

FTA

FEDERAL TRANSIT ADMINISTRATION

Procurement System Review Contractor's Manual

Fiscal Year 2020



U.S. Department of Transportation
Federal Transit Administration

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Forward

OVERVIEW

FTA's Procurement System Review (PSR) Contractor's Manual focuses on recipients' compliance with procurement requirements. In addition to helping evaluate recipients, these reviews give FTA an opportunity to provide technical assistance on requirements and aid FTA in reporting to the Secretary of Transportation, Congress, other oversight agencies, and the transit community on FTA programs.

Periodically, the specific content of the Procurement System Review is modified to reflect any changes in statutory requirements in the funding programs, and FTA policy. This document, which incorporates those changes, is the manual for FTA staff and FTA contractors on execution of these reviews. FTA and contracted reviewers use the Manual to execute the review.

The Federal fiscal year 2020 (FY20) PSR Contractor's Manual is a "back to basics" effort to identify the minimum procurement compliance requirements to which recipients are expected to comply and the optimal methods for assessing compliance with those requirements. Key to that effort was ensuring that all requirements were directly related to specific, citable, written requirements while also maintaining the overall intent of the reviews.

These changes reflect feedback received from our recipients, review contractors, and colleagues. It is part of FTA's ongoing commitment to improve consistency and transparency in its oversight reviews. We anticipate that these changes will result in an even more efficient review process that provides a clearer understanding of what is expected during a PSR, how FTA reviewers determine compliance, and why a finding of deficiency is made.

I. PROCUREMENT SYSTEM REVIEW OVERVIEW AND APPROACH

The Federal Transit Administration (FTA) has a vested interest in assisting recipients to maintain efficient and effective procurement systems as well as a responsibility to ensure that its recipients expend their funds in accordance with FTA regulations, the Uniform Administrative Requirements, Cost Principles, Audit Requirements for Federal Awards at 2 CFR Part 200 (Uniform Guidance), and contractual agreements with FTA. In order to carry out this responsibility, FTA has established an oversight framework that is comprised of recipient self-certifications, annual single audits conducted in accordance with 2 CFR Part 200, and FTA oversight reviews, including the Procurement System Review (PSR).

The old Common Grant Rule, 49 CFR Parts 18 and 19, was superseded by 2 CFR Parts 200 and 1201, effective December 26, 2014. The Uniform Guidance consolidated eight existing award-related circulars into one set of uniform regulations located in Title 2 of the CFR. 2 CFR Part 200 applies to the administration of all Federal awards, cooperative agreements, and amendments as of December 26, 2014. Procurements under awards and cooperative agreements executed prior to December 26, 2014 continue to be subject to 49 CFR Parts 18 and 19 in effect on the date of such awards or agreements.

2 CFR Part 200 contains certain notable changes to FTA awards management. The Uniform Guidance increased the simplified acquisition threshold to \$150,000 (per 2 CFR 200.88) to bring it in alignment with the Federal Acquisition Regulation (FAR). This new threshold applies to procurements funded by awards issued on or after December 26, 2014. As a result of the 2017 and 2018 National Defense Authorization Acts and OMB memorandum M-18-18, the simplified acquisition threshold was increased to \$250,000 for procurements executed after June 20, 2018. Procurements funded by awards issued on or before December 25, 2014, are subject to the previous simplified acquisition threshold of \$100,000 (per 49 CFR 18.36(d)). The simplified acquisition threshold is periodically adjusted for inflation. The micro-purchase threshold, which also is adjusted periodically for inflation, increased from \$3,000 to \$3,500 effective October 1, 2015. As a result of the 2017 and 2018 National Defense Authorization Acts and OMB memorandum M-18-18, the micro-purchase threshold was increased to \$10,000 for procurements executed after June 20, 2018. For consistency, this Manual references the proper thresholds for micro-purchases and simplified acquisition purchases depending on whether the procurement was executed prior to or after June 20, 2018.

Similarly, the Buy America public interest waiver, which exempts “simplified acquisition purchases” from Buy America regulations, increased to \$150,000 per the adoption of 2 CFR Part 200. Effective October 1, 2015, the simplified acquisition purchase waiver was incorporated into the statute in 49 USC 5323(j)(13), and now applies to purchases of not more than \$150,000 and will not automatically increase as a result of the simplified acquisition threshold increase to \$250,000. Per the statute, the simplified acquisition purchase waiver applies to *purchases* of not more than \$150,000. The waiver is based on the total cost of the contract, including labor and options.

On December 4, 2015, the [Fixing America's Surface Transportation \(FAST\) Act](#) was signed, reauthorizing surface transportation programs through Fiscal Year 2020. Section 3019 of the FAST Act included several innovative procurement provisions, including permitting recipients to purchase from another state’s schedule. It also provides for capital leasing of rolling stock and related equipment, including leasing certain zero emission vehicle components. The FAST Act increased the domestic percentage content requirements for rolling stock through incremental increases. By FY 2020, the Buy America requirement for rolling stock will increase to more than 70 percent.

FTA plans to update FTA Circular 4220.1F in order to incorporate the provisions of the Uniform Guidance, 2 CFR Part 200. Until that update is issued, when there is a conflict between FTA Circular 4220.1F and the Uniform Guidance, the Uniform Guidance controls.

The FTA Regional Offices annually perform an internal risk assessment of each recipient. The risk assessment is intended to identify the potential risk that the recipient poses to the overall integrity of FTA programs. FTA uses the results of the risk assessment to identify recipients that pose relatively greater risk and to focus its oversight resources on those recipients. The risk assessment process may result in an oversight review, including a PSR.

The PSR Contractor’s Manual is a reference document for FTA contractors and FTA staff who participate in PSRs. FTA contractors employ these guidelines for each PSR conducted. The Manual documents the process for conducting a PSR, describes the required procurement elements, and provides standard forms and checklists. The Manual has been developed to focus the PSRs and foster consistency in the process.

This section of the Manual provides a discussion of the objectives of the PSR and the approach to conducting a PSR.

1.1. PSR OBJECTIVES

The objectives of the PSR are to encourage and facilitate improved recipient procurement operations, foster the use of industry best practices, and assess the recipient’s compliance with Federal procurement requirements, specifically the requirements of 2 CFR Part 200 and applicable statutory and administrative requirements.

The PSR consists of three phases:

- Assessment Phase
- Onsite Review Phase
- Reporting Phase

1.2. PROCUREMENT ASSESSMENT PHASE

The PSR begins with the Assessment Phase. This phase is designed to establish an understanding of the recipient’s procurement system environment, to assess the recipient’s procurement system risk, and to focus the scope of the next phase of the PSR, the Onsite Review Phase, based on the assessment of risk. The results of the risk assessment will dictate the number and type of contracts to review during the onsite visit. The systematic assessment of relative risk of recipients permits FTA and its contractors to allocate oversight resources where they are most needed.

The Assessment Phase looks at the organizational structure, staffing, management direction, and policies and procedures that define the recipient's procurement system environment. An initial assessment of the recipient's conformance with systemwide requirements of 2 CFR 200 is made. In addition, trends in procurement types or outcomes that could indicate lack of attention to procurement requirements, such as sole source awards and protested procurement actions, are assessed.

The Assessment Phase involves review of documentation and interviews with FTA Regional Office Staff. Each Regional Office annually completes an Oversight Assessment Tool (OAT) for each recipient. The OAT process evaluates risk in several areas including procurement management. FTA uses the results of the OAT process to identify recipients within the region for particular oversight reviews, including the PSR. Reviewers should use the OAT rating when using the procurement selection matrix.

1.2.a. REGIONAL OFFICE REVIEW

Subsequent to task order execution, the review begins with communication with the FTA Regional Office to review relevant documentation on file and to discuss the recipient with Regional Office personnel. The reviewer schedules this communication with the Regional Office.

Once the recipient has been advised by FTA that a PSR will take place, the reviewer drafts a review notification letter for delivery to the recipient by the Regional Office. This letter provides information on the review and requests documents such as the recipient's written procurement policies and procedures, organization charts, list of contracts, copies of job descriptions, list of subrecipients, copies of internal audit reports, and templates used. In some cases, copies of procurement policies and procedures and other documents may be on file with FTA, if for example they were obtained as part of a recent Triennial Review. If the policies and procedures on file with FTA are provided to the reviewer, the reviewer should verify with the recipient that they are current.

The review of the recipient's written policies and procedures provides a foundation for determining the recipient's deficiencies with respect to Federal procurement requirements. In this phase, the reviewer determines whether the written policies and procedures address 2 CFR 200 and the Master Agreement requirements, and whether they are consistent with them.

Initial conversations with recipient staff during this phase can further address the recipient's policies and procedures, practices, measures, and initiatives with respect to specific requirements, including how the policies and procedures are conveyed to staff and implemented.

Subsequent to receipt of documents from the review notification letter, the reviewer schedules a teleconference with the Regional Office. The following documentation, typically evaluated during the Assessment Phase, that should be discussed with and/or requested from the Regional Office includes:

- The FTA Oversight Assessment Tool (OAT)
- Recipient profile and award information in TrAMS
- Other FTA oversight review reports, including prior PSRs, the most recent Triennial Review/State Management Review, Financial Management Oversight Reviews, and Project Management Oversight Reviews
- Reports of other audits and reviews including single audits and GAO or OIG audits of the recipient or programmatic audits which may include the recipient
- Recipient correspondence
- News articles on the recipient
- Review of recipient's website

The reviewer obtains and reviews any oversight reviews or other audits or reviews that address procurement issues. If the recipient has had a prior PSR, the files, report, and monitoring correspondence should be reviewed carefully to identify specific procurement requirements previously found deficient and the actions taken by the recipient to correct the deficiencies. Likewise, a Triennial Review, State Management, or Financial Management Oversight Review may have identified deficiencies with specific procurement requirements.

The Triennial or State Management Review, which is conducted every three years on each recipient regardless of risk, addresses procurement as one of the review areas. This review takes a broad look at the recipient's procurement procedures for compliance with the requirements of 2 CFR Part 200. Financial Management Oversight Reviews look at the recipient's internal controls with respect to the requirements of 2 CFR Part 200 and also address procurement. Findings of these reviews should be noted and addressed in the PSR to ensure that corrective actions have been implemented.

The reviewer communicates with Regional Office staff including program oversight, legal counsel, the individual assigned responsibility for procurement issues (if such assignment has been made), and other Regional Office staff, as appropriate. Discussions should focus on the recipient organization, the results of the FTA OAT process, and specific procurement-related issues and concerns.

The reviewer also makes an initial selection of procurements to be reviewed onsite and highlights those selections out of the entire listing of procurements for the Regional Office and the PSR Contracting Officer's Representative (COR) for input and concurrence.

1.3. ONSITE REVIEW PHASE

The Site Visit begins with an entrance conference with the recipient's management staff and FTA. The reviewer presents the background and objectives of the PSR and discusses the review process and schedule. The reviewer should note that the review will assess the recipient's compliance with the requirements set forth in 2 CFR Part 200 and other requirements and will report deficiencies found, as well as the areas where no deficiencies were found. The reviewer may also advise the recipient of best practices and procedures currently used within the transit industry that could potentially improve the recipient's procurement system. The reviewer records attendees at the entrance conference and this list becomes incorporated into the report.

The reviewer will conduct interviews with recipient personnel such as the following:

- General Manager/Chief Executive Officer (CEO)
- Head of Procurement (highest ranking procurement official)
- Selected Procurement Department Staff
- Legal Department Representative
- Finance Department Representative
- Grants Department Representative
- Program Manager (i.e. Engineering Manager)
- DBE (Disadvantaged Business Enterprise) Representative
- Internal Auditor

The appropriate personnel and questions to be asked of each will vary from small systems to large systems and will depend on each system's organizational structure and assignment of responsibilities. The Interview Questionnaires (see Section IV.1.) are only a guide and may be used as a checklist of topics to be discussed with personnel, as appropriate. Additional questions should be added where appropriate for clarification.

The interview questionnaires for general manager or CEO, head of procurement or highest ranking procurement official, and selected procurement staff should be applicable for any recipient undergoing a PSR. The questionnaires for the legal staff and the finance and/or award staff may not be applicable

depending on the size and particular organizational structure of the recipient. For example, if the recipient uses outside counsel rather than in-house counsel, the questions on the legal staff questionnaire may not be appropriate. The reviewer should determine how best to obtain the information and should schedule additional interviews, if necessary. Further, the reviewer may determine that additional interviews are necessary to obtain follow-up information as a result of issues discussed. If additional interviews are conducted, the questionnaires should be consulted for sample questions.

1.3.a. SYSTEMWIDE REQUIREMENTS REVIEW

Several of the requirements in the Uniform Guidance apply to the recipient's procurement system as a whole, rather than to individual contracts. These elements include:

- Written Standards of Conduct
- Contract Administration System
- Written Protest Procedures
- Prequalification System
- Procedures for Ensuring Most Efficient and Economic Purchase
- Oversight of Subrecipients
- Procurement Policies and Procedures

An initial assessment of the recipient's system with respect to these elements is conducted at the Assessment Phase based on review of the recipient's written policies and procedures. The reviewer completes the Systemwide Elements Checklist (see Section IV.2.a.). During the Onsite Review Phase, the recipient's implementation of these requirements in specific procurements may be assessed. For example, if a contract reviewed during the Onsite Review Phase involved a protest, the reviewer would examine the recipient's resolution of the protest in accordance with its written protest procedures.

The Onsite Review Phase is designed to assess the recipient's compliance with 2 CFR Part 200 and other applicable procurement regulations through review of a sample of procurement actions funded by FTA in the last two years. The Onsite Review Phase includes review of a selection of contract files, development of preliminary findings, and the conduct of an exit conference with the recipient.

1.3.b. SELECTION OF SAMPLE

The selection of contracts to review is based on the procurement risk assessment rating determined during the Assessment Phase and the size of the recipient. The overall number of contracts selected for review increases with the relative risk and size of the recipient.

In the notification letter, the recipient is requested to provide a contract listing of FTA funded procurements for the review period (two years) by type of procurement and method of procurement. The contract listing should include all procurement actions and contracts awarded utilizing Federal funds during the time period, including contracts not yet completed and those undertaken by subrecipients. The reviewer should request the recipient to organize the contract listing into the following categories:

- Micro-Purchases (purchases less than \$3,500 if the procurement is executed prior to June 20, 2018 or \$10,000 if the procurement is executed after June 20, 2018)
- Simplified Acquisition Purchases (use the recipient threshold, may range between \$3,500 and \$150,000 if the procurement is executed prior to June 20, 2018 or between \$10,000 and \$250,000 if the procurement is executed after June 20, 2018)
- Request for Proposal (RFP)
- Invitation for Bid (IFB)
- Sole Source

In addition, the recipient should identify architectural and engineering services, and construction contracts. The recipient should also identify bus and rail vehicle procurements made during the past five years.

The Sample Selection Matrix at the end of this section is used to identify the number of contract files to review for each method of procurement. The Matrix reflects two factors: risk level (low, medium and high) and size of recipient (small, mid-size, large mid-size, over 500 vehicles - bus only, and bus/rail). Using the Matrix, the reviewer determines the number of contract files to review for each method of procurement.

Once the reviewer determines the number of contracts for review, the reviewer selects the contracts from the recipient's contract listing. The reviewer should request the complete contract file, which includes the purchase request, solicitation, evaluation, selection, cost or price analysis, negotiations, award, contract administration documentation, and any other documentation that provides a history of the procurement.

If the initial sample selected by method of procurement does not yield any architectural and engineering services, construction, or rolling stock contracts, the reviewers should select additional contracts for these types of procurements shown in the Matrix. The reviewer should use his/her discretion if a larger sample is needed. Subrecipient procurements should also be included in the sample selected if the recipient has subrecipients that are conducting their own procurements with the recipient's FTA funds.

In addition to the contracts selected using the Matrix, the reviewer should supplement the sample with specific procurement files that have been identified by FTA, those that are of a significant size, and those that may have been the subject of recent news articles.

The sample sizes in the Matrix are minimums. The Matrix is intended as a guide for reviewers in selecting the sample size. In some circumstances, the reviewers may want to increase the recommended sample size. For example, if the reviewer selects a request for proposal contract file and identifies deficiencies in elements specific to the request for proposal checklist, the reviewer may want to increase the sample size, after concurrence with FTA's Regional Office to obtain further documentation to support the findings.

1.3.c. CONTRACT FILE REVIEW

The reviewer will examine each contract file using the appropriate Review Findings Checklist developed for the specific method of procurement (see Section III.2.). The Review Findings Checklists include requirements specific to the method of procurement as well as requirements applicable to all types of procurement. Individual Review Findings Checklists have been developed for:

- Micro-Purchases
- Simplified Acquisition Purchases
- Request for Proposal (RFP)
- Invitation for Bid (IFB)
- Sole Source/Single Bid

Additionally, Supplemental Review Findings Checklists have been developed for:

- Architectural and Engineering Services
- Construction Contracts
- Contracts for Rolling Stock

A separate Review Findings Checklist is used for each contract file reviewed. When reviewing an architectural and engineering services or construction contract, except for micro-purchases, the reviewer will use the Review Findings Checklists appropriate for the method of procurement and the applicable Supplementary Review Findings Checklist. The Micro-Purchases Review Findings Checklist includes construction contracts between \$2,000 and \$10,000.

