Ventura County Transportation Commission

Procurement Policies and Procedures

Note: Purple text identifies revisions developed in 2023 that were not previously presented to the Commission for adoption.
Red text identifies revisions proposed in 2026.

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I. INTRODUCTION

Purpose Statement

Article VI of the Ventura County Transportation Commission (VCTC or Commission) Administrative Code prescribes basic rules about contracts, competitive bidding, and other contracting methods. This document represents a further refinement of VCTC's procurement policies and procedures for all aspects of contract administration and was developed based on California Government and Public Contract Codes and the federal procurement procedures found in 2 CFR Part 200 and Federal Transit Administration (FTA) Circular 4220.1F. The Caltrans Local Assistance Procedures Manual provides additional guidance for Federal Highway Administration (FHWA) funded federal-aid and state funded projects. The purpose of these procurement standards and procedures is to ensure that materials and services are obtained in an effective manner and in compliance with state and federal requirements.

A. Procurement Types

1. **Materials, Supplies and Equipment.** Furnishings, machinery, fuel, vehicles, rolling stock, and other property used to conduct VCTC business.

2. **Professional Services.** Professional services include the following:

   a. Design support includes engineering, surveying, architecture, and other related specialists.

   b. Construction inspection and/or inspection.

   c. Right of Way and property appraisal and acquisition service.

   d. Other services that require special training or expertise.

3. **Construction.** Building, altering, repairing, installing, or demolishing a structure.

B. Roles and Responsibilities

1. **Approval Levels**.

   a. Contracts in the amount of Fifty Thousand Dollars ($50,000.00) or greater shall be awarded by the Commission.

b. The Executive Director of VCTC serves as the administrative officer of VCTC and administers all VCTC contracts. The Executive Director may execute contracts without prior approval on behalf of VCTC, for construction or to purchase or cause to be purchased, supplies, equipment, materials, and personnel services where the expenditure is less than Fifty Thousand Dollars ($50,000), or when immediate measures are required to avert or alleviate damage to property, or to replace, repair, or restore damaged or destroyed property, of VCTC in order to ensure that the facilities of VCTC are available to serve the transportation needs of the general public, pursuant to and in compliance with the limitation and reporting requirement of California Public Utilities Code (PUC) section 130235, subsections (a) and (b), as they may be amended from time to time. The Executive Director may delegate any and all purchasing activities.

c. **Purchases less than Ten Thousand Dollars ($10,000).** may be approved by Directors with a signed authorization form.

2. Code of Conduct.

a. **Conflict of Interest.** Section VII of VCTC's Administrative Code establishes the basic rules and procedures regarding potential conflicts of interest.

b. **Avoiding Organizational Conflicts of Interest.** Any employee, officer, agent, or board member involved in the solicitation, selection, award, or administration of contracts shall take care in carrying out procurements to:

- Identify, evaluate, and make known any instance of potential or known conflict;
- Identify measures to mitigate potential conflicts to avoid the conflict or the effects of the conflict, whether financial, personal, or organizational;
- Take necessary actions to address violations, impose penalties or to proceed when in VCTC's best interest, despite a conflict; and
- Document steps taken or considered and document the justification for the conclusion reached, before proceeding with a contract.

3. **Code of Ethics**. VCTC's Adopted Code of Ethics establishes an ethical code of conduct for employees and board members and prohibits the solicitation and acceptance of gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements. The Code of Ethics also addresses confidentiality and behavior and specifies that disciplinary actions will be taken for violations.

II. PROCUREMENT POLICIES, STANDARDS, AND PROCEDURES

A. Procurement Policies and Standards

1. **Full and Open Competition**. Procurement transactions will be conducted in a manner providing full and open competition consistent with the standards stated in this section. Some of the situations considered to be restrictive of competition include but are not limited to:

   a. Placing unreasonable requirements on firms in order for them to qualify to do business,

   b. Requiring unnecessary experience and excessive bonding,

   c. Noncompetitive pricing practices between firms or between affiliated companies,

   d. Splitting procurements to avoid competitive bidding,

   e. Using exclusionary or discriminatory specifications,

   f. Engaging in a practice whereby an organizational conflict of interest exists,

   g. Specifying only a brand name product instead of allowing an equal product or allowing an "equal" product without listing salient characteristics to be met,

   h. Making noncompetitive awards to any person or firm on a retainer contract for property or services not specified under the existing retainer contract,

   i. Any arbitrary action in the procurement process, and

   j. For federally funded projects, specifying in-state or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. Geographic location may be a selection criterion in procurements for architectural and engineering (A&E) services provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

2. **Disadvantaged Business Enterprise (DBE) Program**. VCTC has an adopted policy and program to utilize DBEs and firms as defined in 49 CFR Part 26 in all aspects of federal-funded contracting to the maximum extent feasible.

