Proceed
- Added Option
- Added Payment Bond
- Added Performance Bond
- Added Piggybacking (Assignment)
- Added Prevailing Wage
- Updated definition of Price Analysis
- Added Professional Services
- Added Progress Payment
- Added Protest
- Added Public Private Partnership (PPP)
- Added Purchase Order
- Added Requisition
- Added Responsiveness
- Added RF's – Request for Expression of Interest, Request for Information, Request for Proposal and Request for Qualification
- Added Rolling Stock
- Added Senior Staff Member
- Added Simplified Acquisition (formerly Small Procurement)
- Added Single Source
- Added Sole Source
- Added Solicitation
- Added Special Provision
- Added Substantial Completion

- Added Surety
- Added Transit-Oriented Development
- Added Value Engineering
- Removed all verbiage pertaining to procedural process and moved/separated to Procurement Procedure Manual
- Added new heading Procurement System-Wide Elements
 - Added descriptive paragraph under this section
 - Structured the required elements to strategically align the items in one place:
 - Section 1.0 Written Standard Code of Conduct
 - Section 2.0 Contract Administration
 - Section 3.0 Written Protest
 - Section 4.0 Procurement Standards
 - Section 5.0 FTA Model Clauses and Requirements
- Section 4.3 Restructured headings under Methods of Procurement
 - Re-aligning all methods of procurement rather than mixed all over the policy pages
 - Section 4.4 Updated section Determination of Method of Procurement and Selection of Solicitation Type
 - Section 4.5 Updated section Determination of Contract Type
 - Updated and revised policy as it relates to types of contracts
 - Added and updated Fixed-Price Contracts
 - Added and updated Fixed-Price Contracts with Escalation
 - Added and updated Cost-Reimbursement Contracts
 - Added and updated Cost Contracts
 - Added and updated Cost-Sharing Contracts
 - Added and updated Cost-Plus-A-Fixed Fee Contracts
 - Added and updated Cost-Plus-A-Percentage of Cost Contracts (Prohibited)
 - Added and updated Time and Material Contracts
 - Added Indefinite Delivery Indefinite Quantity Contracts
 - Added Letter of Intent
 - Added Memoranda of Understanding / Agreement
 - Added Non-Disclosure Agreement
 - Added Revenue Contracts
 - Added Public Private Partnerships
 - Added Reverse Auctions
 - Added Other Contract Types
 - Emergency or Urgent Agreements

- Section 4.3 Updated and revised policy as it relates to options in a contract
- Section 4.7 Added Procedures for Ensuring Most Efficient and Economic Procurements
 - Minimum requirements of FTA
- Section 4.3 Updated section Determination of Method of Procurement or Solicitation Type
 - Updated and revised policy as it relates to Micro Procurement
 - Updated and revised policy as it relates to Small Procurement
 - Updated and revised policy as it relates to Competitive Sealed Bids
 - Updated and revised policy as it relates to Competitive Negotiation
 - Updated and revised policy as it relates to Sole Source
 - Updated and revised policy as it relates to Piggyback or Assignment
 - Added section Unsolicited Proposal and its process
- Section 4.4 Added and updated section Types of Procurement
 - Architectural and Engineering (A&E)
 - Operations and Management (O&M)
 - Rolling Stock Purchase
 - Construction
 - Materials and Supplies
 - Other Professional Services
- Section 4.3 Updated and revised policy as it relates to Evaluation Methodology
- Section 4.3 Updated and revised policy as it relates to Selection and Award
- Removed all “Article” sections and replaced with proper headings as it relates to policy
- Removed Article VI Code of Conduct and replaced with Section 1.0 Written Standard Code of Conduct
 - Updated and revised paragraph under General, Organizational Conflict or Interest, and Personal Conflict of Interest
- Section 4.2 Procurement Standards, subsection Threshold, Authorization, Approval and Reporting Levels added tables separating the Federal funded from the non-Federal funded procurement
 - Subsection Table for non-Federal funded procurement have increased in dollar threshold by authority and by method of procurement



- Subsection Table for Federally funded procurement has been explicitly detailed, increased in dollar threshold by authority level according to FTA Circular 4220.1x
- Section 4.10 Contracting with Small and Minority businesses and Labor Surplus added
- Section 5.53 Buy America Requirements revised
- Section 5.0 FTA Model Clauses and Requirements added
- Section 5.37 Safe Operation of Motor Vehicles added for Seat Belt Use and Distracted Driving
- Section 5.48 Rights to Inventions Made Under a Contract or Agreement according to 2 CFR 200
- Section 5.6 Termination Provision days changed from 15 days to 30 days written notice
- Section 5.20 Conformance with ITS National Architecture added
- Section 5.10 Federal Tax Liability and Recent Felony Convictions added
- Section 5.39 Byrd Anti-Lobbying Amendment added
- Section Exhibits FTA Clause Matrix for Third-Party Contract Provision added

**TRANSIT AUTHORITY OF RIVER CITY
PROCUREMENT POLICY**



Signature of the Executive Director / CEO	Signature of Accountable Executive	Date of Signature
Approval by the Board of Directors or an Equivalent Authority	Name of Individual/Entity That Approved This Plan	Date of Approval
	Relevant Documentation (Title and Location)	
Certification of Compliance	Name of Individual/Entity That Certified This Plan	Date of Certification
	Relevant Documentation (Title and Location)	

Version Number and Updates			
Version Number	Section/Pages Affected	Reason for Change	Date Issued
1			April 1999
2			Nov. 2001
3			Oct. 2015
4		Procurement Standards revised and updated; Major changes to all titles and positions; FTA model clauses changes and updates; document stylistic.	April 2025

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Purpose

The purpose of this Procurement Policy is to provide comprehensive guidance and establish clear procedures for conducting contractual business transactions within the Transit Authority of River City (TARC). This policy ensures that procurement practices adhere strictly to applicable federal, state, and local regulations, align with sound business principles, and deliver optimal value for TARC and its stakeholders. The goal is to facilitate transparent, competitive, and fair procurement processes, promoting accountability, efficiency, and integrity within all procurement activities.

Scope

This Procurement Policy applies to all procurement activities conducted by TARC, encompassing the acquisition of goods, services, equipment, construction projects, and related contractual agreements funded by federal, state, local, or internal resources. The policy outlines standards for procurement methods, solicitation processes, contract administration, protest procedures, and compliance requirements. It includes specific guidelines for ensuring competitive fairness, managing conflicts of interest, and documenting procurement actions thoroughly and transparently. All TARC departments, personnel involved in procurement processes, and external contractors and vendors engaged with TARC are required to adhere to this policy.

Definitions

Adequate Competition: Two or more responsible Bidders or Proposers that are willing and able to compete effectively for the business, or when one Bid or Proposal is received in response to a solicitation, a determination that the solicitation is not unduly restrictive.

Advertising: A Legal Notice communication attracting public attention to announce Procurement opportunities.

Agreement: Written agreement executed by TARC and another legal entity that sets forth the rights and obligations of the parties in connection with the work



Aggregate Amount: The total dollar amount during a fiscal year of items of a like nature, function, and use the need for which can reasonably be determined at the beginning of the fiscal year. Items the need for which cannot reasonably be established in advance or which are unavailable because of a failure of delivery need not be included in the aggregate amount.

Architectural & Engineering: As distinguished from architecture as a design art that focuses on the aesthetics or the functional or spatial layout or design of buildings; architectural engineering incorporates engineering principles to the design and construction of building and light rail systems that integrates various disciplines, including architectural, environmental, structural engineering, mechanical engineering and electrical engineering.

Asian-Pacific Americans: includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar) Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tongo, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong.

Assignability Clause: is an assignment of existing contract rights to purchase supplies, equipment, or services.

Bid: A formal offer, tendered by an individual, firm, partnership, corporation, joint venture, or combination thereof, to provide goods or services at a specified price.

Bidder: An individual, firm, partnership, corporation, joint venture, or combination thereof, includes all submitted offers.

Best Value: is a selection process in which proposals contain both price and qualitative components, and award is based upon a combination of price and qualitative considerations. Qualitative considerations may include technical design, technical approach, quality of proposed personnel, and/or management plan. The award selection is based upon consideration of a



combination of technical and price factors to determine {or derive} the offer deemed most advantageous and of the greatest value to TARC.

(BAFO): - A best and final offer (BAFO) can be requested of each offeror in the competitive range at the conclusion of discussions (negotiations) with those offerors. If an offeror does not respond to your request, your procedures may allow you to consider the most recent offer to be the best and final offer.

Black Americans: which includes persons having origins in any of the Black racial groups of Africa

Blanket Procurement: the Blanket is used to fill a repetitive requirement for goods or services under as single award.

Bond: a written guarantee of performance, secured by a surety that is authorized to do business in the Commonwealth of Kentucky. The three (3) relevant bonds are Bid Bond, Payment (or labor and material payment) Bond, and Performance Bond. A Bid Bond equivalent to five percent (5%) of the bid price is submitted with a bid. The bid bond ensures that on TARC's acceptance of the bid, the offeror will proceed with the work. If the bidder does not proceed, TARC is due from the guarantor the difference between the bid price and the next highest bid price. A Payment Bond or labor and material payment bond secures payment of all contractual obligations by the Contractor. A Performance Bond secures the obligation to complete the Work.

Brand-Name: A well-known and distinguishable name and make, model number, or other appropriate nomenclature by which a commercial product is offered for sale to the public by a particular manufacturer, producer, or distributor. A Brand Name is used by TARC only for the purpose of establishing identification and general description of the form, fit, function and quality of the items sought by TARC.

Business: any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other legal entity through which business is conducted.



Buy America: applies to construction contracts, acquisition of goods or rolling stock for procurements valued over US \$150,000 and funded at least in part by federal grants.

Buyer: The Administrator who assists in the selection and purchase of goods and services, process requisition by gathering and screening information about products, price and suppliers.

Grants and Capital Programs Department: receives and processes grant applications. Obtain necessary supporting documents and clearances to get the grant approved. Evaluate grant request against approved standards and determine best grant amount to be given. Explain grant conditions to sub-recipients and the department directors. Initiate grant administration upon approval of grant and implement tracking procedures. Conduct regular project and financial reviews on funded projects. Review client submissions on fund disbursements and financial reports.

Capital Project: term “capital project” means a project for acquiring, constructing, supervising, or inspecting equipment or a facility for use in public transportation, expenses incidental to the acquisition or construction (including designing, engineering, location surveying, mapping, and acquiring rights-of-way), transit-related intelligent transportation systems, relocation assistance, acquiring replacement housing sites, and acquiring, constructing, relocating, and rehabilitating replacement housing; Rehabilitating a bus; Remanufacturing a bus; Preventive maintenance; Leasing equipment or a facility for use in public transportation, subject to regulations that the Authority prescribes limiting the leasing arrangements to those that are more cost-effective than purchase or construction.

Cardinal Change: A significant change in the work that causes a major deviation from the original scope of the Contract, or the intended method of achievement, or causes 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.



Certificate of Insurance: a document issued by or on behalf of a surety verifying that the insured party named on the certificate has purchased the specified insurance coverages. It is typically provided to a third party, such as TARC, as evidence that the specified coverages are in effect. The certificate typically identifies the specific coverages involved, the providing insurance company, the effective date and expiration date of the policy, and the dollar limits for each type of coverage. TARC requires that its Contractors identify TARC as an additional insured; this information, and the number and title of the Contract involved, should be noted on the certificate. TARC also requires thirty (30) days advance notice if the policy is cancelled; this may be, but usually is not noted on the certificate. A certificate is only evidence of coverage as of the date issued; it is not in itself an insurance policy, nor does it give the certificate holder any rights under the policies referenced.

Change Order: A written document signed by the authorized TARC member that directs the Contractor to make a change pursuant to the change order clause. The change order authorizes TARC to exercise its contractual right to issue a change order with or without the Contractor's consent (i.e. option or administrative change). A modification (always bilateral) is issued when a change requires a Contractor's signature or the nature of work is outside the scope of contracts (i.e. unforeseen subsurface conditions, Acts of God, and emergency, errors, or omissions, constructive change). TARC is responsible for ensuring that appropriate change clause is included in all third-party solicitations and contracts.

Chief Financial and Administrative Officer (CFAO): Oversight from the Executive Director has responsibility of day-to-day operations for managing agency funds, ensuring accuracy of accounting records, internal controls, financial objectives and policies, financial statement preparation, and bank reconciliation review and approval.

Clarification: a communication with an offeror for the sole purpose of eliminating minor irregularities, informalities, or apparent clerical mistakes in a bid or proposal.



Competitive Bid: Solicitation through Request for Qualifications (RFQ), Requests for Proposals (RFP), or Invitations to Bids (ITB) by TARC, under which all individuals or firms are afforded an equal opportunity to compete for award of a contract.

Competitive Range: Those Proposals submitted in response to a RFP or RFQ that, after evaluation by TARC's evaluation committee, have a reasonable chance of being awarded the contract.

Confidential Information: private information that is not publicly available, is communicated in confidence, and should not be shared with others, which is typically any information which is available to an employee only because of his status as an employee of TARC.

Conflict of Interest: when an offeror or Contractor has any contractual or other financial relationship with TARC, its members, officers, employees, or agents other than the contractual relationship established under the Contract.

Contingency: An incidental expense. Example: Allow an extra percentage in the budget for contingencies.

Consultant/Contractor/Vendor/Supplier: The person(s), partnership, joint venture, or firm entering into a Contract for the performance of services or delivery of goods or equipment to TARC.

Construction: The act of building, altering, repairing, renovating, improving or maintaining a building or structure.

Contract Administration: The post-award administration of Contracts to ensure that Contract deliverables are fulfilled by the Contractor pursuant to contract terms and conditions.



Contract Amendment: A change to a contract that either adds to or deletes from the existing in accordance with a contract provision or by mutual action of the parties to the contract.

Contract Amount or Contract Price: The amount payable to the Contractor under the terms and conditions of the Contract and identified in the Contract, as may be adjusted by Contract Modification/Change Order for successful completion of the work under the contract.

Contract Award: The decision by TARC to accept the Bid/Proposal subject to the execution and approval of a satisfactory Contract. The date of the Award is the date of execution of the Contract by TARC.

Contract Coordinator: A Procurement staff member that carries the responsibilities and tasks on the end-to-end process of contract administration.

Contract Drawings: The official plans, profiles, typical cross-sections, general cross- sections, elevations, and details listed or referenced in the Specifications or amendments thereto, and, supplemental drawings approved by TARC which show the locations, characters, dimensions, and details of the work to be performed.

Contract Documents: The documents and plans expressly incorporated by reference into the executed agreement between TARC and the Contractor that set forth the legally binding obligations between TARC and the Contractor for performance and completion of the Contract.

Contract Modification: a change to the scope or price outlined in a legal business contract.

Contractor: The person, entity, or authority representative identified as such in the contract documents, and is referred to throughout the contract documents as if singular in number. For the purposes of these policies, the term "Contractor" may be used interchangeably with the terms "Vendor, Supplier, and/or Consultant".



Cooperative/Joint Purchasing: procurement conducted by, or on behalf of, TARC with another public agency or entity.

Cost Analysis: A cost analysis entails the review and evaluation of each cost element of a bidder's or Contractor's cost or pricing data and the judgmental factor's applied in estimating the costs.

Data: Recorded information, regardless of form or characteristic.

Davis-Bacon Act: is a United States federal law which established the requirement for paying prevailing wages on public works projects. All federal government construction contracts, and most contracts for federally assisted construction over \$2,000, must include provisions for paying workers on-site no less than the locally prevailing wages and benefits paid on similar projects.

Days: weekdays except those holidays when TARC's administrative offices are closed.

DBE: Disadvantaged Business Enterprise are individuals that own at least a 51% interest and also control management and daily business operations. African American, Hispanics, Native Americans, Asian-Pacific and Subcontinent Asian Americans, and women are presumed to be socially and economically disadvantaged. Other individuals can also qualify as socially economically disadvantaged on a case-by-case basis.

Debarment: A remedial action taken by TARC to deny participation in TARC's contracts, or action taken by another government entity to deny a person or entity participation in contracts or financial assistance programs.

Design-Build: A system of contracting under which one entity performs both architectural/engineering and construction under one contract.

Designee or Representative: a duly authorized representative of a person holding a superior position.



Department Directors: Department heads responsible for the overall operation and management of the department, including preparation and submittal of department budgets to the Finance Department and the Executive Office.

Disability: same meaning as in Americans with Disabilities Act of 1990 42 U.S.C. 12102

Direct Pay Items: items that by their very nature may be procured separate from other procurement methods described in these regulations.

Discussion: any oral or written communication between TARC and an offeror (other than a clarification) whether or not initiated by TARC, that (1) involves information essential for determining the acceptability of a proposal, or (2) provides the offeror an opportunity to revise or modify its proposal.

Emergency Procurement: Emergency means unforeseen circumstances beyond the control of TARC that either:

- a. Presents a real, immediate threat to the proper performance of essential functions; or
- b. Will likely result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken. A letter contract, a Notice to Proceed, or Purchase Order may be issued as a written preliminary contract instrument pending the formation of a fully defined Contract.

Emergency Condition: situation which creates a threat or impending threat to public health, welfare or safety such as may arise by reason of fires, floods, tornadoes, or other natural or man-caused disasters, epidemics, riots, enemy attack, sabotage, explosion, power failure, energy shortages, transportation emergencies, equipment failures, state or federal legislative mandates or similar events. The existence of the emergency condition creates an immediate and serious need for services, construction, or items of tangible personal property that cannot be met through normal procurement methods and the lack of which would seriously threaten the functioning of TARC, the



preservation or protection of TARC property, or the health or safety of any person.

Employee: an individual drawing a salary from TARC or an individual paid an hourly wage.

Evaluation Process: The process of evaluating proposals received and recommending to whom the contract(s) should be awarded. The Procurement staff facilitates this process to ensure compliance with the process stated in the solicitation document and policy.

Evaluated Bid Price: shall mean the dollar amount of a bid after bid price adjustments are made pursuant to objective measurable criteria, set forth in the Invitation For Bids, which affect economy and effectiveness in the operation or use of the product, such as reliability, maintainability, useful life, residual value, method and time of delivery, performance, or completion.

Evaluators: Group of individuals who evaluate Proposals received and recommends the Proposer(s) to whom the contract(s) should be awarded. Procurement staff facilitates this group to ensure evaluation process is compliant with the process stated in the solicitation document and the Policy.

Executive Director or Chief Executive Officer (CEO): the Executive Director or Chief Executive Officer (CEO) of TARC, or the person designated by the Executive Director or CEO to perform a given authority function.

Executive Office: consist of Executive Director, Chief Operating Officer, Chief Finance and Administrative Officer, and Legal Counsel.

Final Acceptance: Written notice by TARC acknowledging that Contractor has fulfilled all of the obligations under the Contract and that TARC has accepted the work or goods as of the date stated in the Notice. Final Acceptance is a condition precedent to Final Payment.



Final Payment: Following Final Acceptance of Work, including Punch List items and release of claims, TARC's final payment will be based on the contract terms.

Financial Interest: any position within TARC such as an officer, director, trustee, board member, partner, employee or the like, who may hold ownership of more than 5% in business; and/or have received or presently or in the future entitled to receive \$1,000 or more in any given year in any such organization shall be deemed a "financial interest."

FTA: refers to the Federal Transit Administration.

General Contractor/Construction Manager (GC/CM): A firm with which TARC has negotiated a maximum allowable construction cost to provide services during the design phase and to act as construction manager and general contractor during the construction phase subject to the procedure and requirement stipulated in FTA 4220.1G or latest version.

Good Faith: require an honest belief or purpose, faithful performance of duties, observance of fair dealing standards, or an absence of fraudulent intent.

Grant: The instrument by which FTA awards Federal assistance to a specific recipient to support a particular project in which FTA does not take an active role or retain substantial control, as described in 31 U.S.C. Section 6304.

Grantee: means TARC or any public or private entity to which a grant or cooperative agreement is awarded by FTA. The grantee is the entire legal entity even if only a particular component of the entity is designated in the assistance award document.

Gratuity: a voluntary payment given or received for services or business transaction less than \$25 dollars in value.



Hispanic Americans: Or, “Hispanics,” which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race.

Incentive: a contracting provision that compensates the contractor a specific amount of money for each day that critical work is completed ahead of schedule or for achieving set goals.

Indefinite Delivery Indefinite Quantity (IDIQ): is a type of contract that provides for an indefinite quantity of supplies or services during a fixed period of time.

Independent Cost Estimate: An internal estimate of the cost of the Scope of Work for a project or contract modification, which is derived separately from the Contractor’s price.

ITB/IFB: Invitation To (or For) Bid – A procurement process whereby TARC requests interested parties to submit Bids to provide or procure specified goods and services. ITB is not a negotiated procurement. ITB results in a firm fixed-price contract awarded to the lowest responsive and responsible bidder.

Immediate Family: whether by blood or by marriage, a spouse, children, grandchildren, parents, grandparents, brothers and sisters, and such other relatives as may be designated by TARC.

Job/Task Order Contract: A contract for construction services under which Task or Work Orders or Job Order Requests are issued by TARC for specific construction projects. A JOC contract is a competitively procured firm-fixed-price, indefinite quantity contract.

Joint Development: a project that enhances economic development or incorporates private investment, including such as commercial and residential development; enhances the effectiveness of a public transportation project and is related physically or functionally to that public transportation project; establishes new or enhanced coordination between public transportation and



other transportation; it provides a fair share of revenue for public transportation that will be used for public transportation; it provides a person making an agreement to occupy space in a facility constructed under this definition shall pay a reasonable fair share of the costs of the facility through rental payments and other means; may include—property acquisition; demolition of existing structures; site preparation, utilities, building foundations, walkways, pedestrian and bicycle access to a public transportation facility; construction, renovation, and improvement of intercity bus and intercity rail stations and terminals; renovation and improvement of historic transportation facilities; open space; safety and security equipment and facilities (including lighting, surveillance and related intelligent transportation system applications); facilities that incorporate community services such as daycare or health care, a capital project for, and improving, equipment or a facility for an intermodal transfer facility or transportation mall, and construction of space for commercial uses; excluding outfitting of commercial space.

Joint Procurements: A procurement method that includes, but is not limited to joint procurements with other governmental or transportation agencies from the onset to use a single solicitation document and enter into a single contract. The contract will be with a selected vendor delivering property or services in a fixed quantity, even if the expressed as a total minimum and total maximum.

KYTC UCP: Kentucky Transportation Cabinet Uniform Certification Program

Letter of Intent: A written notice by TARC to the successful Proposer that TARC will sign and deliver the Contract subject to the conditions stated in the bid document and Letter of Intent.

Liquidated Damages: The amount the contractor will pay to TARC for each and every day any portion of the work remains incomplete after the contract Time or for each and every day that any designated Milestone is not met.

May: permissive. However, the words "no person may..." mean that no person is required, authorized, or permitted to do the act prescribed.



Manufacturer: A person or company that makes goods for sale.

Materials: Equipment, materials, products and articles incorporated or to be incorporated into the Work.

Micro-Procurement/Purchases: A method of procurement without obtaining competitive quotations for goods and services valued at \$3,500 or less, For FTA funded projects, the Micro- Purchases are exempt from FTA's Third-Party Contract clauses except for construction contracts exceeding \$2,000.

Native Americans: which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians

Negotiation: contracting by either the competitive negotiation (proposals) or noncompetitive negotiation (sole source) process.

Notice to Proceed (NTP): A written notice issued by TARC to a Contractor directing the start of work. Any work performed prior to Notice to Proceed shall be at the Contractor's expense and risk.

Offeror: The term "offeror" includes "bidder", and "proposer" in response to a RFP, ITB, or RFQ.

Option: A unilateral right in the Contract by which TARC may elect to extend the term of the contract and purchase, at a predetermined price, additional equipment, supplies, or services called for by the Contract.

Owner: Any person or a group or department that has a stake in the project can be internal and external.

Payment Bond: A payment bond or "labor and material payment bond" executed in connection with a contract to assure payment as required by law, to all persons supplying labor and materials in the execution of the work provided for in the contract.



Performance Bond: A surety or bond required of a consultant, vendor, or contractors, which secures their obligation to properly complete the work.

Piggybacking: is an assignment of existing contract rights to purchase supplies, equipment, or services. For the purposes of these policies, the term “Piggyback” may be used interchangeably with the term “Assignment.”

Plans: Includes the drawings, standard drawings, profiles, typical cross-sections, general cross-sections, elevations, diagrams, schedules, and details that show the locations, character, dimensions, and details of the Work. The Plans include the Contract Drawings.

Prevailing Wage: The government mandated minimum hourly wage, benefits, and overtime, paid to the workers, labors, and mechanics in a public works contract. Prevailing wages are established by the Washington State Department of Labor and Industries, pursuant to RCW 39.12, for each trade and occupation employed in the performance of public work. It is established separately for each county, and is reflective of local wage conditions. For FTA funded construction contracts, 49 U.S.C. Section 5333(a) Davis-Bacon Act prevailing wage protections apply to workers, laborers and mechanics.

Price Analysis: A price analysis involves examining and evaluating a proposed price without evaluating its separate cost and profit elements. At TARC, every award must include a determination that the price is fair and reasonable. The extent of the analysis depends on the value and nature of the contract.

Procurement: mean the purchasing, buying, renting, leasing, or otherwise obtaining any materials, supplies, services, equipment, or construction. It also includes all functions that pertain to the obtaining of any public procurement, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration. "Procurement" and "Purchasing" shall be used interchangeably in these regulations.



Procurement and Contract Administrator (PCA): The person responsible for ensuring that assigned procurements and contracts are properly solicited, formed, and administered in partnership with stakeholders, pursuant to all applicable TARC policy and procedures, the Commonwealth of Kentucky and Federal Transit Administration (FTA) procurement laws and regulations. Persons duly authorized to administer contracts and make written determinations.

Professional Services: work performed by an independent Contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy, or professional engineering.