When reviewing contracts for rolling stock, the reviewer will use the Review Findings Checklist appropriate for the method of procurement and the appropriate Vehicle Checklist form (see Section IV.2.i. or IV.2.j.). The reviewer will complete this form for all rail and bus procurements selected for review during the past five (5) years.

In addition, the reviewer may encounter facts or circumstances involving options or change orders that warrant their review using the noncompetitive negotiation (sole source) checklist. Where this is the case, the reviewer should conduct these reviews in addition to the planned sample of contracts and should add these reviews into the tabulations as if they were separate procurements.

Each statement or set of statements in the Review Findings Checklist corresponds to an individual procurement element. Deficiencies will be determined for each individual procurement element (see Section III. for a listing of Required Procurement Elements). In other words, the reviewer must enter either "Not Deficient," "Deficient," or "NA" for every numbered element in the checklist. If the complete statement is true, the recipient is "Not Deficient" with the requirement of that element. If any part of the statement is not true, the recipient is "Deficient" with the requirement of that element. The reviewer must enter the method or basis of determination for each numbered element in the comment section of the checklist.

Discussion with staff should supplement the document review to complete the Review Findings Checklists. If the procurement file documentation appears to be incomplete, the reviewer should discuss open issues with staff and try to resolve any unanswered questions.

After completing the contract file review, the reviewer compiles the preliminary results of each individual procurement element using the Contract File Summary Spreadsheet (provided separately as a spreadsheet file). The spreadsheet lists all of the individual procurement elements along the left side of the spreadsheet. Across the top of the spreadsheet the reviewer records the appropriate data for the purchase orders or contracts reviewed. Under each purchase order or contract, the reviewer enters a numerical value of "1" in the applicable "Not Deficient", "Deficient", or "Not Applicable" column for each procurement element of that procurement type (RFP, IFB, etc.). For each individual procurement element, the far right columns of the spreadsheet provide totals of the number of procurement actions that were determined to be "Deficient," "Not Deficient," or "Not Applicable." The reviewer evaluates the spreadsheet results and determines deficiencies for individual procurement elements, not for individual contract files.

The reviewer determines deficiencies for each systemwide and individual procurement element. The reviewer determines deficiencies for systemwide elements based on the results of the Systemwide Elements Review Checklist. Systemwide elements are requirements that apply to the procurement system as a whole. The reviewer determines deficiencies for each individual procurement element based upon all the contract files reviewed.

The reviewer completes the Report Summary Table (see Section V) for each individual procurement element by totaling the number of not deficient, deficient and not applicable items from the Contract File Summary Spreadsheet. The reviewer also states the applicable requirement from 2 CFR Part 200 or other applicable requirement.

Two levels of findings are used:

Not Deficient. A finding of "not deficient" indicates that the recipient complied with the basic requirements of the element. This is defined as, "The review of the selected procurement files found that in all instances, the recipient complied with the requirements."

Deficient. A finding of "deficient" indicates that the recipient did not comply with the basic requirements of the element. This is defined as, "The review of the selected procurement files found that in one or more of the applicable instances, the recipient did not comply with the requirement."

The reviewer discusses the preliminary findings with Regional Office staff participating in the review or with responsibility for oversight within the Regional Office.

The site visit concludes with an exit conference with the reviewer, FTA, and recipient staff. The reviewer provides a copy of the Contract File Summary Spreadsheet to the appropriate recipient and FTA representatives. The spreadsheet should be marked "DRAFT" so that needed minor adjustments may be made after the exit conference as a result of further evaluation and analysis. The reviewer thanks the recipient for their cooperation, highlights the recipient's best practices, presents the preliminary findings and presents the schedule for issuance of the draft and final reports. Attendees at the exit conference are recorded by the reviewer and included in the report. The exit conference is an opportunity to confirm that the reviewer has not overlooked any information in reaching determinations regarding deficiencies, and to the extent practical, to suggest possible corrective actions. The recipient is also asked to develop an implementation schedule for the suggested improvements that will be proposed later when responding to the PSR report.

1.4. REPORTING

Reporting of the procurement system review includes:

1. Preparation of the draft report
2. Receipt of FTA comments
3. Preparation of draft final report
4. Receipt of Regional Office and recipient comments
5. Preparation of final report
6. Completion of work paper files

1.4.a. DRAFT REPORT

After the conclusion of the site visits, the reviewers prepare the draft report summarizing the findings for systemwide and individual procurement elements identified in Section III of this Manual. The findings are based on the Assessment Phase and the Onsite Review Phase. The primary source of information includes interviews with staff and review of contract files using the Review Findings Checklists.

Systemwide procurement elements refer to the requirements that apply to the procurement system as a whole and the reviewer determines whether the recipient is deficient or not deficient with respect to each element. Individual procurement elements are applicable to one or more methods of procurement and assessed through the review of individual contracts. For each individual procurement element, the reviewer determines whether the recipient is deficient or not deficient with respect to the procurement requirements in 2 CFR Part 200 or other requirement (see Section III for procurement elements reviewed).

The reviewer prepares the initial draft report and submits it to the FTA for review within 30 days of the conclusion of the site visit. The reviewer transmits the initial draft report to the Regional Office, the Office of Oversight, and the Office of Procurement for review and comment. FTA comments are then transmitted to the reviewers to be incorporated into the final draft report before the Regional Office sends the final draft report to the recipient. The final draft report requests the recipient to submit a corrective action plan and schedule within 30 days of receipt of the final draft report. The corrective action plan and schedule may include the development of policies and procedures, additional training for personnel, or other corrective actions.

A sample report format is included in Section V of this Manual.

1.4.b. RECIPIENT COMMENTS AND PRELIMINARY RESPONSE

Within 30 days of receipt of the final draft report, or as otherwise agreed upon by FTA and the recipient, the recipient is required to provide comments to the Regional Office. In addition, the recipient must

develop a corrective action plan and schedule for each deficient element and must submit the plan to the Regional Office and the Reviewer. The corrective action plan should include sample actions that the guarantee will take, including submittal of revised policies and templates, evidence of training, and evidence of implementation.

1.4.c. FINAL REPORT

The reviewer analyzes the recipient comments and proposed corrective action plan and schedule. If the corrective action plans and schedules are satisfactory, the reviewer incorporates and addresses (as appropriate) the recipient comments and corrective action plans and schedules in the final report. If the corrective actions and schedules are unsatisfactory, the Regional Office and the reviewer discuss more appropriate corrective actions or schedules before the final report is prepared and transmitted. Within 14 days of receipt of recipient comments, the reviewer transmits the final report to the Regional Office, the Office of Oversight, and the Office of Procurement. The Regional Office transmits the final report to the recipient.

1.4.d. COMPLETE FILE

The reviewer organizes the work papers according to the Review Findings Checklists (see Section IV.2.). The work papers include Assessment Phase interview notes, individual checklists, and other supporting documentation necessary to substantiate the conclusions of the report. While the work papers contain detailed information necessary for future FTA reference, the final report transmitted to the recipient is a more concise, balanced document. The work papers include documentation obtained during the review not already on file in the Regional Office. The reviewers submit the workpapers to the Regional Office.

1.4.e. ENTERING PROCUREMENT SYSTEM REVIEW DATA INTO THE OVERSIGHT TRACKING SYSTEM (OTRAK)

OTRAK offers real-time access to oversight data and summary reports. It is the system of record for the program oversight reviews conducted by FTA and is also utilized to track and report the status of oversight reviews. Upon assignment, the reviewer inputs process stage information on assigned procurement system reviews into OTRAK. This data consists of dates of desk reviews and site visits.

The reviewer also enters findings and uploads the final report with the signed and dated Regional Office transmittal letter into OTRAK within 30 days of the submission of the final report to the Regional Office. The reviewer completes the input of remaining post site visit process stage information on assigned procurement system reviews into OTRAK. The reviewer coordinates this effort with the Regional FTA Procurement System Review Coordinator.

The reviewer inputs all entries and updates into the oversight tracking system within two days of a status change. Entries should be consistent, thorough, and accurate.

SAMPLE SELECTION MATRIX										
Recipient Size										
Risk	Small 0-49 Vehicles		Mid-Size 50-99 Vehicles		Large Mid-Size 100-500 Vehicles		Bus Only Over 500 Vehicles		Buses/Rail Over 500 Vehicles	
Low	Micro	12	Micro	12	Micro	12	Micro	12	Micro	12
	Simplified Acquisition	12	Simplified Acquisition	12	Simplified Acquisition	12	Simplified Acquisition	12	Simplified Acquisition	12
	RFP	2	RFP	2	RFP	2	RFP	2	RFP	3
	IFB	1	IFB	2	IFB	2	IFB	3	IFB	4
	Sole Source	1	Sole Source	1	Sole Source	1	Sole Source	1	Sole Source	2
	Total	28	Total	29	Total	29	Total	30	Total	33
Medium	Micro	12	Micro	12	Micro	12	Micro	12	Micro	12
	Simplified Acquisition	12	Simplified Acquisition	12	Simplified Acquisition	12	Simplified Acquisition	12	Simplified Acquisition	12
	RFP	2	RFP	2	RFP	3	RFP	4	RFP	5
	IFB	2	IFB	3	IFB	4	IFB	5	IFB	6
	Sole Source	2	Sole Source	2	Sole Source	2	Sole Source	2	Sole Source	3
	Total	30	Total	31	Total	33	Total	35	Total	38
High	Micro	12	Micro	12	Micro	12	Micro	12	Micro	12
	Simplified Acquisition	12	Simplified Acquisition	12	Simplified Acquisition	12	Simplified Acquisition	12	Simplified Acquisition	12
	RFP	2	RFP	3	RFP	4	RFP	5	RFP	6
	IFB	3	IFB	4	IFB	5	IFB	7	IFB	9
	Sole Source	3	Sole Source	3	Sole Source	4	Sole Source	4	Sole Source	5
	Total	32	Total	34	Total	37	Total	40	Total	44
Additional Contracts, If Necessary										
A&E Services	-	1	-	2	-	2	-	3	-	4
Construction	-	1	-	2	-	2	-	3	-	4

II. Crosswalks between Previous and Current PSR Elements

Prior PSR Element and Current PSR Question Crosswalk				
Prior PSR Element #	Element	Current PSR Question	Def. Code	
1)	Written Standards of Conduct	2	2-1	No written standards of conduct
			2-2	Incomplete standards of conduct
			2-3	Lack of enforcement of written standards of conduct
2)	Contract Administration System	6	6-1	Contract administration system lacking
3)	Written Protest Procedures	3	3-1	Protest procedures not accessible to potential bidders
			3-2	No written protest procedures
			3-3	Protest procedures not followed
4)	Prequalification System	7	7-3	Inadequate prequalification criteria
5)	System for Ensuring Most Efficient and Economic Purchase	22	22-1	No system for efficient and economic purchases
6)	Procurement Policies and Procedures	1	1-1	Procurement policies and procedures not evident
			1-2	Procurement transaction procedures missing or incomplete
			1-3	Procurement policies and procedures not current/complete
7)	Independent Cost Estimate	10	10-1	Lacking independent cost estimate
			10-3	Lacking independent cost estimate for change orders or sole source procurements
			10-4	Inadequate independent cost estimate
8)	A&E Geographic Preference	9	9-3	A&E geographic preference deficiencies

9)	Unreasonable Qualification Requirements	7	7-4	Improper use of unreasonable qualifications
10)	Unnecessary Experience and Excessive Bonding	7	7-5	Improper use of unnecessary experience or excessive bonding
11)	Organizational Conflict of Interest	7	7-7	Organizational conflict of interest not properly mitigated
12)	Arbitrary Action	7	7-8	Improper arbitrary action
13)	Brand Name Restrictions	7	7-6	Improper use of "brand name" only specifications
14)	Geographic Preferences	7	7-2	Improper use of geographic preferences
15)	Contract Period of Performance Limitation	16	16-1	Contract(s) period of performance exceeds limitation
			16-2	Contract(s) period of performance is unreasonable
16)	Written Procurement Selection Procedures	8	8-26	Written selection procedures
17)	Solicitation Prequalification Criteria	7	7-3	Inadequate prequalification criteria
18)	Award to Responsible Contractors	4	4-1	Responsibility determination deficiencies
			4-2	No verification that excluded parties are not participating
			4-3	Excluded parties participating in covered transactions
20)	No Splitting [Micro-purchase]	8	8-8	Improper splitting for micro-purchase
21)	Fair and Reasonable Price Determination [Micro-purchase]	8	8-1	Improper micro-purchase procedures used
22)	Micro-purchase Davis-Bacon	11	11-4	Davis-Bacon rates not included
	No Splitting [Small Purchase]	8	8-9	Improper splitting for small purchase
23)	Price Quotations [Small Purchase]	8	8-10	Lack of price or rate quotations for small purchase
24)	Clear, Accurate, and Complete Specification [Sealed Bid]	8	8-14	Lack of complete, adequate, and realistic specifications
25)	Adequate Competition – Two or More Competitors	8	8-13	Inadequate competition [two or more competitors]

26)	Firm Fixed Price [Sealed Bid]	8	8-15	Firm fixed price contract deficiency [sealed bid]
27)	Selection on Price [Sealed Bid]	8	8-16	Selection not based on price [sealed bid]
28)	Discussions Unnecessary [Sealed Bid]	8	8-17	Discussions unnecessary deficiency [sealed bid]
29)	Advertised/Publicized	8	8-11	Procurement not advertised or publicized
30)	Adequate Solicitation	8	8-12	Inadequate solicitation
31)	Sufficient Bid time [Sealed Bid]	8	8-18	Insufficient bid time
32)	Bid Opening [Sealed Bid]	8	8-19	Bid opening deficient
33)	Responsiveness [Sealed Bid]	8	8-20	Responsiveness determination deficient [sealed bid]
34)	Lowest Price [Sealed Bid]	8	8-21	Lowest price deficiency [sealed bid]
35)	Rejecting Bids [Sealed Bid]	8	8-22	Undocumented rejection of bids [sealed bid]
36)	Evaluation [RFP]	8	8-23	Evaluation deficiencies [RFP]
37)	Price and Other Factors [RFP]	8	8-24	Price and other factors evaluation deficiencies [RFP]
38)	Sole Source if Other Award is Infeasible	8	8-5	Lacking required justification(s) and documentation for sole-source award(s)
39)	Cost Analysis Required [Sole Source]	10	10-5	Cost analysis lacking for change orders or sole source procurements
40)	Evaluation of Options	15	15-1	Contract quantities not based on need
41)	Cost or Price Analysis	10	10-2	Lacking required cost/price analysis
			10-6	Profit not negotiated when cost analysis required
42)	Written Record of Procurement History	5	5-1	Incomplete written documentation of procurement history
43)	Exercise of Options	15	15-2	Options exercised not evaluated
			15-3	Exercised option differed from awarded option
44)	Out of Scope Changes	14	14-1	Insufficient documentation to support change orders

45)	Advance Payments	18	18-1	No FTA approval for advance payments
46)	Progress Payments	18	18-2	Federal interest not protected in advance/progress payments
47)	Time and Materials Contracts	8	8-7	Improper time and materials contract
48)	Cost Plus Percentage of Cost	8	8-25	Cost plus percentage of cost contracting used
49)	Liquidated Damages Provisions	13	13-1	Improper use of liquidated damage clause
			13-2	Improper accounting for recovered liquidated damages
50)	Piggybacking	17	17-1	Improper piggyback purchase
			17-2	Domestic content requirements not met in piggyback purchase
51)	Qualifications Exclude Price [A&E]	9	9-1	Recipient has A&E procurement deficiencies
			9-4	A&E on-call service deficiencies
52)	Serial Price Negotiations [A&E]	9	9-2	A&E price negotiation deficiencies
53)	Bid Security [Construction over \$100,000]	11	11-3	Bid security, performance security, or payment security not obtained
54)	Performance Security [Construction over \$100,000]	11	11-3	Bid security, performance security, or payment security not obtained
55)	Payment Security [Construction over \$100,000]	11	11-3	Bid security, performance security, or payment security not obtained
56)	Clauses	11	11-1	Missing FTA clauses
			11-2	FTA clauses added after contract award
57)	Veterans Preference	11	11-1	Missing FTA clauses
			11-2	FTA clauses added after contract award
	Vehicle Buy America Requirements	20	20-1	Buy America domestic content deficiencies
			20-2	Pre-award and/or post-delivery audits not performed
			20-3	Pre-award and/or post-delivery certifications lacking

	<u>Change Orders</u>	14	14-1	Insufficient documentation to support change orders
	<u>Subrecipient Oversight</u>	21	21-1	Insufficient oversight of subrecipient procurements
	<u>Single Bid</u>	8	8-6	Lacking required justification(s) and documentation for single-bid award(s)
	<u>Certifications (TVM, Lobbying, Buy America)</u>	12	12-1	No TVM certification
			12-2	Lobbying certifications not included in procurement solicitations or signed by bidders
			12-3	Buy America provisions not in solicitation and/or contract
			12-4	Contract files lacking signed Buy America certifications
			12-5	Contract awarded without Buy America waiver
	<u>Bus Testing</u>	19	19-1	Deficiency with bus model testing requirements
			19-2	Missing documentation of bus model testing

