



# **PRIIA SECTION 305 NEXT GENERATION CORRIDOR TRAIN EQUIPMENT POOL**

## **Engaging Counsel: A Path Forward**

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# Overview

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- Counsel selection goals
- Procurement options and process
- Defining the scope of work
- Summary observations
- Discussion

# Legal Counsel and Advice: Goals

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The Committee should seek

- *Technical competence*
- *Creativity and innovation*
- *Sensitivity to policy and stakeholder perspectives*
- *Experience with institutional structures and processes needed to accomplish the Committee's objectives*

# Procurement Options

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- FRA
  - Preference for performance-based acquisition when procuring services (FAR 37.6)
- Amtrak
  - Amtrak Procurement Manual and processes control
- Section 305 Committee Member as Delegee
  - Range of options for procurement

# Procurement Considerations

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- Selection process is a tool
- Rules allow for flexibility in how to proceed
- What the Committee wants to achieve will define the counsel procurement process and selection criteria it chooses
- The counsel scope of work is integral to how legal advice may help the Committee achieve its objectives

# Section 305 Committee Charge

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1. Design next-generation corridor equipment
2. Develop technical specifications
3. Prepare equipment procurement and contracting plans
4. Prepare funding/financing plans for equipment procurement
5. Develop specifications for contract service to maintain and remanufacture equipment
6. Enter into cooperative agreements for the funding, procurement, remanufacture, ownership and management of corridor equipment

# Tasks 1 and 2: Design and Prepare Technical Specifications for Interoperable Equipment

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- How and when to engage manufacturers, suppliers and other stakeholders?
  - Consensus standard development?
  - RFEI?
  - Consideration of intellectual property and licensing issues?
  - How does the Committee decide on the specifications?
- What level of standardization/interoperability is desired?
  - Train-set vs. car based?
  - Components?
  - New HSR vs. incremental HSR vs. intercity vs. commuter?

# Tasks 1 and 2 (continued)

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- How to reestablish a domestic passenger rail equipment manufacturing industry?
  - Ensure Buy America compliance
  - What is the appropriate “policy” role for the Committee in promoting domestic manufacturing?
- Interface with FRA safety assurance process?
  - Petitions for alternative compliance?
  - Engagement with new technologies, e.g., CEM?



## Tasks 3 and 4: Procurement, Contracting, Funding and Financing Plans

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- Vehicle procurement analysis is not linear—it is multilayered and requires systematic, simultaneous consideration of policy, legal and business issues
- What procurement characteristics are important?
  - Accountability and transparency
  - Exceptions to full and open competition
  - One step or two step (negotiations vs. sealed bids)
  - Will more technical information be needed?

## Tasks 3 and 4 (continued)

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- Are any policies in FTA C 4220.1F instructive?
  - Contract limitations on rolling stock
  - Quantity issues including indefinite delivery/indefinite quantity contracts
  - Options and piggybacking
  - Assignment
- How does the procurement path intersect with innovative financing options and funding source(s)?

## Tasks 5 and 6: Agreements for Funding, Procurement, Remanufacture, Maintenance, Ownership and Corridor Management

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- How should the procurement be managed?
  - One pool with options/assignments
  - Multiple pools by region, time or equipment needs
- How will title be held?
- What institutional structure will support the desired procurement approach?
  - Amtrak procurement
  - Joint corporation
  - Consolidated procurement with one lead agency
  - Consortium procurement with multiple individual contracts awarded

# Tasks 5 and 6 (continued)

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- Other issues to think about:
  - Risk management: indemnity and insurance
  - State sovereignty

# Summary – Objectives Guiding Counsel Selection

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- Facilitate the Committee's effective and productive function
- Emphasize procedural fairness, accountability and transparency
- Assure integrity of the Committee's decision-making
- Integrate governance structures and procurement processes

# Discussion

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