3. **Emergency Purchases**. In the event of an emergency, threat to public health, welfare, or safety, a contract may be awarded without proceeding with a formal competitive process. To the extent feasible, competition for the procurement shall be made when practical, given the circumstances of the emergency. Proper documentation shall be maintained.

4. **Time and Material Contracts**. For federally funded projects, time and material type contracts will be used only after a determination has been made that no other contract is suitable and only if the contract includes a ceiling price that the contractor may exceed at his or her own risk.

5. **Cost Plus a Percentage of Cost Prohibited**. The cost plus a percentage of cost and percentage of construction cost method of contracting shall not be used for federally funded projects.

6. **Tag-ons**. The addition of work that is beyond the scope of the original contract that amounts to a cardinal change and is subject to non-competitive procurement procedures. The use of tag-ons is prohibited for federally funded projects.

7. **Pre-qualified Bidders List**. VCTC shall ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, VCTC will not preclude potential bidders from qualifying during the solicitation period.

8. **Economical Purchase**. Procurements shall be conducted in a cost-effective manner which avoids the purchase of unnecessary or duplicative items. Consideration shall be given to consolidating or

breaking out procurements when practical to obtain a more economical purchase.

9. **Awards to Lowest Qualified Responsible Contractor**. VCTC will award only qualified responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

10. **Preference for Recycled Products**. To the extent practicable and economically feasible, VCTC will provide a competitive preference for recycled products in federally funded projects pursuant to U.S. Environmental Protection Agency Guidelines

B. Procurement Procedures

1. **Procurement Planning and Written Procurement Methodology**. During the planning stages of a project or procurement (Exhibit 1A), a procurement methodology (Exhibit 1B) shall be completed for federally funded projects greater than Ten Thousand Dollars ($10,000) that details the necessity of the procurement; how the procurement will be carried out; identifies, evaluates, and provides remedies for any organizational conflicts of interest; and identifies the rationale for the method of procurement and the basis for the contract price.
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2. **Selecting a Method of Procurement and Authorization to Proceed**. For federally funded procurements over Ten Thousand Dollars ($10,000), the Project Manager shall select the method of procurement and obtain authorization. (Exhibit 1C)

3. **Cost and Price Analysis**. VCTC shall perform a cost or price analysis in connection with each procurement using federal funds greater than Ten Thousand Dollars ($10,000); including contract modifications. A cost estimated shall be conducted before receiving bids or proposals and documented on an Independent Cost Estimate (ICE) Form (Exhibit 1D) and included as part of the procurement history. The method and degree of analysis shall depend on each procurement situation.

    a. **Cost Analysis**. A cost analysis must be performed when the bidder is required to submit the elements (i.e., labor hours, overhead, materials, etc.,) of estimated cost, (e.g., under professional consulting and architectural and engineering services contracts). A cost analysis will be necessary when adequate price competition is lacking and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or on the basis of prices set by law or regulation.

b. **Price Analysis**. A price analysis may be used in all other instances to determine the reasonableness of the proposed contract price.

c. **Profit**. VCTC shall negotiate profit as a separate element of the price for each contract in which there is no price competition and, in all cases, where a cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical areas for similar work.

4. **Written Selection Procedures**. VCTC shall prepare selection procedures for procurement transactions with federal funds. The selection procedures shall be written and shall incorporate: a clear and accurate description of the technical requirements for the materials, products, or services to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product, or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. The procedures shall identify the requirements which the bidders must fulfill and factors to be used in evaluating bids or proposals.