Progress Payment: Payments may be made to the contractor for costs incurred in the performance of the contract. Progress payments may only be made on the basis of cost incurred (or in the case of construction contracts only, on the basis of percent of completion) and TARC must obtain adequate security for which progress payments are made. Adequate security may include taking title. Letter of credit or equivalent means to protect TARC interest.

Project: the overall purpose for the good and service for which the Solicitation Process is provided resulting in Contract to purchase the requested goods and services.

Project Schedule: the schedule agreed to by the parties setting forth the logical sequence of activities required for the Contractor's orderly performance and completion of the Work in accordance with this Contract, and specifically, to meet the specified milestone dates, including updates.

Project Manager (PM): The individual designated by TARC to manage the project on a day-to-day basis.

Proposal: A formal plan for the provision of goods or services, tendered by an individual, firm, partnership, corporation, joint venture, or combination thereof.



Proposals are evaluated on qualitative technical factors in addition to price. For Architecture and Engineering projects proposals, price is not a competitive factor.

Proposer: The general term for the entity that submits a response to a Solicitation. Any individual, firm, partnership, corporation, or combination thereof, submitting a Proposal for the work contemplated, acting directly or through a duly authorized representative. For the purposes of these policies, Proposer may be used interchangeable with Bidder or Offeror.

Protest: It will allow any actual or prospective proposer, bidder, offeror, or contractor ("Interested Party") who is aggrieved in connection with a solicitation, evaluation, or award of a contract, an opportunity to state their dispute and have a right to seek resolution of any concerns, issues, or perceived wrongs associated with the procurement process. All TARC's administrative procedures must be exhausted and followed prior to raising the issue to the Federal Transit Administration (FTA).

Public Private Partnership (PPP): Binding agreements between the public and private sectors that allow a private entity to assume significant control of, and risk for, multiple elements of an infrastructure project.

Punch List: a list or lists of items to be furnished and or work to be performed by the contractors to finally complete to work.

Purchasing Card (PCard): a TARC credit card used for maintenance parts and supply purchases under the Micro purchase threshold. It streamlines the procurement process by allowing staff to make business-related purchases within specified limits, bypassing the traditional purchase order and check-writing system.

Purchase Order: written acceptance of an offer in response to a Request for Quote for specified goods and services, at a specified price and delivery schedule.



Requisition: ERP System generated order requesting goods or services that initiate a purchase order by the department owner.

Responsible Bidder Offeror: a person or entity who has submitted a bid or proposal that conforms in all material respects to the solicitation.

Responsiveness: The Contractor's compliance in all material respects with a solicitation document.

RF's: "Request for..." which is followed by the corresponding letter identify the type solicitation being used in the procurement process, i.e. "RFP, RFI, RFQ"

- a. **RFEI** – Request for Expression of Interest – means solicitation to prospective proposers on a procurement opportunity.
- b. **RFI**: Request for Information - A means by which to poll the market or ask a series of questions regarding a potential procurement that is of interest to TARC.
- c. **RFP**: Request for Proposal - A solicitation for equipment, goods, or services on a competitive basis. An RFP is used where there is not a clear definition of the desired goods or services, or where different approaches to the work are possible, or where personal knowledge, experience and skills are a determining factor; professional services are always procured by RFP. Award is made by evaluation of both technical merit and price, and may not be based on price alone.
- d. **RFQ**: Request for Qualification – A qualification-based procurement process where price is not an evaluation factor. RFQs must be used for architectural and engineering services and may be used for other procurements unless prohibited by laws and regulations. RFQ are negotiated procurements.

Rolling Stock: Transit vehicles such as buses, vans, cars, railcars, locomotives, trolley cars and buses, and ferry boats, as well as vehicles used for support services.



Sealed Bid: is a formal method in which bids are publicly solicited and then a firm, fixed-price contract is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for Bids, is lowest in price and are publicly opened.

Senior Staff Member: Executive staff members Executive Director or Chief Executive Officer (CEO), Chief Financial & Administrative Officer (CFO), Assistant Executive Director or Chief Operational Officer (COO), Counsel and All Department Directors.

Simplified Acquisition (formerly Small Procurement): are relatively simple and informal solicitations for services, supplies, or other property, if federally funded, cost less than \$250,000. If not funded by federal monies, the threshold is less than \$100,000.

Single Source: Procurement formally competed and received only one bid; competition is determined inadequate due to number of sources; justification is required to award a contract.

Small Business: a small business as defined by Appendix B-Section 106(c) Determinations of Business Size, and 13CFR Part 121 of the Small Business Act.

Socially and Economically Disadvantaged Individuals: individuals who are citizens of the United States (or lawfully permanent residents) and who are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or women, and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act.

Sole Source: a noncompetitive procurement action whereby there is only one (1) known source who can comply with the explicit requirements of a solicitation. Sole source is typically when the goods or services are proprietary to one company and not easily obtained elsewhere. A sole source justification

is required. All change orders outside the scope of the original Contract is considered a sole source procurement action.

Sole Source Justification: written justification for a procurement action, when full and open competition does not exist. The justification must document fully and adequately, the appropriateness of the decision to solicit an offer from only one source. The justification must include documentation of a cost analysis to verify the proposed cost data and the evaluation of the cost.

Solicitation Document: The document release, published or posted by TARC, to the public or potential proposers, requesting quotes, proposals, or bids for needed goods or services.

Specifications: Part of the Contract containing written directions and requirements for completing the Work and/or providing the goods and services. Standards or portions thereof cited in the Specifications by reference shall have the same effect as if physically included in the Contract in their entirety.

Special Provisions: contractual terms that supplements or modifies the General Conditions. Special Provisions take precedence over any General Condition modified by it.

State or Local: The States of the United States, counties, municipalities, cities, towns, townships, tribal governments, public authorities (including public or Indian housing agencies under the United States Housing Act of 1937), school districts, colleges, and other institutions of higher education, council of governments (incorporated or not), regional or interstate government entities, or any agency or instrumentality of the preceding entities (including any local educational agency or institution of higher education), and including legislative and judicial departments.

Subcontinent Asian Americans: includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal, or Sri Lanka.



Subcontract: an agreement including purchase orders (other than one involving an employer/employee relationship) entered into between TARC's Contractor and a lower tier Subcontractor calling for services, labor, equipment, and/or materials required for Contract performance.

Subcontractor: Any person, firm, partnership, corporation, or other entity, other than employees of the Contractor, that contracts with the prime Contractor to furnish labor, materials or goods and services, under a specific Contract.

Substantial Completion: Completion of the Work, or designated portion thereof, to a point where TARC certifies that the work or the designated portions can be used for the purpose for which it was intended, whether or not minor portions of the work, or corrections to any portions of the Work, remain to be completed. Substantial Completion does not relieve the Contractor of its obligation to finally complete the Work in timely fashion. Items remaining to be completed after Substantial Completion are documented in a Punch List.

Supplies, Material, and Equipment: all property, including but not limited to leases on real property, printing and insurance, except land or a permanent interest in land and items incorporated in the Work or otherwise delivered to TARC.

Supplier: a person or entity that provides supplies, materials, or equipment, but usually does not provide labor on TARC property other than delivery

Surety: A party legally liable for the debt, default, or failure of a principal to satisfy a contractual obligation.

Suspension: the disqualification of any person to receive invitations for bids or Requests For Proposals, or to be awarded a contract by TARC for a temporary period, pending the completion of an investigation and any legal proceedings that may ensue.



Task Order: An order for service(s) placed against an established professional service or construction contract and as authorized in the contract. A task order is sometimes referred to as a work or job order.

TARC: Transit Authority of River City, the transit agency that serves the Metro Louisville, Jefferson County, Southern Indiana and surrounding areas.

Transit Oriented Development (TOD): Transit oriented development is a type of community development that includes a mixture of uses and is located near transit facilities.

Third Party Contract: Refers to a contract or purchase order awarded by a grantee such as a vendor, supplier, consultant, or contractor using Federal financial assistance awarded by FTA.

Urgent Procurement: Impromptu procurement need that require immediate action or attention. Also, see *Emergency Procurement*.

Value Engineering: Is a systematic and creative analysis to ensure that the project is designed and constructed to perform its essential functions in the most cost-effective manner.

Women: includes all females regardless of race, ethnicity, or origin.

Work: the furnishing of all of the supervision, labor, Materials, equipment, services, and incidentals necessary to complete the Contract, and the carrying out of any duties and obligations imposed on the Contractor by the Contract.



Responsibilities

All TARC employees involved in the procurement process must follow the procedures and responsibilities outlined in this policy:

All Employees: Obligated to comply with ethical standards outlined in this policy, including avoiding conflicts of interest, maintaining impartiality, and reporting any potential violations or discrepancies in procurement activities promptly.

TARC Board of Directors: Responsible for adopting and periodically reviewing procurement regulations and policies, ensuring alignment with organizational goals and regulatory compliance.

Executive Director (CEO): Oversees the overall implementation, supervision, and enforcement of procurement policies, delegates authority for procurement activities, and ensures periodic review and timely amendments of procurement regulations as necessary.

Director of Procurement: Responsible for overseeing the operational execution of procurement processes, managing the Procurement Department, ensuring compliance with policy procedures, resolving procurement issues, and facilitating communication between departments and external entities.

Procurement Department: Tasked with planning, organizing, facilitating, managing, and evaluating all procurement activities. Responsibilities include maintaining procurement documentation, managing vendor relations, ensuring adherence to procurement standards, and overseeing compliance with federal, state, and local regulations.

Chief Financial and Administrative Officer (CFAO): Under oversight from the Executive Director, responsible for managing day-to-day operations related to agency funds, ensuring accuracy of accounting records, maintaining internal controls, achieving financial objectives and policies, preparing financial statements, and reviewing and approving bank reconciliations.



Department Directors and Project Managers: Required to collaborate with the Procurement Department, provide accurate project specifications, manage project budgets, and participate actively in contract administration and compliance processes.

Procurement and Contract Administrator (PCA): Responsible for ensuring that assigned procurements and contracts are properly solicited, formed, and administered in partnership with stakeholders, pursuant to all applicable TARC policy and procedures, the Commonwealth of Kentucky and Federal Transit Administration (FTA) procurement laws and regulations

Contract Coordinator: Carries out responsibilities and tasks related to the end-to-end process of contract administration.

Buyer: Assists in the selection and purchase of goods and services, and processes requisitions by gathering and screening information about products, prices, and suppliers.

PROCUREMENT SYSTEM-WIDE ELEMENTS

The TARC Board of Directors has adopted the regulations contained herein governing the procurement and/or disposal of any and all materials, supplies, services, equipment, construction, and other items required by TARC. The Board has considered and decided matters of policy with regard to TARC procurement or disposal. The Board shall have the power of review with respect to the implementation of regulations and policy determinations.

The Executive Director of TARC shall be responsible for the implementation of adopted regulations and policies, recommend changes to such regulations, policies, and procedures; and shall have supervision over all procurements and disposals. He shall delegate such supervision as deemed necessary. This policy should be published to assist in implementing the regulations, policies, and procedures. This policy shall be distributed to those TARC employees directly involved in the procurement process and shall be considered revised upon adoption of amendments to such regulations, and



policies. Such regulations and policies shall be reviewed annually in June for possible amendment, but may be amended any time by the Executive Director, upon a finding by the Executive Director of immediate necessity.

1.0 WRITTEN STANDARD CODE OF CONDUCT

1.1 General

1.1.1 All TARC officers, employees and members of the TARC Board, including but not limited to the Procurement Staff, Buyer and the Director of Procurement shall promote, foster and maintain the integrity of the procurement processes utilized by TARC. Additionally, are required to conduct procurements in accordance with applicable local, state, and federal requirements as prescribed in FTA Circular 4220.1G or latest version. and Best Practices Procurement Manual (BPPM). TARC procurement policy will be conducted using the highest standard of ethics while utilizing best business practices.

1.2 Organizational Conflict of Interest

1.2.1 It is the policy of TARC to remain objective and impartial with regard to all suppliers, vendors, service companies, passengers, etc., with whom we may have a relationship as part of our normal daily operations.

1.2.2 In all matters pertaining to the operation of TARC, no TARC official or representative shall have any relationship or engage in any activity which might:

1.2.2.1 Involve or lead to personal obligations which could impair the objectivity of such person's judgment, or



1.2.2.2 Imply to others that favoritism or obligations exist between the employee, officer, or agent, and any other party, providing an opportunity for an unfair competitive advantage.

1.2.2.3 When the contractor is unable, or potentially unable, to render impartial assistance or advise to TARC due to the other activities, relationships, contracts, or other circumstances.

1.2.3 The following are expressly prohibited:

1.2.3.1 Acceptance of gifts or other gratuities which affect the judgment of a TARC official or representative.

1.2.3.2 Acceptance of entertainment, if any party might reasonably infer the creation of an obligation pursuant to said entertainment.

1.2.3.3 Existence of a financial interest by any TARC official or representative in any other organization, which might profit either from the decisions he/she makes in carrying out his responsibilities, or from his knowledge of TARC actions or future plans. Any interest as an owner, partner, joint venture or stockholder of five (5%) or more percent or receipt of one thousand dollar (\$1,000) or more in any given year in any such organization shall be deemed a "financial interest."

- Ownership of any interest or involvement in any relationship from which, or as a result of which, a person has, received or is presently or in the future entitled to receive more than one thousand dollars (\$1,000); or
- Ownership of more than 5% in any business; or

- Holding a position in a business such as an officer, director, trustee, partner, employee, or the like, or holding any position of management.
- 1.2.3.4** Investment by a TARC official or representative based upon special knowledge he obtained –whether directly or inadvertently –as a result of his/her TARC position.
- 1.2.3.5** Participation by TARC official or representative in the selection, award, or administration of a contract between TARC and other organization which contract is supported by Federal funds if the individual or any member of the individual’s immediate family has a financial or other interest in the organization.
- 1.2.4** Organizational Conflict of Interest - The FTA Circular 4220.1G or latest version., describes an organizational conflict of interest as follows:
- 1.2.4.1** An organizational conflict of interest means that because of other activities, relationships, or contracts, a contractor is unable or potentially unable, to render impartial assistance or advice to TARC; a contractor’s objectivity in performing the contract work is or might be otherwise impaired; or a contractor has an unfair competitive advantage.
- 1.2.4.2** There are two distinct problems that organizational conflicts of interest can cause. One concerns the issue of bias; the other involves the issue of unfair competitive advantage.
- 1.2.5** An organizational conflict of interest occurs when the type of work to be performed under a third-party contract, or because of other activities or relationships:



- 1.2.5.1** A contractor is unable, or potentially unable to render impartial assistance or advice to TARC, due to other activities, relationships, contracts, or circumstances.
- 1.2.5.2** A contractor's objectivity in performing contract work is or might otherwise be impaired, or
- 1.2.5.3** A contractor has an unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier contract.
- 1.2.5.4** When during the conduct of an earlier procurement, bidder or offeror has established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents.
- 1.2.5.5** Supporting or acquiescing in noncompetitive pricing practices between firms or between affiliated companies.
- 1.2.5.6** Taking any arbitrary action in the procurement process. Such as awarding to other than the most favorable constructor is prohibited by TARC. The problem of bias arises when a contractor is placed in a situation where it may have an incentive to distort its advice or decisions. Whenever TARC is awarding a contract that involves the rendering of advice, the question must always be asked as to whether there exists the potential for a conflict of interest for the contractor rendering the advice.
- 1.2.5.7** TARC shall always consider using a "Conflict of Interest Disclosure Statement" in its solicitation as prescribed in BPPM when contracting for services of this nature.
- 1.2.5.8** The problem of unfair competitive advantage occurs most often when a contractor is developing specifications or

statements of work that will be used in a future competitive solicitation. The problem most often causing unfair advantage is that of a contractor writing specifications or statements of work around its own corporate competitive strengths or products, and then bidding on those specifications or statements of work. The unfair advantage can be overcome by placing reasonable restrictions on the contractor's involvement in the procurement that will utilize the specifications. Some form of advance restriction (limitation on future contracting) must be agreed to with the contractor as a provision within its consulting contract as prescribed in BPPM.

- 1.2.5.9** Another typical problem scenario is that a contractor developing specifications or work statements may have access to information that TARC has paid the contractor to develop, or which TARC has furnished to the contractor for its work and which has not been made public. When this information enhances the contractor's competitive position in the bidding, it represents an unfair competitive advantage. The potential solution to this problem is to fully disclose all information to the bidders for a reasonable time prior to receipt of proposals.
- 1.2.5.10** The situation of unfair competitive advantage is to be distinguished from a fairly won competitive advantage which naturally accrues to any contractor that can do work more efficiently because it has more experience (i.e., won more contracts) for its products or services.
- 1.2.5.11** TARC shall not discourage any or all competitors from bidding on a particular procurement. This is due to perception of an incumbent contractor to have an insurmountable competitive advantage by virtue of its previous work.

1.3 Personal Conflict of Interest

1.3.1 TARC's Personal Conflict of Interest Policy is as follows:

1.3.1.1 TARC prohibits its employees, officers, board members, or agents from participating in the selection, award, or administration of a third-party contract or sub agreement supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when any of the following parties has a financial or other interest in the entity selected for award: (a) an employee, officer, board member, or agent; (b) any member of his or her immediate family; (c) his or her partner; or (d) an organization that employs, or intends to employ, any of the above.

1.3.1.2 Note: FTA has expressly mandated the inclusion of board members in its requirements for TARC codes of ethics and written standards of conduct. The common grant rules do not expressly mention board members but FTA has always understood board members to be implicitly covered by the common rules.

1.3.2 Those regulations noted above that require TARC to have written standards of conduct also define the circumstances giving rise to personal conflicts of interest. Those circumstances have been defined to include conflicts arising from the selection of a firm for award when any of the following has a financial or other interest in the firm selected:

1.3.2.1 The employee, officer, agent, or board member,

1.3.2.2 Any member of his/her immediate family,

1.3.2.3 His or her partner, or

1.3.2.4 An organization that employs, or is about to employ, any of the above

1.3.3 The Federal rules, and this Policy, also prohibit TARC personnel from soliciting or accepting gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub agreements.

1.3.4 The procurement business of TARC shall be conducted in a manner above reproach and with complete impartiality and without preferential treatment. Any violation of these standards may be cause for disciplinary action, including dismissal, if appropriate.

2.0 CONTRACT ADMINISTRATION SYSTEM

2.1 General

2.1.1 TARC will manage, maintain, track and oversee a contract administration system to ensure that its third-party contractors comply with the terms, conditions, and specifications of its contracts or purchase orders and applicable Federal, State and local responsibilities. (FTA C4220.1G or latest version., III, 3.) or latest version. Refer to Procurement Manual.

2.2 Contract Documentation

2.2.1 Contract administration system documentation shall encompass the required FTA supporting documents. The procurement history should commensurate with the size, type and complexity of the procurement.

2.2.2 The Procurement Department is responsible for maintaining the contract file which includes the required procurement solicitation and contract

documents. These two documents shall be filed in one single folder after contract closeout, refer to the FTA Best Practices Procurement Manual (BPPM) in Chapter 5 – Contract Administration.

2.2.3 The official contract file shall include the following:

1. A signed fully executed copy of the complete contract including exhibits;
2. Internal approval or authorization of the project budget;
3. Independent cost estimate or pricing/cost analysis;
4. All FTA required forms as prescribed in FTA Circular 4220.1G or latest version. and BPPM;
5. All signed amendments, modifications and change orders including rationale for the contract change and justification for the resulting cost/price analysis or delivery and/or project date change;
6. All correspondence with the contractor;
7. Approvals or disapprovals of contract deliveries;
8. Requests for waivers or deviations and the associated responses;
9. Documentation regarding settlement of claims and disputes;
10. Documentation regarding stop work or suspension of work orders;
11. Written Record of Procurement History



- a. The Written Record of Procurement History shall contain all of the following:
 - 2.2.3.11.a.1 Procurement Method: TARC will provide its rationale for the method of procurement used for each contract, including sole source justification. TARC subrecipients only need to provide justification for when it does not obtain competitive bids or proposals for contracts exceeding the simplified threshold In Agreement With (IAW) FTA C 4220.1G (or current version) Chapter II 3.b.
 - 2.2.3.11.a.2 Contract Type: The type of contract, that TARC utilizes for each procurement, must state the reasons for the contract type it used. (fixed price, cost reimbursement, and so forth)
 - 2.2.3.11.a.3 Contractor Selection: TARC must state its reason for contractor selection or rejection. FTA expects TARC to include a justification for each noncompetitive award. A written responsibility determination for each successful contractor will be included in the procurement file.
 - 2.2.3.11.a.4 Cost or Price: TARC must evaluate and state its justification for the contract cost or price.



2.2.3.11.a.5 Reasonable Documentation: The extent of the documentation should be reasonable and commensurate with the size and complexity of the procurement itself.

2.3 Contract Disputes

2.3.1 Even though contract documents are made as clear as possible, there may be differences in interpretation as to what may or may not be included in the contract. The objective of this dispute resolution procedure is for a prompt agreement as to the merit and solution of such disputes.

2.3.2 The contractor shall present a possible dispute to the TARC project manager. If the claim is submitted to any other official, either TARC or consultant, it shall be directed to the project manager. The TARC project manager will review the claim, obtain additional information from the contractor as required, consult with all necessary parties, and make a recommendation as to the merit of the claim to his appropriate supervisor. If the supervisor believes there is merit, even partial, then he shall prepare a report on his findings in document form. This document will be placed in the contract file and become the basis for a change order or contract amendment. From this point on, the claim or dispute is considered resolved.

2.3.3 If the project manager believes that there is no merit, then that individual will formally respond to the contractor to that effect. In the letter, the contractor will be advised of the right to appeal if provided in the dispute clause of the contract.

2.4 Cardinal Changes

- 2.4.1** A significant change in contract work that causes a major deviation from the original purpose of the work or the intended method of achievement, or causes a revision of contract work so extensive, significant, or cumulative that, in effect, the contractor is required to perform very different work from that contemplated in the original competition, is a cardinal change. Such practices are sometimes informally referred to as “tag-ons.”
- 2.4.2** Restricted: A cardinal change that is beyond the scope of the competition conducted to achieve the original contract is, effectively, a new contract. Accordingly, TARC must not allow a cardinal change to a contract without a justification for making a noncompetitive award.
- 2.4.3** Identifying Cardinal Changes: Recognizing a cardinal change can be nuanced and fact specific. TARC should consider the circumstances of the contract and the change at issue considering the original competition. It may require TARC to consider whether the change was reasonably foreseeable to the contractor and the other offerors at the time. TARC will also be guided by its local procurement rules and contract law. Although FTA has provided additional guidance in its Best Practices Procurement & Lessons Learned Manual, FTA has not developed a definite list of acceptable contract changes. There is no specific percentage, dollar value, number of changes, or other objective measure that would apply to all cases.
- 2.4.4** Tests: TARC may consider whether a contemplated change is so drastic that it exceeds the scope of the contract’s changes clause. This is not the same as the ultimate question, which is whether the change is outside the scope of the competition that procured the contract, but in practice these questions overlap. Other tests involve the nature and extent of the work to be performed, the amount of effort involved, whether the change was contemplated during discussions with offerors or at the time the original contract was entered into, or the cumulative impact on the contract’s quantity, quality, costs, and delivery terms.

2.4.5 Changes in Quantity: Very large changes to quantities may be cardinal changes. However, to categorize any change in quantity as a prohibited cardinal change would be impractical and would unnecessarily restrict a recipient's discretion to adjust contemplated fairly and reasonably by the parties when they entered into the contract.

2.4.6 Rolling Stock: In the case of rolling stock, a substitution of major end items not contemplated when competition for the original award took place generally would be a cardinal change. For example, a change from a high-floor to a low-floor vehicle, or a change from a single-deck to a double-deck vehicle, could be cardinal changes. Changing an engine or fuel type might result in a cardinal change depending on the circumstances surrounding the project and the terms of the solicitation. Changes to seating, fabrics, colors, exterior paint schemes, signage, and floor covering, and other similar changes usually will not be cardinal changes.

2.5 Contract Closeout

2.5.1 All Contracts shall have a process for closing out the project and the payments. Contract Closeout Checklist shall include but not limited to:

1. Notification of Written Record of Procurement History;
2. Inspection / Acceptance Documentation;
3. Certificate of Completion;
4. Determination/Recovery of Liquidated Damages, as applicable;
5. Systems Integration Testing, as applicable;
6. Warranties, as applicable;
7. Final Invoice or payment;



8. Review and Settlement of Insurance Claims, as applicable;
9. DBE participation forms;
10. Contractor's General Release;
11. Notification of Closeout to Grants Management

2.6 Record Retention and Access

2.6.1 The Common Grant Rules require TARC to prepare and maintain adequate and readily accessible project performance and financial records, covering procurement transactions as well as other aspects of project implementation. TARC, and TARC sub-recipients, are required to maintain these records for three (3) years after the final payment and all pending matters have been closed.

2.6.2 Access to Records: The FTA will be provided unlimited access to all records related to any FTA financed project or procurement.

3.0 WRITTEN PROTEST

3.1 General

3.1.1 An enclosure detailing TARC bid protest policy will be included with all bid, proposal or written quotation requests. A copy of FTA bid protest appeal procedures, FTA Circular 4220.1G or latest version will be provided by the Procurement staff or Director of Procurement upon bidder request.

3.1.1.1.1 In addition, in order to help unsuccessful bidders understand TARC's selection process, after each

solicitation has been awarded, TARC generally offers a “Debriefing” session. This bidder debrief is an opportunity for TARC to present to bidders information about the evaluation process, and to provide explanation as to how and why the winning bidder was selected. This is an educational opportunity that TARC believes will improve competition by helping bidders be more responsive and competitive in future solicitations. Further, it can help clarify to bidders why they were not chosen, and potentially avoid bid protests.