Deficiencies in red font are PSR, but not CORTAP, deficiencies

Bold and underlined elements are new and/or expanded elements for PSR

Current PSR Question and Prior PSR Element Crosswalk

Current PSR Question	Element	Prior PSR Element #
1	Procurement Policies and Procedures	6)
2	Written Standards of Conduct	1)
3	Written Protest Procedures	3)
4	Award to Responsible Contractors	18)
5	Written Record of Procurement History	42)
6	Contract Administration System	2)
7	Prequalification System	4)
7	A&E Geographic Preference	8)
7	Unreasonable Qualification Requirements	9)
7	Unnecessary Experience and Excessive Bonding	10)
7	Organizational Conflict of Interest	11)
7	Arbitrary Action	12)
7	Brand Name Restrictions	13)
7	Geographic Preferences	14)
7	Solicitation Prequalification Criteria	17)
8	Written Procurement Selection Procedures	16)
8	No Splitting [Micro-purchase]	20)
8	Fair and Reasonable Price Determination [Micro-purchase]	21)
8	Price Quotations [Small Purchase]	23)
8	Clear, Accurate, and Complete Specification	24)
8	Adequate Competition – Two or More Competitors	25)
8	Firm Fixed Price [Sealed Bid]	26)
8	Selection on Price [Sealed Bid]	27)
8	Discussions Unnecessary [Sealed Bid]	28)
8	Advertised/Publicized	29)
8	Adequate Number of Sources Solicited	30)
8	Sufficient Bid Time [Sealed Bid]	31)
8	Bid Opening [Sealed Bid]	32)
8	Responsiveness [Sealed Bid]	33)
8	Lowest Price [Sealed Bid]	34)
8	Rejecting Bids [Sealed Bid]	35)
8	Evaluation [RFP]	36)
8	Price and Other Factors [RFP]	37)
8	Sole Source if Other Award is Infeasible	38)
8	Time and Materials Contracts	47)
8	Single Bid	
9	Qualifications Exclude Price [A&E]	51)
9	Serial Price Negotiations [A&E]	52)

Current PSR Question and Prior PSR Element Crosswalk		
Current PSR Question	Element	Prior PSR Element #
10	Independent Cost Estimate	7)
10	Cost Analysis Required [Sole Source]	39)
10	Cost or Price Analysis	41)
11	Sound and Complete Agreement	19)
11	Micro-purchase Davis-Bacon	22)
11	Bid Security [Construction over \$100,000]	53)
11	Performance Security [Construction over \$100,000]	54)
11	Payment Security [Construction over \$100,000]	55)
11	Clauses (includes Veterans Preference)	56) and 57)
12	<u>Certifications (TVM, Lobbying, Buy America)</u>	
13	Liquidated Damages Provisions	49)
14	Out of Scope Changes	44)
14	<u>Change Orders</u>	
15	Evaluation of Options	40)
15	Exercise of Options	43)
16	Contract Period of Performance Limitation	15)
17	Piggybacking	50)
18	Advance Payments	45)
18	Progress Payments	46)
19	<u>Bus Testing</u>	
20	Vehicle Pre-Award Review	
20	Vehicle Post-Delivery Review	
21	<u>Subrecipient Oversight</u>	
	Cost Plus Percentage of Cost	48)
	System for Ensuring Most Efficient and Economic Purchase	5)

Elements that are in **bold and underline** are new or separate items now in the PSR.

III. Procurement Elements/Questions for the Review

P1. Does the recipient have written procurement policies and procedures that include required state, local, and Federal provisions?

BASIC REQUIREMENT

All recipients must have written procurement policies and procedures.

APPLICABILITY

All recipients

DETAILED EXPLANATION FOR REVIEWER

All recipients must have written procurement policies and procedures.

Policies and procedures must explain how the recipient will ensure compliance with the standards and requirements identified in 2 CFR 200.318 (General Procurement Standards) through 200.326 (Contract Provisions) including:

General procurement standards

- Contract oversight: Recipients must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
- Standards of conduct: Recipients must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent must participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity. If the recipient has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the recipient must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the recipient is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.
- Unnecessary or duplicative items: The recipient's procedures must avoid the acquisition of unnecessary or duplicative items.
- Award to responsible contractors: The recipient must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement.
- Procurement history: The recipient must maintain records sufficient to detail the history of the procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.
- Time and Material contracts: The recipient may use time and material type contracts only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Since this contract type generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the recipient awarding such a contract must assert a high

degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

- Contract dispute resolution: The recipient alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims.

Competition

- Full and open competition: All procurement transactions must be conducted in a manner that provides full and open competition. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:
 - Placing unreasonable requirements on firms in order for them to qualify to do business;
 - Requiring unnecessary experience and excessive bonding;
 - Noncompetitive pricing practices between firms or between affiliated companies;
 - Noncompetitive contracts to consultants that are on retainer contracts;
 - Organizational conflicts of interest;
 - Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and
 - Any arbitrary action in the procurement process.
- Geographic preference: The recipient must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in 2 CFR Part 200 preempts state licensing laws. When contracting for A&E services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.
- Procedures for procurement transactions: The recipient must have written procedures for procurement transactions. These procedures must ensure that all solicitations:
 - Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must 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, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offerors must be clearly stated; and

- Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.
- Prequalification: The recipient must 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 full and open competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

Methods of procurement

- Allowed methods of procurement: Recipients must use one of the following methods of procurement: (1) micro-purchases; (2) small purchase procedures; (3) sealed bid; (4) competitive proposals; (5) non-competitive proposals

DBE participation

- To the extent authorized by applicable federal laws, regulations, or requirements, the recipient agrees to facilitate, and assures that each Third Party Participant will facilitate, participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as “Disadvantaged Business Enterprises” (DBE).

Contract cost and price

- Cost or price analysis: Recipients must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.
- Profit: Recipients must 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 must 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 area for similar work.
- Estimated costs: Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the recipient under 2 CFR Part 200 Subpart E—Cost Principles. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.
- Cost plus: The cost plus a percentage of cost and percentage of construction cost methods of contracting may not be used.

Bonding requirements

- Bonding requirements: For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, FTA may accept the bonding policy and requirements of the non-Federal entity provided that FTA has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be applied as follows:
 - A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must 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 acceptance of the bid, execute such contractual documents as may be required within the time specified.

- 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 secure fulfillment of all the contractor’s obligations under such contract.
- A payment bond on the part of the contractor for 100 percent of the contract price. A “payment 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.

Contract provisions

- **Contract provisions:** Recipient’s contracts must contain the applicable provisions described in Appendix II to 2 CFR Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards, and any other provisions required under Federal law.

Other requirements

- **Exclusionary or discriminatory specification:** Federal funds may not be used to support a procurement that uses an exclusionary or discriminatory specification.
- **Buy America:** Recipient’s procurements must comply with Buy America requirements in 49 U.S.C 5323(j) and 49 CFR Parts 661 and 663.

INDICATORS OF COMPLIANCE

- Does the recipient have written procurement policies and procedures? (PSR-6)*
- Does the recipient have procurement policies and procedures that conform, and are not contrary, to 2 CFR 200.318 (General Procurement Standards) through 200.326 (Contract Provisions)? (PSR-6)*

INSTRUCTIONS FOR REVIEWER

Request and review the recipient’s procurement policies and procedures. Through review of the policies and procedures, interviews with recipient personnel, and examination of procurements selected, evaluate if the recipient can demonstrate compliance with the following requirements of 2 CFR Part 200. Additionally, review procurement procedures to determine if anything in their policies and procedures is contrary to the requirements below.

Requirements	Addressed? (Y/N)	Page Reference	Comments/Notes
Does the recipient have written procedures for procurement transactions that ensure that all procurements <ul style="list-style-type: none"> ● incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured, and ● identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals? 	-	-	-
General Procurement Standards			
Maintenance of contract oversight (Contract Administration System)	-	-	-

Requirements	Addressed? (Y/N)	Page Reference	Comments/Notes
Maintenance of written standards of conduct	-	-	-
Avoidance of unnecessary or duplicative items	-	-	-
Contracting with responsible contractors	-	-	-
Maintenance of written procurement history	-	-	-
Use of time and material contracts	-	-	-
Procedures for contract dispute resolution	-	-	-
Competition			
Promotion of full and open competition	-	-	-
Prohibition on geographic preference	-	-	-
Procedures for procurement transactions	-	-	-
Use and maintenance of prequalification lists, if permitted	-	-	-
Methods of procurement (Recipient is not required to use a listed method if such method is prohibited by state or local law)			
Allowed methods of procurement:	-	-	-
(1) micro-purchases;	-	-	-
(2) small purchases;	-	-	-
(3) sealed bid;	-	-	-
(4) competitive proposals;	-	-	-
(5) non-competitive proposals;	-	-	-
DBE participation			
Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms	-	-	-
Cost and price			
Cost or price analysis	-	-	-
Negotiation of contractor profit	-	-	-
Use of estimated costs	-	-	-
Prohibition of cost plus contracts	-	-	-
Contract provisions			
Inclusion of required contract provisions	-	-	-
Bonding requirements			
Bonding requirements for construction or facility improvement contracts	-	-	-
Other requirements			

Requirements	Addressed? (Y/N)	Page Reference	Comments/Notes
Prohibition of exclusionary or discriminatory specifications	-	-	-
Compliance with Buy America	-	-	-

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it does not have written procurement policies and procedures.

DEFICIENCY CODE: P1-1: Procurement policies and procedures not evident

SUGGESTED CORRECTIVE ACTION: The recipient must develop and submit to the FTA regional office procurement policies that include all required provisions.

The recipient is deficient if it does not have written procedures for procurement transactions to ensure that all procurements 1) incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured, and 2) identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

DEFICIENCY CODE: P1-2: Procurement transaction procedures missing or incomplete

SUGGESTED CORRECTIVE ACTION: The recipient must develop and submit to the FTA regional office procurement transaction procedures that include all required provisions.

The recipient is deficient if procurement policies and procedures contain provisions that are contrary to the provisions outlined above or the recipient cannot demonstrate how it ensures compliance with **any of the above** provisions **that are not contained in policies and procedures**. If the deficiency can be captured with the related separate element of the review, it should not be captured here also; but rather noted in the working papers. If there is no separate, related element, this deficiency code should be used.

DEFICIENCY CODE P1-3: Procurement policies and procedures not current/complete

SUGGESTED CORRECTIVE ACTION: The recipient must develop and submit to the FTA regional office revised procurement policies that include all required provisions and identify procedures that ensure compliance with 2 CFR 200.318 through 200.326.

GOVERNING DIRECTIVES

2 CFR 200.317 Procurements by states

“When procuring property and services under a Federal award, a state must follow the same policies and procedures it uses for procurements from its non-Federal funds. The state will comply with §200.322 Procurement of recovered materials and ensure that every purchase order or other contract includes any clauses required by section §200.326 Contract provisions. All other non-Federal entities, including subrecipients of a state, will follow §§ 200.318 General procurement standards through 200.326 Contract provisions.”

2 CFR 200.318 General procurement standards

“(a) The non-Federal entity must use its own documented procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(c)(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award, and administration of contracts. No employee, officer, or agent must participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity must neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

(2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

(d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.

(f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(j)(1) The non-Federal entity may use time-and-materials type contracts only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time-and-materials type contract means a contract whose cost to a non-Federal entity is the sum of:

- (i) The actual cost of materials; and
- (ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.”

2 CFR 200.319 Competition

“(a) All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, and invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

- (1) Placing unreasonable requirements on firms in order for them to qualify to do business;
- (2) Requiring unnecessary experience and excessive bonding;
- (3) Noncompetitive pricing practices between firms or between affiliated companies;
- (4) Noncompetitive contracts to consultants that are on retainer contracts;
- (5) Organizational conflicts of interest;
- (6) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and
- (7) Any arbitrary action in the procurement process.

(b) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for A&E services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(c) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

- (1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must 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, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offerors must be clearly stated; and
- (2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(d) The non-Federal entity must 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, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.”

2 CFR 200.320 Methods of procurement to be followed.

“The non-Federal entity must use one of the following methods of procurement.

(a) Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (§200.67 Micro-purchase). To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.

(b) Procurement by 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 the Simplified Acquisition Threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

(c) Procurement by 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. The sealed bid method is the preferred method for procuring construction, if the conditions in paragraph (c)(1) of this section apply.

(1) In order for sealed bidding to be feasible, the following conditions should be present:

- (i) A complete, adequate, and realistic specification or purchase description is available;
- (ii) Two or more responsible bidders are willing and able to compete effectively for the business; and
- (iii) 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.

(2) If sealed bids are used, the following requirements apply:

- (i) The invitation for bids will be publicly advertised and bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids;
- (ii) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
- (iii) All bids will be publicly opened at the time and place prescribed in the invitation for bids;
- (iv) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must 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
- (v) Any or all bids may be rejected if there is a sound documented reason.

(d) Procurement by competitive proposals. The technique of competitive proposals is 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 requirements apply:

- (1) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;
- (2) Proposals must be solicited from an adequate number of qualified sources;
- (3) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;
- (4) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
- (5) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(f) Procurement by noncompetitive proposals. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

- (1) The item is available only from a single source;
- (2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- (3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or
- (4) After solicitation of a number of sources, competition is determined inadequate.”

2 CFR 200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms

“(a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

(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

(6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.”

2 CFR 200.322 Procurement of recovered materials

“A non-Federal entity 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 by 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.”

2 CFR 200.323 Contract cost and price

“(a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.

(b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must 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 area for similar work.

(c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under Subpart E—Cost Principles of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.

(d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.”

2 CFR 200.325 Bonding requirements

“For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must 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 acceptance of the bid, execute such contractual documents as may be required within the time specified.

(b) 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 secure fulfillment of all the contractor's obligations under such contract.

(c) A payment bond on the part of the contractor for 100 percent of the contract price. A “payment 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.”

2 CFR 200.326 Contract provisions

“The non-Federal entity's contracts must contain the applicable provisions described in Appendix II to 2 CFR Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards.”

Additional Guidance:

[FTA C 4220.1F, III, 3.a.](#)

Each recipient and subrecipient may use its own procurement procedures, provided that its procurements conform to applicable Federal law and regulations.

P2. Does the recipient maintain written standards of conduct for its representatives engaged in the selection, award, and administration of FTA-funded contracts?

BASIC REQUIREMENT

The recipient must have and implement written standards of conduct for those involved in its procurement and contract administration actions.

APPLICABILITY

All recipients

DETAILED EXPLANATION FOR REVIEWER

Recipients are required to maintain written standards of conduct governing the performance of their employees engaged in the award and administration of contracts supported by Federal funds. The standards must:

- Preclude any employee, officer, or agent from participating in the selection, award, or administration of a contract supported with FTA assistance if he or she has any real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, his or her immediate family member, partner, or organization that employs or is about to employ any of forgoing has a financial or other interest or a tangible personal benefit from a firm considered for a contract.
- Include a restriction that the recipient's officers, employees, or agents may neither solicit nor accept gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements. The recipient may set minimum rules when the financial interest is not substantial or the gift is an unsolicited item of nominal value.
- Provide for disciplinary action for violation of such standards by the recipient's officers, employees, or agents.

If the recipient has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the recipient must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

INDICATORS OF COMPLIANCE

- a. *Does the recipient have written standards of conduct? (PSR-1)*
- b. *Do the recipient's standards of conduct include all required elements? (PSR-1)*
- c. *Does it appear that any person covered by the standards of conduct violated the recipient's standards during the last two years? (PSR-1)*

INSTRUCTIONS FOR REVIEWER

Request and review the recipient's standards of conduct for procurement-related actions. These may be contained in the recipient's policies and procedures, in a separate document(s), or different documents for employees and governing board members. Please note that state and/or local laws may have requirements that are more restrictive than the Federal requirements below. Recipients must adhere to those state and local requirements.

Review standards of conduct to ensure that, at a minimum, they:

- Preclude any employee, officer, or agent from participating in the selection, award, or administration of a contract supported with FTA assistance if he or she has any real or apparent conflict of interest.
- Include a restriction that the recipient's officers, employees, or agents may neither solicit nor accept gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements.
- Provide for disciplinary action for conflict of interest violations by the recipient's officers, employees, or agents.
- If the recipient has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, verify the written standards of conduct cover organizational conflicts of interest.

Prior to the site visit, research procurement actions of the recipient on the internet and request any relevant information from the regional office and FTA's Chief Counsel's Office relating to violations of the standards of conduct. Record any issues regarding standards of conduct that the region has noted in the recipient's OAT. Review documents such as board meeting minutes, as applicable, to determine if procurement actions are noted. Onsite, during interviews with the CEO and the Head of Procurement, follow up on any issues found during the pre-site review and inquire if there have been any covered employees that recused themselves from procurement actions or violated any part of the written standards of conduct during the last two years. Obtain documentation of disciplinary action taken, if applicable.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it does not have written standards of conduct.

DEFICIENCY CODE P2-1: No written standards of conduct

SUGGESTED CORRECTIVE ACTION: The recipient must develop and submit to the FTA regional office written standards of conduct that include all required provisions.