5. **Debarment and Suspension Check.** Any federally funded procurement, contract, or vendor contract exceeding Twenty-Five Thousand Dollars ($25,000) is subject to the Federal Excluded Parties List (EPLS/SAM). After all qualified bids or quotes have been opened the EPLS/SAM database must be referenced at www.sam.gov, which contains all businesses that have been barred or suspended from receiving federal funds or participating in federal contracts. The project manager will perform an EPLS/SAM business name search on each of the businesses for specific procurements.

a. If a business reference returns a positive listing on the EPLS/SAM, a printout of the web page will be included in the procurement file, while a second copy will be forwarded to the bidding business with a notice that they have been removed from consideration in the procurement.

b. If the EPSL/SAM search returns no listing on a specific business, a copy of the web page, showing the negative return, will be made and included in the procurement file.

6. **Award of Contract**. Unless all bids are rejected, the award shall be by written or electronic notice. For a Sealed Bid procurement, when the award is made to a bidder other than the lowest responsible bidder, VCTC will document in the procurement files the reason for not choosing the lowest bid.

7. **Protest Procedures**. VCTC will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurement. VCTC will follow the procedures established for protests to contracts awarded and bids or proposals on contracts received by VCTC pursuant to VCTC Resolution No. 91-05, Contract Protest Procedures, found as Exhibit 2 to this document.

   FTA Appeals: A protestor adversely affected by a decision of VCTC may submit a protest regarding an FTA-funded procurement to the Federal Transit Administration (FTA) in accordance with the provisions of FTA Circular 4220.1F or its successors (FTA Circular). Under the provision of the FTA Circular, FTA will only review protests regarding:

   - The alleged failure of VCTC to have written protest procedures or the alleged failure to have followed such protest procedures;
   - The alleged failure of VCTC to review a complaint or protest; or,
   - Alleged violations of federal law or regulations by VCTC.

   In accordance with the FTA Circular, such a protest must be filed no later than five (5) working days after the protestor knew or should have known of VCTC's final decision that resulted in the alleged failure or violation listed above. VCTC may proceed with the procurement in spite of a pending protest to the FTA under the following conditions:

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

Procurement History. VCTC will maintain records of all federally funded procurements in sufficient detail to document the significant history of the procurement. These records shall include but are not limited to the following: the Procurement Checklists found in Exhibit's 3A through Exhibit 3E, rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

III. METHODS OF PROCUREMENT

A. Convenience Purchase / Micro-Purchase

For purchases of Ten Thousand Dollars ($10,000) or less, informal or Convenience Purchase/Micro-Purchase procedures may be used. Micro-Purchases may be procured without obtaining competitive quotations. However, for purchases with federal funds, some documentation shall be maintained to support that the price is fair and reasonable and to document how the procurement determination was derived. (Exhibit 1D)

B. Small Purchase Procedures

Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than Two Hundred Fifty Thousand Dollars ($250,000) in the aggregate. Price or rate quotations shall be obtained from an adequate number of qualified sources (usually three or more). Normally, a Request for Quotations (RFQ) will be issued to obtain quotes but may be done verbally. The purchase file shall reflect the results of competition or document lack of it and otherwise document how the price was determined to be fair and reasonable. (Exhibit 1D).

C. Sealed Bids (Formal Advertising)

Bids are publicly solicited, and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price.

1. The sealed bid method shall be the preferred method for acquiring property, procuring construction, and other services, if the following conditions apply:

a. A complete, adequate, and realistic specification or purchase description is available;

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

c. The procurement lends itself to a firm fixed price contract; and

d. The selection of the successful bidder can be made principally on the basis of price and those price-related factors are listed in the solicitation including, but not limited to, transportation costs, life cycle costs, and discounts expected to be taken.

2. If sealed bids are used, the following apply:

a. The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time to prepare bids prior to the date set for opening the bids.

b. The invitation for bids, which will include any specifications and pertinent attachments, shall describe the property or services sought in sufficient detail in order for a bidder to properly respond.

c. All bids will be publicly opened at the time and place prescribed in the invitation for bids.

d. A firm fixed-price contract award will be made in writing to the lowest qualified responsive and responsible bidder. Where specified in 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 be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

e. Any or all bids may be rejected if there is a sound, documented business reason.

f. If, after rejecting bids received, VCTC determines and declares by a two-thirds (2/3) vote of the Commission's voting membership that, in its opinion, the procurement may be made at a lower price in the open market, VCTC may proceed to make such procurement in the open market without further observance of the provisions regarding contracts, bid or advertisements.