3.1.2 Definitions for Purposes of the section:

3.1.2.1 Day – refers to business working days.

3.1.2.2 Timely – within five (5) business working days.

3.1.2.3 The term “interested party” means any person (a) who is an actual bidder or prospective bidder in the procurement involved, and (b) whose direct economic interest would be affected by the award of the contract or by a failure to award the contract.

3.1.2.4 Note – The Federal Transit Administration (FTA) will be notified by TARC of all formal, written protests, when FTA funds are involved.

3.1.3 Transit Authority of River City (TARC) will hear and consider a bona fide bid protest regarding its procurement actions. It is anticipated that the majority of protests will be evaluated and finally decided by TARC. Accordingly, TARC intends to provide a thorough review of all bona fide bid protests. TARC’s primary concern, however, is the timely procurement of needed capital equipment, supplies or services. It does not intend to allow the filing of protests to unnecessarily delay



the procurement process, especially if the protest involved is vexatious or frivolous in nature.

- 3.1.4** Notwithstanding the availability of these protest procedures, any interested party is encouraged to exhaust all methods described in this section of resolving an issue before filing a formal protest with TARC. In its consideration of a protest, TARC reserves the right to give due consideration to the good faith efforts of the protestor to resolve the issue involved through informal methods.

3.2 Submission of Protest

- 3.2.1** Any interested party may file a protest with TARC on the basis that TARC has failed to comply with applicable Federal or State Regulations or with TARC's Procurement Process. The protest must be filed in accordance with the timing requirements set forth in subsection 3.3 "Types of Protests and Timing" of this section, and must include; the name, phone number, e-mail and address of the protestor; the solicitation and proposed contract number of the bid. A statement of grounds for the protest, a statement as to what relief is requested, and in particular the Federal or State law or Authority Process alleged to have been violated. This statement should be accompanied by any supporting documentation the protesting party desires TARC to consider in making its decision.

- 3.2.2** Protest should be submitted to:

- 3.2.2.1.1** Executive Office of the Executive Director

- 3.2.2.1.2** 1000 W Broadway, Louisville, KY 40203

3.3 Protest Types: Information and Requirements for Bidders



3.3.1 The requirement for timely filing of protest with TARC will depend upon the type of protests involved. TARC will consider the following three types of protest by interested parties:

3.4 Protest Regarding Solicitation

3.4.1 Any bid protest regarding the solicitation by TARC must be filed no later than five (5) business days before proposal due date. Any protest filed after that date regarding the solicitation will not be considered by TARC.

3.4.2 This type of protest would include any claim that the solicitation contained exclusionary or discriminatory specification, any challenge to the basis of award, or any claim that the solicitation documents or the solicitation process violated applicable Federal or State law, or that TARC failed to follow its Procurement Process in the solicitation.

3.5 Protests Regarding Requirements and Responsiveness

3.5.1 Any protest regarding the requirements and responsiveness of solicitation by TARC must be filed with Authority no later than five (5) business days after receipt of letter of notification of non-responsiveness. Any protest filed after such date regarding the requirements and responsiveness will not be considered by TARC.

3.5.2 This type of protest would include any challenge to determinations by TARC of the responsiveness of or the responsibility of a bidder, or any claim that the requirements and responsiveness of solicitation violated Federal or State law or TARC's Procurement Process.

3.6 Protest Regarding Receipt of Non-Award Notification

- 3.6.1** Any protest regarding the award of the contract must be filed no later than five (5) business days after receipt of Non- Award Notification. Any protest regarding the award of the contract filed after that date will not be considered by TARC.
- 3.6.2** This type of protest will only be entertained by TARC if the protestor is able to demonstrate that the party awarded the contract fraudulently represented itself as a responsible bidder or that TARC violated Federal or State regulations or its Procurement Process in the award of the contract.

3.7 Authority Response

- 3.7.1** TARC will notify the protestor upon five (5) business working days receipt of a protest and may, where appropriate, request additional information from the protestor. TARC may, at its discretion, meet with protestor to review the matters raised by the protest. TARC's consideration of the particular types of protests will, except as otherwise stated in subsection 3.9 "Decisions by Authority" in accordance with the following provisions:

3.8 TARC's Decision Procedures by Protest Type and Effect on the Solicitation Process

3.8.1 Protest Regarding Solicitation

- 3.8.1.1** Upon receipt of a filed protest within five (5) business days of submission deadline, TARC will postpone any further openings until resolution of the protest. No additional solicitations will be accepted during the period of postponement.



3.8.1.2 If the protest regarding the solicitation involves a claim of unduly restrictive or exclusionary specifications, TARC will, in evaluation of the protest, consider both the specific need of TARC for the feature or item challenged and any effects on competition of including the specifications regarding that feature or item. If TARC determines that such feature or item was included in the specification in order to meet justified and valid transit needs of TARC, and was not unduly restrictive of competition or designed to exclude a particular competitor, then TARC will have grounds to deny the protest.

3.8.2 Protest Regarding Requirement and Responsiveness

3.8.2.1 Upon receipt of a filed protest within five (5) business days regarding the requirements responsiveness, TARC will suspend its evaluation of all solicitations submitted until resolution of the protest, if TARC determines that the protestor has established that there are reasonable doubts regarding the responsiveness of a bid or the responsibility of a bidder or regarding TARC's compliance with Federal or State Regulations or its Procurement Process.

3.8.3 Protests After Non-Award Notification

3.8.3.1 Upon receipt of five (5) business days filed protest regarding the non-award notification TARC will not proceed with contract, if necessary, until the resolution of the protest if TARC determines that the protestor has established a prima facie case that the contract was awarded fraudulently or in violation of that Federal or State Regulations or TARC's Procurement Process.

3.9 Decisions by Authority

3.9.1 As indicated above, in most instances TARC will suspend the procurement process upon receipt of a bona fide protest. However, TARC reserves the right, notwithstanding the pendency of a protest, to proceed with the appropriate action in the procurement process or under the contract in the following cases:

3.9.1.1 where the item to be procured is urgently required;

3.9.1.2 where TARC determines that the protest was vexatious or frivolous; and

3.9.1.3 where delivery of performance will be unduly delayed or other undue harm will occur, by failure to make the award promptly

3.9.2 After reviewing the protest submitted under this section, TARC will issue a written decision of the basis of the information provided by the protestor, the results of any meetings with protestor, and TARC's own investigation. If the protest is upheld, TARC will take appropriate action to correct the procurement process and protect the rights of the protestor, including re-solicitation, revised evaluation of solicitation or Authority determinations, or termination of the contract. If the protest is denied, TARC will lift any suspension imposed and proceed with the procurement process.

3.10 Notification to FTA

3.10.1 TARC will notify FTA when it receives a third-party contract protest to which Circular 4220.1G or latest version applies, and keep FTA informed about the status of the protest.

3.11 FTA Protest Procedure



- 3.11.1** Reviews of protests by FTA will be limited to claims that TARC failed to have or follow protest procedures, or claims TARC failed to review a complaint or protest.
- 3.11.2** A protestor must exhaust all administrative remedies with TARC before pursuing a protest with FTA. An appeal to FTA must be received by the cognizant FTA regional or Headquarters Office within five (5) working days of the date the protestor knew or should have known of the violation.
- 3.11.3** Under certain circumstances, protest may be made to the FTA in accordance with FTA circular 4220.1G or latest version.
- 3.11.4** Violations of Federal law or regulation will be handled by the complaint process stated within that law or regulation. Violations of State or local law or regulations will be under the jurisdiction of State or local authorities.

3.12 Protest Submission

- 3.12.1** Protests may be made by prospective bidders/offerors whose direct economic interest would be affected by a solicitation, proposed award, or award of a contract. TARC will consider all protests made in a timely manner, whether submitted before or after an award. The Regional FTA Office will be notified of all Protests of Federally Funded Contracts and will be kept current of the status of the protest. All protest documentation and status of protest will be made available to the FTA IAW the most current version of FTA C4220.1G or latest version Chapter VII or latest version.
- 3.12.2** All protests are to be submitted in writing to Transit Authority of River City; Attn: Executive Office, Executive Director; 1000 West Broadway, Louisville, Kentucky 40203.

3.12.3 Protest submissions should be concise, logically arranged, and clearly state the grounds for the protest. Protests must include at least the following information:

3.12.3.1 Name, address, and telephone number of protestor.

3.12.3.2 Identification of the solicitation or contract.

3.12.3.3 A detailed statement of the legal and factual grounds for the protest, including copies of all relevant documents or information and a description of the prejudice resulting to the protester.

3.12.3.4 A statement as to what relief is requested.

3.12.3.5 The date the facts giving rise to the protest became known to the protester.

3.12.4 Protests must be submitted to TARC in accordance with these procedures and time requirements stated herein. Protests must be complete and contain all issues that the protestor believes relevant. A protest that fails to contain the required information may be denied solely on that basis.

3.12.5 TARC's protest procedures will be referenced in all solicitation documents so all interested parties shall know their rights under these protest procedures:

3.12.5.1 Protests Before Bid Opening

3.12.6 Bid protests alleging restrictive specifications or improprieties which are apparent prior to bid or proposal opening must be submitted in writing to TARC and must be received at least three (3) days prior to bid/proposal opening. Bids will not be opened until seven (7) days after resolution of the protest unless TARC determines that:



- 3.12.6.1** The items to be procured are urgently required;
 - 3.12.6.2** Delivery or performance will be unduly delayed by failure to make award promptly; or
 - 3.12.6.3** Failure to make award will otherwise cause undue harm to TARC or the state/federal government.
- 3.12.7** If the written protest is not received by the time specified, bids or proposals may be received, opened and awarded in the normal manner unless a determination is made by TARC to delay procurement. Oral protests not followed up by a written protest will not be considered. TARC may request additional information from the protesting party, or information or a response from other bidders, which must be submitted in writing to TARC no later than ten (10) days from the date of TARC's request. So far as practicable, protests will be decided upon the basis of the written material submitted by all sources so all parties are urged to make written submissions as complete as possible. Failure of any party to respond timely to a request for information may be deemed by TARC that such party does not desire to participate in the proceeding, does not contest the matter, or does not desire to submit a response; and, in such event, the protest will proceed and will not be delayed due to the lack of a response. Upon receipt of a protest, appropriate TARC staff, TARC's Legal Counsel and, any independent evaluation deemed appropriate by TARC, shall review the written protest submissions, and within ten (10) days shall, either (a) render a final written decision which responds in detail to each substantive issue raised in the protest, or (b) at the sole election of TARC, conduct an informal hearing at which the interested participating parties will be afforded an opportunity to present their respective positions, facts, documents, justification, and technical information in support thereof. Parties may, but are not required to, be represented by counsel at the informal hearing, which will not be subject to formal rules of evidence or procedures. Following

any informal hearing, TARC shall render a decision, and advise all interested parties thereof in writing no later than ten (10) days from the date of the informal hearing.

3.13 Protests After Bid Opening/Prior to Award:

3.13.1 Protests against making an award may be made after bid opening and prior to award. Such protests must be submitted in writing to TARC and must be received by TARC within seven (7) days of the bid opening. The process outlined above for receiving and resolving protests received before bid opening will be followed for any protest received under this section.

3.13.2 Notice of the protest and the basis therefore will be given to all respondents. In addition, when a protest against the making an award is received and TARC decides to withhold the award pending disposition of the protest, the bidders/offerors whose bids or proposals might become eligible for award shall be requested, before expiration of the time for acceptance, to extend or withdraw the bid or proposal.

3.13.2.1 Where a written protest against making an award is received in the time specified, award will not be made until at least seven (7) days after resolution of the protest unless TARC determines that:

3.13.2.2 The items to be procured are urgently required;

3.13.2.3 Delivery or performance will be unduly delayed by failure to make award promptly; or

3.13.2.4 Failure to make award will otherwise cause undue harm to TARC or the state/federal government.



3.14 Protests After Award

3.14.1 Protests received after award has been made will be considered only if the contractor has not executed the contract as of the date the protest is received by TARC. Under this circumstance, the protest will be processed as if received before bid opening and the execution of the contract will not be made until seven (7) days after resolution of the protest unless TARC determines that:

3.14.1.1 The items to be procured are urgently required;

3.14.1.2 Delivery or performance will be unduly delayed by failure to make award promptly; or

3.14.1.3 Failure to make award will otherwise cause undue harm to TARC or the state/federal government.

3.15 Appeal Process

3.15.1 An appeal of TARC's decision or request to reconsider such decision will only be allowed if data becomes available that was not previously known and could not have been discovered through reasonable efforts of the protestor or if there has been an error of law or regulation. Such appeal or request to reconsider must be made within five (5) days after TARC's decision. If an appeal or request to reconsider is made, the appeal shall be submitted in the same format as the original protest to TARC's Legal Department. Review of any appeal information shall be made by Legal Counsel or his/her designee. The final decision of the appeal shall be made by Legal Counsel or his/her designee. TARC shall respond in writing no later than ten (10) days from the receipt date of appeal or request to reconsider.

3.16 Protests to Federal Transit Administration:

3.16.1 Under certain limited circumstances, an interested party may protest to FTA if the procurement involves funds from an FTA grant. FTA's review of any protest will be limited to an alleged failure by TARC to have written protest procedures or alleged failure by TARC to follow such procedures. Alleged violations on other grounds are under the jurisdiction of the appropriate state or local administrative or judicial authorities. Alleged violations of a specific federal requirement that provides an applicable complaint procedure shall be submitted and processed in accordance with that federal regulation.

3.16.2 Protestors desiring to do so shall file a protest with FTA not later than five (5) days after the decision or reconsideration of TARC is rendered under the TARC protest procedure. In instances where the protestor alleges that TARC failed to make a final determination on the protest, the protestor shall file a complaint with FTA no later than five (5) days after the protestor knew or should have known of TARC's failure to render a final determination on the protest. The protestor must exhaust its administrative remedies by pursuing the recipient's protest procedures to completion before appealing the recipient's decision to the FTA.

3.16.3 Protests to FTA should be filed with the FTA Atlanta Regional Office with a concurrent copy to TARC. The protest filed with FTA shall be filed in accordance with the most current version of FTA Circular 4220.1G or latest version. or latest version, include the name and address of the protestor, identify the TARC project number, contain a statement of the grounds for the protest and any supporting documentation, and include a copy of the local protest filed with TARC and a copy of TARC's decision, if any.

4.0 PROCUREMENT STANDARDS



4.1 General

TARC procurement transactions will be conducted in a manner allowing full and open competition to the maximum feasible extent. The regulations, policies and procedures contained herein are designed:

- 4.1.1** To simplify and clarify the standards relating to procurement by TARC;
- 4.1.2** To ensure complete public confidence in the procedures followed in TARC procurement;
- 4.1.3** To ensure the fair and equitable treatment of all persons who deal with the procurement system of TARC;
- 4.1.4** To provide increased economy in TARC procurement activities by fostering effective competition; and
- 4.1.5** To provide safeguards for the maintenance of a procurement system of quality and integrity.

This section documents the approval, authorization and reporting levels needed for various procurement types.

The following table shows the procurement threshold currently approved for TARC staff and Board of Directors.

The Director of Grants and Capital will be required to authorize all Grant related requisitions.

The Chief Financial & Administrative Officer (CFAO) will be required to authorize all procurement projects that results into contract agreements that may include scope and timeline schedule that may fall within Small Procurement or Simplified Acquisitions thresholds.



The Department Directors will be required to approve and authorize all related requisitions that may fall under their departments within the thresholds.



4.2 Threshold, Authorization, Approval and Reporting Levels

4.2.1 Procurement funded by revenue, local and state (non-federal monies):

<u>Amount</u>	<u>Authority/Approval</u>	<u>Procurement Method</u>
Up to \$3,500	Supervisors &	Micro Purchase
Up to \$15,000	Director or Assistant Director Level	Simplified Acquisition (Small) 3 Quotes
Up to \$30,000	Director of Maintenance	
Up to \$65,000	COO or CFAO	Simplified Acquisition (Small) 3 Quotes
Up to \$100,000	Executive Director or CEO	Simplified Acquisition (Small) 3 Quotes Or Emergency Procurement
Fuel Only - Up to \$100,000	Director of Procurement	Simplified Acquisition
Greater than \$100,000	Board Review and/or Authorization	Formal - Competitively Bid

4.2.2 Procurements that are not budgeted of which may be funded by revenue, local, and state funds must be requested and processed through similar process above and approved by the Department Director and Director of Finance.



4.2.3 Procurement funded by FTA or other federal grants:

<u>Amount</u>	<u>Authority/Approval</u>	<u>Procurement Method</u>
Up to \$10,000 (\$2,001 Construction)	Procurement Official (Managers/Supervisors)	Micro Purchase
Up to \$15,000 Up to \$30,000	Director or Assistant Director Level Director of Maintenance	Simplified Acquisition (Small) 2 Quotes
Up to \$65,000	Director of Grants and Capital	Simplified Acquisition (Small) 2 Quotes
Up to \$100,000	COO or CFAO	Simplified Acquisition (Small) 2 Quotes
Up to \$250,000	Executive Director or CEO	Simplified Acquisition (Small) 2 Quotes
Above \$250,001	Board Review and/or approval	Formal - Competitively Bid

4.2.4 Procurement that are not budgeted or an emergency of which may be funded by federal funds must be requested and processed through similar process above and approved by the Director of Grants and Capital, Director of Finance and Chief Financial and Administrative Officer (CFAO).

4.2.5 No department, officer, official, or representative of TARC should obligate TARC to financial commitment unless by this TARC Procurement Policy. Notice of this fact should be sent annually to organizations with which TARC contracts.

4.2.6 A requisition must accompany all requests except for utility services, (telephone, electric, gas, internet cable, and/or any services that are subscription based (organizational memberships, travel, training dues and fees).



- 4.2.7** TARC's financial obligation in procurement must be evidenced by an approved requisition, supporting documents and followed by a system Purchase Order.
- 4.2.8** For purchases under the Micro and Small Procurement - No telephone, handwritten or verbal purchases shall be made without the proper authorization and approval process. No purchasing transactions shall be made or agreed upon without a system Purchase Order originated by Procurement Department.
- 4.2.9** Approval is required from the department director for all purchase requests related to the specific department. All grant-related purchases must be approved by the Director of Grants and Capital Programs or the Executive Director or designee.
- 4.2.10** The Executive Director or Chief Executive Officer or Chief Financial Administrative Officer, or a designee, TARC Board Chair and/or and Vice-Chair will be the only officials to enter into any written agreement herein.
- 4.2.11** All Contracts for goods, non-professional services and professional services in excess of \$100,000 must be approved by the Board of Directors, as described by the tables and corollary funding source herein.
- 4.2.12** All Contracts, Contract Modifications and other documents binding or committing TARC in relation to a contractual action (Binding Documents) it is a preference of TARC that documents shall be signed by the contractor prior to execution of TARC, unless specifically approved by the Executive Director or CEO.
- 4.2.13** All Binding Documents with a value of \$100,000 or less and not requiring approval by the Board of Directors, except as otherwise specified herein, may be signed by the Executive Director or a



designee, Chief Financial & Administrative Officer and the Counsel, as described by the tables and corollary funding source herein.

4.2.14 Signature on all documents shall be legible, in ink or a certified and verified software electronic signature application.

4.2.15 Signature on all documents shall be legible, in ink or a certified and verified software electronic signature application.

4.2.16 The Threshold, Authorization, Approval and Reporting Levels in Section 4 apply to both new procurements and to Contract Modifications (change orders).

4.2.17 All requisitions must be presented with the appropriate authorization, account code and department code

4.2.18 All grant requisitions must be presented with the appropriate approval(s) and will be assigned a cost code by grant number and line-item number (Project Number).

4.2.19 Unauthorized purchases or entering into a none TARC contract by an employee that has not gone through the appropriate channels and approvals may lead to disciplinary action and up to termination, Refer to Employee Handbook Section 2.1 TARC Code of Conduct.

4.3 Methods of Procurement

The TARC Board of Directors has adopted the policy contained herein governing the procurement and/or disposal of any and all materials, supplies, services, equipment, construction, and other items required by TARC. The Board has considered and decided matters of policy with regard to TARC procurement or disposal. The Board shall have the power of review with respect to the implementation of regulations and policy determinations.



The Executive Director of TARC shall be responsible for the implementation of adopted regulations and policies, recommend changes to such regulations, policies, and procedures; and shall have supervision over all procurements and disposals. He shall delegate such supervision as deemed necessary. This procurement manual/handbook shall be published to assist in implementing the regulations, policies, and procedures. This manual/handbook shall be distributed to those TARC employees directly involved in the procurement process and shall be considered revised upon adoption of amendments to such regulations, policies, and/or procedures. Such regulations, policies, and/or procedures shall be reviewed annually in June for possible amendment, but may be amended any time by the Executive Director, upon a finding by the Executive Director of immediate necessity.

Procurement staff shall analyze each planned acquisition in order to identify and evaluate potential organizational conflicts of interest as early in the acquisition process as possible, and avoid, neutralize, or mitigate potential conflicts before Contract award. The Procurement Staff, with collaboration from the Project Manager, shall develop a procurement plan to guide the solicitation process. The elements of a procurement plan should include:

4.3.1 Determination of Method of Procurement and Selection of Solicitation Type

4.3.1.1 Micro, Simplified Procurement or Small Procurement, Piggyback, Sole Source, Emergency Procurement, Purchasing Card (PCARD), Unsolicited Procurement, or ITB/IFB, RFP, RFQ, RFx, etc.) Refer to Procurement Manual.

4.3.2 Determination of Contract Type

4.3.2.1 IDIQ, Revenue, Multi- Award, Task Order-Based, Firm Fixed Price, Fixed Unit Price, Simplified Agreement or Purchase

Order, Memorandum of Understanding or Agreement, Inter-Agency Agreement, etc., Refer to Procurement Manual.

- 4.3.2.2** Any requirement for insurance, bonding, and/or liquidated damages
- 4.3.2.3** Procurement Schedule, considering the need date, any startup period involved Board of Director's schedules, and resource availability
- 4.3.2.4** Involvement by other TARC staff, including the DBE functions, as well as specialized expertise in other areas that may be required.
- 4.3.2.5** For an RFP, identification of evaluation criteria and sub-criteria, relative weights, and potential evaluation committee members.
- 4.3.2.6** For an RFQ, identification of evaluation criteria, weighted point values, and other factors. The policy of the Federal Government is to publicly announce all requirements for architectural and engineering services and to negotiate contracts for architectural and engineering services on the basis of demonstrated competence and qualification for the type of professional services required and at fair and reasonable prices." – 40 U.S.C. Sections 1101.
- 4.3.2.7** According to the Brooks Act, recipients of federal funds must use qualifications-based procurement procedures for Architectural and Engineering (A&E) services; and
- 4.3.2.8** Any preliminary steps that must be taken before a solicitation is issued, such as preparation of design drawings. If these involve resources outside TARC, a separate procurement action may be required for them; and



- 4.3.2.9** Identification of potential markets and vendors, utilizing all available resources, including the internet; and
- 4.3.2.10** Identification of the need for advertising in national or specialized trade media, including their advertising lead times and deadlines, to ensure timely publication; and
- 4.3.2.11** Identification of any special requirements for a successful procurement, such as an industry review; and
- 4.3.2.12** Preliminary independent cost estimate.
- 4.3.2.13** Preliminary Pricing and cost analysis and determination of Price Reasonableness.

4.3.3 Direct Pay Items

4.3.3.1 Certain items by their very nature may be purchased by “check request” upon authorization by signature of a department director. The following list shown is not meant to be all-inclusive of this type of item. Additions, deletions, or exceptions should be approved in advance by the Executive Director.

4.3.3.2 Purchases, of the following nature:

- 4.3.3.2.1** Dues to national or professional societies
- 4.3.3.2.2** Books and newspapers - reference, professional, vocational, etc.
- 4.3.3.2.3** Medical bills
- 4.3.3.2.4** Travel - local and out-of-town, per TARC Travel Regulations
- 4.3.3.2.5** Utilities
- 4.3.3.2.6** Investigative expenses



- 4.3.3.2.7** Settlement of claims and litigation
- 4.3.3.2.8** Advertisements and public media
- 4.3.3.2.9** Postage
- 4.3.3.2.10** Pension plan costs
- 4.3.3.2.11** Payroll taxes, deductions and related costs
- 4.3.3.2.12** Payroll bank account reimbursement
- 4.3.3.2.13** Expenses approved per labor contract
- 4.3.3.2.14** Temporary help charges
- 4.3.3.2.15** Rates fixed by law or ordinance
- 4.3.3.2.16** Petty cash reimbursement
- 4.3.3.2.17** Tax and license fees
- 4.3.3.2.18** Freight charges
- 4.3.3.2.19** Court costs and depositions
- 4.3.3.2.20** Items that are exempt from bidding by specific legislation

4.3.4 Micro Purchases

- 4.3.4.1** Micro purchases are those relatively simple and informal procurement methods for securing materials, supplies, equipment, services or other property that do not cost more than a defined amount in the aggregate or on an annualized basis. (However, Davis-Bacon prevailing wage and hour restrictions apply to construction contracts exceeding \$2,000). TARC utilizes micro purchase procedures for federally funded procurements up to \$10,000; and for state and/or locally funded purchases up to \$3,500.