The recipient is deficient if its written standards of conduct do not contain required elements.

DEFICIENCY CODE P2-2: Incomplete standards of conduct

SUGGESTED CORRECTIVE ACTION: The recipient must develop and submit to the FTA regional office written standards of conduct that include all missing provisions.

The recipient is deficient if there were violations to its written standards of conduct and no appropriate disciplinary action was taken.

DEFICIENCY CODE P2-3: Lack of enforcement of written standards of conduct

SUGGESTED CORRECTIVE ACTION: The recipient must develop and submit to the FTA regional office procedures for ensuring that disciplinary action is taken when there is a violation of the written standards of conduct.

GOVERNING DIRECTIVES

2 CFR 200.318 (c)(1) & (2)

“(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract

supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

(2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.”

FTA Master Agreement (25), Section 4

“Standards of Conduct. At a minimum, the Recipient agrees to, and assures that its Subrecipients will, establish and maintain written Standards of Conduct covering conflicts of interest that:

(1) Apply to the following individuals who have a present or potential financial interest, or other significant interest, such as a present or potential employment interest in the selection, award, or administration of a third party contract or subcontract:

(a) The Recipient or its Subrecipients’ officers, employees, board members, or agents engaged in the selection, award, or administration of any third party agreement,

(b) The immediate family members or partners of those listed above in section 4.a(1)(a) of this Master Agreement, and

(c) An entity or organization that employs or is about to employ any person that has a relationship with the Recipient or its Subrecipient listed above in sections 4.a(1)(a) and (b) of this Master Agreement;

(2) Prohibit those individuals listed above in section 4.a(1) from:

(a) Engaging in any activities involving the Recipient’s or any of its Subrecipients’ present or potential Third Party Participants at any tier, including selection, award, or administration of a third party agreement in which the individual has a present or potential financial or other significant interest, and

(b) Accepting a gratuity, favor, or anything of monetary value from a present or potential Third Party Participant in the Recipient’s Underlying Agreement, unless the gift is unsolicited and has an insubstantial financial or nominal intrinsic value; and

(3) Establish penalties, sanctions, or other disciplinary actions for violations, as permitted by state or local law or regulations, that apply to those individuals listed above in section 4.a(1) and the Recipient’s or Subrecipient’s Third Party Participants.

Additional Guidance:

FTA Circular. 4220.1F Chapter III

P3. Does the recipient have and follow written procurement protest procedures?

BASIC REQUIREMENT

The recipient must have and follow written protest procedures in compliance with all applicable Federal, state, and local laws and regulations.

APPLICABILITY

All recipients

DETAILED EXPLANATION FOR REVIEWER

Written Protest Procedures (PSR – 3)

Recipients must have written procedures that allow bidders **or proposers** to protest a procurement action. Notice of protest procedures must be available to all potential bidders or **proposers**, either by inclusion in the solicitation documents or available to the public.

FTA recipients are responsible for resolving all contractual and administrative issues arising out of their third party procurements, including source evaluation and selection, protests of awards, disputes, and claims using good administrative practices and sound business judgment.

INDICATORS OF COMPLIANCE

- a. *Are the recipient procurement protest procedures included in solicitations for bids or proposals and/or publicly available?*
- b. *Does the recipient have written protest procedures?*
- c. *Has the recipient received any procurement protests since the last Comprehensive Review?*
 - *If yes, did it follow its protest procedures?*
 - *If yes, does the number or nature of protests received indicate potential issues with the recipient's procurement process?*

INSTRUCTIONS FOR REVIEWER

Confirm how protest procedures are made available to bidders and the public. Prior to the site visit, request and review the recipient's written protest procedures. Protest procedures may be contained in the recipient's policies and procedures or in a separate document.

Review milestone progress reports in TrAMS for protests noted. Onsite, ask the recipient for any bid protests received, granted, or denied. If there have been any protests during the review period, review related documentation to determine if the recipient followed its written protest procedures. **Discuss the number and nature of protests with the regional office. If the recipient has received more than three protests over the past three years, determine if there are any trends that may indicate issues in other areas of the recipient's procurement processes.**

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if its protest procedures are not accessible to potential bidders.

DEFICIENCY CODE P3-1: Protest procedures not accessible to potential bidders.

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office with documentation of actions taken to make protest procedures available to potential bidders.

The recipient is deficient if it does not have written protest procedures.

DEFICIENCY CODE P3-2: No written protest procedures

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office a copy of written protest procedures.

The recipient is deficient if it has written protest procedures and received protests, but did not follow its procedures.

DEFICIENCY CODE P3-3: Protest procedures not followed

SUGGESTED CORRECTIVE ACTION: The recipient must provide the FTA regional office documentation of implemented procedures or documentation of the process that will be followed to ensure that its protest procedures are followed. **If the number of protests appears to be high, the recipient must provide the regional office with details on the next protest received within 10 business days of receiving such protest.**

GOVERNING DIRECTIVES

2 CFR §200.318(k)

“Section 200.318(k) provides that a recipient “alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the [recipient] of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the [recipient] unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.”

FTA Master Agreement (25), Section 16.x

Bid Protests. The Recipient agrees to provide FTA, as part of the annual or quarterly Milestone Progress Report, with a list of all bid protests and appeals for solicitations or contracts in excess of \$500,000. The Recipient also should be mindful of the requirement in Section 39, Disputes, that the Recipient must promptly notify the FTA Chief Counsel, or FTA Regional Counsel for the Region in which the Recipient is located, of significant current or prospective legal matters that may affect the Federal Government.

Guidance note regarding notifying FTA of Protests and Appeals to FTA

FTA’s involvement in bid protests is limited. The Uniform Guidance, as adopted by DOT, no longer includes the language in 49 C.F.R. §18.36(b)(12) that provided for a direct appeal to FTA of a recipient’s final decision on a bid protest. The Uniform Guidance provides that:

“The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.” – 2 C.F.R. § 200.318(k)

Thus, the FTA’s role is limited to considering matters that are “primarily a Federal concern.” Accordingly, Section (1)(b)(2)(a) of Chapter VII of FTA Circular 4220.1F, which provides for direct appeals to FTA, is no longer applicable.

P4. Does the recipient make awards only to responsible contractors as described in its policies and procedures and in compliance with the requirements of 49 U.S.C. 5325(j)?

APPLICABILITY

All recipients

BASIC REQUIREMENT

The recipient must only contract with responsible firms.

DETAILED EXPLANATION FOR REVIEWER

[Award to Responsible Contractors \(PSR – 18\)](#)

49 U.S.C. Section 5325 (j) requires recipients to make FTA-assisted contract awards only to “responsible” contractors possessing the ability to successfully perform under the terms and conditions of a proposed procurement. Before making an award to a contractor, a recipient shall consider the integrity of the contractor; the contractor’s compliance with public policy; the contractor’s past performance; and the contractor’s financial and technical resources. Responsibility is determined by the recipient after receiving bids or proposals and before making contract award.

Recipients also are required to ensure before entering into a covered contract that the potential contractor and its principals are not suspended, debarred, ineligible, or voluntarily excluded from participation in federally assisted transactions or procurements. For each third party contract expected to equal or exceed \$25,000, recipients must verify that the bidder is not excluded or disqualified by:

- Checking System for Award Management (SAM) Exclusions (at SAM.gov); or
- Collecting a certification; or
- Adding a clause or condition to the covered transaction

FTA notes that affirmative actions, such as checking SAM.gov or including a requirement for a signed certification, are preferred. A best practice is for the recipient to print the screen with the results of the search to include in the award or procurement file, or to have a checklist noting when the SAM was reviewed.

2 CFR Part 180.995 defines a principal as an officer, director, owner, partner, principal investigator, or other person with management or supervisory responsibilities related to a covered transaction; or a consultant or other person, whether or not employed by the contractor or paid with federal funds, who is in a position to handle federal funds, influence or control the use of those funds, or who occupies a technical or professional position capable of substantially influencing the development or outcome of an activity required to perform the covered transaction.

In the event that a recipient becomes aware that an excluded party is participating in a covered transaction, it must promptly inform the FTA regional office in writing of this information. The recipient may continue any covered transaction in existence at the time a party is excluded. The recipient is not required to continue the transaction and may consider termination. However, the recipient may not renew or extend the covered transaction (other than through a fully documented no-cost time extension) with the excluded party.

INDICATORS OF COMPLIANCE

- a. *Do procurement files contain documentation that the recipient made written responsibility determinations prior to award, considering all required information?*
- b. *Prior to award, does the recipient have documentation that third party contractors are not suspended or debarred?*

- c. *Did the recipient extend a contract with a contractor after it determined that the contractor had been suspended or debarred?*

INSTRUCTIONS FOR REVIEWER

Review the recipient's policies and procedures for its process of conducting and documenting responsibility determinations and ensuring it does not award contracts to debarred or suspended contractors or individuals. **Review procurements over the micro-purchase threshold for this responsibility determinations and procurements of \$25,000 or more for the suspension and debarment requirements.**

During the site visit, examine selected procurement files, in accordance with records sampling procedures, to determine if the recipient makes **written** responsibility determinations prior to awarding contracts that exceed the micro-purchase threshold.

Examine responsibility determinations to verify that a written responsibility determination was made for each successful bidder prior to award and that consideration was given to matters such as:

- Contractor integrity - **The contractor should have a satisfactory record of integrity and business ethics.**
- Compliance with public policy – **The contractor should have record of compliance with local, state and federal laws and regulations such as compliance with prevailing wage requirements and permitting.**
- Record of past performance – **The contractor should have a satisfactory record of completing similar projects on time and within budget.**
- Financial and technical resources – **The contractor's organization and staffing should indicate adequate technical skills. Financial statements or Dun & Bradstreet reports can indicate the financial stability.**

For procurements of \$25,000 or more, review contract and subrecipient files to verify if the recipient or subrecipient is determining that bidders were not excluded or disqualified before entering into any third party contracts. Document that the recipient makes this verification by:

- checking SAM Exclusions (at SAM.gov), or
- collecting a certification, or
- adding a clause or condition to the covered transaction

Discuss with the recipient if it has become aware of any situation in which an excluded party is participating in a covered transaction. For the procurements reviewed, check SAM.gov to determine if the contractors are suspended or debarred. Determine if the recipient received FTA approval to extend (other than a no-cost extension) or renew a contract with a suspended or debarred contractor prior to taking those actions.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it does not make written responsibility determinations that include the required elements prior to award.

DEFICIENCY CODE P4-1: Responsibility determination deficiencies

SUGGESTED CORRECTIVE ACTION: For any contracts where the recipient was found to have failed to verify that the contractor was responsible, the recipient must verify the responsibility of contractors. The recipient must provide the FTA regional office documentation of an

implemented process to make adequate responsibility determinations prior to award of a contract. For the next procurement, submit to the FTA regional office documentation that the required process was implemented.

The recipient is deficient if it has not verified that excluded parties are not participating prior to applicable awards or actions.

DEFICIENCY CODE P4-2: No verification that excluded parties are not participating

SUGGESTED CORRECTIVE ACTION: For any contracts where the recipient was found to have failed to verify that the contractor was in compliance with suspension/debarment requirements, the recipient must either amend the contract with the appropriate clause or obtain the applicable certification from the third-party contractor(s). The recipient must submit to the FTA regional office procedures for making excluded party determinations before entering into applicable transactions. For the next procurement, submit to FTA regional office documentation that the required process was implemented.

The recipient is deficient if it extended (other than a no-cost time extension) or renewed a contract with a contractor subsequent to it becoming suspended or debarred, unless approved by FTA.

DEFICIENCY CODE P4-3: Excluded parties participating in covered transactions

SUGGESTED CORRECTIVE ACTION: The recipient must confer with the FTA regional office for any contract that was extended or renewed with a suspended or debarred contractor. The recipient must submit to the FTA regional office procedures for making excluded party determinations before entering into applicable transactions.

GOVERNING DIRECTIVES

49 U.S.C 5325(j) AWARDS TO RESPONSIBLE CONTRACTORS

“(1) IN GENERAL. Federal financial assistance under this chapter may be provided for contracts only if a recipient awards such contracts to responsible contractors possessing the ability to successfully perform under the terms and conditions of a proposed procurement.

(2) CRITERIA. Before making an award to a contractor under paragraph (1), a recipient shall consider:

- A. the integrity of the contractor;
- B. the contractor’s compliance with public policy;
- C. the contractor’s past performance, including the performance reported in the Contractor Performance Assessment Reports required under section 5309(l)(2); and
- D. the contractor’s financial and technical resources.”

2 CFR 180.300

“What must I do before I enter into a covered transaction with another person at the next lower tier? When you enter into a covered transaction with another person at the next lower tier, you must verify that the person with whom you intend to do business is not excluded or disqualified. You do this by: (a) Checking SAM Exclusions; or (b) Collecting a certification from that person; or (c) Adding a clause or condition to the covered transaction with that person.”

2 CFR 180.310

“What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction? (a) You as a participant may continue covered transactions with an excluded person if the transactions were in existence when the agency excluded the person. However, you are not required to continue the transactions, and you may consider termination. You should make a decision about whether to terminate and the type of termination action, if any, only after a thorough review to ensure that the action is proper and appropriate. (b) You may not renew or extend covered transactions (other than no-cost time extensions) with any excluded person, unless the Federal agency responsible for the transaction grants an exception under §180.135.”

Additional Guidance:

FTA Master Agreement (25), Section 16 (d)

FTA Circular 4220.1F Chapter III. d. (1) (c)

P5. Does the recipient maintain records sufficient to detail the history of each procurement as described in its policies and procedures and in compliance with 2 CFR Part 200?

BASIC REQUIREMENT

The recipient must maintain a written history of each procurement.

APPLICABILITY

All recipients

DETAILED EXPLANATION FOR REVIEWER

[Written Record of Procurement History \(PSR – 42\)](#)

Recipients must maintain records sufficient to detail the significant history of a procurement. At a minimum, such records must include:

- Rationale for the method of procurement (i.e., request for proposals, invitation for bids, sole source)
- Selection of contract type (i.e., fixed price, cost reimbursement)
- Reason for contractor selection or rejection
- Basis for the contract price (i.e., cost/price analysis)

The extent of documentation should be reasonable. Documents included in a procurement history should be commensurate with the size and complexity of the procurement itself. FTA recognizes that these written records may vary greatly for different procurements or procurement methods.

INDICATORS OF COMPLIANCE

- a. *Do procurement files reviewed include required historical information?*

INSTRUCTIONS FOR REVIEWER

Review recipient's policies and/or procedures for documenting procurement files to ensure that the policy requires, at a minimum, written documentation of the following:

- Rationale for the method of procurement (i.e., request for proposals, invitation for bids, sole source)
- Selection of contract type (i.e., fixed price, cost reimbursement)
- Reason for contractor selection or rejection
- Basis for the contract price (i.e., cost/price analysis)

During the site visit, examine selected procurement files, in accordance with records sampling procedures, to determine if procurement records include the minimum information listed above, as well as all documentation required in the recipient's policies and/or procedures.

POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if, for any procurement examined, procurement records do not contain the minimum documentation required and any additional information noted in the recipient's policies and/or procedures.

DEFICIENCY CODE P5-1: Incomplete written documentation of procurement history

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office evidence that the deficiencies identified in its record-keeping process have been corrected and that procurement staff have been trained on documenting procurement history.

GOVERNING DIRECTIVE

2 CFR 200.318(i)

“The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.”

P6. Does the recipient ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders in its policies and procedures and in compliance with 2 CFR Part 200?

BASIC REQUIREMENT

Recipients must have oversight mechanisms to ensure that contractors perform in accordance with the terms of their contracts.

APPLICABILITY

All recipients

DETAILED EXPLANATION FOR REVIEWER

[Contract Administration System \(PSR – 2\)](#)

Recipients are required to have mechanisms in place to ensure that contractors perform in accordance with the terms, conditions, and specifications contained in their contracts or purchase orders. 2 CFR Part 200 assigns responsibility to the recipient for resolving all contractual and administrative issues arising out of their third party procurements, including protests of awards, disputes, and claims using good administrative practices and sound business judgment. Neither FTA nor 2 CFR part 200 relieves the recipient of any responsibility under its contracts.

Many FTA recipients assign contracting duties to technical, financial, or management personnel. If the recipient lacks qualified personnel within its organization to undertake the various procurement tasks, such as drafting specifications, evaluating contracts, or performing internal audits for the recipient, FTA expects the recipient to acquire the necessary services from sources outside the recipient's organization. When using outside sources, the recipient should take appropriate steps to prevent or mitigate organizational conflicts of interest that would result in conflicting roles that might bias a contractor's judgment or would result in unfair competitive advantage.

INDICATOR OF COMPLIANCE

- a. *Does the recipient conduct oversight of third party contractors to ensure performance in accordance with contract terms?*

INSTRUCTIONS FOR REVIEWER

Prior to the site visit, review milestone progress reports in TrAMS and information provided by the recipient to determine if there were any contracts noted as having issues with the contractor not performing in accordance with the terms, conditions, and specifications of their contracts or purchase orders. Review information in TrAMS on the resolution of disputes or claims. Ask the regional office if there are any procurements that should be reviewed for contractor performance issues. Prior to the site visit, request and review the recipient's policies and procedures, which should include procedures to ensure contract performance and to resolve third party contracting issues, for any described contract administration processes and responsibilities.