D. Procurement by Competitive Proposal

Competitive proposals are normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following apply:

1. Requests for Proposals (RFP) will be publicized and identify all evaluation factors and their relative importance;

2. Proposals will be solicited from an adequate number of qualified sources;

3. VCTC shall use a "Proposal Evaluation Form" as a guide for conducting technical evaluations of the proposals received and for selecting awardees;

4. Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

5. For projects with federal funding, awards may also be made on a "best value" basis when the RFP states the award will be so based and identifies the factors on which award will be made. The evaluation factors should reflect subject matter and elements most important to VCTC and may include, but not be limited to, technical design, technical approach, length of delivery schedules, quality of proposed personnel, past performance, and management plan. The determination of "best value" will be based on an analysis of the tradeoff of qualitative technical factors and price or cost factors.

E. Two Step Procurement for Projects with Federal Funding

Two-step procedures may be used in both sealed bid and competitively negotiated procurements.

Step 1. Review of Technical Qualifications and Approach. The first step is review of the prospective contractors' technical approach and technical qualifications to carry out that approach. The competitive range may be reduced to prospective contractors that demonstrate a technically satisfactory approach and have satisfactory qualifications.

Step 2. Review of Bids and Proposals Submitted by Qualified Prospective Contractors. The second step consists of soliciting and reviewing complete bids (sometimes referred to as "two-step sealed bidding") or proposals (as in "competitive negotiations"), including price, submitted by each prospective contractor determined to be qualified. It is recommended that bids or proposals should be solicited from at least three qualified sources.

F. Architectural and Engineering (A&E) and Related Services

Procurement of A&E and related services applicable to or leading to construction projects with FHWA federal aid or state funds shall follow the consultant selection procedures outlined in Chapter 10 of the Caltrans Local Assistance Procedures Manual.

Federally funded procurements shall use qualifications-based procedures outlined in the "Brooks Act." Such services include program management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, and construction management applicable to construction projects including research, planning, development, design, construction alteration, or repair of real property. Such services that are not construction-related will use procedures identified in subparagraphs "A" through "E" above.

The Brooks Act requires the following steps:

1. Evaluate the qualifications of all offerors without considering price and determine the most qualified offeror.

2. Open the price proposal and conduct negotiations with only the most qualified offeror to achieve a fair and reasonable price.

3. If agreement on a fair and reasonable price with the most qualified offeror is not achieved, it is eliminated from the process and can no

longer be involved, and negotiations may be conducted with successive offerors in descending order of qualification.

G. Procurement by Noncompetitive Proposals (Sole Source)

Procurement by noncompetitive proposal is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. Adequate documentation is required for procurement by noncompetitive proposal. (Exhibit 3E).

1. **Procurement by Sole Source** may be used only when the procurement is infeasible under small purchase procedures, sealed bids, or competitive proposals and one of the following circumstances applies:

   a. The item is available only from a single source. The property or services are available from one source if one of the conditions described below is present:

   - **Unique or Innovative Concept.** The offeror demonstrates 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 the recipient from another source.

   - **Patents or Restricted Data Rights.** Patent or data rights restrictions preclude competition.

   - **Substantial Duplication Costs**. In the case of a follow-on contract for the continued development or production of highly specialized equipment and 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.

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

b. The public exigency or emergency for the procurement will not permit a delay resulting from a competitive solicitation.

c. The FTA authorizes noncompetitive proposals.

d. After solicitation of several sources, competition is determined inadequate.

2. **Cost analysis** is required. (i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit)

3. **Contract Change Orders** shall be considered Noncompetitive/Sole Source procurements when a Change Order is not within the scope of the original contract. Therefore, the procurement must meet the above conditions and obtain the appropriate approvals.

H. Rolling Stock

FTA requirements. Third party contracts to acquire rolling stock must include provisions to ensure compliance with applicable FTA requirements as follows:

1. **Pre-Award Buy America Audit.** A pre-award audit shall be completed before entering into a formal contract for the purchase of rolling stock. A Pre-Award Buy America Certification attesting to compliance with Buy America shall be signed by the bidder/proposer and included with the bid. (Exhibit 4C)

   The bidder shall supply a list of the rolling stock components and subcomponent parts of the rolling stock including the manufacturer, their country of origin, the cost or percentage of the vehicle cost, and the location of the final assembly point.