- 4.3.4.2** TARC permits purchases below these thresholds to be made without obtaining competitive quotations and those purchases are exempt from Buy America requirements. There should be equitable distribution among qualified suppliers and no splitting of procurements to avoid competition through various means. TARC's only documentation requirement for micro purchases is a determination that the price is fair and

reasonable and a description of how this determination was made. The rationale for the procurement method, selection of contract type, and reasons for contractor selection or rejection are not required. Documentation for the micro purchase fair and reasonable determination shall be based on any of the following:

- 4.3.4.2.1** Adequate competition (two or more quotes received an award made to lowest)
- 4.3.4.2.2** Current price lists or off-the-shelf pricing
- 4.3.4.2.3** Catalog price
- 4.3.4.2.4** Prices found reasonable on recent previous purchases
- 4.3.4.2.5** Advertisements
- 4.3.4.2.6** Similar items in a related industry
- 4.3.4.2.7** Independent price estimate (attach documentation)
- 4.3.4.2.8** Other (cite basis)

4.3.5 Small Purchases

- 4.3.5.1** Small purchases are those relatively simple and informal procurement methods for securing materials, supplies, equipment, services or other property that do not cost more than the threshold of federally funded procurements of up to \$250,000 with obtaining two (2) quotes; and for state and/or locally funded purchases up to \$100,000 with obtaining three (3) quotes; and these purchases are exempt from Buy America requirements. Price quotations or acquired pricing online market from qualified and responsible prospective



contractors in the market area within which it is practicable to obtain such quotations. However, if the Director of Procurement determines there are less than three qualified and responsible prospective contractors in the market area and further search would not produce a more favorable price to TARC, then that fact should be noted and appropriate written documentation placed in the file. Purchases of materials, supplies, equipment, services, or other property shall not be artificially divided just for the purpose of utilizing this small purchase process.

NOTE: The Director of Procurement is authorized to award spot fuel purchases up to \$100,000 as deemed necessary to support the needs of TARC.

4.3.6 Competitive Sealed Bids

4.3.6.1 Procurements that are not direct pay items that are not Micro Purchases and exceed the amount specified in the "Small Purchases" portion of these regulations as described by the tables and corollary funding source shall be made by competitive sealed bids unless it is determined in writing that this method is not practicable. Nothing shall preclude TARC from using competitive sealed bids for purchases less than \$100,000, if it is determined to be in the best interest of TARC.

4.3.6.2 Competitive sealed bidding shall generally be considered practicable if the following conditions apply:

4.3.6.2.1 A complete, adequate, precise, and realistic specification or purchase description is available;

4.3.6.2.2 Two or more responsible bidders are willing and able to compete effectively for the business;

4.3.6.2.3 The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

4.3.6.3 When the competitive sealed bid process is used, the following requirements shall apply:

4.3.6.3.1 The Invitation For Bids shall state whether the award shall be made on the basis of the lowest bid price or the lowest evaluated bid price. If the latter is used, the objective measurable criteria to be utilized shall be set forth in the Invitation For Bids.

4.3.6.3.2 The Invitation for Bids shall include adequate specifications, descriptions, or attachments of the item(s) to be procured to allow the bidder to properly respond.

4.3.6.3.3 The public shall be given notice of the Invitation For Bids by advertisement in the newspaper of largest circulation in the local jurisdiction. The average bid period for competitive procurements will normally be up to thirty (30) days, except in cases of emergency or urgency procurement a shorter time may be specified. In cases of a re-solicitation, a shorter period may also be appropriate, if the changes to the solicitation are not substantial. Whenever a period shorter than thirty (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.

4.3.6.3.4 Advertising – The advertisement shall include the time and place the bids will be opened and the time and place where the specifications may be obtained. A pre-

bid conference may or may not be scheduled for competitive sealed bids.

4.3.6.3.5 Bid Opening – The bids shall be opened publicly at the time and place designated in the Invitation for Bids. Each bid, together with the name of the bidder, shall be recorded and be open to public inspection. Discussions with the bidders after the bids have been submitted are unnecessary as award of the contract will be based on price and price-related factors alone.

4.3.6.4 A contract shall be awarded with reasonable promptness by written notice to the responsive and responsible bidder whose bid is either the lowest bid price or the lowest evaluated bid price. When specified in the bidding documents, factors such as discounts, transportation costs, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only determine the low bid when prior experience indicates that such discounts are usually taken advantage of.

4.3.6.5 Award to other than the Lowest Bidder or Offeror – TARC may award a contract to other than the lowest bidder if the award furthers an objective consistent with the purpose of 49 U.S.C. Chapter 53, including improved long-term operating efficiency and lower long-term costs. TARC may also award a contract to other than the offeror whose price proposal is lowest, when stated in the evaluation factors of the solicitation. In both cases, TARC must include a statement in its solicitation document reserving the right to award the contract to other than the low bidder or offeror.

4.3.6.6 TARC may allow the withdrawal of a bid where there is a patent error on the face of the bid document, or where the bidder presents sufficient evidence, substantiated by bid



worksheets, that the bid was based upon an error in the formulation of the bid price or were determined appropriate by TARC. Additionally, any or all bids may be rejected if determined appropriate and in the best interest of TARC, with appropriate written documentation of the reason(s) for such decision placed in the file. Refer to Procurement Manual.

4.3.7 Competitive Negotiation

TARC may contract or purchase through competitive negotiation upon a written finding that:

- 4.3.7.1** Specifications cannot be made sufficiently specific to permit award on the basis of either the lowest bid price or the lowest evaluated bid price, including, but not limited to, contracts for experimental or developmental research work, or highly complex equipment which requires technical discussions, and other nonstandard materials, supplies, services, equipment, or construction (Design-Bid-Build or Design-Build); or
- 4.3.7.2** Sealed bidding is inappropriate because the available sources of supply are limited, the time and place of performance cannot be determined in advance, the price is regulated by law, or a fixed price contract is not applicable; or
- 4.3.7.3** Prices received through sealed bidding are unresponsive or unreasonable as to all or part of the requirements, or are identical or appear to have been the result of collusion. The original sealed bid process shall have contained a provision that TARC retains the right to negotiate with each bidder determined to be responsive and responsible. The negotiated price must be lower than the lowest rejected bid by any responsible bidder.



4.3.7.4 If TARC uses the competitive negotiation method, the following requirements shall apply:

4.3.7.4.1 TARC shall solicit proposals through advertising as outlined in the competitive sealed bid process or through any other means which identifies an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirement of the procurement. The Request For Proposals shall indicate the factors to be considered in the evaluation and the relative importance of each factor.

4.3.7.4.2 Written or oral discussions shall be conducted with all responsible offerors who submit proposals determined in writing to be reasonably susceptible of being selected for award, based upon the selection factors contained in the RFP. Discussions shall not disclose any information derived from proposals submitted by competing offerors. Discussions need not be conducted:

4.3.7.4.2.1 With respect to prices, where such prices are fixed by law or regulation except that consideration shall be given to competitive terms and conditions; or

4.3.7.4.2.2 Where time of delivery or performance will not permit discussions; or

4.3.7.4.2.3 Where it can be clearly demonstrated and documented from the existence of adequate competition or accurate prior cost experience with that particular material, supply, service, equipment, or construction item that acceptance of an initial offer without discussion would result in fair and reasonable prices and the request for proposal notifies all offerors of

the possibility that award may be made on the basis of initial offers.

- 4.3.7.5** Award shall be made to the responsible offeror whose proposal is determined in writing, and by the Evaluation Committee, to be the most advantageous to TARC based upon the evaluation factors set forth in the Request for Proposals. All proposals will be evaluated to include option quantities or periods contained in the solicitation if TARC intends to exercise any of the options after the contract is awarded.
- 4.3.7.6** If discussions pertaining to the revision of the specifications or quantities are held with any potential offeror, all other potential offerors shall be afforded an opportunity to take part in such discussions. A request for proposals based on revised specifications or quantities shall be issued as promptly as possible, shall provide for an expeditious response to the revised requirements and shall be awarded upon the basis of the lowest bid price, lowest evaluated bid price, or the response most advantageous to TARC based upon the evaluation factors set forth in the revision, submitted by any responsive and responsible offeror. No discussion shall be conducted with offerors after submission of revised proposals except for a compelling reason as determined in writing by TARC. The revised request for proposals shall state that an award is to be made without discussion except as herein provided.
- 4.3.7.7** In the event that all bids submitted pursuant to competitive sealed bidding result in bid prices in excess of the funds available for the procurement, and TARC determines in writing:



- 4.3.7.7.1** That there are no additional funds then available from any source so as to permit an award to the lowest responsive and responsible bidder; and
- 4.3.7.7.2** In the best interest of TARC will not permit the delay attendant to a re-solicitation under revised specifications or revised quantities under competitive sealed bidding, then a negotiated award may be made as follows:
 - 4.3.7.7.2.1** Where there is more than one (1) bidder, competitive negotiations shall be conducted with the three (3) [two (2) if there are only two (2)] bidders determined in writing by TARC to be the lowest responsive and responsible bidders to the competitive sealed bid invitation. Such competitive negotiations shall be conducted under the following restrictions:
 - 4.3.7.7.2.2** If discussions pertaining to the revision of the specifications or quantities are held with any potential offeror, all other potential offerors shall be afforded an opportunity to take part in such discussions; and
 - 4.3.7.7.2.3** A request for proposals, based upon revised specifications or quantities, shall be issued as promptly as possible, shall provide for an expeditious response to the revised requirements, and shall be awarded upon the basis of the lowest bid price, lowest evaluated bid price, or the response most advantageous to TARC based upon the evaluation factors set forth in the revision, submitted by any responsive and responsible offeror. No discussion shall be conducted with offerors



after submission of proposals except for a compelling reason as determined in writing by TARC. The request for proposals shall state that award is to be made without discussions except as herein provided.

4.3.7.8 Personal (or Professional) service contracts will generally be secured through use of the competitive negotiation process. Article V outlines in more detail the process to be followed for securing such services. Refer to Procurement Manual.

4.3.8 Noncompetitive Procurements:

4.3.8.1 When Authorized: TARC may conduct procurements without providing for full and open competition only if one of the following circumstances applies. 2 CFR 200.320(c).

4.3.8.1.1 Micro-Purchase: When the aggregate amount of the procurement transaction does not exceed the micro-purchase threshold, TARC may use micro-purchase procedures that do not require competition. TARC must not divide a known requirement into smaller purchases for the purpose of avoiding competition requirements.

4.3.8.1.2 Sole Source: When TARC's requirement can only be fulfilled from one source, it may make a noncompetitive award. The following examples may give rise to sole-source procurements.

4.3.8.1.2.1 Unsolicited Proposal: TARC may negotiate a sole-source award with an offeror that presents an unsolicited proposal that makes available a unique and innovative idea or approach. Commercial products or commercial services cannot be the basis of an unsolicited proposal.



The offeror should demonstrate 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 the recipient only from one source and has not in the past been available to TARC from another source.

4.3.8.1.2.2 Patents or Restricted Data Rights: Patent or data rights restrictions may preclude competition. However, the mere existence of such rights does not by itself justify a noncompetitive award.

4.3.8.1.2.3 Substantial Duplication Costs: In the case of a follow-on contract for the continued development or production of highly specialized equipment or major components thereof, when it is likely that award to another contractor would result in substantial duplication of costs that are not expected to be recovered through competition.

4.3.8.1.2.4 Unacceptable Delay: In the case of a follow-on contract for the continued development or production of a highly specialized equipment or major components thereof, when it is likely that award to another contractor would result in unacceptable delays in fulfilling TARC's needs.

4.3.8.1.3 Exigency or Emergency: When a public exigency or emergency for the requirement will not permit a delay



resulting from providing public notice of a competitive solicitation, or where an unusual and compelling urgency means TARC would be seriously injured unless it were permitted to limit the solicitation, it may make a noncompetitive award. When TARC is procuring goods or services to respond to an emergency, it should limit its contract only to the quantities or period of performance necessary to see it through the emergency.

4.3.8.1.4 Adequate Competition—Single Bid Situations: If after soliciting several sources, competition is determined inadequate, TARC may make a noncompetitive award. If a recipient receives inadequate competition in response to its solicitation, it should review its specifications to determine if they are unduly restrictive or if changes can be made to encourage submission of more bids or proposals. If TARC determines that the specifications are not unduly restrictive and changes cannot be made to encourage greater competition, it may make a noncompetitive award.

4.3.8.1.5 As Authorized by FTA. 2 CFR 200.320(c)(4) permits TARC to request FTA’s approval to use a noncompetitive procurement method. Under this authority, FTA has made the following determinations:

4.3.8.1.5.1 Team, Consortium, Joint Venture, or Partnership: When FTA awards a grant agreement or enters into a cooperative agreement with a team, consortium, joint venture, or partnership, or provides FTA assistance for a research project in which FTA has approved the participation of a particular firm or combination of firms in the project work,



the grant agreement or cooperative agreement constitutes approval of those arrangements. Typically, this occurs in FTA's discretionary funding programs. In such cases, TARC must adhere to competition requirements to select other contractors. TARC should be explicit in its application whether it is applying as part of a team, the members of the team, their commitment to the project, and each member's role. Because FTA awards funding to such applications based on the strength of the team, the withdrawal of a team member may be cause for FTA to terminate the award.

4.3.8.1.5.2 Federal Standards: To ensure that TARC has flexibility equal to that of Federal contracting officers, FTA authorizes procurement by noncompetitive proposals in all of the circumstances authorized by FAR Part 6.3. In addition to circumstances discussed in 2 CFR 200.320(c), the FAR authorizes less than full and open competitive procurements in the following circumstances:

4.3.8.1.5.2.1 Statutory Authorization or Requirement: To comply with Department of Transportation (DOT) appropriations laws that include specific statutory requirements, with the result that only a single contractor can perform certain project work.

4.3.8.1.5.2.2 National Emergency: To maintain a facility, producer, manufacturer, or other supplier available to provide supplies or

services in the event of a national emergency or to achieve industrial mobilization.

- 4.3.8.1.5.2.3** Research: To establish or maintain an educational or other non-profit institution or a Federally funded research and development center that has or will have an essential engineering, research, or development capability.
- 4.3.8.1.5.2.4** Protests, Disputes, Claims, Litigation: To acquire the services of an expert or neutral person for any current or anticipated protest, dispute, claim, or litigation.
- 4.3.8.1.5.2.5** International Arrangements: When precluded by the terms of an international agreement or a treaty between the United States and a foreign government or international organization, or when prohibited by the written directions of a foreign government reimbursing the recipient for the cost of the acquisition of the supplies or services for that government.
- 4.3.8.1.5.2.6** National Security: When the disclosure of the recipient's needs would compromise the national security.
- 4.3.8.1.5.2.7** Public Interest: When the recipient determines that full and open competition

in connection with a particular acquisition is not in the public interest.

4.3.8.2 When Prohibited

4.3.8.2.1 Failure to Plan: TARC's lack of advance planning, or

4.3.8.2.2 Limited Availability of Federal Assistance: Concerns about the amount of Federal assistance available to support the procurement (for example, due to expiration of Federal assistance available for award).

4.3.8.3 Procedures for Noncompetitive Procurements: When less than full and open competition is available to the recipient, the following procedures apply:

4.3.8.3.1 Potential Sources: In all situations, the recipient should solicit offers from as many potential sources as is practicable under the circumstances.

4.3.8.3.2 Justification: If the recipient decides to make a noncompetitive award, the recipient must justify its decision in its records for the procurement as included under 2 CFR 200.318(i).

4.3.8.3.3 Cost or Price Analysis: If the procurement will exceed the simplified acquisition threshold, the recipient must perform a cost or price analysis consistent with 2 CFR 200.324.

4.3.9 Solicitations

The following federal standards apply to solicitations:



- 4.3.9.1** Clear Descriptions: Accurate description of the technical requirements for the material, product or service to be procured is required.
- 4.3.9.2** Nonrestrictive Specifications: In competitive procurements, the description may not contain features that unduly restrict competition. Notably, the FTA may not finance procurements that use exclusionary or discriminatory specifications.
- 4.3.9.3** Quality Requirements: A description may include a statement of the qualitative nature of the material, product, or service to be procured and, when necessary, describe minimum essential characteristics and standards to which the property or services must conform if it is to satisfy the recipient's intended use.
- 4.3.9.4** Preference for Performance Specifications: The Common Grant Rule advises that "detailed product specifications should be avoided if possible." The Common Grant Rule for non-governmental recipients (TARC Non-governmental sub-recipients) advises the recipient to describe technical requirements in terms of "functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards."
- 4.3.9.5** Each solicitation will identify all factors to be used in evaluating bids and proposals and their relative importance, but numerical or percentage ratings or weights need not be disclosed.
- 4.3.9.6** Buy or Equal: When it is impractical or uneconomical to write a clear and accurate description of the technical requirements of the property or services to be acquired, a "brand name or equal" description may be used to define the performance or other salient characteristics of the property or services



sought. The specific feature or salient characteristics brand which must be met by offerors of “an equal” proposal must be clearly stated.

- 4.3.9.7** Requirements of all Bidders: Each solicitation must clearly identify all requirements which bidders must fulfill to be deemed responsive.
- 4.3.9.8** Necessity: Must state the need for the property or service to be procured.
- 4.3.9.9** Metric Usage: TARC will accept property and services with dimensions expressed in metric measurements, to the extent practical and feasible, in compliance with the Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act, 15 U.S.C. Sections 205a et seq: Executive Order No. 12770, Metric Usage in Federal Government Programs,” July 25, 1991, 15 U.S.C. Section 205a.
- 4.3.9.10** In-State or Local Geographic Preferences or Restrictions
 - 4.3.9.10.1** TARC does not impose any Geographic Preferences or Restrictions on the majority of its solicitations. The only exceptions expressly mandated or encouraged by Federal law include the following:
 - 4.3.9.10.2** Architectural Engineering (A&E) Services. Geographic location may be a selection criterion if an appropriate number of qualified firms are eligible to compete for the contract in view of the nature and the size of the project.



4.3.9.10.3 Licensing. The Commonwealth of Kentucky may enforce its licensing requirements, provided that their requirements do not conflict with Federal law.

4.3.9.10.4 Major Disaster or Emergency Relief. Federal assistance awarded under the Stafford Act, 42 U.S.C. Section 5150, to support contracts and agreements for debris clearance, distribution of supplies, reconstruction and other major disaster or emergency assistance activities permits a preference, to the extent feasible and practicable, for organizations, firms, and individuals residing or doing business primarily in the area affected by a major disaster or emergency.

4.3.9.11 Options in Solicitations and Contracts

An option is a unilateral right in a Contract by which, for a specified time, TARC may elect to purchase additional equipment, supplies, or services called for by the Contract, or may elect to extend the term of the Contract. The use of options must be limited to quantities of goods or services that are reasonably anticipated to be required by TARC during the term of the Contract; options may not be included solely with the intent of assigning them to another entity in the future; however, Contracts may include a provision allowing assignment to other agencies in the event of a change in TARC's anticipated requirements, in accordance with FTA regulations and guidance.

4.3.9.11.1 The option quantities or periods must be defined in the solicitation; contained in the offer upon which a Contract is awarded; and evaluated as part of the initial award process. When an option has not been evaluated as part of the award, the exercise of the option will be considered sole source procurement and must be justified as such.

4.3.9.11.2 In developing options for a solicitation, the PCA and the technical participants must consider the benefits and drawbacks of a new solicitation for the optional items, the impact on competition, and the feasibility of obtaining reasonably accurate pricing.

4.3.9.11.3 Types of Options

Generally, there are three (3) types of options which may be included in a solicitation:

4.3.9.11.3.1 Options for additional quantities - Options for additional quantities may be utilized when TARC anticipates that quantities of the same goods or services beyond those specified may be required within the time period of the Contract, conditioned upon unsecured funding or potential future events. The additional quantities should be clearly specified and, to the extent reasonably feasible, the time frame identified. Cost factors such as escalation or quantity discounts should be considered in evaluating the price reasonableness of such options.

4.3.9.11.3.2 Options for additional time periods - Options for additional time periods are often used in annual service Contracts, where TARC desires the ability to continue with a Contract beyond the base term of the Contract, conditioned upon satisfactory performance by the Contractor. The total of the option periods should not exceed a reasonable period for the services required, and options cannot be used to perpetuate a Contract with one (1) Contractor



to the detriment of reasonable competition. Factors such as escalation and the economic value of prior experience should be considered in evaluating the price reasonableness of such options.

4.3.9.11.3.3 Options for additional or alternative types of goods or services - Options for additional or alternative types of goods or services may be used where TARC wishes items beyond its estimated capacity to fund the Contract (such as a higher quality of product) or where a future set of services may be needed depending upon the results of the initial Contract scope (such as in preliminary feasibility or design contracts).

4.3.9.11.4 Exercise of Options

The exercise of an option must be in accordance with the terms and conditions of the option as stated in the initial Contract, and an option may not be exercised unless it is determined and documented that the option price is better than prices available in the market or that the option is the more advantageous offer at the time the option is exercised, cost and other factors considered.

4.3.9.11.4.1 If sequential options (e.g., a series of one-year extensions) exist, the failure to timely and properly exercise any option will void all subsequent options.

4.3.9.11.4.2 TARC may exercise options in Contracts of other public agencies (“piggybacking”) in accordance with FTA regulations and guidance. Use of such options is considered sole source actions and must be documented accordingly.



4.3.9.11.4.2.1 The term “piggybacking” is often used to describe one transit agency’s use of another transit agency’s existing Contract when the awarding agency’s Contract did not originally envision its use by the piggybacking agency. A number of FTA requirements must be met before such a Contract may be used. FTA requires that the existing Contract contain an Autho and all required FTA Contract clauses and certifications; these clauses cannot be added by TARC as part of its use of the existing Contract. All quantities acquired by assigned Contract rights must be within the original Contract quantities (including options) and acquired within the term of the existing Contract. TARC must determine that the agency with the Contract complied with all FTA requirements relating to competition and performance of a cost or price analysis. TARC must also perform its own cost or price analysis to determine that the prices it will pay are fair and reasonable. TARC’s procurement staff will obtain all appropriate documentation from the original awarding agency and are retained in the procurement file for that acquisition. Piggybacking should not be confused with a joint acquisition, where TARC is a named party in the original solicitation.

4.3.9.11.4.2.2 Exercising an option after a lower or higher price has been negotiated constitutes sole source procurement.

4.3.10 Other TARC Solicitation Requirements and Procedures

4.3.10.1 Project Managers will not impose unreasonable qualification requirements or unnecessary experience requirements to projects and/or contracts.

4.3.10.2 Excessive Bonding: To encourage greater participation amongst firms, bonding needs to support the overall goal of the project/contract and needs to be reasonable and not unduly restrictive. Bid, performance, or payment bonds may be imposed, but not required on contracts that have a minimum or no risk as determined by the Project Manager, other than construction bonding as specified by the Common Grant Rules and FTA C 4220.1G (or Latest version)

4.3.10.3 Cancellation, Postponement and Extensions

4.3.10.4 TARC reserves the right to cancel, postpone, or extend the date and time for submitting responses to any solicitations at any time. Such occurrences shall be posted in writing on TARC solicitation portal.

4.3.10.5 TARC reserves the right to reject any or all responses to any solicitations, to waive any or all informalities or irregularities in the responses received, to investigate the qualifications and experience of any offerors, to reject any provisions in any responses, to modify solicitation contents, to obtain new responses, and to negotiate the requested services and contract terms with any offerors.

4.3.10.6 Unacceptable Proposals



4.3.10.6.1 TARC shall not accept responses or proposals or award any contract to any person, firm or corporation that is in arrears or is in default to TARC upon any debt or contract, has defaulted on surety or other obligation or has failed to perform faithfully of any previous contract for TARC.

4.3.11 Evaluation of Solicitation Responses/Offers

4.3.11.1 Evaluation Methodology:

4.3.11.1.1 The Procurement Department will conduct an initial review and examination of the submitted proposals. A pass or fail score will be given in accordance with the procurement policies and procedures to determine compliance with legal and administrative requirements as specified herein. After the initial review and examination, the Procurement Department may make the recommendation of the short-listed proposals to the Evaluation Committee or may reject proposals deemed as non-responsive as specified herein.

4.3.11.1.2 The proposals will be evaluated and scored through a one and/or two-step process. The same evaluation criteria will be used to complete the evaluation for both the one and/or two-step process. The evaluation committee will be reviewing, evaluating and scoring pass/fail proposals to determine responsive and responsibility of the proposals. If deemed necessary by the Facilitator, committee members may be substituted and/or the evaluation committee may be disbanded.



4.3.11.1.3 TARC reserves the right to enter into negotiations with the short-listed offerors without requesting interviews to reach final agreement on specific terms of the Contract. Proposals should be submitted initially on the most qualified and responsible Proposals, as a BAFO may or may not be requested. Once the EC has finished scoring the Proposals, TARC will then enter into negotiations with the top apparent offerors.

4.3.11.2 Price and Other Factors

4.3.11.2.1 Awards will be made to the responsible firm whose proposal is most advantageous to TARC's program with price and other factors considered; and,

4.3.11.2.2 In determining which proposals most are advantageous, TARC may award (if consistent with State law) to the proposer whose proposals offer the greatest business value to the Agency based upon an analysis of a tradeoff of qualitative technical factors and price/cost to derive which proposal represents the "best value" to the Procuring Agency. If TARC elects to use the best value selection method as the basis for award, however, the solicitation must contain language which establishes that an award will be made on a "best value" basis.

4.3.12 Unsolicited Proposal or Bid

4.3.12.1 An unsolicited proposal is a written offer that is submitted to TARC for the purpose of developing a partnership or concept which is not in response to a current procurement solicitation.

4.3.12.2 An unsolicited proposal characteristic:



- 4.3.12.2.1** Be innovative and practical;
 - 4.3.12.2.2** Have potential to significantly reduce TARC operating and/or capital expenses for a service TARC currently provides, or for a new service;
 - 4.3.12.2.3** Be independently originated and developed by the proposer;
 - 4.3.12.2.4** Be prepared without TARC's supervision, endorsement, direction, or direct involvement; and
 - 4.3.12.2.5** Contain sufficient details regarding the benefits for TARC.
- 4.3.12.3** Unsolicited proposal is a concept that uses innovative but efficient solutions to offer added value, lower operating expenses and/or avoided capital expenses to our transportation system.
- 4.3.12.4** An unsolicited proposal is not an offer or alternative for property or services that the TARC is currently procuring through competitive methods.
- 4.3.12.5** Submission of unsolicited proposal
- 4.3.12.5.1** TARC welcomes proposals from any potential offeror with technical and financial resources to provide the services proposed or the ability to contract with TARC and/or serve as a partner in a contract resulting from the adoption of the proposal. TARC encourages and welcomes innovative submissions from private sector businesses (including startups and small businesses), labor unions, municipalities, academic institutions,



philanthropic foundations and non-profit organizations.