The extent and complexity of a contract administration system will vary with the type, size and complexity of the procurement.

A simple materials or equipment purchase may only require documentation that the material or equipment was delivered, was in accordance with the purchase requirements, was accepted by the user, approved for payment, and added to the fixed asset listing, if applicable.

A professional services contract may require holding periodic progress meetings, approving invoices for progress payments, monitoring the project schedule and budget, verifying that deliverables are in compliance with the scope of work, and approving any change orders.

A construction contract often involves the most extensive level of contract administration. Based on the recipient size and staffing, the contract administration system may require use of a design and engineering firm and/or a construction manager to verify compliance with specifications, attend and keep records of project progress meetings, provide responses to requests for interpretation of specifications, manage the recommendations associated with change orders, certify payment applications, prepare punch lists, and oversee project close out.

Contracts for transit service management or operations often include numerous items to administer, such as on-time performance, staffing, maintenance and compliance with regulations such as Americans with Disabilities Act and FTA's Drug and Alcohol Testing Program.

Onsite, during review of selected procurements, determine if contract administration and oversight procedures are being implemented as described in policies and procedures. Determine if the recipient is monitoring the contractor's on-time delivery of products or services as detailed in any contractual milestones, **receiving any required contractor reporting, or verifying any required coordination meetings.** Determine if the recipient is analyzing the cause of cost overruns, scope changes, or slippages in delivery schedules or milestone dates. **In these cases there should be documentation of correspondence between the recipient and contractor regarding contractor performance. Multiple delays in contract completion should be supported by legitimate reasons provided from the contractor to the recipient.**

For any procurements examined for which enforcement of contract administration remedies appeared to be warranted (i.e. liquidated damages, remedies related to milestone or delivery dates or performance standards), determine if appropriate actions were taken. In accordance with 2 CFR §200.318(j)(1), recipients must assert a high degree of oversight for time and materials type contracts in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if the recipient does not have documentation evidencing contract oversight pursuant to its internal policies and/or procedures. For example, the recipient is deficient if non-performance of contractors is a persistent problem, with contractors either not performing in accordance with the terms and conditions of their contracts, or issues remain unresolved for a substantial length of time, or the recipient cannot demonstrate that it has taken remedial action in accordance with its policies and procedures.

DEFICIENCY CODE P6-1: Contract administration system lacking

SUGGESTED CORRECTIVE ACTION: The recipient must develop and submit to the FTA regional office revised procurement procedures that include oversight procedures and remedies for non-performance, along with evidence of implementation.

GOVERNING DIRECTIVE

2 CFR 200.318(b)

"Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders."

P7. Does the recipient ensure that it conducts all procurement transactions in a manner that provides full and open competition and does not unduly restrict competition in its procurement process and as described in its policies and procedures and in compliance with 2 CFR Part 200?

BASIC REQUIREMENT

Procurement transactions must be non-restrictive.

APPLICABILITY

All recipients

DETAILED EXPLANATION FOR REVIEWER

Restricting Competition:

Recipients must conduct procurement transactions in a manner providing full and open competition. Recipients are prohibited from restricting competition in federally supported procurement transactions. Some of the situations considered to be restrictive of competition include but are not limited to:

- Placing unreasonable requirements on firms in order for them to qualify to do business;
- Requiring unnecessary experience and/or excessive bonding;
- Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement;
- Having overly burdensome requirements for approval of an equal product;
- Noncompetitive pricing practices between firms or between affiliated companies;
- Noncompetitive contracts to consultants that are on retainer contracts;
- Organizational conflicts of interest; and
- Any arbitrary action in the procurement process.

Geographic Preference: (PSR-8, PSR-14)

Recipients are prohibited from specifying in-state or local geographic preferences, or evaluating bids or proposals in light of in-state or local geographic preferences, even if those preferences are imposed by state or local laws or regulations. In particular, 49 U.S.C. Section 5325(i) prohibits an FTA recipient from limiting its bus purchases to in-state dealers.

Exceptions expressly mandated or encouraged by law include the following:

- **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 size of the project. Although geographic preferences are permissible in procurements for A&E services, the reviewer should ensure that their use does not restrict competition (i.e., the use of geographic preference leaves only one or two qualified firms to bid on the contract).
- **Licensing.** A state may enforce its licensing requirements, provided that those requirements do not conflict with Federal law.
- **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 an area affected by a major disaster or emergency.

Section 418 of the fiscal year (FY) 2015 Appropriations Act and Section 415 of the Consolidated Appropriations Act, 2016, Public Law 114-113 (FY 2016 Appropriations Act) prohibit FTA from using FY2015 or FY2016 funds to implement, administer, or enforce the prohibition of geographic preferences under 49 CFR 18.36(c)(2), (now 2 CFR 200.319(b)) for construction hiring purposes. "Construction hiring purposes" means hiring of the construction labor workforce for a construction project. Section 418 applies to all FTA awards, including awards funded under the Hurricane Sandy Emergency Relief and Transportation Investment Generating Economic Recovery (TIGER) programs. Recipients are asked to provide the FTA Regional Office notice of using local hiring preferences on construction projects.

On March 6, 2015, US DOT announced an initiative to permit, on an experimental basis, FTA recipients and subrecipients to utilize various contracting requirements that generally have been disallowed due to concerns about adverse impacts on competition. This initiative, being initially carried out as a pilot program was extended until March 6, 2017. Unless accepted into the pilot program, FTA recipients may not include local hiring or geographic preferences in FTA-funded projects, except for construction hiring purposes and other exceptions described above.

Prequalification Lists: (PSR-4, PSR-17)

Except for small and micro purchases, proposals and/or bids must be publicly solicited from an adequate number of sources. Recipients are prohibited from restricting competition in federally supported procurement transactions. Recipients are not required to prequalify potential bidders. However, recipients that place such a requirement on potential bidders must adhere to FTA's requirements. If a recipient requires prospective bidders to prequalify, it must ensure that all lists of prequalified persons, firms, or products that are used in acquiring goods and services are current and include enough sources to ensure full and open competition. Recipients must permit potential bidders or offerors to qualify during the solicitation period (from the issuance of the solicitation to its closing date). Prequalification should not be confused with reviews of technical qualifications that are an essential process in two-step and qualifications-based procurements.

Unreasonable Qualification Requirements: (PSR-9)

In order to ensure objective contractor performance and eliminate unfair competitive advantage, recipients that develop or draft specifications, requirements, statements of work, and invitations for bids or requests for proposals must not include provisions considered to be restrictive of competition.

Unnecessary Experience and Excessive Bonding (PSR-10)

Bonds are required for all construction contracts exceeding the Simplified Acquisition Threshold, unless FTA determines that other arrangements adequately protect the Federal interest. FTA's bonding policies for those construction projects are as follows:

- Bid Guarantee – Each bidder is generally required to provide a bid guarantee equivalent to 5 percent of its bid price.
- Performance Bond – Contractors generally must obtain a performance bond for 100 percent of the contract price. A performance bond is obtained to ensure completion of the obligations under the third party contract.
- Payment Bond – Contractors generally must obtain a standard payment bond. A payment bond is obtained to ensure that the contractor will pay all people supplying labor and material for the third party contract as required by law. FTA has determined that payment bonds in the following amounts are adequate to protect FTA's interest and will accept a local bonding policy that meets the following minimums:
 - Less Than \$1 Million – Fifty percent of the contract price if the contract price is not more than \$1 million;
 - More Than \$1 Million but Less Than \$5 Million – Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million;
 - More Than \$5 Million – Two and one half million dollars if the contract price is more than \$5 million.

Brand Name Restrictions (PSR-13)

Procurement documents must incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must 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, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of the procurement. The specific features of the named brand which must be met by offerors must be clearly stated.

Organizational Conflicts of Interest: (PSR-11)

When using outside sources, the recipient should take appropriate steps to prevent or mitigate organizational conflicts of interest that would result in conflicting roles that might bias a contractor’s judgment or would result in unfair competitive advantage. An organizational conflict of interest occurs when any of the following circumstances arise:

- **Lack of Impartiality or Impaired Objectivity.** When the contractor is unable, or potentially unable, to provide impartial and objective assistance or advice to the recipient due to other activities, relationships, contracts, or circumstances.
- **Unequal Access to Information.** The contractor has an unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier contract.
- **Biased Ground Rules.** During the conduct of an earlier procurement, the contractor has established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents.

Arbitrary Action (PSR-12)

Recipients are prohibited from taking any arbitrary action when awarding contracts. Arbitrary actions include lack of adhering to the requirements contained in the procurement solicitation when awarding contracts. An arbitrary action can also be found when there is lack of documentation for awarding a contract to other than the low responsive and responsible bidder or the most qualified proposal when price and other factors are considered.

INDICATORS OF COMPLIANCE

- a. *Does the recipient include prohibited geographic preferences in procurements? (PSR-8, PSR-14)*
- b. *If the recipient uses prequalification lists for any of its procurements, does it do so properly? (PSR-4, PSR-17)*
- c. *Does the recipient restrict competition by applying unreasonable requirements? (PSR-9)*
- d. *Does the recipient restrict competition by requiring unnecessary experience or excessive bonding? (PSR-10)*
- e. *Does the recipient, specify only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; or are the requirements for approval of equal products overly burdensome? (PSR-13)*
- f. *Does the recipient implement mechanisms to identify and mitigate organizational conflicts of interest? (PSR-11)*
- g. *Does a review of procurement files indicate any arbitrary action(s) by the recipient? (PSR-12)*

INSTRUCTIONS FOR REVIEWER

Prior to the site visit, request and review the recipient's written procurement policies for discussion of the requirements in the above indicators. Obtain and review the listing of FTA-funded procurements.

During the site visit:

- Review procurement files, particularly legal notices and solicitation documents, to determine whether procurements were unreasonably restrictive. If a procurement only received one or two responses, did the specifications include non-essential requirements that only a single or a few bidders could meet? Did potential bidders submit pre-submission questions regarding compliance with the specifications or other contract requirements? Examine any bid protests and any questions and answers to solicitations to determine if there are any perceived restrictions from potential bidders.
- Review construction and non-construction procurements to determine if the recipient's bonding policies far exceed FTA's requirements. Determine through document review or interviews if the recipient has a sound reason for bonding requirements that far exceed FTA requirements.
- Review procurement specifications and/or scope of work to determine if there are any product descriptions that are limited to brand name only without containing the phrase "or approved equal". Determine if the specification and/or scope of work also contains the salient characteristics of the brand name product referenced. Review policies and procedures on brand names or equals. Determine, through review of procurement documents and interviews with procurement staff, what the process is for requesting an approved equal, how these requests are processed, and what the results were? Examine any bid protests and questions and answers to solicitations to determine how questions or issues related to brand names were addressed.
- Review procurement policies and procedures for how organizational conflicts of interest are defined. Review procurement files to determine if there were any potential organizational conflicts of interest and how the recipient mitigated the conflict.
- Review procurement files to determine if it is clear that the awarded vendor's file clearly documents that there was no arbitrary action. Determine that the award for each of the procurements reviewed followed the recipient's conditions for award detailed in its procurement policies and procedures and the solicitation. For example, for sealed bids, if the awarded bidder was not the lowest bidder ensure that documentation exists that reasons for this; for requests for proposals, determine if the results of evaluations clearly identify that the recipient followed its evaluation criteria. The documentation in the procurement file should allow the reviewer to understand the major procurement milestones and decisions of the recipient. Examples of documents to review include:
 - The solicitation document
 - Solicitation addenda
 - A listing of bids/proposals received
 - Protest documentation
 - A copy of the contract document or purchase order
 - Contract administration correspondence
 - Contract change orders with justifications and cost analysis
 - Contract dispute documentation

Review procurement files for use of geographic preferences outside of the allowable exceptions. Examine any bid protests and any questions and answers to solicitations to determine if there are any potential geographic preference issues. These may include bid/evaluation preferences for, or restricting competition to, in-state or local firms. In-state licensing requirements do not constitute geographic preference. When contracting for A&E services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

- Review procurement files, particularly legal notices and solicitation documents, to determine whether responses to procurements are limited to pre-qualified firms. If a recipient requires prospective bidders to prequalify, determine if it has documented that it has ensured that all prequalification lists include enough sources to ensure full and open competition. Determine if the recipient permitted potential bidders or offerors to qualify during the solicitation period (from the issuance of the solicitation to its closing date).

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it has improperly included geographic preferences in its procurements.

DEFICIENCY CODE P7-2: Improper use of geographic preferences

SUGGESTED CORRECTIVE ACTION: The recipient must cease using inappropriate geographic preferences in FTA-funded procurements and submit to the FTA regional office documentation of a revised procurement process that prohibits the improper use of geographic preferences. For the next procurement, the recipient must submit to the FTA regional office documentation that the required process was implemented.

The recipient is deficient if its prequalification lists do not include enough qualified sources to ensure maximum full and open competition or it has precluded potential bidders from qualifying during the solicitation process.

DEFICIENCY CODE P7-3: Inadequate prequalification criteria

SUGGESTED CORRECTIVE ACTION: The recipient must provide the FTA regional office documentation demonstrating that deficiencies identified in its prequalification process have been corrected. For the next procurement, submit to the FTA regional office documentation that the required process was implemented.

The recipient is deficient if it has improperly included unreasonable qualifications in its procurements.

DEFICIENCY CODE P7-4: Improper use of unreasonable qualifications

SUGGESTED CORRECTIVE ACTION: The recipient must cease using unreasonable qualifications in FTA-funded procurements and submit to the FTA regional office documentation of a revised procurement process. For the next procurement, the recipient must submit to the FTA regional office documentation that the required process was implemented.

The recipient is deficient if it has improperly included unnecessary experience or excessive bonding in its procurements.

DEFICIENCY CODE P7-5: Improper use of unnecessary experience or excessive bonding

SUGGESTED CORRECTIVE ACTION: The recipient must cease using unnecessary experience or excessive bonding in FTA-funded procurements and submit to the FTA regional office documentation of a revised procurement process. For the next procurement, the recipient must submit to the FTA regional office documentation that the required process was implemented.

The recipient is deficient if it has used “brand name” only specifications in its procurements.

DEFICIENCY CODE P7-6: Improper use of “brand name” only specifications

SUGGESTED CORRECTIVE ACTION: The recipient must use performance specifications or “brand name or equal” specifications that include the salient characteristics of the item specified and submit to the FTA regional office documentation of a revised procurement process. For the next procurement, the recipient must submit to the FTA regional office documentation that the required process was implemented.

The recipient is deficient if an organizational conflict of interest was present in its procurements.

DEFICIENCY CODE P7-7: Organizational conflict of interest not properly mitigated

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office documentation of a revised procurement process for identifying and mitigating organizational conflicts of interest. For the next procurement, the recipient must submit to the FTA regional office documentation that the required process was implemented.

The recipient is deficient if an arbitrary action was taken in connection with the award of its procurements.

DEFICIENCY CODE P7-8: Improper arbitrary action

SUGGESTED CORRECTIVE ACTION: The recipient shall submit to the FTA regional office documentation of a revised procurement process that will insure no arbitrary actions are taken in connection with the award of FTA funded procurements. For the next procurement, the recipient must submit to the FTA regional office documentation that the required process was implemented.

GOVERNING DIRECTIVES

49 U.S.C. 5325(a). Contract requirements

“(a) Competition. Recipients of assistance under this chapter shall conduct all procurement transactions in a manner that provides full and open competition as determined by the Secretary.”

49 U.S.C. 5325(h). Contract requirements

“(h) Grant prohibition. A grant awarded under this chapter or the Federal Public Transportation Act of 2015 may not be used to support a procurement that uses an exclusionary or discriminatory specification.”

2 CFR 200.319 (a)

“All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to: (1) Placing unreasonable requirements on firms in order for them to qualify to do business; (2) Requiring unnecessary experience and excessive bonding; (3) Noncompetitive pricing practices between firms or between affiliated companies; (4) Noncompetitive contracts to consultants that are on retainer contracts; (5) Organizational conflicts of interest; (6) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and (7) Any arbitrary action in the procurement process.”

2 CFR 200.319 (c)(1)

“When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the

performance or other salient requirements of procurement. The specific features of the named brand which must be met by offeror must be clearly stated.”

2 CFR 200.319 (b)

“The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographic preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.”

2 CFR 200.319 (d)

“The non-Federal entity must 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, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.”

Master Agreement (25), Section 16

FTA Circular 4220.1F Chapter VI 2. (g)

P8. Did the recipient appropriately use each method of procurement as described in its policies and procedures and in compliance with 2 CFR Part 200?

BASIC REQUIREMENT

The non-Federal entity must appropriately use one of the following methods of procurement: micro-purchase, small purchase, sealed bid, competitive proposals or non-competitive proposals.

APPLICABILITY

All recipients

DETAILED EXPLANATION FOR REVIEWER

Micro-purchases may be made without obtaining competitive quotations if the recipient determines that the price to be paid is fair and reasonable. These purchases should be distributed equitably among qualified suppliers to the extent practicable, and must not be split to avoid the requirements for competition above the micro-purchase threshold.