2. **Bus Testing**. Buses procured using federal resources shall have an Altoona Certification to be eligible for reimbursement. Rolling stock to be procured shall be certified through the Altoona Bus Testing Center. (Exhibit 4C)

3. **FTA Civil Rights Office Notification of Award**. For transit vehicle procurements, the FTA Civil Rights office must be notified within 30-days of the award using the on-line form found at: https://www.surveymonkey.com/r/vehicleawardreportsurvey.

4. **Onsite Inspection**. For procurements over ten (10) buses, final inspection shall be conducted at the manufacture's site before taking acceptance of rolling stock. Full payment to the vendor shall not be made until all deficiencies are noted and resolved or corrected.

5. **Post-Delivery/Audit.** Post Audit must be completed before application is made for title to the vehicle(s). The project manager is required to certify that the vehicles meet the requirements, and the post-delivery audit is complete. The project manager accomplishes this by signing the Post-delivery Audit Certification.

   Post-Delivery Audit requires a complete visual inspection and road test to ensure that the rolling stock meets the specification of the contract. Buy America provisions require that items in the pre-award audit are consistent.

   VCTC will only accept rolling stock that has been tested in accordance with applicable FTA bus testing requirements and has received a passing test score.

I. Joint Procurement

For projects with federal funding, VCTC may participate in a joint procurement with one or more agencies or may consider participation in an FTA-sponsored Procurement Pool if the procurement is consistent with all applicable FTA and other federal requirements, including required clauses and certifications. Financial benefits will be weighed prior to engaging in such a procurement. A contract will be awarded to a single vendor, who in turn will enter into a separate contract with VCTC.

J. Piggybacking

Piggybacking is an assignment of existing contract rights to purchase supplies, equipment, or services. As an FTA grantee, VCTC may assign or obtain contractual rights to purchase goods and services, provided the original contract contains the appropriate "assignability provision" and the items or services were federally procured including all applicable federal clauses and certifications.

K. Revenue Contracts

VCTC may issue contracts to generate revenue. If there are limited contracting opportunities (i.e., several potential competitors so there is more demand than supply), a competitive process will be used to provide an equal chance to obtain the limited opportunity. If contract opportunities are open (i.e., there's more supply than demand), competition is not necessary.

L. Disposal Of Surplus and/or Non-Repairable Materials

The Executive Director shall have and may delegate the authority to dispose of surplus and/or non-repairable VCTC property or material which either has no further financial record value or has an estimated fair market value of Five Thousand Dollars ($5,000) or less per item or batch of the same item.

Disposal of property or materials with any financial record value over Five Thousand Dollars ($5,000) or for VCTC property or materials which have an estimated fair market value over (Five Thousand Dollars) $5,000 shall be by determination of the Commission.

1. In any event the process for disposal shall take into consideration the cost of employee time and effort and related expenses associated with it. Such expenses can include, but are not limited to, storage facilities, control systems, advertising, and display of items for bidding. The following disposal requirements apply depending on the estimated fair market value of the items: Upon written determination, items that are determined to be broken, damaged or obsolete such that there is no perceived fair market value may be thrown away or contributed to a local recognized charity.

2. Items with any perceived fair market value will be disposed of by the seeking of bids or assigned to an auction or sales company which has the expertise/facilities to dispose of the property. Items for which no bids are received may be thrown away or contributed to a locally recognized charity.

IV. CONTRACT PROVISIONS

A. General Contract Provisions.

The following provisions shall be included in VCTC contracts:

1. **Administrative, contractual, or legal remedies** in instances where contractors violate or breach contract terms and provide for such sanctions and penalties as may be appropriate.

2. **Termination for cause and for convenience** by the grantee or sub grantee including how it will be affected and the basis for settlement

3. **Compliance with Executive Order 11246 of September 24, 1965**, entitled Equal Employment Opportunity, as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Part 60)

4. **Compliance with the Copeland "Anti-Kickback" Act** (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3)

5. **Compliance with the Davis-Bacon Act** (40 U.S.C. 276a to a-7) as supplemented in Department of Labor regulations (29 CFR Part 5)

6. **Compliance with Sections 103 and 107 of the Contract Work Safety Standards Act** (40 U.S.C. 327-330) as supplemented by the Department of Labor regulations (29 CFR Part 5)

7. **Reporting.** Notice of any VCTC requirements and regulations pertaining to reporting.