- 4.3.12.5.2** All Conceptual Proposals shall be submitted to TARC by email to Procurement@ridetarc.org. TARC may request more detailed information from the proposer as a component of the evaluative process. After a full review, TARC will decide whether to forego the proposal, to proceed to a sole source agreement, to test a pilot program, or to pursue a competitive solicitation based upon the proposal.

4.4 Types of Procurement

There are five (5) types of procurement may be conducted and must be determined prior to the release of the competitive solicitation. It is imperative to define the type of procurement prior to the release of the solicitation because it will dictate the type of contract and method of the solicitation:

4.4.1 Professional Service Architectural and Engineering

Architectural Engineering (A&E) Services and Other Services. FTA's enabling legislation at 49 U.S.C. Section 5325(b)(1) requires the use of the qualifications-based procurement procedures contained in the "Brooks Act," 40 U.S.C. Sections 1101 through 1104, to acquire A&E services, but also for program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping and related services. The nature of the work to be performed and its relationship to construction, not the nature of the prospective contractor, determine whether qualifications-based procurement procedures may be used.

4.4.2 Operations & Management (O&M) Services

Refers to the practices and procedures related to maintaining and operating TARC's public transit system, as overseen by the Federal Transit Administration (FTA) which is a US government agency responsible for

regulating and funding public transit projects. O & M practices include routine maintenance, repairs, inspections, and overall management of transit infrastructure like buses, trolleys, bus shelters, and main stations to ensure safe and reliable operations. A set of standards and guidelines for TARC to follow regarding its O&M practices requiring detailed plans and reporting to ensure proper maintenance and funding allocation. Effective O&M is crucial to TARC for minimizing disruptions, preventing accidents, maximizing asset lifespan, and ensuring efficient public transportation services.

4.4.3 Rolling Stock Purchase

TARC may enter into a multiyear contract to buy rolling stock and replacement parts, when federal funds are used. The multiyear contract can include an option under which TARC may buy additional rolling stock or replacement parts; provided that such option does not allow for significant changes or alterations to the rolling stock.

4.4.3.1 Options for bus procurements must be exercised no later than 5 years after the date of the original contract.

4.4.3.2 Rolling stock transit vehicle procurements utilizing federal funds shall comply with the Provisions of 49 CFR 663, including Pre-Award and Post-Delivery Audits conducted by TARC or a third-party consultant to verify compliance with the applicable Buy America domestic content requirements.

4.4.4 Construction

4.4.4.1 Construction involves unique projects with drawings and specifications which are developed solely for that particular project. In some cases, construction may follow a more traditional approach involving sequential design and construction. Utilization of this approach requires that a detailed design package of the entire project be complete before soliciting Bids for construction. For complex or time sensitive projects, a phased design and construction



approach may be utilized. This approach allows construction to begin before the full detailed design package for the project is complete. Phased design and construction may involve the use of a construction manager at risk or turnkey (design-build) contracting. In the case of both sequential or phased design and construction, TARC may contract with an outside architect or engineer for complete design services for the project before it solicits Bids. The architect or engineer may remain on the project during the course of construction and will work under the direction and oversight of TARC and its program manager during both the design and construction phases of the project. TARC may also have a contract with a construction manager to oversee the construction phase of the project under the direction and oversight of TARC and its program manager. If the architect or engineer or construction manager are not TARC employees, they will be retained to act as TARC's agent.

4.4.4.2 Methods of Procuring Construction Contracts:

4.4.4.2.1 Construction contracts may be solicited through the IFB process with the lowest price, responsible, and responsive Bidder being awarded the contract or through an RFP where a contract award may be based on best value to TARC. Solicitations for construction contracts will be administered in accordance with these Regulations.

4.4.4.2.2 Infrastructure staff will work with the Procurement and Contract Administrator to prepare construction contracts for solicitation and to present proposed contracts to the Board for approval.

4.4.5 Materials and Supplies



4.4.5.1 Items needed for TARC's operations that are purchased with FTA funds, including things vehicle parts, maintenance supplies, bus components, station equipment, fuel, fluids and even computer technology used for transit management, all subject to TARC's procurement regulations and "Buy America" requirements when applicable.

4.4.6 Other Professional Services:

4.4.6.1 Other professional services involve providing specialized business administrative support to TARC; this can include finance and banking, legal, human resources, executive consulting, security services, marketing and communications, technology and public relations supporting TARC with administrative functions or providing consulting and management services.

4.5 Types of Contracts

4.5.1 Selecting Contract Type

4.5.1.1 A wide selection of contract types is available to Procurement and Contract Administrators and Contractors in order to provide needed flexibility in acquiring goods and services. Contract types vary according to the degree and timing of the responsibility assumed by the Contractor for performance.

4.5.1.2 When procurement is by competitive sealed bidding, the Procurement and Contract Administrator will use either a firm-fixed-price contract or a cost reimbursement contract. The type of contract to be used will be determined prior to solicitation, and the solicitation will inform Bidders of the type of contract that will be used.

- 4.5.1.2.1** The Procurement Administrator will include documentation in each contract file to show the reasons the particular contract type was selected, except for the following procurements:
- 4.5.1.2.2** Small purchases other than cost-reimbursement contracts; and
- 4.5.1.2.3** Repetitive purchases on a firm-fixed-price basis.
- 4.5.1.2.4** The cost-plus-a-percentage-of-cost and the percentage of construction cost methods of contracting will NOT be used by TARC or its Contractors.

4.5.2 Fixed-Price Contracts

- 4.5.2.1** The fixed-price contract usually stipulates a firm price. However, under certain circumstances it may provide for an adjustable price. An adjustable price contract includes a price ceiling, a target price, or both, which limits the financial obligation of TARC to the Contractor for satisfactory completion of the contract.
- 4.5.2.2** Fixed-price contracts consist of several types designed to facilitate proper pricing under varying circumstances.
- 4.5.2.3** Firm Fixed-Price Contract — The firm fixed-price contract provides for a price which is not subject to any adjustment.

4.5.3 Fixed-Price Contract with Escalation

- 4.5.3.1** This type of contract provides for the upward and downward revision of the stated contract price upon the occurrence of certain specified contingencies.

- 4.5.3.2** This type of contract is used when the market for a particular good or service is especially volatile, and TARC needs a contract for a term greater than just the initial quantity.
- 4.5.3.3** Risks to the Contractor are reduced by the inclusion of escalation provisions.
- 4.5.3.4** Upward price adjustments must be limited by the establishment of a reasonable ceiling.
- 4.5.3.5** Provisions should also be included to provide for downward adjustments when the prices or rates fall below the base levels provided in the contract.

4.5.4 Cost-Reimbursement Contracts

- 4.5.4.1** The cost-reimbursement contract provides for payment of allowable costs incurred in the performance of the contract only to the extent prescribed in the contract. Cost-reimbursement contracts are suitable for use only when uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed-price contract. This type of contract establishes an estimate of total cost for the purpose of obligation of funds and establishes a ceiling which the Contractor may not exceed (except at the Contractor's own risk) without prior approval of the Procurement Administrator. Nevertheless, it places all significant risk on CTA. The federal cost principles set forth in 2 CFR 200, Subpart E must be adhered to. Only those costs complying with the federal cost principles will be eligible for reimbursement.

4.5.5 Cost Contract

4.5.5.1 A cost contract is a cost-reimbursement type of contract which provides reimbursement for costs, but no fee to the Contractor. The following are illustrative situations in which the use of this type of contract may be appropriate:

4.5.5.2 Research and development work, particularly with non-profit educational institutions or other non-profit organizations; or

4.5.5.3 Initial small quantity procurements of new items with anticipated subsequent large production runs.

4.5.6 Cost-Sharing Contract

4.5.6.1 A cost-sharing contract is a cost-reimbursement contract under which the Contractor receives no fee, but is reimbursed for an agreed portion of the allowable costs.

4.5.7 Cost-Plus-A-Fixed-Fee Contract

4.5.7.1 A cost-plus-a-fixed-fee contract is a cost reimbursement contract which provides for payment of a fixed fee (profit) to the Contractor.

4.5.7.2 Once the fixed fee has been negotiated, it does not vary with the Contractor's actual costs.

4.5.7.3 The fee may be adjusted as a result of subsequent changes in the work or services to be performed.

4.5.7.4 Because the fixed fee does not vary in relation to the Contractor's ability to control costs, there is minimum incentive for effective management control of costs.

4.5.8 Time and Material Contracts

- 4.5.8.1** The time and materials contract provides for the procurement of property or services on the basis of:
- 4.5.8.2** Direct labor hours at specified, fixed hourly rates, including direct and indirect labor, overhead, and profit, and
- 4.5.8.3** Material at cost. Material handling costs may be included in the charge for "material at cost" to the extent they are clearly excluded from any factor of the charge computed against direct labor hours.
- 4.5.8.4** This type of contract does not provide any incentive for Contractors to control the cost of materials or to manage their labor forces effectively.
- 4.5.8.5** Because this type of contract does not encourage effective cost control and requires almost constant surveillance, it should be used only when no other type of contract will suffice.
- 4.5.8.6** A labor-hour contract is a variant of a time & materials contract, differing only of those materials not supplied by the Contractor.
- 4.5.8.7** This type of contract is used only when it is not possible, at the time of awarding the contract, to estimate the extent or duration of the work or to anticipate costs with any reasonable degree of confidence.
- 4.5.8.8** Particular care should be exercised in the use of this contract, since its nature does not encourage effective cost control. There must be adequate controls, including surveillance during performance, to give reasonable assurance that inefficiency and waste is not perpetuated.

4.5.8.9 Because this type of contract does not encourage effective cost control and requires almost constant surveillance, it should be used only after determining that no other type of contract is suitable to ensure contract performance.

4.5.8.10 A ceiling price, which the Contractor exceeds at his own risk, should be established for this type of contract.

4.5.9 Indefinite Delivery Indefinite Quantity Contracts

4.5.9.1 TARC may use this type of contract (either requirements contract or an indefinite quantity contract) when the exact quantities of supplies or services are not known at the time of contract award. Indefinite quantity contracts provide for delivery of an indefinite quantity including a stated minimum and maximum limit of goods or services during a fixed period. Quantity limits may be stated in the contract as number of units or as dollar values.

4.5.9.2 The Procurement and Contract Administrator will include the following in each contract and solicitation for an Indefinite Delivery Indefinite Quantity:

4.5.9.2.1 A realistic estimate of the total quantity that will be ordered, based on the most current information available;

4.5.9.2.2 A clause stating that the estimate is not a representation to a Bidder that the estimated quantity will actually be required or ordered, or that conditions affecting the requirements will be stable or normal.

4.5.9.2.3 If feasible, requirements type contract will state both the minimum and maximum limit of the Vendor's obligation to deliver and TARC 's obligation to order. The contract



will require that TARC order and the Contractor to furnish at least the stated minimum quantity of supplies or services. The Contractor will also be required to furnish, if and as ordered, any additional quantities, not to exceed the stated maximum. The Procurement and Contract Administrator will ensure that the contract obligates a sufficient budget to cover TARC 's minimum required order under the contract.

4.5.9.2.4 The Procurement and Contract Administrator will obligate funds when each individual order is issued and may order from requirements type contract as much as is needed by TARC up to the maximum quantity of the goods or services covered by the contract. Each order placed under a Blanket Contract will contain the following information:

- a. Date of the order;
- b. Contract number and an order number;
- c. Item number, description, quantity, and unit price;
- d. Delivery or performance date;
- e. Place of delivery or performance;
- f. Packaging, packing, and shipping instructions, if any; and
- g. Any other pertinent information

4.5.10 Letter of Intent

4.5.10.1 Prior to execution of a contract by the Contractor and TARC, TARC may use a Letter of Intent to demonstrate its intent to enter into the contract with the Contractor. Letters of intent are not binding on TARC and may not be used to circumvent these Regulations. The Letter of Intent will authorize the Contractor to begin immediately performing services or delivering supplies while the contract terms are negotiated. It

should be used only in exceptional circumstances and is most appropriate for urgent and compelling needs.

4.5.10.2 It should be used only in exceptional circumstances and is most appropriate for urgent and compelling needs.

4.5.10.3 Letters of Intent may result from the following process:

4.5.10.3.1 The using department requests a Letter of Intent by submitting a justification statement justifying the need for the Contractor to begin performing services prior to contract execution. The Letter of Intent authorizes the Contractor to begin performance prior to contract execution and allows time to conduct negotiations of the terms and conditions with the Contractor. However, TARC will not be obligated to pay for the work until the contract is executed.

4.5.10.3.2 The Procurement and Contract Administrator reviews the Letter of Intent, and if acceptable, submits the Letter of Intent to the Director of Procurement and the Department Owner.

4.5.10.3.3 The Director of the Department or designee is authorized to execute Letters of Intent.

4.5.10.3.4 Letters of Intent will be issued to the Contractor by the Procurement and Contract Administrator.

4.5.10.3.5 A Letter of Intent should be superseded by a definitive contract at the earliest practicable date.

4.5.11 Memoranda of Understanding/Agreement

4.5.11.1 An agreement with one or more parties that sets out the parties' mutual understanding and the obligations of each party toward the common objective. A memorandum of understanding (MOU) creates guidelines for each party as they contribute their efforts toward the shared goal but does not obligate Authority funds. An MOU is less formal than a contract. The Executive Director/CEO or designee, is authorized to execute MOUs.

4.5.12 Non-Disclosure Agreement

4.5.12.1 A nondisclosure agreement, which is also referred to as an NDA or a confidentiality agreement, is an agreement in which the parties promise to protect the confidentiality of confidential and proprietary information that is disclosed during the procurement processes described herein or during the course of doing business with TARC. NDAs may be either "mutual" or "one-way." A mutual NDA is one in which both parties are exchanging confidential information. A one-way agreement is used when only one party is making a disclosure. The Executive Director/CEO or designee, or the Board or designee, following consultation with the General Counsel or designee, may authorize all non-disclosure agreements.

4.5.13 Revenue Contracts

4.5.13.1 Revenue contracts are contracts of which the primary purpose is to generate revenues or to create business opportunities for TARC. If revenue contracts involve use of a federally funded asset, the FTA requires that such contracts be awarded utilizing competitive procedures and principles. The extent and type of competition should be consistent with the purpose and scope of the procurement and the available marketplace. Competitive procedures are not required when

a business opportunity is made available on an equal basis to all qualified applicants.

4.5.14 Public Private Partnerships

4.5.14.1 To the extent permitted by law and regulations, TARC may participate in public private partnerships. A public private partnership may take the form of a Transit Oriented Development or joint development, but it need not do so. The provisions of these Regulations apply to such agreements.

4.5.15 Reverse Auctions

4.5.15.1 To the extent permitted by law and regulations, TARC may purchase goods and equipment through a reverse auction. A reverse auction is a real-time electronic bidding process. TARC will issue an IFB that states it will be subject to the reverse auction process. Interested bidders will submit bids; however, the bids will not include the price for the items to be purchased. The Procurement and Contract Administrator will determine the pool of responsive and responsible bidders. Those bidders will be permitted to participate in the electronic bidding process as described in the IFB.

4.6 Other Contract Types

4.6.1 TARC may enter into any other type of contract permitted by TARC policy, the FTA, State law or regulation, including the contract types set forth in this Section, Construction Contracts.

4.6.2 Emergency of Urgent Procurements

- 4.6.2.1** An emergency or urgent procurement condition exists when it prevents the use of normal purchase order development procedures. TARC may conduct procurements on an emergency or urgent basis; or
- 4.6.2.2** The Executive Director/CEO or its designee may authorize the award of Contracts or Contract Modifications exceeding the threshold for the Board of Director approval in the following cases:
 - 4.6.2.2.1** When emergency action is required to prevent loss of life, damage to property, a threat to public safety or the environment, or the disruption of transit service or directly or indirectly affecting the customer services, public health or other essential functions.
 - 4.6.2.2.2** All circumstances related to the emergency must be properly authenticated;
 - 4.6.2.2.3** Where an emergency has been declared by local, state or national officials affecting TARC's service area, directly or indirectly, or a request for waiver of regulatory requirements has been entered on FTA's Emergency Docket.
 - 4.6.2.2.4** In cases where a delay in approving a Contract Modification will cause TARC to incur substantial additional costs (by delaying a Contractor, for example) or potential liabilities.
 - 4.6.2.2.5** In cases where The Board of Director's is unable to take action at its scheduled meeting (due to a lack of a quorum, for example).

4.6.2.2.6 When immediate delivery of supplies, materials, equipment, or services related to the emergency is required.

4.6.2.3 In the event of an Emergency or Urgent Procurement, the purchase does not preclude submitting the requisition form within seventy-two (72) hours.

4.6.2.4 In such cases, the individual identifying the emergency or urgent procurement shall notify the Executive Director/CEO or its designee and their immediate supervisor, with a copy to the Director of Procurement, as soon as possible. The Director of Procurement shall notify the Executive Director or CEO or its designee and the requesting Project Manager's immediate supervisors whether there is any active Contract under which the work might be performed, or whether TARC has had previous satisfactory experience with one or more Contractors capable of performing the work. At the direction of the Executive Director or CEO or its designee, the Director of Procurement, and in consultation with the Project Manager/Lead for the emergency, shall issue a notice to proceed to the appropriate Contractor on a not-to-exceed price basis, and shall solicit quotes, proposals or bids to complete the work at the earliest feasible time. Contracts and Contract modifications shall be subject to confirmation by the Board of Directors at its next meeting.

4.6.3 Emergency Procurement Documentation

4.6.3.1 The basis and justification for the emergency and urgent procurement, including the date the occurrence first became known.

4.6.3.2 A list of the items and or services procured



- 4.6.3.3** A description of the efforts made to ensure that TARC used to it best efforts to receive reasonable value under the circumstances.
- 4.6.3.4** A list of the vendors solicited for pricing and availability
- 4.6.3.5** A requestor may use any acceptable form of quotes (e.g., written, fax, electronically transmitted, etc.) to solicit for the procurement.

4.6.4 Small Procurements Emergencies

- 4.6.4.1** It is determined that an emergency directly and immediately affecting customer service, or public health, safety, or welfare requires immediate delivery of supplies, materials, equipment, or services. All circumstances related to the emergency must be properly authenticated; or
- 4.6.4.2** It is determined that the property to be purchased is a unique article which cannot be obtained from other sources, provided that the reasons for sole source procurement are properly authenticated.
- 4.6.4.3** In the event that an Emergency or Urgent Procurement is required, the purchase does not preclude submitting the requisition form within seventy-two business hours.

4.6.5 Emergency Procurement Authorization

- 4.6.5.1** The Executive Director/CEO – Primary
- 4.6.5.2** Chief Financial & Administrative Officer - First Alternate
- 4.6.5.3** Senior Staff Member – Second Alternate

4.7 Procedures for Ensuring Most Efficient and Economic Procurements

- 4.7.1** Procurement documents will be reviewed to avoid the procurement of property and services that TARC does not need (including duplicative items and unnecessary options). Consideration will be given to consolidating or breaking out procurements to obtain a more economical purchase.
- 4.7.2** Eligibility: The property and services to be acquired must be eligible under the Federal law authorizing the FTA assistance award and any regulations thereunder. For example, FTA prohibits the use of capital assistance for the recipient's operations expenses. If FTA assistance will be used to finance the cost of property or services, the property or services must be within the scope of the specific project from which that FTA assistance will be derived.
- 4.7.3** To obtain the best value, lease versus procurement alternatives for acquiring property should be reviewed, and if necessary, an analysis should be obtained to determine the more economical alternative. In these cases, a written determination will be made of the cost of leasing the asset compared with the cost of procuring or constructing it. (FTA C 4220.1G, Ch. IV.1.e, or latest version). Cost used in the comparison must be reasonable, based on realistic current market conditions, and based on the expected useful service life of the asset. (FTA Reg. "Capital Leases" 49 CFR Part 639, Subpart C)
- 4.7.4** Environmental and Energy Efficiency Preferences: TARC has a preference, to the extent that it is practical and economically feasible, for products and services that conserve natural resources, protect the environment, and are energy efficient.
- 4.7.5** Industry Contracts: TARC will use industry contracts when they will benefit TARC and will accommodate all federal requirements.



4.7.6 Independent Cost Estimate: TARC will conduct and prepare an independent cost estimate (ICE) for all procurements exceeding a dollar threshold of \$65,000 under the Simplified Acquisition before receiving bids or proposals. The Project Manager/Lead and or the PCA will be responsible for obtaining an Independent Cost Estimate (ICE) of the project, based on the scope and specifications as written.

4.7.6.1 An ICE is required for all task-order based contracts previously agreed on terms with Indefinite Delivery and Indefinite Quantity. Each tasks requested shall accompany an ICE to ensure the price of the scope is fair and reasonable.

4.7.6.2 An ICE is also required for each subsequent change order or modification. The ICE will be used to assess the reasonableness of cost for goods or services. The estimate can range from a simple budgetary estimate to a complex estimate based on inspection of the product itself and review of such items as:

4.7.6.2.1 Polls of known vendors who can provide parts, material or equipment.

4.7.6.2.2 Recent competitive bids from other agencies that recently obtained the same goods and/or services.

4.7.6.2.3 Research and scanning the market place and internet.

4.7.6.2.4 Using historical data from previous competitive procurements updated with inflation factors.

4.7.6.2.5 Collaborating and acquiring previous historical data from other peer agency.

- 4.7.6.3** For contract modifications, the ICE must be prepared without knowledge of the contractor's proposed pricing. The ICE may be completed in-house or by an external estimator independent of any offerors.
- 4.7.6.4** The written ICE must state how it was derived and the basis of the estimate. The independent cost estimate must be maintained in the official solicitation file
- 4.7.6.5** An Independent Cost Estimate Sample Form is available in the Procurement Procedures Policy.

4.7.7 Cost Analysis and Price Analysis

- 4.7.7.1** 2 CFR 200.324 requires TARC to perform a cost analysis or price analysis in connection with every procurement action, including contract modifications and options exercises, in excess of the simplified acquisition threshold. The method and degree of analysis depend on the facts and circumstances surrounding each procurement. However, as a starting point, TARC must make independent estimates before receiving bids or proposal, as described herein.
- 4.7.7.2** The objective of the cost or price analysis should be to ensure the final contract price is fair and reasonable. A cost analysis examines the reasonableness of the contractor's proposed costs to deliver the contract. A price analysis considers the overall price of the contract to TARC. One or the other may be more appropriate in different circumstances.
 - 4.7.7.2.1** Cost Analysis: TARC should perform a cost analysis when a price analysis will not provide sufficient information to determine the reasonableness of the contract price. The recipient should perform a cost analysis when the offeror submits cost elements (e.g.,



labor hours, overhead, materials) in its proposal. TARC also should perform a cost analysis when price competition is inadequate, e.g., when only a single source is available, or when performing a contract modification. The recipient may not need to perform a cost analysis if it can analyze the price reasonableness of the proposed contract based on a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation.

4.7.7.2.2 Price Analysis: If TARC determines that competition was adequate, it may perform a price analysis instead of a cost analysis. One method to record this price analysis is through the use of a preprinted form on which a contracting officer (or other responsible person) can annotate a finding of fair and reasonable pricing and check off the most common reasons why this would be so, such as catalog or market prices offered in substantial quantities to the general public, regulated prices (for example, for many utilities purchases), or a comparison with recent prices for similar goods and services.

4.8 Pre-Qualification in Procurement

4.9.1 For any federally funded procurement, TARC will not prequalify bidders, offerors and products for procurement purposes.

4.9.2 For non-federally funded procurement, refer to State Authority under the Commonwealth of Kentucky KRS 45A in procuring any goods and services requiring pre-qualification.

- 4.9.3** The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used and is prohibited by FTA.

4.10 Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms

- 4.10.1** TARC must take all necessary affirmative steps to assure that small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms are used when possible. Affirmative steps must include:

- 4.10.1.1** Placing qualified small, minority, and veteran-owned businesses and women's business enterprises on solicitation lists;
- 4.10.1.2** Assuring that small, minority, and veteran-owned businesses, and women's business enterprises are solicited whenever they are potential sources;
- 4.10.1.3** Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small, minority, and veteran-owned businesses, and women's business enterprises;
- 4.10.1.4** Establishing delivery schedules, where the requirement permits, which encourage participation by small, minority, and veteran-owned businesses, and women's business enterprises;
- 4.10.1.5** Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- 4.10.1.6** Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed above.



5.0 FTA MODEL CLAUSES AND REQUIREMENTS

TARC and its contractors or vendors shall accept and comply with the below requirements as specified in TARC's solicitations. Under the Authority of Federal, State and local policies, regulations and standards of 49 CFR 200, Circular 4220.1G or latest version, the most recent FTA Master Agreement, all required contract clauses will be included in both solicitations and contracts.

Federal requirements shall apply to any or all procurement and any future contracts. If those requirements change then the most recent requirements shall apply. The Federal Government requires that activities financed in part, with Federal funds, and performed by a third-party contractor and/or its sub-contractor's on behalf of TARC must be in accordance with Federal requirements.

All subcontracts and subcontractors employed because of this contract are subject to the same conditions and regulations as set forth herein unless specifically exempted.

The prime contractor shall ensure that its subcontractor's at all tiers are aware of and comply with these Federal regulations. The prime contractor is liable for subcontractor's compliance failures. Failure to comply will render the prime contractor responsible for damages and/or contract termination.

5.1 No Obligation By The Federal Government

5.1.1 TARC and offerors shall acknowledge and shall agree that notwithstanding any concurrence by the Federal Government in or approval of the Proposal or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to TARC, offerors, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

- 5.1.2** The offerors agree to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the sub-contractor who will be subject to its provisions.