Small purchase procedures require that price or rate quotations be obtained from an adequate number of qualified sources (at least two). The solicitations and quotations may be either oral or written but must be evidenced in the recipient's records. **There must not be any splitting of purchases to avoid requirements for competition above the small purchase threshold.**

For procurements exceeding the Federal simplified acquisition threshold (currently \$250,000), sealed bids or competitive proposals are generally required. **All solicitations must incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured.**

- Sealed Bids/IFB – Bids are publicly solicited and solicited from an adequate number of known suppliers; **sufficient response time is provided; the solicitation defines the items or services requested; there must be two or more responsible bidders; bids are to be opened publicly at a prescribed time and place;** a firm fixed-price award is made to the lowest (best price), responsive (meets all specifications), and responsible (is qualified to perform the work) bidder; **and any bids may be rejected for sound documented reason.**
- Competitive Proposals/RFP – Proposals are publicly solicited **and solicited** from an adequate number of sources and the award is made to the responsive and responsible proposer whose offer is most advantageous to the recipient, with price and other factors considered. Recipients must identify their evaluation factors and indicate the relative importance that each has towards the award.

Non-competitive proposals: When the recipient requires supplies or services available from only one responsible source, and no other supplies or services will satisfy its requirements, the recipient may make a sole-source award. In the case of a sole-source award, the recipient should prepare a written cost analysis and justification. The property or services are available from one source if one of the conditions described below is present:

- Unique or Innovative Concept. 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 in the past, has not been available 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, 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 highly specialized equipment and major components, when it is likely that award to another contractor would result in unacceptable delays in fulfilling the recipient's needs.

While professional services can be procured on a sole-source basis if justified, in general, a competitive environment does exist for professional services and the recipient needs to provide for competition when FTA funds are used to pay for these services.

With a single bid, the documentation should include a cost analysis, as well as an explanation as to why a single bid was obtained. Upon receiving a single bid or proposal in response to a competitive solicitation, the recipient should determine if its solicitation was unduly restrictive. This should include a review of the specifications for undue restrictiveness and should include a survey of potential sources that chose not to submit a bid or proposal.

Time-and-materials contracts are listed as a restricted type of procurement. They are contracts in which the contractor charges a single rate that includes overhead and profit for labor, and materials are billed at cost. Generally, the total value of a time and materials type contract is an indeterminate amount. As such, recipients are not permitted to use FTA funds for time-and-materials type contracts unless it determines that no other type of contract is suitable for the procurement. If time-and-materials type contracts are used, recipients must specify a ceiling price that the contractor shall not exceed, except at its own risk.

Cost Plus Percentage of Cost Contracts. 2 CFR 200.323 expressly prohibits the use of the cost plus a percentage of cost and percentage of construction cost methods of contracting.

The cost-plus-percentage of a cost is a type of contract that requires the buyer to reimburse all legitimate project costs towards the seller. Aside from reimbursing costs, the buyer also needs to pay a percentage of cost as stipulated and agreed-upon in the contract. This type of contract raises the additional fee as the cost of the contract rises and does not provide any incentive to the contractor to control the project cost.

A percentage of construction cost contract is similar. This method of contracting may be requested by project/construction managers or A&E firms and would include a provision that ties their fixed fee or profit to a percentage of construction cost.

Change orders on construction projects are another type of procurement action where the request for a cost plus a percentage of cost arrangement may be made by a contractor. Recipients should exercise caution in change order negotiations to ensure that cost plus percentage of cost change orders are not used.

INDICATORS OF COMPLIANCE

- If the recipient used micro-purchase procedures, was it done in accordance with requirements?*
- If the recipient used small purchase procedures, was it done in accordance with requirements?*
- If the recipient used sealed bid procedures, was it done in accordance with requirements?*
- If the recipient used competitive proposal procedures, was it done in accordance with requirements?*
- Did the recipient include written justification of any non-competitive or sole source procurements in the procurement file?*
- If the recipient had awarded a contract to a single bidder, did it appropriately determine that the item was available only from a single source?*

- g. *If the recipient awarded any time and materials type contracts during the review period, did it determine that it was the only method suitable and was a ceiling price identified? Did the recipient have a monitoring process in place to verify actual time and materials used?*
- h. *Did the recipient use a cost plus percentage of cost or a cost plus percentage of construction cost method of contracting for any FTA funded procurement?*

INSTRUCTIONS FOR REVIEWER

Review the recipient's policies and procedures for dollar thresholds and procedures for micro-purchase, small purchase, sealed bid, competitive proposals or non-competitive proposals/sole source procurements, as applicable.

Review the list of FTA-funded procurements to determine which types of procurements were used.

Micro-purchase: Review selected procurements to determine if:

- this method was only used for procurements \$3,500 or less awarded prior to June 20, 2018, or \$10,000 or less for contracts awarded after June 20, 2018,
- the procurements were distributed equitably if there was more than one qualified supplier,
- the recipient documented its determination that the price was reasonable with a description of how that determination was made *Fair and Reasonable Price Determination [Micro-purchase] (PSR – 21)*, and
- there was no evidence that procurements were split to avoid procurement requirements for purchases above the micro-purchase threshold (such as repeated purchases of the same item(s)) *No Splitting [Micro-purchase] (PSR – 20)*. *Review the full listing of procurements to determine if there were repetitive types or amounts of procurements that were below the micro-purchase threshold. Review any instances of these, along with interviewing procurement staff to verify.*

Note to reviewers: State or local law or recipient policies/procedures may set a micro-purchase threshold lower than the federal threshold. In such cases, recipients must follow state or local law. However, if the state or local micro-purchase threshold is higher than the federal threshold, the recipient is constrained by the federal threshold for FTA-funded contracts.

Small purchase: Review selected procurements to determine if:

- this method was only used for procurements of \$150,000 or less awarded prior to June 20, 2018, or \$250,000 or less for procurements awarded after June 20, 2018. Procurements funded by awards issued on or before December 25, 2014, are subject to the previous simplified acquisition threshold of \$100,000. (per 49 CFR 18.36(d)),
- price or rate quotations *Price Quotations [Small Purchase] (PSR – 23)* were obtained from an adequate (at least two) number of qualified sources, and
- there was no evidence that procurements were split to avoid procurement requirements for purchases above the small purchase threshold (such as repeated purchases of the same item(s)). *Review the full listing of procurements to determine if there were repetitive types or amounts of procurements that were below the small purchase threshold. Review any instances of these, along with interviewing procurement staff to verify.*

Note to reviewers: State or local law or recipient policies/procedures may set a small purchase threshold lower than the federal threshold. In such cases, recipients must follow state or local law. However, if the state or local small purchase threshold is higher than the federal simplified acquisition threshold, the recipient is constrained by the federal threshold for FTA-funded contracts.

Sealed bid: Review selected procurements to determine if:

- bids were solicited from an adequate number of known suppliers *Adequate Competition – Two or More Competitors (PSR – 25) Adequate Solicitation (PSR-30)*, and there were at least two or more responsible bidders able to compete for the business,
- if the recipient is a local or tribal government, bids were publicly advertised in accordance with State and local laws *Advertised/Publicized (PSR-29)*,
- adequate time was allowed for potential vendors to prepare bids *Sufficient Bid Time [Sealed Bid] (PSR – 31)*,
- the invitation for bids defined the items or services in order for the bidder to properly respond, solicitation documents contained a clear and accurate specification or scope of work *Clear, Accurate, and Complete Specification (PSR – 24)*,
- the solicitation identified all requirements that offerors must fulfill and all other factors to be used in evaluating bids or proposals (PSR-16)
- bids were opened at the time and place prescribed in the invitation for bids, and, if the recipient is a local or tribal government, the bids were open publicly *Bid Opening [Sealed Bid] (PSR – 32)*,
- a responsiveness determination was made *Responsiveness [Sealed Bid] (PSR – 33)*,
- responsiveness was determined from the bid documents themselves, and, with very few exceptions, it was determined with no discussions or further input from the bidder *Discussions Unnecessary [Sealed Bid] (PSR – 28)*,
- a firm fixed price contract *Firm Fixed Price [Sealed Bid] (PSR – 26)* (lump sum or unit price) was awarded to the lowest *Selection on Price [Sealed Bid] (PSR – 27)* responsive and responsible bidder *Lowest Price [Sealed Bid] (PSR – 34)*, and
- any or all bids were rejected only if there was a sound, documented reason *Rejecting Bids [Sealed Bid] (PSR – 35)*.

Competitive proposal: Review selected procurements to determine if:

- requests for proposals were publicly advertised in accordance with State and local laws *Advertised/Publicized (PSR-29)*,
- solicitation documents contained a clear and accurate specification or scope of work *Clear, Accurate, and Complete Specification (PSR – 24)*,
- evaluation criteria and their relative importance were identified *Evaluation [RFP] (PSR – 36)*,
- the solicitation identified all requirements that offerors must fulfill and all other factors to be used in evaluating bids or proposals (PSR-16)
- proposals were solicited from an adequate number of qualified sources, *Adequate Competition – Two or More Competitors (PSR – 25), Adequate Solicitation (PSR – 30)*
- there was a written method for conducting technical evaluations of the proposals received and for selecting recipients, and *Written Procurement Selection Procedures (PSR – 16)*

- contracts were awarded to the responsive and responsible firm whose proposal is most advantageous, with price and other factors considered *Price and Other Factors [RFP] (PSR – 37)*.

For Architectural & Engineering (A&E) procurements, price should not be a factor in the selection criteria. A&E procurements are reviewed in a following question.

Non-competitive (sole source) procurement *Sole Source if Other Award is Infeasible (PSR – 38):*

Review selected procurements to determine if one of the following conditions was met:

- The recipient appropriately determined that the item was available from only a single source. Commonly, property or services are available from one source when one of the conditions described below is present:
 - *Unique or Innovative Concept.* 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 in the past, has not been available 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, 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 highly specialized equipment and major components, when it is likely that award to another contractor would result in unacceptable delays in fulfilling the recipient's needs.
- There was a public exigency or emergency for the requirement which would not permit a delay resulting from competitive solicitation. When relying on this provision, recipients may use a non-competitive procurement method only for its reasonable needs to address the exigency or emergency. For example, a recipient's facility receives an unprecedented 24-inches of snow in 24 hours in October and it does not have a snow removal contract in place. The recipient may enter into a non-competitive snow removal contract to clear the snow. However, the recipient may not use this emergency to justify entering into a non-competitive snow removal contract for the entire winter season.
- FTA expressly authorized noncompetitive proposals in response to a written request from the recipient.

Determine if the recipient included a written sole source justification in its procurement file **that meets one of the criteria above**.

Single bidder *Single Bid (PSR – 62):* Ask the recipient to provide information on state or local requirements for advertisement/dissemination of solicitation. Review any advertisement/dissemination procedures in the recipient's procurement policies. Review selected procurements to determine if the procurement files include an explanation as to why a single bid was obtained and if the recipient's determination of adequate competition included a review of the specifications for undue restrictiveness. Reviewing a solicitation for undue restrictiveness may include a survey of potential sources that chose not to submit a bid or proposal, and a review of whether the solicitation was adequately advertised and open for a sufficient period of time given the complexity of the project.

Time and materials *Time and Materials Contracts (PSR – 47)*: Prior to the site visit, examine the procurement listing provided by the recipient to determine if any time-and-materials type contracts were awarded during the review period. If so, during the site visit, examine at least one time and materials procurement file to determine if there was information noting that this was the only suitable type of procurement and that a ceiling price was included. **Also review the procurement file to determine if the recipient had a monitoring system to verify actual time and materials used as input into contract administrative procedures.**

Cost Plus Percentage of Costs Contracts *(PSR – 48)*- Prior to the site visit, review the procurement listing to identify project management/construction management contracts, construction contracts, and change orders to construction contracts for review during the site visit. Review procurement policies and procedures to determine if this method of contracting is described or prohibited.

During the site visit, ask the procurement representatives if this type of contracting is utilized. Examine selected procurement files to determine the type of contracting method used. Pay special attention to cost proposals, payment terms, and change order cost negotiations records for any provisions that tie a predetermined fee to actual contract costs.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it made procurements using micro-purchase procedures but used this method for procurements over \$3,500 for contracts awarded prior to June 20, 2018, or \$10,000 for contracts awarded after June 20, 2018, did not make reasonable price determinations, and/or did not distribute purchases equitably if applicable.

DEFICIENCY CODE P8-1: Improper micro-purchase procedures used

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office evidence that it has updated its procurement process to correctly implement micro-purchase procedures. For the next micro-purchase, submit to the FTA regional office documentation that the required process was implemented.

The recipient is deficient if it made procurements using micro-purchase procedures and there was evidence of splitting procurements to be within the micro-purchase threshold.

DEFICIENCY CODE P8-8: Improper splitting for micro-purchase

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office evidence that it has updated its procurement process to ensure improper splitting will not occur with micro-purchase procurements. For the next micro-purchase, submit to the FTA regional office documentation that the required process was implemented.

The recipient is deficient if it made procurements using small purchase procedures and there was evidence of splitting procurements to be within the small purchase threshold.

DEFICIENCY CODE P8-9: Improper splitting for small purchase

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office evidence that it has updated its procurement process to ensure improper splitting will not occur with small purchase procurements. For the next small purchase, submit to the FTA regional office documentation that the required process was implemented.

The recipient is deficient if it made procurements using small purchase procedures for procurements over \$150,000 for contracts awarded prior to June 20, 2018, or \$250,000 for contracts awarded after June 20, 2018, and price or rate quotations were not obtained.

DEFICIENCY CODE P8-10: Lack of price or rate quotations for small purchase

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office evidence that it has updated its procurement process to ensure price or rate quotations are documented for small purchases. For the next small purchase, submit to the FTA regional office documentation that the required process was implemented.

The recipient is deficient if it made procurements using sealed bid procedures or competitive proposal procedures but bids or proposals were not publicly advertised.

DEFICIENCY CODE P8-11: Procurement not advertised or publicized

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office evidence that it has updated its procurement process to ensure competitive procurements above the Simplified Acquisition Threshold are advertised or publicized. For the next sealed bid or competitive proposal, submit to the FTA regional office documentation that the required procedures were followed.

The recipient is deficient if it made procurements using sealed bid procedures or competitive proposal procedures but cannot document that an adequate number of potential sources were solicited.

DEFICIENCY CODE P8-12: Inadequate solicitation

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office evidence that it has updated its procurement process to ensure the procurement file contains documentation of the potential vendors solicited for competitive procurements above the Simplified Acquisition Threshold. For the next sealed bid or competitive proposal, submit to the FTA regional office documentation that the required procedures were followed.

The recipient is deficient if it made procurements using sealed bid or competitive proposal procedures and the procurement documents did not include a determination that two or more responsible bidders were will and able to compete for the business (sealed bid) or that more than one source submitted an offer (competitive proposal).

DEFICIENCY CODE P8-13: Inadequate competition [two or more competitors]

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office evidence that it has updated its procurement process to ensure that there is adequate competition for using the sealed bid or competitive proposal method. For the next applicable procurement, submit to the FTA regional office documentation that the required process was implemented.

The recipient is deficient if it made procurements using sealed bid or competitive proposal procedures and the solicitation did not identify all requirements that offerors must fulfill and all other factors to be used in evaluating bids or proposals.

DEFICIENCY CODE P8-26: Written selection procedures

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office evidence that it has updated its procurement process to ensure that solicitations identify all requirements that offerors must fulfill and all other factors to be used in evaluating bids or proposals when using the sealed bid or competitive proposal method. For the next applicable procurement, submit to the FTA regional office documentation that the required process was implemented.

The recipient is deficient if it made procurements using sealed bid procedures and the procurement documents did not contain a complete, adequate, and realistic specification or purchase description.

DEFICIENCY CODE P8-14: Lack of complete, adequate, and realistic specification [sealed bid]

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office evidence that it has updated its procurement process to ensure complete, adequate, and realistic specification for sealed bids. For the next applicable procurement, submit to the FTA regional office documentation that the required process was implemented.

The recipient is deficient if it made procurements using sealed bid procedures and did not utilize a firm fixed price contract or justify the use of an alternate type of contract.

DEFICIENCY CODE P8-15: Firm fixed price contract deficiency [sealed bid]

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office evidence that it has updated its procurement process to ensure that a firm fixed price contract is used for sealed bid awards or a written justification is made for use of an alternate type of contract. For the next applicable procurement, submit to the FTA regional office documentation that the required process was implemented.

The recipient is deficient if it used sealed bid procedures that did not contain a selection process based on the lowest price provided by a responsive and responsible bidder.

DEFICIENCY CODE P8-16: Selection not based on price [sealed bid]

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office evidence that it has updated its procurement process to ensure that sealed bid selection processes are based on the lowest responsive and responsible bid. For the next applicable procurement, submit to the FTA regional office documentation that the required process was implemented.

The recipient is deficient if, when using sealed bid procedures, responsiveness was not determined from the bid documents themselves, and, with very few exceptions, discussions or further input was sought from the bidder(s),

DEFICIENCY CODE P8-17: Discussions unnecessary deficiency [sealed bid]

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office evidence that it has updated its procurement process to ensure that when using the sealed bid method of procurement, the solicitation and procurement process is designed so that discussions are not necessary with potential bidders. For the next applicable procurement, submit to the FTA regional office documentation that the required process was implemented.