8. **Patent Rights.** Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

9. **Copyrights and Data Rights.** Any requirements and regulations pertaining to copyrights and rights in data.

10. **Access to Documents.** Access to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

11. **Retention** of all required records for three years after VCTC makes final payments and all other pending matters are closed.

12. **Liquidated damages** assessments must be at a specific rate per day of overrun and must be specified in the contract for projects receiving federal funds.

a. **Exercise of Options.** Options shall be exercised only after a written determination is made that such exercise is the most advantageous method of fulfilling the needs of VCTC, price and other factors considered. VCTC must ensure that the exercise of an option is in accordance with the terms and conditions of the option provisions stated in the initial contract awarded. An option may not be exercised unless it has been determined that a new solicitation would fail to produce a better price or a more advantageous price than that offered by the option.

13. **Payments**.

    a. **Advance Payments**. Advance payment using federal funds is prohibited unless prior written concurrence is obtained from the FTA.

    b. **Progress Payments**. Progress payments may be made on federally funded projects based on the costs incurred and with adequate security for which progress payments are made.

14. **Insurance requirements**. Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that Entity is an additional insured on insurance required from subcontractors. For CGL coverage subcontractors shall provide coverage with a format as broad as CG 20 38 04 13.

B. Construction Contract Provisions

For construction or facility improvement contracts or subcontracts exceeding One Hundred Thousand Dollars ($100,000), the minimum requirements shall be as follows:

1. **Bid Guarantee**. A bid guarantee from each bidder is equivalent to five percent (5%) of the bid price. The “bid guarantee” shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon his acceptance of his bid, execute such contractual documents as may be required within the time specified.

2. **Performance Bond**. A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and

material in the execution of the work provided for in the contract.

3. **Payment Bond**. To ensure payment of people supplying labor and material for a contract using federal funds, payment bond minimums are as follows for the stated contract amounts:

   - **Less than $1 Million**
     Fifty Percent (50%) of the contract price.

   - **More than $1 Million to $5 Million**
     Forty Percent (40%) of the contract price.

   - **More than $5 Million**
     Two Million Five Hundred Thousand Dollars ($2,500,000).

4. **Seismic Safety**. A provision on seismic safety shall be included in contracts using federal funding for construction of new buildings or additions to existing buildings.

5. **Prevailing Wages.** Any FTA assisted project exceeding Two Thousand Dollars ($2,000) shall include a provision requiring compliance with the Davis-Bacon Act which requires laborers and mechanics to be paid prevailing wages as determined by the Secretary of Labor and to pay them not less than once a week. Each solicitation should include the current prevailing wage determination. Since the State of California Department of Industrial Relations also issues prevailing wage determinations which may differ from those of the Labor Secretary, VCTC will require contractors to refer to both the Federal and State wage determinations and pay the higher amount if there is conflict. State funded contracts over One Thousand Dollars ($1,000) up to Two Thousand Dollars ($2,000) shall include prevailing wage requirements using only State wage determinations.

6. **Other Provisions**. As addressed further in FTA Circular 4220.1F, provisions pertaining to equal employment opportunity, the Copeland “Anti-Kickback” Act, the Contract Work Hours and Safety Standards Act, Buy America, project labor agreements and accessibility may be required.

C. Federal Contract Provisions

Pursuant to FTA Circular 4220.1F, specific federally mandated provisions (clauses) (Exhibit 4B) will be included in VCTC solicitations and contracts using FTA funds, depending on factors such as the type and dollar value of the procurement. In addition, and in compliance with some of those provisions, certifications (Exhibit 4C) will be obtained from bidders or offerors to denote their compliance with the applicable requirements.

VCTC shall annually review the current FTA Master Agreement, 2 CFR Part 200, and the FTA Comprehensive Review Contractor's Manual to ensure all applicable FTA-required third-party contract clauses and certifications are included in procurement documents. Compliance shall be verified through a clause checklist or other documented review mechanism. ProcurementPRO, or its successor, shall be used to identify and generate applicable Federal clauses and certifications for each procurement.

Required Contract Provisions for FHWA Federal-aid or State funded procurements are provided in Chapter 12 of the Caltrans Local Assistance Procedures Manual at:

http://www.dot.ca.gov/hq/LocalPrograms/lam/lapm.htm