5.2 Program Fraud and False or Fraudulent Statements and Related Acts

- 5.2.1** The offerors acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the offerors shall certify or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the offerors further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the offerors to the extent the Federal Government deems appropriate.
- 5.2.2** The offerors also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the offerors, to the extent the Federal Government deems appropriate.
- 5.2.3** The offerors agree to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be

modified, except to identify the sub-contractor who will be subject to the provisions.

5.3 Access to Records and Reports/Record Retention

- 5.3.1** The offerors agree to provide TARC, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the offerors which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. offerors also agree, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO offerors access to offerors' records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309, or 5311.
- 5.3.2** The offerors agree to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- 5.3.3** The offerors agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case offerors agrees to maintain same until TARC, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i) (11).
- 5.3.4** Reports or information requested from the offerors will be prepared using electronic or information technology capable of assuring that,

when provided to FTA, the reports or information will meet the applicable accessibility standards of section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C., 794d, and U.S.A TBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194.

5.4 Federal Changes

5.4.1 The offerors shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between TARC and FTA, as they may be amended or promulgated from time to time during the term of this contract. Offerors' failure to so comply shall constitute a material breach of this contract.

5.5 Civil Rights Requirements

5.5.1 Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal Transit Law at 49 U.S.C. § 5332, the offerors agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the offerors agree to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

5.5.2 Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

5.5.3 Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 USC 2000e, and 49 USC

5332, contractor shall comply with all applicable equal employment opportunity requirements of USDOL, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, USDOL," 41 CFR 60 et seq., (implementing Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 USC 2000e), and any applicable Federal statutes, executive orders, regulations, and policies that may in the future affect construction activities undertaken in the course of the project. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, contractor shall comply with any implementing requirements FTA may issue.

- 5.5.4** Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal Transit Law at 49 U.S.C. § 5332, the offerors agree to refrain from discrimination against present and prospective employees for reason of age. In addition, the offerors agree to comply with any implementing requirements FTA may issue.

- 5.5.5** Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the offerors agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the offerors agree to comply with any implementing requirements FTA may issue.



- 5.5.6** Veterans Preference - As provided by 49 U.S.C. § 5325(k), to the extent practicable, TARC and its contractor agrees and assures that each of its subcontractors: (1) Will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under a third party contract in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53, and (2) Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.
- 5.5.7** The offerors agree to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. Section 12101 et seq. and 49 USC Section 322; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. Section 794; Section 16 of the Federal Transit Act, as amended, 49 U.S.C. App. Section 1612; and implementing regulations, as may be amended.
- 5.5.8** The offerors also agree to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

5.6 Termination Provisions

- 5.6.1** Termination for Convenience – TARC may terminate this contract, in whole or in part, at any time with thirty (30) days written notice to the offerors. Upon receipt of such notice, the offerors shall perform no further services under the contract. Settlement payment will be based on successful delivery or service prior to termination. TARC shall pay the aggregate price of delivered service computed in accordance with the prices specified in the contract. If the offeror has any property in its



possession belonging to TARC, the offerors will account for the same, and dispose of it in the manner TARC directs.

- 5.6.2** Termination for Default Breach or Cause – If the offerors does not perform in accordance with the contract delivery or project schedule, or, if the offerors fail to perform in the manner called for in the contract, or if the offerors fail to comply with any other provisions of the contract, TARC may terminate this contract for default. Termination shall be effected by serving a thirty (30) day written notice of termination on the offerors setting forth the manner in which the offerors are in default. The offerors shall promptly submit its termination claim to TARC for payment. The offerors will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.
- 5.6.3** If it is later determined by TARC that the offerors had an excusable reason for not performing, such as a man-made disaster, fire, or flood, which are not the fault of or are beyond the control of the offerors, TARC, may set up a new delivery of performance schedule, and may allow the offerors to continue work, or treat the termination as a termination for convenience.
- 5.6.4** In the event of breach or default by the offerors, TARC shall be entitled to all of its damages and reasonable expenses, and its cost to include, but not limited to its reasonable attorneys' fees incurred because of such default.
- 5.6.5** Opportunity to Cure – TARC in its sole discretion may, in the case of a termination for breach or default, allow the offerors ten (10) days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions. If offerors fail to remedy to TARC satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by offerors of written notice from TARC setting forth the nature of said breach or default, TARC shall

have the right to terminate the Contract without any further obligation to offerors. Any such termination for default shall not in any way operate to preclude TARC from also pursuing all available remedies against offerors and its sureties for said breach or default.

- 5.6.6** Waiver of Remedies for any Breach -In the event that TARC elects to waive remedies for any breach by offerors of any covenant, term or condition of this Contract, such waiver by TARC shall not limit TARC remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.
- 5.6.7** Termination Funding – Should funding for any contracts be discontinued, reduced, or delayed, in whole or in part, TARC shall have the right to terminate the contract immediately upon written notice to contractor.
- 5.6.8** TARC by written notice may terminate any contracts, in whole or in part, when it is in TARC's interest. If TARC terminated the contract, TARC shall be liable only for payment under the payment provision of any contracts for services rendered before the effective date of termination.

5.7 Disadvantaged Business Enterprise (DBE)

- 5.7.1** Transit Authority of River City (TARC) Disadvantaged Business Enterprise (DBE) Program has established a DBE program in accordance with regulations of the U.S. Department of Transportation (US DOT), 49 CFR Part 26. That TARC has received Federal financial assistance from the U.S. DOT and as a condition of receiving this assistance, TARC has signed an assurance that it will comply with 49 CFR Part 26. Refer to Disadvantaged Business Enterprise Program Plan.



5.7.2 In connection with procurement projects, TARC shall establish a specific goal for Disadvantaged Business Enterprise (DBE) participation. DBE participation is encouraged either in the capacity of the prime contractor or subcontractor. The offerors may be required to document their activities in the Proposal and selection of any subcontractor(s) to ensure the process is nondiscriminatory. To be considered a certified DBE the organization must be registered through the Commonwealth of Kentucky Department of Transportation Uniform Certification Program (KYC UCP) member agencies or through an out-of-state Uniform Certification Program. It is the policy of the Department of Transportation that Disadvantaged Business Enterprises, as defined in 49 C.F.R. Part 26, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under the Agreement. Accordingly, the DBE requirements of 49 C.F.R. Part 26 applies to this Contract. In connection with the performance of this Contract, the offerors will cooperate with TARC in meeting its commitments and goals with regard to maximum utilization of Disadvantaged Business Enterprise and will use its best effort to ensure that disadvantaged businesses will be utilized when possible by steps in accordance with DOT regulations 49 C.F.R. Part 26.

5.8 Disadvantaged Business Enterprise Participation

- 5.8.1** Federally funded contracts are subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.
- 5.8.2** DBE Program Goal is set for three fiscal years. Every fiscal renewal year, TARC shall conduct community engagement in setting a goal for the agency. Refer to DBE Program Goal for detail of this program.



- 5.8.3** TARC and awarded contractor shall not discriminate on the basis of race, religion, color, national origin, disabilities, creed, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as TARC deems appropriate. Each contract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- 5.8.4** Offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following concurrent with and accompanying an initial proposal prior to award:
- 5.8.4.1** The names and addresses of DBE firms that will participate in this contract;
 - 5.8.4.2** A description of the work each DBE will perform;
 - 5.8.4.3** The dollar amount of the participation of each DBE firm participating;
 - 5.8.4.4** Written documentation of the offerors commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
 - 5.8.4.5** Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
 - 5.8.4.6** If the contract goal is not met, evidence of good faith efforts is required for every reporting period.



- 5.8.5** The offerors must present the information required above as a matter of responsiveness with initial proposals prior to contract award (see 49 CFR 26.53(3)).
- 5.8.6** The successful offerors will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.
- 5.8.7** Prompt Payment - The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from TARC. In addition, the contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed. Any delay or postponement of payment from the above-referenced timeframe may occur only for good cause following written approval of TARC. This clause applies to both DBE and non-DBE subcontracts.
- 5.8.8** The contractor must promptly notify TARC whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of TARC.
- 5.8.9** Small Business Participation - TARC has established a race-neutral Small Business element provided through 49 CFR 26.39 of the DBE program to structure contracting requirements to facilitate competition by small business concerns. Under the current Policy, a Small Business is a business which meets the US Government Small Business Administration (SBA) size standard. Contractors doing business with TARC are encouraged to utilize small businesses in their subcontracts. Contractors shall complete and submit the



required forms which indicate whether they intend to use small businesses in the contract to be awarded, and, if so, the percentages of contract work to be allocated to small businesses. Refer to Procurement Procedure Manual for other form requirements.

5.9 Debarment and Suspension Government-Wide

5.9.1 All contracts awarded by TARC are covered transactions for purposes of 49 CFR Part 29. As such, offerors are required to verify that none of the offerors, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945

5.9.2 The offerors are required to comply with 49 CFR 29, Subpart C, and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

5.9.3 By signing and submitting its Proposal, the offerors certify as follows:

The certification in this clause is a material representation of fact relied upon by TARC. If it is later determined that the offerors knowingly rendered an erroneous certification, in addition to remedies available to TARC, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The offerors agree to comply with the requirements of 49 CFR 29, Subpart C, while this offer is valid and throughout the period of any contract that may arise from this offer. The offerors further agree to include a provision requiring such compliance in its lower tier covered transactions. Refer to Procurement Procedure Manual for other form requirements.

5.10 Federal Tax Liability and Recent Felony Convictions

5.10.1 TARC agrees that, prior to entering into any Third-Party Agreement with any private corporation, partnership, trust, joint-stock company,



sole proprietorship, or other business association, TARC shall obtain from the prospective Third-Party Participant a certification that the Third-Party Participant:

5.10.1.1 Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and

5.10.1.2 Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months.

5.10.2 If the prospective Third-Party Participant cannot so certify, TARC agrees to refer the matter to FTA and not to enter into any Third-Party Agreement with the Third-Party Participant without FTA's written approval.

5.11 Provisions For Resolution of Disputes, Breaches, or Other Litigation

5.11.1 Disputes- Disputes arising in the performance of any awarded contracts, which are not resolved by agreement of the parties, shall be decided in writing by the authorized representative of TARC. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the offerors mails or otherwise furnishes a written appeal to TARC. In connection with any such appeal, the offerors shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of TARC shall be binding upon the offerors and the offerors shall Proposal by the decision.

5.11.2 Performance during Dispute- Unless otherwise directed by TARC, offerors shall continue performance under this Contract while matters in dispute are being resolved.



5.11.3 Claims for Damages- Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing within fifteen (15) days after the first observance of such injury of damage.

5.11.4 Remedies- Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between TARC and the offerors arising out of or relating to this Contract or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction in Jefferson County within the Commonwealth of Kentucky.

5.11.5 Rights and Remedies- The duties and obligations imposed by the Contract Documents and the rights and remedies available shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law. No action or failure to act by TARC, shall constitute a waiver of any right or duty afforded TARC under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach hereunder, except as may be specifically agreed in writing or in a court of competent jurisdiction in Jefferson County, Kentucky.

5.12 Clean Water and Air Requirements

5.12.1 The offerors agree to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq., and the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The offerors agree to report each violation to TARC and understands and agrees that TARC will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.



5.12.2 The offerors also agree to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

5.13 Fly America

5.13.1 The offerors agree to comply with 49 U.S.C. 40118 (the “Fly America” Act) in accordance with the General Services Administration’s regulations at 41 CFR Part 301-10. This provides that recipients and sub-recipients of Federal funds and their offerors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. If a foreign air carrier is used, the offerors shall submit an appropriate certification of compliance, memorandum adequately explaining why service by a U.S. flag air carrier was not available, or why it was necessary to use a foreign air carrier. The offerors shall include the requirements of this section in all subcontracts that may involve international air transportation.

5.14 Privacy Act

5.14.1 The following requirements apply to the offerors and its employees that administer any system of records on behalf of the Federal Government under any contract:

5.14.2 The offerors agree to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974 5 U.S.C § 552a. Among other things, the offerors agree to obtain the express consent of the Federal Government before the offerors or its employees operate a

system of records on behalf of the Federal Government. The offerors understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

5.14.3 The offerors also agree to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

5.15 Energy Conservation Requirements

5.15.1 The offerors shall comply with mandatory standards and policies relating to energy efficiency, which are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act.

5.16 Americans with Disabilities Act (ADA) Access Requirements

5.16.1 The offerors agree to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA) 42 U.S.C. §§ 12101 et seq; section 504 of the Rehabilitation Act of 1973 as amended 29 U.S.C. § 794, section 16 of the Federal Transit Act, as amended, 49 U.S.C. §§ 1612.

5.16.2 Rehabilitation Act of 1973, as amended, 29 USC § 794; 49 USC § 5301(d); and any implementing requirements FTA may issue. These regulations provide that no handicapped individual, solely by reason of his or her handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity included in or resulting from this Agreement.



5.16.3 In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112 and section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Contractor agrees that it will comply with the requirements of U.S. Department of Transportation regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 CFR Part 37; and U.S. Department of Transportation regulations, “Americans with Disabilities Accessibility Specifications for Transportation Vehicles,” 36 CFR Part 1192 and 49 CFR Part 38, pertaining to facilities and equipment to be used in public transportation. In addition, the Contractor agrees to comply with the requirements of 49 U.S.C. § 5301 (d) which expresses the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly persons and persons with disabilities. Contractor also agrees to comply with any implementing requirements FTA may issue.

5.16.4 The offerors understands that it is required to include this Article in all subcontracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the Authority deems appropriate.

5.17 Incorporation of Federal Transit Administration (FTA) Terms

5.17.1 The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1G or latest version., are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract.

The offerors shall not perform any act, fail to perform any act, or refuse to comply with any TARC requests which would cause TARC to be in violation of the FTA terms and conditions.

5.18 Notification of Federal Participation for States

5.18.1 The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1G or latest version., are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any TARC requests which would cause TARC to be in violation of the FTA terms and conditions.

5.19 Copyright, Trademark, Service Mark, or Patent Infringement

5.19.1 Contractor shall, at its own expense, be entitled to and shall have the duty to defend any suit which may be brought against TARC to the extent that it is based on a claim that the products or services furnished infringe a copyright, Trademark, Service Mark, or patent. The Contractor shall have sole discretion in selecting counsel. Contractor shall further indemnify and hold harmless TARC against any award of damages and costs made against TARC by a final judgment of a court of last resort in any such suit. TARC shall provide Contractor immediate notice in writing of the existence of such claim and full right and opportunity to conduct the defense thereof, together with all available information and reasonable cooperation, assistance and authority to enable Contractor to do so. No costs or expenses shall be incurred for the account of Contractor without its written consent. TARC reserves the right to participate in the defense of any

such action. Contractor shall have the right to enter into negotiations for and the right to effect settlement or compromise of any such action, but no such settlement or compromise shall be binding upon TARC unless approved by TARC Board.

5.19.2 If the products or services furnished under this contract are likely to, or do become, the subject of such a claim of infringement, then without diminishing Contractor's obligation to satisfy the final award, Contractor may at its and expense:

5.19.2.1 Procure for TARC the right to continue using the products or services.

5.19.2.2 Replace or modify the alleged infringing products or services with other equally suitable products or services that are satisfactory to TARC, so that they become non-infringing.

5.19.2.3 Remove the products or discontinue the services and cancel any future charges pertaining thereto.

5.19.2.4 Provided, however, that Contractor will not exercise option 8.2.3. until Contractor and TARC have determined that options 8.2.2. and 8.2.3. are impractical.

5.19.3 Contractor shall have no liability to TARC, however, if any such infringement or claim thereof is based upon or arises out of:

5.19.3.1 The use of the products or services in combination with apparatus or devices not supplied or else approved by Contractor.

5.19.3.2 The use of the products or services in a manner for which the products or services were neither designated nor contemplated.



- 5.19.3.3** The claimed infringement in which TARC has any direct or indirect interest by license or otherwise, separate from that granted herein.

5.20 Conformance with ITS National Architecture

5.20.1 National Intelligent Transportation Systems Architecture and Standards:

- 5.20.1.1** To the extent applicable, Contractor agrees to conform, and to assure its subcontractors' conformity, to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA-LU § 5307(c), 23 U.S.C. § 5307(c), 23 U.S.C. § 512 note, and follow the provisions of FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 Fed. Reg. 1455 et seq., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

5.21 Prevention of Alcohol Misuse and Prohibited Drug Use In Transit Operations

- 5.21.1** Third party contractors who perform safety-sensitive functions in Transit Operations for Sections 5307, 5309, and 5311 projects must comply with FTA's substance abuse management program under 49 C.F.R. part 655, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations." Under 49 C.F.R. § 655.4, Safety-sensitive function means any of the following duties, when performed by employees of recipients, subrecipients, operators, or contractors:
- 5.21.2** Operating a revenue service vehicle, including when not in revenue service;



- 5.21.3 Operating a nonrevenue service vehicle, when required to be operated by a holder of a Commercial Driver's License;
- 5.21.4 Controlling dispatch or movement of a revenue service vehicle;
- 5.21.5 Maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service. This section does not apply to the following: an employer who receives funding under 49 U.S.C. § 5307 or § 5309, is in an area less than 200,000 in population, and contracts out such services; or an employer who receives funding under 49 U.S.C. § 5311 and contracts out such services; and
- 5.21.6 Carrying a firearm for security purposes; and
- 5.21.7 Additionally, third party contractors providing testing services involving the performance of safety sensitive activities must also comply with 49 C.F.R. part 40, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs."

5.22 Drug-Free Workplace: The Recipient agrees to:

- 5.22.1 Comply with the Drug-Free Workplace Act of 1988, as amended, 41 U.S.C. § 8103, et seq.
- 5.22.2 Comply with U.S. DOT regulations, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)," 49 CFR Part 32; and
- 5.22.3 Follow and facilitate compliance with U.S. OMB regulatory guidance, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)," 2 CFR Part 182, particularly where the U.S. OMB regulatory guidance supersedes comparable provisions of 49 CFR Part 32.

5.22.4 Alcohol Misuse and Prohibited Drug Use: The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 U.S.C § 5331, 49 C.F.R. parts 40 and 655, and agrees to produce any documentation necessary to establish its compliance and permit any authorized representative of the United States Department of Transportation or its operating administrations, the Kentucky Transportation Cabinet, or any local and municipal agencies in Jefferson County, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. part 655 and review the testing process. The Contractor agrees further to certify annually its compliance with the aforementioned codes before the contract is awarded. To certify compliance, the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register. The Recipient agrees that if FTA determines that the Recipient or a Third-Party Participant receiving federal assistance under 49 U.S.C. chapter 53 is not in compliance with 49 CFR Part 655, the Federal Transit Administrator may bar that Recipient or Third-Party Participant from receiving all or a portion of the federal transit assistance for public transportation it would otherwise receive.

5.23 Notice to FTA and U.S. DOT Inspector General of Information Related to Fraud, Waste, Abuse, or Other Legal Matters

5.23.1 If a current or prospective legal matter that may affect the Federal Government emerges, under FTA Master Agreement §39(b) contracts in excess of \$25,000, the Contractor must promptly notify Transit Authority of River City (TARC), which will promptly notify the FTA Region Office IV. The Contractor must include an equivalent provision in its sub-agreements at every tier, for any agreement that is a "covered transaction" according to 2 C.F.R. §§ 180.220 and 1200.220.



- 5.23.2** The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
- 5.23.3** Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement between the FTA and TARC, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.
- 5.23.4** Additional Notice to U.S. DOT Inspector General. The Contractor must promptly notify TARC, which will promptly notify the U.S. DOT Inspector General in addition to the FTA Region Office IV. If the Contractor has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement with TARC involving a principal, officer, employee, agent, or Third-Party Participant of the Contractor. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Contractor. In this paragraph, "promptly" means to refer information without delay and without change. This notification provision applies to all divisions of

the Contractor, including divisions tasked with law enforcement or investigatory functions.

5.24 Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

5.24.1 Under 2 CFR 200.216 all resulting contracts, contractor is prohibited from obligating or expending federal funds to:

5.24.1.1 Procure or obtain covered equipment and services;

5.24.1.2 Extend or renew a contract to procure or obtain

5.24.1.3 Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, “covered telecommunications equipment or services” is:

5.24.2 Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities)

5.24.3 For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).



5.24.4 Telecommunications or video surveillance services provided by such entities or using such equipment.

5.24.5 Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country. The Contractor shall not provide covered telecommunications equipment or services in the performance of this contract.

5.25 Assignability and Purchasers

5.25.1 The awarded offerors are prohibited to accept and fulfill any order under this contract agreement from other agencies. No agencies are permitted to use this contract unless written authorization is acquired from TARC, Procurement Department. TARC Procurement Department Purchasing Agents are the primary stakeholders of this contract as being the primary purchasers. This contract will be available for use by TARC and its authorized representatives. Purchase orders, payments, business transaction exchanges directly to the awarded offerors are subject to the same contract terms, conditions and pricing as TARC.

5.25.2 While use of the contract during the contract term, TARC Procurement Department accepts no responsibility for orders or payments due and or made by its authorized representatives and agents to the awarded offerors. The Purchaser in the purchase order agreement is the sole responsibility of, and will be made by, the purchaser.



5.26 Prompt Payment

5.26.1 The Professional or prime agrees to pay each subcontractor for satisfactory performance of its contract no later than 30 days from receipt of each payment the Professional receives from TARC. The Professional agrees further to return retainage payments to each subcontractor within 30 days after the subcontractor work is satisfactorily completed. Any delay or postponement of payment from the above reference may occur only for good cause following written approval of TARC. This clause applies to both DBE and non-DBE subcontractors. If the Professional determines the work to be unsatisfactory, it must notify TARC immediately, in writing, and state the reasons. Failure to comply with this requirement would be construed to be a breach of contract and subject to contract termination.

5.27 Gratuities and Kickbacks

5.27.1 It shall be a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to any program requirement of a contract or subcontract or to any solicitation or proposal therefore. It shall be a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or a person associated therewith, as an inducement for the award of a subcontract or order.

Breach of the provisions of this paragraph is, in addition to a breach of this contract, a breach of ethical standards which may result in civil or criminal sanction and/or debarment or suspension from being a contractor or subcontractor under TARC contracts.

5.28 Interest of Members of TARC

5.28.1 No member of the governing body of TARC, other officer, employee or agent of TARC who exercises any functions or responsibilities in connection with the carrying out of the activities, to which this Contract pertains, shall have any personal interest, direct or indirect, in this Contract.

5.29 Interest of Other Local Public Officials and State Officials

5.29.1 No member of the governing body of Local Governments or affiliates and no other public official of such locality, who exercises any functions or responsibilities in the review or approval of the carrying out of activities to which this Contract pertains, shall have any personal interest, direct or indirect, in this Contract. No part of the proceeds shall be paid directly or indirectly to any officer or employee of the Commonwealth of Kentucky as wages, compensation or gifts in exchange for acting as officer, agent, employee, subcontractor, or offerors to TARC in connection with any work contemplated or performed relative to this Contract

5.30 Interest of Members, Or Delegates to Congress

5.30.1 In accordance with 18 U.S.C. Section 431, no member of, or delegate to, the Congress of the United States shall be admitted to any share or part of this Contract, or to any benefit arising there from.



5.31 Interest of The Offerors

5.31.1 The offerors covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract. The offerors further covenants that no person having such interest shall be employed in the performance of this Contract.

5.32 Workers Compensation ACT

5.32.1 The offerors shall comply with the State Law known as the Workers' Compensation Act and shall pay into the State insurance fund the necessary premiums required by the Act to cover all employees furnishing said services to TARC, and under the control of the offerors, and shall relieve TARC from any costs due to accidents and other liabilities mentioned in said Act.

5.33 Social Security ACT

5.33.1 The offerors shall be and remain an independent offeror with respect to all services performed and agrees to and does accept full and exclusive liability for payment of any and all contributions or taxes for social security, unemployment insurance, and retirement benefits or annuities imposed under any State and Federal law which are measured by the wages, salaries, or other remunerations paid to persons by the offerors for work performed under the terms of this contract. The offerors agree to obey all lawful rules and regulations and to meet all lawful requirements which are now or may be issued or promulgated under laws authorized by State or Federal officials; and offerors also agrees to indemnify and save harmless TARC from any contributions or liability therefore.



5.34 Equal Employment Opportunity

5.34.1 In implementing the Project/Contract, the offerors may not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age or national origin. The offerors agree to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, sex, disability, age or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The offerors shall insert the foregoing provisions (modified only to show the particular contractual relationship) in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

5.35 Performance and Payment Bonding Requirements (Non-Construction)

5.35.1 The Contractor may be required to obtain performance and payment bonds when necessary to protect TARC's interest. The following situations may warrant a performance bond:

5.35.2 TARC property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).

5.35.3 A contractor sells assets to or merges with another concern, and TARC, after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.

5.35.4 Substantial progress payments are made before delivery of end items starts.



- 5.35.5** Contracts are for dismantling, demolition, or removal of improvements.
- 5.35.6** When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows, the penal amount of performance bonds shall be 100 percent of the original contract price, unless TARC determines that a lesser amount would be adequate for the protection of TARC.
- 5.35.7** TARC may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. TARC may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.
- 5.35.8** A payment bond is required only when a performance bond is required, and if the use of payment bond is in TARC's interest.
- 5.35.9** When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows, the penal amount of payment bonds shall equal:
 - 5.35.10** Fifty percent of the contract price if the contract price is not more than \$1 million;
 - 5.35.11** Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
 - 5.35.12** Two and one half million if the contract price is increased.

5.36 Liquidated Damages

- 5.36.1** If TARC determines it is in its best interest to do so a liquidated damages clause may be used in a contract when the following factors apply:
- 5.36.2** The extent or precise amount of damages would be difficult or impossible to ascertain or prove.
- 5.36.3** A liquidated damages assessment must be at a specific rate per an appropriate time period and must be specified in the contract. For federally funded contracts only, any damages recovered must be credited to the project involved unless the FTA permits otherwise.