The recipient is deficient if it made procurements using sealed bid procedures and did not allow adequate time for a bidder to prepare bids.

DEFICIENCY CODE P8-18: Insufficient bid time

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office evidence that it has updated its procurement process to ensure potential bidders will have sufficient time to prepare bids. For the next sealed bid, submit to the FTA regional office documentation that the required procedures were followed.

The recipient is deficient if it made procurements using sealed bid procedures but did not have a public bid opening (for or did not advertise the date, place and time of the bid opening).

DEFICIENCY CODE P8-19: Bid opening deficient

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office evidence that it has updated its procurement process to ensure public bid openings are held when using the sealed bid method of procurement and that the date, location and time of the bid opening are made public. For the next sealed bid, submit to the FTA regional office documentation that the required procedures were followed.

The recipient is deficient if it made procurements using sealed bid procedures and did not document a determination of responsiveness for the bid that was awarded.

DEFICIENCY CODE P8-20: Responsiveness determination deficient [sealed bid]

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office evidence that it has updated its procurement process to ensure a written determination of responsiveness is made prior to awarding a low bid contract. For the next sealed bid, submit to the FTA regional office documentation that the required procedures were followed.

The recipient is deficient if it made procurements using sealed bid procedures and the contract was awarded to other than the lowest responsive and responsible bidder.

DEFICIENCY CODE P8-21: Lowest price deficiency [sealed bid]

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office evidence that it has updated its procurement process to ensure sealed bid procurements are awarded to the responsible bidder submitting the lowest responsive bid. For the next sealed bid, submit to the FTA regional office documentation that the required procedures were followed.

The recipient is deficient if it used sealed bid procedures and rejected any or all bids without documenting a sound business reason

DEFICIENCY CODE P8-22: Undocumented rejection of bids [sealed bid]

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office evidence that it has updated its procurement process to ensure that a sound business reason is documented in the procurement file if any or all bids are rejected. For the next sealed bid, submit to the FTA regional office documentation that the required procedures were followed.

The recipient is deficient if it made procurements using the competitive proposal procedures but it did not have a written method in place for conducting technical evaluations and making a selection and/or the RFP did not include the relative importance of the evaluation factors.

DEFICIENCY CODE P8-23: Evaluation deficiencies [RFP]

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office evidence that it has updated its procurement process to document a written method in place for conducting technical evaluations and making a selection and/or for ensuring that RFPs include the relative importance of evaluation factors. For the next sealed bid, submit to the FTA regional office documentation that the required procedures were followed.

The recipient is deficient if it made an award using competitive proposal procedures but the procurement file does not contain documentation of how the award was based on price and other factors.

DEFICIENCY CODE P8-24: Price and other factors evaluation deficiencies [RFP]

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office evidence that it has updated its procurement process to ensure competitive proposal procurement files contain documentation that demonstrates the recipient awarded the contract based on price and other factors. For the next competitive proposal, submit to the FTA regional office documentation that the required procedures were followed.

The recipient is deficient if it made sole source procurements but does not have a sole-source justification in its procurement files, and/or if its justification does not include at least one of the conditions permitting the use of a sole source procurement.

DEFICIENCY CODE P8-5: Lacking required justification(s) and documentation for sole-source award(s)

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office evidence of an implemented policy to ensure that future sole source procurements are properly conducted and documented. Where contracts are ongoing, confer with the FTA regional office to determine if the recipient should be directed not to exercise any options, or possibly terminate the existing contract for convenience, and rebid for the required goods and services in accordance with Federal requirements. For the next procurement, submit to the FTA regional office documentation that the required process was implemented.

The recipient is deficient if it does not have the appropriate justification for single-bid awards.

DEFICIENCY CODE P8-6: Lacking required justification(s) and documentation for single-bid award(s)

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office evidence of an implemented policy to ensure that future single bid procurements are properly documented. For the next applicable procurement, submit to the FTA regional office documentation that the required process was implemented.

The recipient is deficient if FTA funds were used for a time-and-materials contract and the files do not support the recipient's decision or the contract does not specify a ceiling price.

DEFICIENCY CODE P8-7: Improper time and materials contract

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office evidence that it has updated its procurement process to include procedures for the proper use of FTA-assisted time and materials contracts. The recipient must obtain prior FTA regional office approval before entering into the next time and materials contract.

The recipient is deficient if the cost plus percentage of cost or the percentage of construction cost method of contracting was used.

DEFICIENCY CODE P8-25: Cost plus percentage of cost contracting used

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office documentation that it has revised its procurement policies and procedures and has established a system to ensure that the cost plus percentage of cost method of contracting will not be used for FTA funded procurements.

GOVERNING DIRECTIVES

2 CFR 200.320 (a) Procurement by micro-purchases

“Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (§200.67 Micro-purchase) (\$3,000 or less prior to October 1, 2015; \$3,500 or less effective October 1, 2015). To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.”

Note: Threshold increased to \$10,000 effective June 20, 2018.

FTA 4220.1F Chapter VI 3. a. (2) (b) Prohibited Divisions

“The recipient may not divide or reduce the size of its procurement to avoid the additional procurement requirements applicable to larger acquisitions.”

FTA 4220.1F Chapter VI 3. a. (2) (c) Documentation

“FTA’s only documentation requirement for micro-purchases is a determination that the price is fair and reasonable and a description of how the recipient made its determination. FTA does not require the recipient to provide its rationale for the procurement method used, selection of contract type, or reasons for contractor selection or rejection.”

2 CFR 200.319 (c)(1) Clear accurate and complete specification

(c) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

(1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must 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, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offerors must be clearly stated; and (2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

2 CFR 200.320 (b) Procurement by 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 the Simplified Acquisition Threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.”

2 CFR 200.320 (c) Procurement by 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. The sealed bid method is the preferred method for procuring construction, if the conditions in paragraph (c)(1) of this section apply. (1) In order for sealed bidding to be feasible, the following conditions should be present: (i) A complete, adequate, and realistic specification or purchase description is available; (ii) Two or more responsible bidders are willing and able to compete effectively for

the business; and (iii) 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. (2) If sealed bids are used, the following requirements apply: (i) Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised; (ii) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond; (iii) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly; (iv) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must 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 (v) Any or all bids may be rejected if there is a sound documented reason.”

2 CFR 200.320 (d) Procurement by competitive proposals

“The technique of competitive proposals is 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 requirements apply: (1) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical; (2) Proposals must be solicited from an adequate number of qualified sources; (3) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients; (4) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.”

2 CFR 200.320 (f) Procurement by noncompetitive proposals

“Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply: (1) The item is available only from a single source; (2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation; (3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or (4) After solicitation of a number of sources, competition is determined inadequate.”

FTA Circular 4220.1F Chapter VI 3. i. (1) (b) 2. Single Bid or Single Proposal

“Upon receiving a single bid or single proposal in response to a solicitation, the recipient should determine if competition was adequate. This should include a review of the specifications for undue restrictiveness and might include a survey of potential sources that chose not to submit a bid or proposal. a. Adequate Competition. FTA acknowledges competition to be adequate when the reasons for few responses were caused by conditions beyond the recipient’s control. Many unrelated factors beyond the recipient’s control might cause potential sources not to submit a bid or proposal. If the competition can be determined adequate, FTA’s competition requirements will be fulfilled, and the procurement will qualify as a valid competitive award. b. Inadequate Competition. FTA acknowledges competition to be inadequate when, caused by conditions within the recipient’s control. For example, if the specifications used were within the recipient’s control and those specifications were unduly restrictive, competition will be inadequate.”

2 CFR 200.318 (j)(1)

“The non-Federal entity may use a time and materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time-and-materials type contract means a contract whose cost to a non-Federal entity is the sum of: (i) The actual cost of materials; and (ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit. (2) Since this formula generates an open-ended

contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.”

2 C.F.R. 200.323 (d)

(d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

P9. Does the recipient procure Architectural Engineering (A&E) Services in accordance with 49 U.S.C. 5325(b)?

BASIC REQUIREMENT

If the recipient procures services for program management, architectural, engineering, construction management, a feasibility study, and preliminary engineering, design, architectural, engineering, surveying, mapping, or related services (collectively referred to as “A&E services”) for an FTA-funded project, it must use a qualifications-based method. This method is not to be used for procuring services other than A&E.

APPLICABILITY

All recipients

DETAILED EXPLANATION FOR REVIEWER

Qualifications Exclude Price [A&E] (PSR – 51) and Serial Price Negotiations [A&E] (PSR – 52)

A&E services include program management, architectural, engineering, construction management, a feasibility study, and preliminary engineering, design, architectural, engineering, surveying, mapping, or related services. FTA guidance suggests that 49 U.S.C. Section 5325(b) authorizes the use of qualifications-based procurement procedures only for those services that directly relate or lead to construction, alteration, or repair of real property. A recipient may not use qualifications-based procurement procedures to acquire non-A&E services, even if those services will be or could be provided by an A&E firm. For design/build procurements, FTA expects the recipient to use the procurement method appropriate for the services having the greater cost, even though the other necessary services would not typically be procured by that method.

When using FTA assistance to contract for A&E services, recipients, including states, are required to use competitive proposal procedures based on the Brooks Act or an equivalent qualifications-based requirement of a State adopted before August 10, 2005.

For qualifications-based procurements under the Brooks Act, price must not be considered during the selection phase of the most qualified offeror. Offerors’ qualifications are evaluated to determine the most qualified offeror. Price is then negotiated with the most qualified firm. If an agreement cannot be reached, then the recipient may negotiate with the next most qualified firm and so on until an agreement is reached on a price that the **recipient** determines is fair and reasonable.

Recipients may make multiple awards to cover needs for various disciplines under an “on-call” type of contract. Under this type of contract, the recipient must select the most qualified firm for each discipline (e.g., architect, seismic engineer, etc.). When the recipient has a project that needs an A&E firm, the recipient negotiates price with the most qualified firm only. On-call contracts may be suited for smaller jobs that would be too expensive (administratively) to compete individually. The Brooks Act does not permit a recipient to enter into a contract with multiple “qualified” A&E firms with work assignments to be distributed among the various firms based on price or some other selection method. An on-call A&E contract means that the recipient has identified the most qualified firm and has entered into a contract with that firm for future A&E work, as needed.

Solicitations for on-call awards must describe how the work will be assigned, and not leave the process undefined. For example, if company A is initially evaluated as being the best for geothermal work, then all such work should be given to that company as tasks are defined, assuming the company can perform within the timeframes required for the task. The procurement officials should not leave it to someone's judgment later to withhold work from company A and give it to company B based on a subjective judgment that B would be better than A for this job even though A was evaluated first initially. The selected companies also should not be allowed to update their qualifications during the term of the contract and so be rated higher than they were initially. There should be a finite period for these contract awards, after which a new round of qualifications-based awards would be made.

INDICATORS OF COMPLIANCE

- a. *Does the recipient have and follow a State statute prescribing a formal procedure for the procurement of A&E services, adopted prior to August 10, 2005 that it is an equivalent qualifications-based requirement of the Brooks Act?*
- b. *If the recipient does not have an applicable State statute, does it use competitive proposals based on the Brooks Act when procuring A&E services?*
- c. *Were price negotiations only carried out with the most qualified firm?*
- d. *If geographic location was used as a selection criterion, did it still allow for an adequate number of qualified firms?*
- e. *Did on-call solicitations describe how on-call work will be assigned?*
- f. *If on-call contracting was used, were the on-call task orders only negotiated and awarded to the most qualified firm?*

INSTRUCTIONS FOR REVIEWER

Prior to the site visit, review State statutes, the state management plan, and other documentation of procurement procedures for contracting A&E services through qualifications-based requirements. Review the list of procurements provided in advance of the review to identify procurements that would likely require Brooks method procedures. **Procurements requiring the Brooks method must include both A&E procurements and those directly related to, or leading to construction, alteration, or repair of real property.**

On site, discuss with the recipient, and evaluate procurement files to determine if A&E services were procured using a qualifications-based process in accordance with the Brooks Act, where firms are ranked based only on their qualifications and price is then negotiated with the most qualified firm. **The instructions to proposers and the evaluation criteria of the solicitation document should be reviewed to ensure price was not to be used to evaluate proposals. The description of how the contract will be awarded should also be reviewed to ensure proposed pricing information will only be evaluated for the firm that is identified as most qualified and that other pricing will only be evaluated if a fair and reasonable price cannot be negotiated with the most qualified firm and negotiations are terminated. Review the scoring or evaluation sheets completed by each member of the evaluation committee and the justifications for scores selected. Review documentation of the price negotiations to verify that only the most qualified firm was involved in price negotiations initially.**

When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

Review all “on-call” contracts for A&E services to determine if they comply with the Brooks Act. **The recipient should be specifically asked if they utilize on-call A&E contracting where multiple firms are selected and eligible for assignments. These types of contracts may also be identified by recipients as “delivery order”, “open-end”, “job-order”, or “pool” contracts. Review solicitations and contracts to determine the method of assignments from these types of contracts. If on-call contracting is used, review the recipient’s on-call contracting procedures to determine if assignments or tasks under these contracts are negotiated with the most qualified firm identified for that type of work during the on-call contractor selection process. Review a sample of assignment authorizations to document the actual process used to authorize assignments of work.**

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient, including states, is deficient if it is in a state with a policy for A&E procurements adopted prior to August 10, 2005 but it is not following it or it is not following the Brooks Act, when procuring

applicable services. The recipient also is deficient if it is using a qualifications-based method for procuring non-A&E services.

DEFICIENCY CODE P9-1: Recipient has A&E procurement deficiencies

SUGGESTED CORRECTIVE ACTION: The recipient must provide the FTA regional office a list of all active A&E contracts procured with a method other than the qualifications-based method. The FTA regional office will advise the recipient as to whether those contracts must be terminated and resolicited. The recipient must provide the FTA regional office procedures for following qualifications-based procedures when using FTA assistance to contract for A&E services. For the next procurement, the recipient must submit to the FTA regional office documentation that the required process was implemented.

The recipient is deficient if it carried out price negotiations with more than one proposer simultaneously.

DEFICIENCY CODE P9-2: A&E price negotiation deficiencies

SUGGESTED CORRECTIVE ACTION: The recipient must provide the FTA regional office a list of all active A&E contracts procured where price negotiations were conducted with more than one proposer simultaneously. The FTA regional office will advise the recipient as to whether those contracts must be terminated and resolicited. The recipient must provide the FTA regional office procedures for following qualifications-based procedures when using FTA assistance to contract for A&E services. For the next procurement, the recipient must submit to the FTA regional office documentation that the required process was implemented.

The recipient is deficient if geographic location was a selection criterion, but there was not an appropriate number of qualified firms that could meet that criterion.

DEFICIENCY CODE P9-3: A&E geographic preference deficiencies

SUGGESTED CORRECTIVE ACTION: The recipient must provide the FTA regional office a list of all active A&E on-call contracts and associated task orders. The FTA regional office will advise the recipient as to whether those contracts must be terminated and resolicited. The recipient must provide the FTA regional office procedures for following qualifications-based procedures when using FTA assistance to contract for on-call A&E services. For the next procurement, the recipient must submit to the FTA regional office documentation that the required process was implemented.

The recipient, including states, is deficient if solicitations for multi-consultant on-call services did not describe how work will be assigned or on-call A&E services were not negotiated and awarded to the most qualified firm identified in a multi-consultant on-call services procurement.

DEFICIENCY CODE P9-4: A&E on-call service deficiencies

SUGGESTED CORRECTIVE ACTION: The recipient must provide the FTA regional office a list of all active A&E on-call contracts and associated task orders. The FTA regional office will advise the recipient as to whether those contracts must be terminated and resolicited. The recipient must provide the FTA regional office procedures for following qualifications-based procedures when using FTA assistance to contract for on-call A&E services. For the next procurement, the recipient must submit to the FTA regional office documentation that the required process was implemented.

GOVERNING DIRECTIVES

49 U.S.C. 5325 (b) Architectural, Engineering, and Design Contracts

“(1) Procedures for awarding contract. A contract or requirement for program management, architectural engineering, construction management, a feasibility study, and preliminary engineering, design, architectural, engineering, surveying, mapping, or related services for a project for which Federal assistance is provided under this chapter shall be awarded in the same way as a contract for architectural and engineering services is negotiated under chapter 11 of title 40 [aka “Brooks Act”] or an equivalent qualifications-based requirement of a State adopted before August 10, 2005.”

40 U.S.C. 1101- 1104 (“Brooks Act”)

§1101: “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.”

§1104(b): “Order of Negotiation. The agency head shall attempt to negotiate a contract, as provided in subsection (a), with the most highly qualified firm selected under section 1103 of this title. If the agency head is unable to negotiate a satisfactory contract with the firm, the agency head shall formally terminate negotiations and then undertake negotiations with the next most qualified of the selected firms, continuing the process until an agreement is reached. If the agency head is unable to negotiate a satisfactory contract with any of the selected firms, the agency head shall select additional firms in order of their competence and qualification and continue negotiations in accordance with this section until an agreement is reached.”