5.37 Safe Operation of Motor Vehicles

- 5.37.1** Seat Belt Use: The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or Agency.
- 5.37.2** Distracted Driving: The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract.

5.38 Trafficking in Persons

- 5.38.1** The offeror agrees that it and its employees that participate in this contract may not:

- 5.38.1.1** Engage in severe forms of trafficking in persons during the period of time that the contract is in effect;
- 5.38.1.2** Procure a commercial sex act during the period of time that the contract is in effect; or
- 5.38.1.3** Use forced labor in the performance of the contractor or subagreements thereunder.

5.39 Restrictions on Lobbying

5.39.1 Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to TARC.

5.40 Compliance with the Contract Work Hours and Safety Standards Act

5.40.1 Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such

laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

- 5.40.2** Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- 5.40.3** Withholding for unpaid wages and liquidated damages. The agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.



5.41 Davis Bacon and Copeland Anti-Kickback Act

5.41.1 For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FTA, the Contractor shall comply with the Davis-Bacon Act and the Copeland “Anti-Kickback” Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction.” In accordance with the statute, the Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor agrees to pay wages not less than once a week. The Contractor shall also comply with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States.” The Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

5.42 Seismic Safety

5.42.1 The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation (DOT) Seismic Safety Regulations 49 C.F.R. part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract, including work performed by a subcontractor, is in compliance with the

standards required by the Seismic Safety regulations and the certification of compliance issued on the project.

5.43 Special DOL EEO Clause

During the performance of this contract, the contractor agrees as follows:

5.43.1 The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

- a. Employment, upgrading, demotion, or transfer;
- b. recruitment or recruitment advertising;
- c. layoff or termination;
- d. rates of pay or other forms of compensation; and
- e. selection for training, including apprenticeship.

The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

5.43.2 The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

5.43.3 The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee

or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

- 5.43.4** The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 5.43.5** The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 5.43.6** The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 5.43.7** In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may



be declared ineligible for further Government contracts or federal assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- 5.43.8** The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:
- 5.43.9** Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.
- 5.43.10** TARC further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

5.44 Veterans Hiring Preference

5.44.1 Veterans Employment - Recipients and subrecipients of Federal financial assistance shall ensure that contractors working on a capital project funded using such assistance give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

5.45 Public Transportation Employee Protective Arrangements

The offeror agrees to comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):

5.45.1 U.S. DOL Certification. Under this Contract or any Amendments thereto that involve public transportation operations that are supported with federal assistance, a certification issued by U.S. DOL is a condition of the Contract.

5.45.2 Special Warranty. When the Contract involves public transportation operations and is supported with federal assistance appropriated or made available for 49 U.S.C. § 5311, U.S. DOL will provide a Special Warranty for its Award, including its Award of federal assistance under the Tribal Transit Program. The U.S. DOL Special Warranty is a condition of the Contract.

5.45.3 Special Arrangements. The conditions of 49 U.S.C. § 5333(b) do not apply to Contractors providing public transportation operations pursuant to 49 U.S.C. § 5310. FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for



all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate, and, in those instances, any special arrangements required by FTA will be incorporated herein as required.

5.46 School Bus Operations

5.46.1 The contractor agrees to comply with 49 U.S.C. 5323(f), and 49 C.F.R. part 604, and not engage in school bus operations using federally funded equipment or facilities in competition with private operators of school buses, except as permitted under:

5.46.1.1 Federal transit laws, specifically 49 U.S.C. § 5323(f);

5.46.1.2 FTA regulations, "School Bus Operations," 49 C.F.R. part 605;

5.46.1.3 Any other Federal School Bus regulations; or

5.46.1.4 Federal guidance, except as FTA determines otherwise in writing.

5.46.2 If Contractor violates this School Bus Agreement, FTA may:

5.46.2.1 Bar the Contractor from receiving Federal assistance for public transportation; or

5.46.2.2 Require the contractor to take such remedial measures as FTA considers appropriate.

5.46.3 When operating exclusive school bus service under an allowable exemption, the contractor may not use federally funded equipment, vehicles, or facilities.

The Contractor should include the substance of this clause in each subcontract or purchase under this contract that may operate public transportation services.

5.47 Charter Service

5.47.1 The contractor agrees to comply with 49 U.S.C. 5323(d), 5323(r), and 49 C.F.R. part 604, which provides that Recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except as permitted under:

5.47.1.1 Federal transit laws, specifically 49 U.S.C. § 5323(d);

5.47.1.2 FTA regulations, "Charter Service," 49 C.F.R. part 604;

5.47.1.3 Any other federal Charter Service regulations; or

5.47.1.4 Federal guidance, except as FTA determines otherwise in writing.

5.47.2 The contractor agrees that if it engages in a pattern of violations of FTA's Charter Service regulations, FTA may require corrective measures or impose remedies on it. These corrective measures and remedies may include:

5.47.2.1 Barring it or any subcontractor operating public transportation under its Award that has provided prohibited charter service from receiving federal assistance from FTA;



5.47.2.2 Withholding an amount of federal assistance as provided by Appendix D to part 604 of FTA’s Charter Service regulations; or

5.47.2.3 Any other appropriate remedy that may apply.

The contractor should also include the substance of this clause in each subcontract that may involve.

5.48 Patent Rights and Rights in Data

Intellectual Property Rights

This Project is funded through a Federal award with FTA for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this Contract. The Contractor shall grant the Agency intellectual property access and licenses deemed necessary for the work performed under this Contract and in accordance with the requirements of 37 C.F.R. part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by FTA or U.S. DOT.

The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Contract and shall, at a minimum, include the following restrictions:

Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of FTA, until such time as FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution.



For purposes of this Contract, the term “subject data” means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of “subject data” include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.

1. The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for “Federal Government Purposes,” any subject data or copyright described below. For “Federal Government Purposes,” means use only for the direct purposes of the Federal Government. Without the copyright owner’s consent, the Federal Government may not extend its Federal license to any other party.
 - a. Any subject data developed under the Contract, whether or not a copyright has been obtained; and
 - b. Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part by the FTA.
2. Unless FTA determines otherwise, the Contractor performing experimental, developmental, or research work required as part of this Contract agrees to permit FTA to make available to the public, either FTA’s license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under



the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.

3. Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. The Contractor shall not be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
4. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
5. Data developed by the Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying Contract is exempt from the requirements herein, provided that the Contractor identifies those data in writing at the time of delivery of the Contract work.

The Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

5.49 Solid Wastes



5.49.1 A Recipient that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

5.50 Pre-Award and Post-Delivery Audits of Rolling Stock Purchases

5.50.1 The Contractor agrees to comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 C.F.R. part 663. The Contractor shall comply with the Buy America certification(s) submitted with its proposal/bid. The Contractor agrees to participate and cooperate in any pre- award and post-delivery audits performed pursuant to 49 C.F.R. part 663 and related FTA guidance.

5.51 Bus Testing

5.51.1 The Contractor [Manufacturer] agrees to comply with the Bus Testing requirements under 49 U.S.C. 5318(e) and FTA's implementing regulation at 49 C.F.R. part 665 to ensure that the requisite testing is performed for all new bus models or any bus model with a major change in configuration or components, and that the bus model has achieved a passing score. Upon completion of the testing, the contractor shall obtain a copy of the bus testing reports from the

operator of the testing facility and make that report(s) publicly available prior to final acceptance of the first vehicle by the recipient.

5.52 Air Pollution and Fuel Economy

5.52.1 Each third-party contract to acquire rolling stock must include provisions to ensure compliance with applicable Federal air pollution control and fuel economy regulations, such as EPA regulations, “Control of Air Pollution from Mobile Sources,” 40 CFR Part 85; EPA regulations, “Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines,” 40 CFR Part 86; and EPA regulations, “Fuel Economy of Motor Vehicles,” 40 CFR Part 600.

5.53 Buy America Requirements

5.53.1 The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661 and 2 CFR §200.322 Domestic preferences for procurements, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7.

5.53.2 Construction materials used in the Project are subject to the domestic preference requirement of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 – 70927 (2021), as implemented by the U.S. Office of Management and Budget, the U.S. Department of Transportation, and FTA. The Recipient acknowledges that this agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).



- 5.53.3** Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C), 49 U.S.C. § 5323(u) and 49 C.F.R. § 661.11. Domestic preferences for procurements.
- 5.53.4** The bidder or offeror must submit to the Agency the appropriate Buy America certification. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive. For more information, please see the FTA's Buy America webpage at: <https://www.transit.dot.gov/buyamerica>.

End of Section



EXHIBITS

APPLICABILITY OF THIRD-PARTY CONTRACT PROVISIONS – EXHIBIT A

FTA Clause List	
Always Required	
<input type="checkbox"/>	1. Incorporation of Federal Transit Administration (FTA) Terms
<input type="checkbox"/>	2. Notice to Third Party Participants
<input type="checkbox"/>	3. Civil Rights Laws and Regulations
<input type="checkbox"/>	4. Disadvantaged Business Enterprise (DBE)
<input type="checkbox"/>	5. No Government Obligation to Third Parties
<input type="checkbox"/>	6. Program Fraud and False or Fraudulent Statements and Related Acts
<input type="checkbox"/>	7. Prompt Payment
<input type="checkbox"/>	8. Access to Records and Reports
<input type="checkbox"/>	9. Energy Conservation
<input type="checkbox"/>	10. Safe Operation of Motor Vehicles
<input type="checkbox"/>	11. Trafficking in Persons
<input type="checkbox"/>	12. Federal Tax Liability and Recent Felony Convictions (+ Certification)
<input type="checkbox"/>	13. Prohibition on Certain Telecommunications and Video Surveillance
Awards Exceeding \$10,000	
<input type="checkbox"/>	14. Termination
Awards Exceeding \$25,000 (and responsibility determination)	
<input type="checkbox"/>	15. Debarment and Suspension
<input type="checkbox"/>	16. Notification to FTA of Fraud, Waste, or Abuse
Awards Exceeding \$100,000	
<input type="checkbox"/>	17. Restrictions on Lobbying (+ Certification)
Awards Exceeding \$150,000	
<input type="checkbox"/>	18. Clean Air Act and Federal Water Pollution Control Act
<input type="checkbox"/>	19. Buy America Requirements (+ Certification for applicable product)
Awards Exceeding Simplified Acquisition Threshold (\$250,000)	
<input type="checkbox"/>	20. Violation and Breach of Contract
<input type="checkbox"/>	21. Simplified Acquisition Threshold (not really required)



Non-Construction Activities (where laborers are involved)	
<input type="checkbox"/>	22. Contract Work Hours and Safety Standards Act (same for construction & non-construction)
Construction Activities	
<input type="checkbox"/>	23. Davis Bacon Act and Copeland Anti-Kickback Act (All construction \$2,000+)
<input type="checkbox"/>	24. Contract Work Hours and Safety Standards Act (same for construction & non-construction)
<input type="checkbox"/>	25. Seismic Safety
<input type="checkbox"/>	26. Americans with Disabilities Act (ADA)
<input type="checkbox"/>	27. Special DOL EEO Clause (over \$10,000)
<input type="checkbox"/>	28. Veterans Hiring Preference
<input type="checkbox"/>	29. Bond Requirements
Transit Operation Activities	
<input type="checkbox"/>	30. Public Transportation Employee Protective Arrangements
<input type="checkbox"/>	31. School Bus Operations
<input type="checkbox"/>	32. Charter Service
<input type="checkbox"/>	33. Substance Abuse Requirements
Miscellaneous Requirements	
<input type="checkbox"/>	34. Cargo Preference Requirements
<input type="checkbox"/>	35. Fly America
<input type="checkbox"/>	36. Patent Rights and Rights in Data
<input type="checkbox"/>	37. Solid Wastes
<input type="checkbox"/>	38. Conformance with ITS National Architecture
Rolling Stock	
<input type="checkbox"/>	39. Americans with Disabilities Act (ADA)
<input type="checkbox"/>	40. Pre-Award and Post-Delivery Audits of Rolling Stock Purchases
<input type="checkbox"/>	41. Bus Testing
<input type="checkbox"/>	42. Air Pollution and Fuel Economy

End of Exhibits

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TRANSIT AUTHORITY OF RIVER CITY PROCUREMENT POLICY



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MEMORANDUM

To: TARC Board of Directors
From: Ozzy Gibson, Executive Director
Date: April 23, 2025
Re: Resolution 2025-10 Tire Leasing & Servicing (#20251923)

Transit Authority of River City (TARC) is proposing to extend terms of Goodyear's contract (20251923) for Tire Leasing & Servicing of up to 12 months as a single source procurement through February 28, 2026. This will support the agency's Tire Leasing & Servicing requirement up to the preparation of a new solicitation for tire leasing and servicing requirement in July 2025.

Goodyear has been in contract with TARC for over fifteen (15) years and is known and widely used in the transit industry. This tire maintenance services provides safety and stability within our maintenance and features careful planning, specifically, problems and concerns that may need immediate repairs.

TARC's Procurement Department reached out to Goodyear and discussed the current contract. Due to TARC's possible route changes in the near future, TARC wanted to make contractor aware of possible service changes and its impact on product needs. Additionally, Procurement Department requested Goodyear for a single-source procurement to provide a short-term solution to support TARC's needs as we prepare to competitively solicit such services.

Based on the pricing analysis that was conducted less than a year ago, the negotiated unit price and labor rates is fair and reasonable, with an expected total contract amount not to exceed \$500,000.

In the event that TARC implements a network that could significantly reduce its level of service during the term of this single-source contract, TARC shall conduct further pricing analysis to ensure negotiated unit price is within market range.

This Resolution seeks authorization for the Board of Directors to authorize the Executive Director to extend terms of contract with Goodyear Tire Company as a single source procurement at a cost not to exceed \$500,000 of up to 12 months through February 28, 2026.

Please call me at 561-5100 if you have any questions. Thank you.



RESOLUTION 2025-10 TIRE LEASING AND SERVICING

A Resolution authorizing the Executive Director to extend terms of contract with Goodyear Tire Leasing and Servicing as a single source procurement for a cost not to exceed \$500,000 of up to 12 months through February 28, 2026.

WHEREAS, Transit Authority of River City (TARC) intends to implement Goodyear Services that will support agency's Tire Leasing & Servicing for transit vehicles; and

WHEREAS, TARC conducted an independent cost estimate and pricing analysis which deemed the price to be fair and reasonable; and

WHEREAS, the term of this extension of up to 12 months through February 28, 2026.; and

WHEREAS, the total contract amount shall not exceed \$500,000 for this period; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Transit Authority of River City that:

The Executive Director is hereby authorized to extend terms of contract with Goodyear Tire for the Transit Tire & Leasing Services as a single source procurement at a cost not to exceed \$500,000.

ADOPTED THIS 23rd DAY OF APRIL, 2025

Ted Smith, Chair of the TARC Board of Directors



MEMORANDUM

To: Ted Smith, Chair of TARC Board of Directors

From: Ozzy Gibson, Executive Director

Date: April 23, 2025

Re: Resolution 2025-12 Transit Bus Batteries & Common use batteries (ITB 20241898)

On February 26, 2025, the procurement department released an Invitation for Bid 20241898 for transit bus batteries and common use batteries which included eleven (11) inventory parts. The solicitation intent is to award the contract to the lowest bidder/s.

On March 27, 2025 we received two (2) responses from Clarke Power Services and Interstate Batteries which were deemed responsive and responsible.

Procurement Department conducted an independent cost estimate using prior purchase history and current market price. It was determined an estimated annual spend of \$57,000 may be expected in the coming years.

The selection was made and the intent is to award a multi-vendor contract based on lowest pricing provided by Clarke Power Services and Interstate Batteries.

Procurement Department proposes a multi-vendor award contract for transit bus batteries and common use batteries to the above vendors with a not-to-exceed amount of \$130,000 for a term of two (2) years.

The staff recommends the award of transit bus batteries and common use batteries to both Clarke Power Services and Interstate Batteries. Both companies lowest bid price was determined to be the most favorable to TARC.

This Resolution seeks approval for the Board of Directors to authorize the Executive Director to negotiate and enter into a two (2) year contract with Clark Power Services and Interstate Batteries at a cost not to exceed \$130,000 to provide transit bus batteries and common use batteries to TARC.

Please call me at 502-561-5135 if you have any questions. Thank you.



RESOLUTION 2025-12 TRANSIT BUS BATTERIES & COMMON USE BATTERIES

A Resolution authorizing the Executive Director to negotiate and enter into a two (2) year term with Clarke Power Services and Interstate Batteries based upon the attached bid pricing for Transit Bus Batteries & Common Use Batteries with a not-to-exceed amount of \$130,000.

WHEREAS, TARC seeks a vendor or vendors to supply Transit Bus Batteries and Common Use Batteries for TARC's bus fleet; and

WHEREAS, a competitive solicitation, invitation to bid (ITB) was issued on February 26, 2025 for such parts; and

WHEREAS, TARC received proposals from Clarke Power Services and Interstate Batteries, which were both deemed responsible and responsive; and

WHEREAS, TARC's Procurement Department conducted an independent cost estimate and deemed pricing for such responses were within market range; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Transit Authority of River City that:

The Executive Director is hereby authorized to negotiate and enter into a two (2) year contract term with the vendors set forth above based upon their cost submittals to the ITB for not-to-exceed amount of \$130,000.

ADOPTED THIS 23TH DAY OF April 2025

Ted Smith, Chair of the Board of Directors



MEMORANDUM

To: TARC Board of Directors

From: Ozzy Gibson, Executive Director

Date: April 23, 2025

Re: Resolution 2025-11 Genfare SPX License, Support and Maintenance Sole Source (20211694)

The purpose of this resolution is to provide updated authority for the annual license, support and maintenance agreement that TARC maintains with Genfare. TARC has utilized Genfare products since late 1998 to support the on-board bus fareboxes, backend support operations and farebox upgrading to FastFare in 2018.

On April 26, 2022, Resolution 2022-13 was authorized and approved by the TARC Board of Directors to negotiate and execute a sole source contract number 20211694 with Genfare. The Resolution was for the annual license, support and maintenance agreement for a total of three (3) years.

We have come once again to the end of the third year. We are seeking to exercise the remaining three (3) years of the contract with a not to exceed amount of \$295,710 which shall expire in February 2028 to continue the use of the software, licenses, support, and maintenance for the fareboxes on TARC's bus fleet as well as the Genfare Link application.

This Resolution seeks approval for the Board of Directors to authorize the Executive Director to enter into a three-year agreement with Genfare SPX to continue at the scheduled pricing in the amount of \$295,710.

Please call me at 502-561-5100 if you have any questions. Thank you.



Resolution 2025-11 Genfare SPX License, Support and Maintenance Sole Source (20211694)

A Resolution authorizing the Executive Director to enter into a three-year agreement with Genfare SPX to continue the use of the software, licenses, support, and maintenance for the fareboxes on TARC's bus fleet as well as the Genfare Link application at a cost not to exceed \$295,710.

WHEREAS, Transit Authority of River City (TARC) seeks software system support and maintenance on our Genfare fareboxes; and

WHEREAS, TARC initiated a renewal for sole source procurement and pricing analysis for Genfare software system support and maintenance; and

WHEREAS, TARC seeks to exercise the remaining three (3) years of the contract scheduled pricing from Genfare SPX that was deemed fair and reasonable; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Transit Authority of River City that:

The Executive Director is hereby authorized to enter into the remaining three-year agreement with Genfare SPX based upon the scheduled pricing amount total of \$295,710.

Adopted this 23rd day of April 2025

Ted Smith, Chair, Board of Directors



**FY2026 DRAFT BUDGET
BOARD REVIEW**

APRIL 16, 2025





FY26 BUDGET TIMELINE

COMPLETED TASKS

DECEMBER 5th	INITIAL REFRESHER TRAINING ON BUDGET PLANNING WITH FINANCE IN TRAINING ANNEX
DECEMBER 5th	EMAIL THAT DIRECTORS HAVE ACCESS TO FILES NO LATER THAN DATE STATED
JANUARY 2nd - 31st	INITIAL MEETINGS WITH FINANCE MUST HAVE DOCUMENTS APPROVED BY BUDGET ANALYST PRIOR TO SCHEDULING
JANUARY 2nd	KEY PLANS, PROJECTS AND GOALS FOR FY25, FY24 ACCOMPLISHMENTS TO MARKETING
FEBRUARY 3rd	DEPARTMENT DRAFT BUDGETS DUE TO FINANCE - MUST HAVE AT LEAST MET WITH FINANCE ONCE
FEBRUARY 3rd	COMMUNICATIONS/MARKETING DEPT. DUE DATE FOR SUBMITTING TO FINANCE
FEBRUARY 24th - 28th	EXECUTIVE DIRECTOR REVIEW OF DEPT BUDGETS
MARCH 14th	BY EXPENSE CATEGORY COMPLETED FOR EXECUTIVE REVIEW
MARCH 26th	TARC BOARD REVIEW OF BUDGET (FIRST LOOK)



FY26 BUDGET TIMELINE

NEXT STEPS

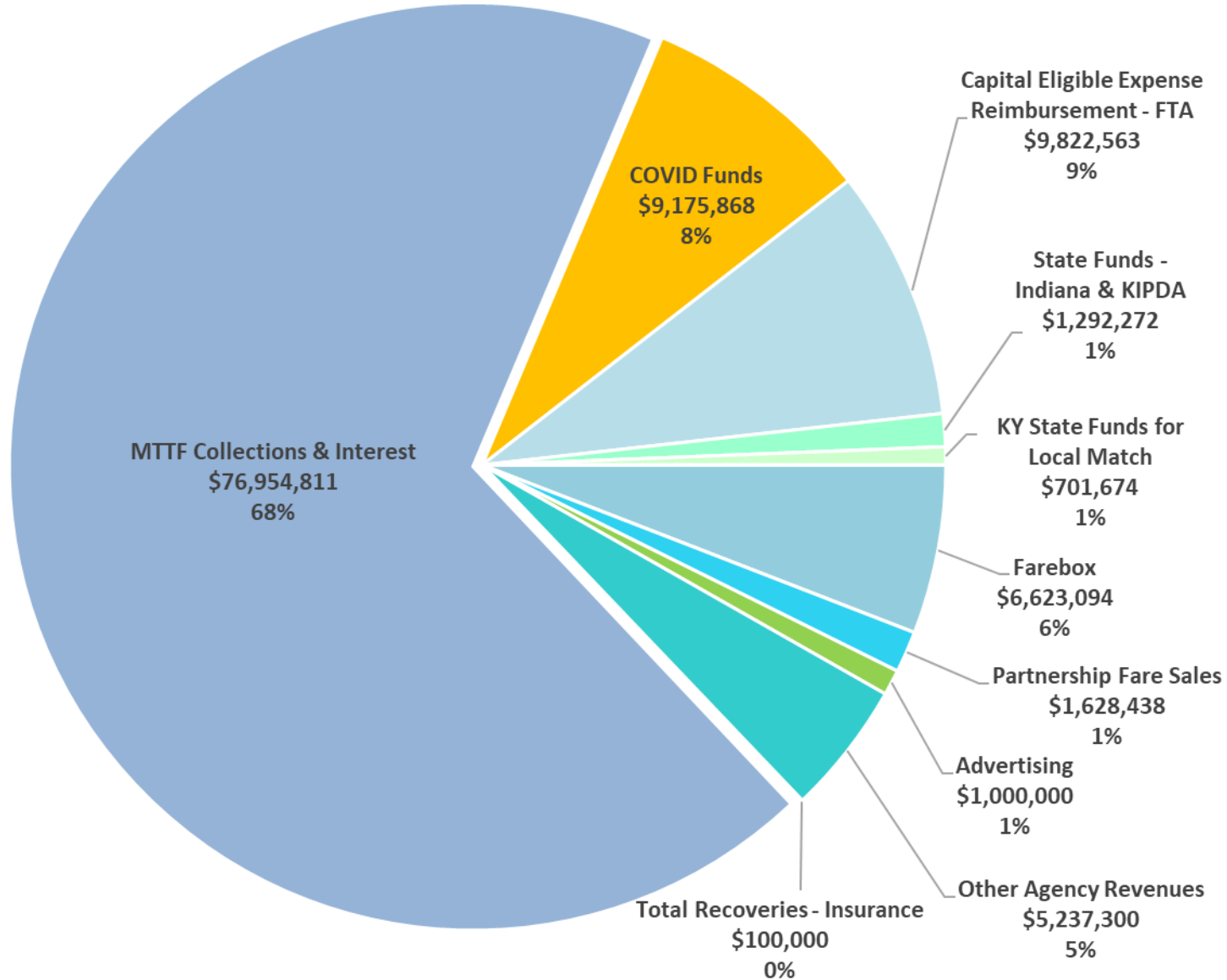
EARLY APRIL (TBD)	TARC BOARD REVIEWS AND APPROVES FINAL BUDGET - MAY REQUIRE SPECIAL BOARD MEETING
APRIL MID (TBD)	MUST HAVE BUDGET TO METRO GOVERNMENT OMB FOR MAYOR REVIEW
APRIL 14TH	WORK BEGINS ON PREPARING FINAL BUDGET BOOK TO BE SENT TO METRO
APRIL 30th	TARC BUDGET GOES TO METRO COUNCIL WITH METRO'S BUDGET
MAY (TBD)	MAYOR'S RECOMMENDED BUDGET (Around the 3rd Thursday)
JUNE on or before the 3rd	BUDGET HEARINGS WITH METRO COUNCIL BEG. OF JUNE
JUNE (TBD)	FOLLOW UP BUDGET HEARINGS IF NECESSARY MID JUNE
JUNE (TBD)	APPROVAL BY METRO GOVERNMENT END OF JUNE

FY 2026 BUDGET BUILT ON THESE ASSUMPTIONS

Diesel Fuel	• \$2.76/gallon
Gas	• \$2.94/gallon
Ridership	• +3% from FY25 estimates
MTTF Growth	• +2.5% from FY25 estimates
Medical	• 22% actual and 10% for renewal
JCPS	• Continuing JCPS agreement into year 2
Purchased Transportation	• 10% increase in paratransit trips
Services	• Maintaining current service levels
Remaining COVID Funds	• \$9,175,868



FY 2026 REVENUE - OPERATING BUDGET



Operating Revenues	\$112,536,020
Capital MTTF Match	\$3,412,513
TARC Requested Budget	\$115,948,533



FY 2026 REVENUE - OPERATING BUDGET

OPERATING REVENUE

MTTF Collections & Interest	\$76,954,811	68%
Farebox	\$6,623,094	6%
Other Agency Revenues	\$5,237,300	5%
Partnership Fare Sales	\$1,628,438	1%
State Funds - Indiana & KIPDA	\$1,292,272	1%
Advertising	\$1,000,000	1%
Total Recoveries - Insurance	<u>\$100,000</u>	0%
Total Operating Revenues	\$92,835,915	82%

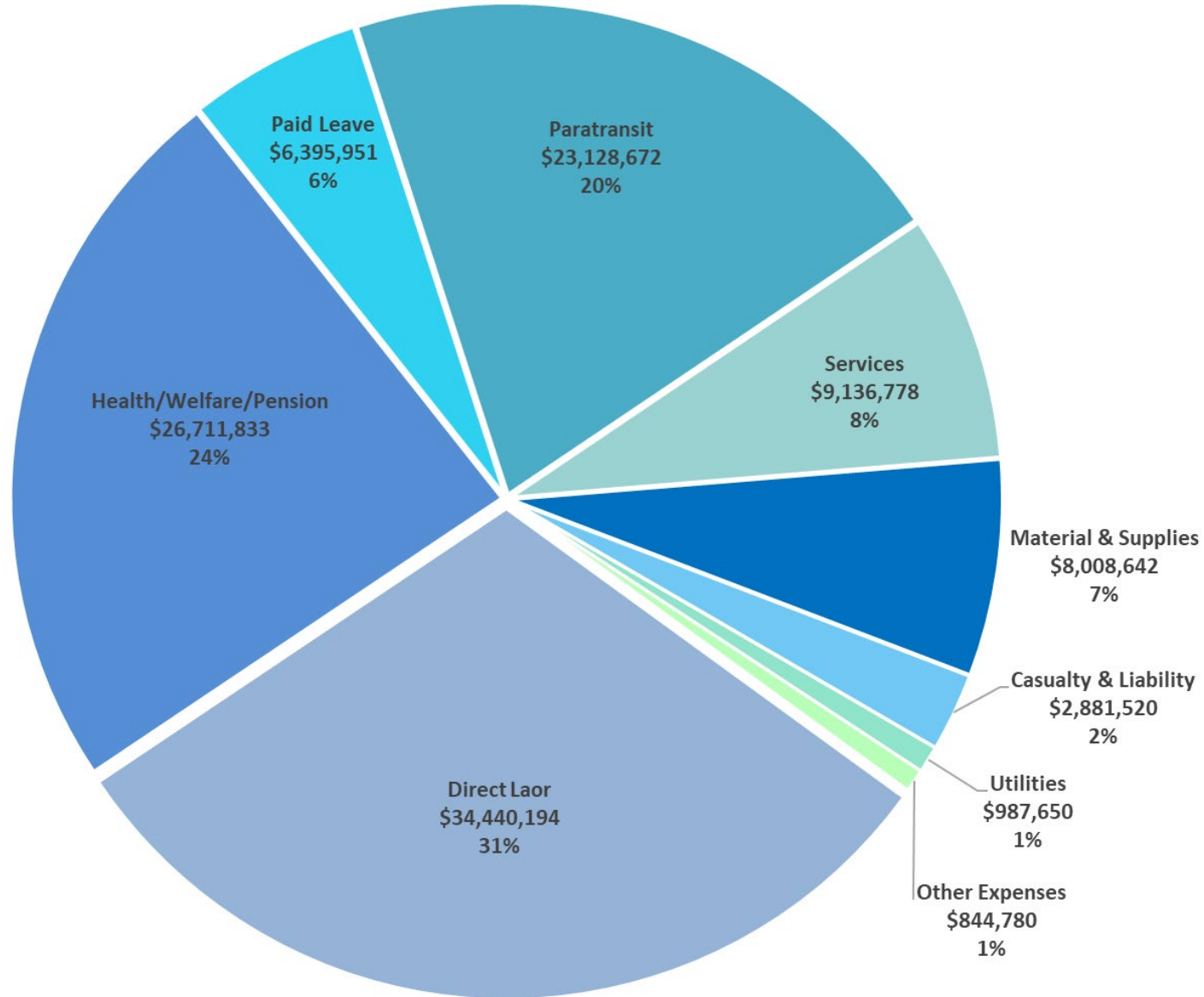
SUBSIDIES

Capital Eligible Expense Reimbursement - FTA	\$9,822,563	9%
Remaining COVID Funds	\$9,175,868	8%
KY State Funds for Local Match	<u>\$701,674</u>	1%
Total Subsidies	\$19,700,105	18%

TOTAL REVENUES BEFORE CAPITAL	<u><u>\$112,536,020</u></u>	100%
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FY 2026 EXPENSES - OPERATING BUDGET



**Total Operating Expenses
\$ 112,536,020**



FY 2026 EXPENSES - OPERATING BUDGET

OPERATING EXPENSES

Direct Labor*	\$34,440,194	30.6%
Health/Welfare/Pension*	\$26,711,833	23.7%
Paid Leave*	\$6,395,951	5.7%
Paratransit	\$23,128,672	20.6%
Services**	\$9,136,778	8.1%
Material & Supplies	\$8,008,642	7.1%
Casualty & Liabilities	\$2,881,520	2.6%
Utilities	\$987,650	0.9%
Other Expenses	\$844,780	0.8%
TOTAL OPERATING EXPENSE BEFORE CAPITAL	<u>\$112,536,020</u>	100.0%

**These categories represent total personnel costs totaling \$67,547,978 or 60% of the total Operating Budget before capital.*

***Services includes but is not limited to all TARC IT hardware/software licenses, building and bus security, and shelter and facility maintenance agreements.*



FY 2026 CAPITAL PROJECTS & PROGRAM OF FUNDS

Projects That Use Formula Funds	TOTAL	FEDERAL	MTTF	STATE	OTHER
Purchase Five (5) Battery Electric Buses - Partial	1,112,535	890,028	0	222,507	0
Associated Capital Maintenance Items	150,000	120,000	30,000	0	0
Architectural & Engineering Services	585,068	468,054	40,000	77,014	0
Infotech Systems*	5,754,887	4,603,909	600,000	550,978	0
Security Improvements*	1,720,100	1,376,080	211,437	132,583	0
Facility Renovation Projects*	4,968,197	3,974,558	25,000	968,639	0
Bus Line Inspection	11,394	9,115	1,000	1,279	0
Sub-total	14,302,181	11,441,744	907,437	1,953,000	0
Projects That Use Other (5339 & Flex) Formula Funds	TOTAL	FEDERAL	MTTF	STATE	OTHER
Purchase (6) ADA Paratransit Vans	845,744	676,595	140,000	29,149	0
Purchase Four (4) Battery Electric Buses - Partial	2,496,567	1,997,254	103,313	396,000	0
Shop Equipment - Bus Lift Replacement*	504,128	403,302	0	100,826	0
Infotech Systems*	396,033	316,826	18,213	60,994	0
Security Improvements*	1,000,000	800,000	0	200,000	0
Support Vehicles (4)*	177,380	141,904	34,000	1,476	0
Office Equipment	93,535	74,828	18,707	0	0
Facility Renovation Projects*	3,152,308	2,521,846	124,094	506,368	0
Transit Enhancements	587,497	469,998	0	117,499	0
Sub-total	9,253,192	7,402,553	438,327	1,412,312	0
Projects That Use Discretionary Funds	TOTAL	FEDERAL	MTTF	STATE	OTHER
Purchase Nine (5 & 4) Battery Electric Buses - Partial	7,431,158	6,316,484	1,114,674	0	0
Architectural & Engineering Services	172,369	146,192	26,177	0	0
Bus Charging Infrastructure	5,086,890	4,363,542	723,348	0	0
Workforce Development - Electric Infrastructure	427,750	362,200	65,550	0	0
Project Management (LowNo-CMAQ)	80,000	68,000	12,000	0	0
Operations Planning (APP-RR)	280,100	280,100	0	0	0
Preliminary Engineering - 3rd Party (Brwy All the Way)	2,260,077	1,408,062	125,000	0	727,015
Sub-total	15,738,344	12,944,580	2,066,749	0	727,015
SUB-TOTAL - All Capital Projects	39,293,717	31,788,877	3,412,513	3,365,312	727,015

KEY CAPITAL PROJECTS

- Fleet Replacement \$11.8M
(6 Paratransit Vehicles, 9 Electric)
- Facility Renovation \$8.2M
(HVAC Replacement, lot resurfacing, bus wash replacement, 2905 roof)
- Infotech Systems \$6.1M
(EAM replacement, telephone systems upgrade, access controls)
- Charging Infrastructure \$5.8M
(for electric fleet)
- Security Program \$2.7M
(Facility surveillance & access control upgrades)

Highlighted funds are examples of what could be at risk based on changes to federal policies.



FY 2026 CAPITAL PROJECTS & PROGRAM OF FUNDS

Capital Eligible Expense Reimbursements

<i>Projects That Use Formula Funds</i>	TOTAL	FEDERAL	MTTF	STATE	OTHER
Non-Fixed Route ADA Paratransit	4,000,000	3,200,000	800,000	0	0
Capital Cost of Contracting (Fixed Route)	26,449	21,159	0	5,290	0
Capital Maintenance	6,082,348	4,865,878	520,086	696,384	0
Sub-total 5307 Formula Contributions	10,108,797	8,087,037	1,320,086	701,674	0
<i>Projects That Use Formula Funds</i>	TOTAL	FEDERAL	MTTF	STATE	OTHER
ADA Paratransit Work Trips	415,440	207,720	207,720	0	0
Sub-total 5310 Formula Contributions	415,440	207,720	207,720	0	0
<i>Projects That Use CARES & CRRSA Act Funds</i>	TOTAL	FEDERAL	MTTF	STATE	OTHER
ARP Act Emergency Operations	9,175,868	9,175,868	0	0	0
Sub-total CARES Act Contributions	9,175,868	9,175,868	0	0	0
SUB-TOTAL - All Contributions to Operations	19,700,105	17,470,625	1,527,806	701,674	0
TOTAL	58,993,822	49,259,502	4,940,319	4,066,986	727,015

*Capital funds being used to offset operating budget shortfall

MTTF Capital Projects = \$3.4M
MTTF Capital Eligible Expense Reimbursement = \$1.5M



FY 2026 BUDGET BY EXPENSE CATEGORY

	FY24 ACTUAL	FY25 BUDGET	FY25 ESTIMATE	FY26 BUDGET		
BEGINNING MTTF BALANCE	\$56,541,912	\$56,541,912	\$70,181,827	\$73,238,176	4.35%	
OPERATING REVENUE						FY 26 BUD vs FY 25 EST
FAREBOX	\$6,273,354	\$6,197,337	\$6,430,188	\$6,623,094	3.00%	192,906
SPECIAL FARES	\$1,570,776	\$1,536,008	\$1,581,008	\$1,628,438	3.00%	47,430
CHARTER	\$0	\$0	\$0	\$0	0.00%	0
ADVERTISING	\$788,942	\$1,100,000	\$700,000	\$1,000,000	42.86%	300,000
OTHER AGENCY REVENUES	\$778,680	\$447,300	\$5,647,300	\$5,237,300	-7.26%	(410,000)
TOTAL RECOVERIES - INSURANCE	\$422,818	\$100,000	\$150,000	\$100,000	-33.33%	(50,000)
MTTF COLLECTIONS	\$74,851,800	\$75,300,639	\$77,097,354	\$79,024,788	2.50%	1,927,434
MTTF INTEREST	\$2,759,149	\$1,582,289	\$2,841,923	\$2,870,342	1.00%	28,419
STATE GOVERNMENT FUNDS	\$2,607,292	\$1,276,642	\$1,276,642	\$1,292,272	1.22%	15,630
FEDERAL REIMB. FUNDS-ACCESS TO JOBS	\$0	\$0	\$0	\$0	0.00%	0
MTTF PRINCIPAL	(\$13,639,915)	\$0	(\$3,056,349)	\$0	0.00%	3,056,349
TOTAL REVENUES	\$76,412,896	\$87,540,215	\$92,668,066	\$97,776,234	5.51%	5,108,168
OPERATING EXPENSES						
DIRECT LABOR	\$33,878,360	\$31,866,017	\$34,417,750	\$34,440,194	0.07%	22,444
FRINGE BENEFITS:						
VAC/HOL/SICK/BDAY	\$6,025,271	\$5,712,566	\$5,535,100	\$6,395,951	15.55%	860,851
HEALTH/WELFARE/PENSION	\$22,990,352	\$23,888,855	\$25,625,930	\$26,711,833	4.24%	1,085,903
SERVICES	\$6,318,337	\$8,858,740	\$7,737,510	\$9,136,778	18.08%	1,399,268
MATERIAL&SUPPLIES	\$8,497,126	\$8,839,946	\$8,188,620	\$8,008,642	-2.20%	(179,978)
UTILITIES	\$994,331	\$1,118,100	\$1,058,900	\$987,650	-6.73%	(71,250)
CASUALTY&LIABILITY	\$3,297,272	\$4,411,270	\$2,350,670	\$2,881,520	22.58%	530,850
PARATRANSIT	\$17,485,740	\$23,295,590	\$20,071,440	\$23,128,672	15.23%	3,057,232
INTEREST EXPENSE	\$0	\$0	\$0	\$0	0.00%	0
OTHER EXPENSE	\$552,535	\$1,097,720	\$666,560	\$844,780	26.74%	178,220
TOTAL OPERATING EXPENSE	\$100,039,324	\$109,088,804	\$105,652,480	\$112,536,020	6.52%	6,883,540
CAPITAL ELIGIBLE EXPENSE REIMBURSEMEN	(\$5,213,797)	(\$10,527,120)	(\$4,495,405)	(\$10,524,237)	134.11%	(6,028,832)
CRRSAA FUNDING	\$0	\$0	\$0	\$0	0.00%	0
ARP	(\$19,767,283)	(\$18,547,198)	(\$9,754,222)	(\$9,175,868)	-5.93%	9,175,868
SUBTOTAL	(\$24,981,080)	(\$29,074,318)	(\$14,249,627)	(\$19,700,105)	38.25%	3,147,036
NET OPERATING EXPENSE	\$75,058,244	\$80,014,486	\$91,402,853	\$92,835,915	1.57%	1,433,062
MTTF CAPITAL SHARE	\$1,354,652	\$7,525,729	\$1,265,213	\$4,940,319	290.47%	3,675,106
TOTAL OPERATING/CAPITAL	\$76,412,896	\$87,540,215	\$92,668,066	\$97,776,234	5.51%	5,108,168
ENDING MTTF BALANCE	\$70,181,827	\$56,541,912	\$73,238,176	\$73,238,176	0.00%	0

FY26 Budget key drivers:

Fringe Benefits

- 22% increase in insurance rates

Casualty & Liability

- Increase liability rates by 20% (industry standard)

Services

- Increase scheduling services and software support \$550,000
- Increase printing and consulting services for network redesign \$150,000
- Increase court fees & building security \$200,000

Purchase Transportation

- Increase trips by 10% based on historical trends



FY 2026 BUDGET BY DEPARTMENT

	FY24 ACTUAL	FY25 BUDGET	FY25 ESTIMATE	FY26 BUDGET		
BEGINNING MTTF BALANCE	\$56,541,912	\$56,541,912	\$70,181,826	\$73,238,176	4.35%	
						FY 26 BUD vs FY 25 EST
OPERATING REVENUE						
FAREBOX	\$6,273,354	\$6,197,337	\$6,430,188	\$6,623,094	3.00%	192,906
SPECIAL	\$1,570,776	\$1,536,008	\$1,581,008	\$1,628,438	3.00%	47,430
CHARTER	\$0	\$0	\$0	\$0	0.00%	0
ADVERTISING	\$788,942	\$1,100,000	\$700,000	\$1,000,000	42.86%	300,000
OTHER AGENCY REVENUES	\$778,680	\$447,300	\$5,647,300	\$5,237,300	-7.26%	(410,000)
TOTAL RECOVERIES -INSURANCE	\$422,818	\$100,000	\$150,000	\$100,000	-33.33%	(50,000)
MTTF COLLECTIONS	\$74,851,800	\$75,300,639	\$77,097,354	\$79,024,788	2.50%	1,927,434
MTTF INTEREST	\$2,759,149	\$1,582,289	\$2,841,923	\$2,870,342	1.00%	28,419
INDIANA/KIPDA/OTHER	\$2,607,292	\$1,276,642	\$1,276,642	\$1,292,272	1.22%	15,630
FEDERAL REIMB. FUNDS-ACCESS TO JOBS	\$0	\$0	\$0	\$0	0.00%	0
MTTF PRINCIPAL	(\$13,639,914)	\$0	(\$3,056,349)	\$0	-100.00%	3,056,349
TOTAL REVENUES	\$76,412,897	\$87,540,215	\$92,668,066	\$97,776,234	5.51%	0
OPERATING EXPENSES						
TRANSPORTATION	\$44,954,522	\$41,279,399	\$46,002,620	\$45,318,039	-1.49%	(684,581)
MAINTENANCE	\$17,812,318	\$19,083,874	\$19,072,930	\$20,066,042	5.21%	993,112
PARATRANSIT	\$19,302,022	\$25,555,720	\$20,695,733	\$23,894,836	15.46%	3,199,103
MARKETING	\$1,104,589	\$1,361,053	\$1,284,220	\$1,468,644	14.36%	184,424
CUSTOMER EXPERIENCE	\$0	\$0	\$1,384,517	\$1,419,388	0.00%	
PLANNING	\$751,906	\$945,547	\$873,400	\$1,092,417	25.08%	219,017
EXECUTIVE OFFICE	\$1,853,805	\$2,020,172	\$2,068,770	\$2,177,610	5.26%	108,840
GRANTS	\$486,411	\$629,729	\$564,720	\$677,543	19.98%	112,823
SAFETY	\$5,574,575	\$7,069,211	\$4,749,510	\$5,443,824	14.62%	694,314
PROCUREMENT	\$984,065	\$1,202,256	\$1,132,060	\$1,233,674	8.98%	101,614
IT	\$3,568,732	\$4,688,775	\$3,655,210	\$4,584,511	25.42%	929,301
FINANCE	\$1,942,079	\$2,188,083	\$2,090,600	\$2,283,570	9.23%	192,970
HUMAN RESOURCES	\$870,338	\$2,185,900	\$1,113,370	\$2,002,728	79.88%	889,358
TRAINING	\$833,963	\$879,085	\$964,820	\$873,194	0.00%	(91,626)
TOTAL OPERATING EXPENSE	\$100,039,325	\$109,088,804	\$105,652,480	\$112,536,020	6.52%	6,883,540
CAPITAL ELIGIBLE EXPENSE REIMBURSEMEN	(\$5,213,797)	(\$10,527,120)	(\$4,495,405)	(\$10,524,237)	134.11%	(6,028,832)
CARRSA FUNDING	\$0	\$0	\$0	\$0	0.00%	0
ARP	(\$19,767,283)	(\$18,547,198)	(\$9,754,222)	(\$9,175,868)	0.00%	578,354
SUBTOTAL	(\$24,981,080)	(\$29,074,318)	(\$14,249,627)	(\$19,700,105)		(5,450,478)
NET OPERATING EXPENSE	\$75,058,245	\$80,014,486	\$91,402,853	\$92,835,915	1.57%	1,433,062
MTTF CAPITAL SHARE	\$1,354,652	\$7,525,729	\$1,265,213	\$4,940,319	290.47%	3,675,106
TOTAL OPERATING/CAPITAL	\$76,412,897	\$87,540,215	\$92,668,066	\$97,776,234	5.51%	5,108,168
ENDING MTTF BALANCE	\$70,181,826	\$56,541,912	\$73,238,175	\$73,238,176	0.00%	1

MTTF Principal shows how much is added or withdrawn from the MTTF Balance based on revenue over expenses for the fiscal year.

TARC policy is to keep at least 2 months of reserve for Operating Expenses.



TARC HISTORY - REVENUE OVER EXPENSES





REVENUE OVER EXPENSES SHORTFALL OVER LAST 10 YEARS

	Shortfall	Covid funding applied	Remaining Shortfall
FY24	\$24.9M	\$19.8M	\$ 5.1M
FY23	\$24.6M	\$21.6M	\$ 3.0M
FY22	\$24.7M	\$20.4M	\$ 4.3M
FY21	\$28.5M	\$26.8M	\$ 1.7M
FY20	\$18.9M	\$ 4.3M	\$14.6M
FY19	\$16.4M		
FY18	\$14.9M		
FY17	\$ 9.4M		
FY16	\$13.4M		
FY15	\$ 6.5M		
FY14	\$13.2M		
FY13	\$12.0M		

For many years, TARC has also used capital formula funds to keep service on the street.

TARC has shifted funds needed to buy and maintain buses, care for facilities, purchase needed IT programs, etc. to cover its eligible operational expenses.



FY 2026 ADDITIONAL REVENUES AND EXPENSE INCREASE/REDUCTIONS

Additional Revenues

JCPS second year revenues	\$ (5,237,300)
Potential fare increase*	\$ (1,682,950)
Total Additional Revenues	\$ (6,920,250)

Additional Increases in Expenses

JCPS second year	\$ 7,196,807
Healthcare increases	\$ 1,800,000
Scheduling system upgrades	\$ 400,000
TARC 2025 implementation expenses	\$ 200,000
Phone system upgrades	\$ 195,000
Total Additional Increases	\$ 9,791,807

Additional Expense Reductions

Renegotiated service contracts	\$ (351,307)
Misc. expense reductions	\$ (310,148)
Old pension contributions	\$ (250,000)
Renegotiated IT contracts	\$ (119,144)
Total Additional Expense Reductions	\$ (1,030,569)

**Fare Increase assumes implementation at July 1, 2025 and an elasticity factor of -6% for ridership.*

Note: 16 admin positions were frosted/eliminated in the FY25 budget resulting in \$1.3MM of savings.



ADDITIONAL CAPITAL NEEDS IF FUNDING BECOMES AVAILABLE

Project Description	Total Estimated Cost	Federal Funding	Local Match
In-ground lift replacement (all maint. locations)	\$ 17,000,000	\$ 13,600,000	\$ 3,400,000
Union Station atrium restoration	\$ 2,000,000	\$ 1,600,000	\$ 400,000
T&O Building interior rehab	\$ 1,500,000	\$ 1,200,000	\$ 300,000
Resurface 10th St. rear lot	\$ 750,000	\$ 600,000	\$ 150,000
Baggage Building roof & gutter repair	\$ 750,000	\$ 600,000	\$ 150,000
Roof replacement - 2905 W. Broadway shop	\$ 600,000	\$ 480,000	\$ 120,000
Union Station elevator modernization	\$ 250,000	\$ 200,000	\$ 50,000
Develop cash processing room	\$ 225,000	\$ 180,000	\$ 45,000
HVAC replacement - 925 W. Broadway	\$ 80,000	\$ 64,000	\$ 16,000
Bus Barn roof recoating	\$ 65,000	\$ 52,000	\$ 13,000
Clock tower repair	\$ 60,000	\$ 48,000	\$ 12,000
Warehouse fixtures & equipment	\$ 45,000	\$ 36,000	\$ 9,000
Union Station basement interior tuck pointing	\$ 40,000	\$ 32,000	\$ 8,000
Total estimated cost of additional capital projects	\$ 23,365,000	\$ 18,692,000	\$ 4,673,000



DRAFT FISCAL YEAR 2026 BUDGET

April 16, 2025



MEMORANDUM

To: TARC Board of Directors
From: Ozzy Gibson, Executive Director
Date: April 23, 2025
Re: Resolution 2025 -13 TARC's Fiscal Year 2026 Budget

The Transit Authority of River City (TARC) Fiscal Year 2026 Budget continues fixed route and paratransit services similar to the prior fiscal year. Thanks to the work to right-size TARC and our partnership with JCPS, TARC is fairly stable in its near-term financial position. While TARC has been rescued from the fiscal cliff in years past by several one-time federal funding sources to help the continuation of services, those funding options will no longer be available beyond next fiscal year and this budget reflects that reality.

TARC's portion of the 1974 Jefferson County Occupational License Fee, or Mass Transit Trust Fund, has not been able to keep pace with the rate of cost increases across key cost centers.

This recommended budget continues the necessary steps that began last year to be fiscally responsible in order to manage a projected significant future shortfall. During the fiscal year, TARC will work to complete the TARC 2025 study and create an implementation plan that will create a more sustainable TARC based on current funding sources.

Please call me at 561-5100 if you have any questions. Thank you.



RESOLUTION 2025- 13
TARC'S FISCAL YEAR 2026 BUDGET

This resolution requests the Board adopt the TARC FY 2026 budget and authorizing the Executive Director to forward the budget to Louisville Metro Government for its consideration:

WHEREAS, our resources for the FY 2026 budget will be directed towards steps to make TARC more financially sustainable; and,

WHEREAS, providing quality service within our means and safe service continues to be our top priority; and,

WHEREAS, TARC is committed to continuous improvement, exploring visionary opportunities, and new funding resources; and,

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Transit Authority of River City that:

The TARC FY 2026 Budget is hereby approved and the Executive Director is hereby authorized to forward the TARC FY 2026 Budget to Louisville Metro Government for its consideration.

ADOPTED THIS 23rd DAY OF APRIL 2025

Ted Smith, Chair of the TARC Board of Directors

The Procurement Calendar will be available during the Finance Committee Meeting.