2 CFR 200.320(d)(5)

“The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.”

2 CFR 200.319(a)(7)(a)

“All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:.... (7) Any arbitrary action in the procurement process.”

FTA Circular 4220.1F Chapter IV 2. h. (2) (a)

“FTA has long administered the requirement for using qualifications-based procurement procedures for selection of contractors that perform A&E services, generally associated with the construction, alteration, or repair of real property. FTA interprets 49 U.S.C. Section 5325(b) to authorize the use of qualifications-based procurement procedures only for those services that directly support or are directly connected or related to construction, alteration, or repair of real property. FTA's interpretation of 49 U.S.C. Section 5325(b) is consistent with typical Federal policies implementing the “Brooks Act,” 40 U.S.C. Section 1102, which limits qualifications-based procurement procedures to research, planning, development, design, construction, alteration, or repair of real property. Thus, if services, such as program management, feasibility studies, or mapping, are not directly in support of, directly connected to, or directly related to, or lead to construction, alteration, or repair of real property, then the recipient may not use qualifications-based procurement procedures to select the contractor that will perform those services.”

P10. Does the recipient develop independent cost estimates and conduct cost and/or price analysis as described in its policies and procedures and for each procurement action above the Simplified Acquisition Threshold?

BASIC REQUIREMENT

Recipients must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold. As a starting point, the recipient must make independent estimates before receiving bids or proposals.

APPLICABILITY

All recipients

DETAILED EXPLANATION FOR REVIEWER

Cost Analysis Required (Sole Source) (PSR- 39), Cost or Price Analysis (PSR- 41)

Recipients must perform a cost or price analysis in connection with every procurement action exceeding the applicable Simplified Acquisition Threshold, including contract modifications, after receiving bids, but before awarding a contract. Note that effective June 20, 2018, the Simplified Acquisition Threshold increased from \$150,000 to \$250,000. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the recipient must make independent cost estimates before receiving bids or proposals.

Generally, a cost analysis must be performed for: (1) procurements which require that offerors submit detailed elements of direct and indirect costs; (2) procurements where adequate price competition is lacking; and/or (3) sole-source procurements, unless price reasonableness can be established based on market prices. *Obtaining cost elements for sole source pricing of manufactured items can be difficult or impossible since many vendors may feel this information is proprietary. In these cases, recipients should prepare a price analysis to determine if the price is fair and reasonable.*

Price analysis (i.e., using catalog, market prices, or comparison of bidders) may be performed for all other procurements. *A price analysis is a more simplified process and is normally used when two or more responsive and responsible bids or proposals have been received.*

For each contract in which there is no price competition and in all cases where a cost analysis is performed, the recipient must negotiate profit as a separate element of the price. To establish a fair and reasonable profit, consideration must 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 area for similar work. A bidder's profit should be separately negotiated and not based on a flat percentage of estimated contract costs.

Independent Cost Estimate (PSR-7)

The independent cost estimate (ICE) is a tool to assist in determining the reasonableness of the bid or proposal being evaluated; that is, to assist in performing the cost or price analysis. An ICE is the starting point for conducting a cost or price analysis. It is required for all procurements exceeding the simplified acquisition threshold. An ICE is completed prior to receipt of bids or proposals. *An ICE is required for procurement actions such as contract modifications and change orders.* It can range from a simple budgetary estimate to a complex estimate based on inspection of the product itself and review of items like drawings, specifications, and information from previous procurements. The word "independent" means that the estimate is prepared without the influence of persons who have a financial interest in, or will be considered for, the resulting award. It does not imply that it is performed by someone other than the recipient. This could be the case, however, if the recipient does not have the expertise for a large complex procurement.

The ICE is especially critical whenever there is no price competition or where offerors are submitting price proposals for goods or services that are not exactly comparable (e.g., for procurements of high-

technology items or professional services). It is also useful in competitive procurements to alert the recipient when all competitors are submitting unreasonably high or low-cost proposals.

INDICATORS OF COMPLIANCE

- a. *Did the recipient develop an ICE prior to the receipt of bids and proposals for procurements above the Simplified Acquisition Threshold?*
- b. *Did the recipient develop an ICE for change orders and sole source procurements over the Simplified Acquisition Threshold?*
- c. *Was the independent cost estimate prepared prior to receipt of bids or proposals and did it contain the basis for the estimated cost?*
- d. *Did the recipient conduct a cost analysis or price analysis for every procurement action above the Simplified Acquisition Threshold?*
- e. *Did the recipient develop a cost analysis for change orders or sole source procurements?*
- f. *Did the recipient negotiate profit for sole source procurements and for every instance where a cost analysis was performed?*

INSTRUCTIONS FOR REVIEWER

Independent Cost Estimate

Prior to the site visit, examine the recipient's policies and procedures. Onsite, review selected procurements to determine if the recipient developed an independent cost estimate prior to receipt of bids or proposals for procurements above the Simplified Acquisition Threshold. **The independent cost estimate (ICE) should be contained in the procurement file and be in writing. Determine if the ICE is dated to verify that it was completed prior to the receipt of bids or proposals. Determine if the ICE contains documentation of how the recipient arrived at the estimate. If the recipient required a breakdown of estimated costs, determine if the in-house independent cost estimate was broken down into similar cost elements.**

Cost or Price Analysis

Review procurements over the Simplified Acquisition Threshold to determine if each cost or price analysis includes a written narrative of how the recipient determined the cost or price was fair and reasonable prior to a contract award. Determine if the analysis compared the prices or costs received to the ICE. In certain circumstances, the ICE may be much higher or lower than the costs or prices received. If this is the case for procurements reviewed, obtain documentation from the recipient on how it determined to move forward with the award.

Determine if the recipient adequately documented a price analysis when a cost analysis was not required.

Determine if a cost analysis was performed in accordance with the recipient's policies and procedures and 2 CFR Part 200.323 for: (1) procurements which require that offerors submit detailed elements of direct and indirect costs; (2) procurements where adequate price competition is lacking; (3) **change orders**; and/or (4) **sole-source procurements. Determine if the cost analysis documented how a fair and reasonable profit was determined and if the extent of the analysis appears to be adequate to the size and complexity of the procurement. For sole source awards and in any other instance where cost analysis was used, determine if profit was negotiated as a separate element of the price, taking into account aspects such as 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 area for similar work.**

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it has not conducted independent cost estimates for procurements above the Simplified Acquisition Threshold.

DEFICIENCY CODE P10-1: Lacking independent cost estimate

SUGGESTED CORRECTIVE ACTION: The recipient must provide the FTA regional office documentation that it has updated its procurement process to include development of independent cost estimates prior to receipt of bids or proposals. For the next procurement, submit to the FTA regional office documentation that the required process was implemented.

The recipient is deficient if it has not conducted independent cost estimates for change orders or sole source procurements above the Simplified Acquisition Threshold.

DEFICIENCY CODE P10-3: Lacking independent cost estimate for change orders or sole source procurements

SUGGESTED CORRECTIVE ACTION: The recipient must provide the FTA regional office documentation that it has updated its procurement process to include development of independent cost estimates prior to receipt of sole source bids or proposals and change orders. For the next procurement, submit to the FTA regional office documentation that the required process was implemented.

The recipient is deficient if the independent cost estimate is not dated, was dated after receipt of the bid or proposal, or there was no basis for how the estimate was derived.

DEFICIENCY CODE P10-4: Inadequate independent cost estimate

SUGGESTED CORRECTIVE ACTION: The recipient must provide the FTA regional office documentation that it has updated its procurement process to ensure the independent cost estimate is dated, was prepared prior to receipt of bids or proposals, and contains the basis for how the estimate was derived. For the next procurement, submit to the FTA regional office documentation that the required process was implemented.

The recipient is deficient if it did not conduct a cost analysis or price analysis, as applicable, for procurements above the Simplified Acquisition Threshold or if the extent of the analysis was not sufficient based on the size and complexity of the procurement.

DEFICIENCY CODE P10-2: Lacking required cost/price analysis

SUGGESTED CORRECTIVE ACTION: The recipient must provide the FTA regional office documentation that it has updated its procurement process to include performing applicable cost or price analysis for procurements above the Simplified Acquisition Threshold. For the next applicable procurement, submit to FTA documentation that the required analysis was implemented.

The recipient is deficient if a cost analysis was not prepared or was inadequate for change orders or sole source procurements over the Simplified Acquisition Threshold.

DEFICIENCY CODE P10-5: Cost analysis lacking for change orders or sole source procurements

SUGGESTED CORRECTIVE ACTION: The recipient must provide the FTA regional office documentation that it has updated its procurement process to include performing a cost

analysis for change orders and sole source procurements. For the next change order, submit to the FTA regional office documentation that the required cost analysis was completed.

The recipient is deficient if, for awards without price competition, or any other instance where a cost analysis was used, profit was not negotiated as a separate element.

DEFICIENCY CODE P10-6: Profit not negotiated when cost analysis required

SUGGESTED CORRECTIVE ACTION: The recipient must provide the FTA regional office documentation that it has updated its procurement process to include negotiating profit as a separate element for procurements requiring a cost analysis. For the next sole source procurement, submit to the FTA regional office documentation that the required cost analysis was completed.

GOVERNING DIRECTIVES

2 CFR § 200.323

“(a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.

(b) The non-Federal entity must 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 must 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 area for similar work.

(c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under Subpart E—Cost Principles of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.

(d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.”

FTA Circular 4220.1F Chapter VI 6. a. Cost Analysis

“The recipient must obtain a cost analysis when a price analysis will not provide sufficient information to determine the reasonableness of the contract cost. The recipient must obtain a cost analysis when the offeror submits elements (that is, labor hours, overhead, materials, and so forth) of the estimated cost, (such as professional consulting and A&E contracts, and so forth). The recipient is also expected to obtain a cost analysis when price competition is inadequate, when only a sole source is available, even if the procurement is a contract modification, or in the event of a change order. The recipient, however, need not obtain a cost analysis if it can justify 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.”

FTA Circular 4220.1F Chapter VI 6. b. Price Analysis

“If the recipient determines that competition was adequate, a price analysis, rather than a cost analysis, is required to determine the reasonableness of the proposed contract price. As discussed previously in subsection 3.a of this Chapter, the price analysis for micro-purchases may be limited. Similarly, the

recipient may use an abbreviated price analysis for small purchases in most cases. 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 many utilities purchases), or a comparison with recent prices for similar goods and services.”

P11. Did the recipient include applicable federal clauses in FTA-funded procurements exceeding the micro-purchase limit and construction contracts over \$2,000?

APPLICABILITY

All recipients

BASIC REQUIREMENT

Recipients must include and implement required clauses in its procurements.

DETAILED EXPLANATION FOR REVIEWER

Sound and Complete Agreement (PSR-19), Micro-purchase Davis-Bacon (PSR – 22), Bid Security (PSR – 53), Performance Security (PSR – 54), Payment Security (PSR – 55), and Clauses (PSR – 56)

Recipients are required to include specific required clauses in FTA-funded procurements, intergovernmental agreements (e.g., those involving states and other public entities), and subrecipient agreements. FTA Master Agreement identifies certain clauses that apply to third party contracts. 2 CFR 200.326 and Appendix II to 2 CFR Part 200 identify contract provisions for non-Federal contracts under a Federal award. FTA C. 4220.1F discusses Federal requirements that affect a recipient's acquisitions.

Additional guidance is provided through FTA's Third Party Procurement Frequently Asked Questions website. Through the National Rural Transportation Assistance Program (RTAP), FTA developed ProcurementPRO, an on-line procurement tool that assists recipients in developing procurement packages. Using ProcurementPRO, can assist a recipient in developing a procurement package that includes federally required clauses.

Generally, recipients may not modify an existing contract to include Federal clauses and so make it eligible for reimbursement with Federal funds. A recipients may, however include Federal clauses in a purchase order made against its state's General Services Administration (GSA)-type contracts.

Not all clauses apply to every contract. The applicability of clauses depends on the size and type of contract as is described in the exhibit at the end of this section. **Procurement contracts or purchase orders should be tailored and only the clauses applicable to the specific procurement should be included in the contract document. Including clauses not applicable to the procurement may restrict competition or result in higher contract pricing than necessary.** Contracts must include all applicable clauses. Incorporation of a clause by reference is permitted, however a general reference to FTA guidelines or clauses is not sufficient to incorporate a clause. A **checklist** of required clauses is provided in the Instructions for Reviewer. The checklist provides a citation for each required clause.

INDICATOR OF COMPLIANCE

- a. *Did the recipient include applicable required clauses in FTA-funded procurements?*
- b. *Did the recipient add clauses to a state GSA-type contract after contract award?*
- c. *Did the recipient obtain bid security, performance security, and payment security for applicable construction projects?*
- d. *Did the recipient include Davis Bacon wage determinations in applicable construction projects?*

INSTRUCTIONS FOR REVIEWER

Prior to the site visit, examine the recipient's policies and procedures. During the site visit, examine procurement files for inclusion of required clauses as detailed in the table shown below. **Suggested language for some of these clauses may be found in the FTA "Best Practices Procurement Manual."**

Review construction project files to verify that the recipient obtained bid security, performance security and payment security.

Review construction project files to ensure bid documents contain the wage determinations to be paid to workers under the provisions of the Davis-Bacon Act. As a general rule, the wage determination incorporated into a bid solicitation and related contract award establishes the minimum wage rates and fringe benefits which must be paid for the entire term of the contract. Where the proper wage determination is incorporated into a contract prior to award of the contract, wage determination modifications issued after bid opening are not applicable to the contract except in the case of a general wage determination in a contract that has not been awarded within 90 days after the bid opening and an extension of the 90-day limit has not been granted.

The reviewer should point out any instances where the recipient has included clauses or certifications not applicable to the procurements reviewed and discuss with the recipient the need to tailor clauses and certifications to the size and type of procurement.

Please note that in addition to these clauses, review of suspension/debarment and required certifications are covered in other questions of the review.

Clause	Threshold	Citation
<p>Bonding</p> <p>(a) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must 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 acceptance of the bid, execute such contractual documents as may be required within the time specified.</p> <p>(b) 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 secure fulfillment of all the contractor's obligations under such contract.</p> <p>(c) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment 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.</p>	<p>For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected.</p>	<p>2 CFR 200.325</p>

Clause	Threshold	Citation
Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate	All contracts exceeding the simplified acquisition level	Appendix II to Part 200
Termination for cause and for convenience including the manner by which it will be effected and the basis for settlement	For procurements over \$10,000	Appendix II to Part 200
Equal Employment Opportunity	All contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3	Appendix II to Part 200
Davis-Bacon Act	All prime construction contracts in excess of \$2,000	Appendix II to Part 200
Contract Work Hours and Safety Standards Act	All contracts in excess of \$100,000 that involve the employment of mechanics or laborers	Appendix II to Part 200
Rights to Inventions Made Under a Contract or Agreement	Contracts that meet the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements.”	Appendix II to Part 200
Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act	Contracts in excess of \$150,000	Appendix II to Part 200 42 U.S.C. §§ 7401 – 7671q 33 U.S.C. §§ 1251 – 1388

Clause	Threshold	Citation
<p>6002 of the Solid Waste Disposal Act</p> <p>When 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</p> <p>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</p>	<p>For a non-Federal entity that is a state agency or agency of a political subdivision of a state, contracts with a purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000</p>	<p>2 CFR 200.322</p>
<p>Notice to FTA and U.S. DOT Inspector General of information related to fraud, waste, abuse, or other legal matters</p>	<p>Applies to all contracts at all tiers expected to equal or exceed \$25,000. The recipient must require a prime contractor to “flow-down” the requirement to subcontractors.</p>	<p>FTA Master Agreement (25) Section 39(b)</p>
<p>Access to Records</p>	<p>All contracts</p>	<p>FTA Master Agreement (25), Sec. 9(c)(1)</p>
<p>DBE Assurance Clause</p>	<p>All contracts</p>	<p>49 CFR part 26.13(b)</p>
<p>Federal Changes</p>	<p>All contracts</p>	<p>FTA Master Agreement (25), Sec. (3)(i)(6)</p>
<p>Incorporation of Federal Terms</p>	<p>All contracts</p>	<p>FTA Master Agreement (25), Sec. (3)(i)(5)</p>
<p>Cargo Preference</p>	<p>When acquiring property possible for shipment by ocean vessel</p>	<p>46 CFR part 381.7</p>

Clause	Threshold	Citation
Copeland Anti-Kickback Act Section 1 and Section 2	All construction contracts above \$2,000	29 CFR 3.1 and 3.11 18 USC § 874 40 USC § 3145
Seismic Safety	Design and construction of new building and addition to existing buildings financed in whole or in part through Federal grants	49 CFR § 41.117
Charter Service Operations	Transit operations funded with 5307, 5309, 5311 and 5316 funds	49 USC § 5323(d)
Drug and Alcohol Testing	All transit operations contracts	49 CFR part 40.11(c)
School Bus Operations	All transit operations contracts	49 USC § 5323(f)
Transit Employee Protective Arrangements	Transit operations funded with 5307-5312, and 5316	49 USC § 5333(b)
Non-construction Employee Protection (Contract Work Hours and Safety Standards Act)	All turnkey, rolling stock and operational contracts (excluding contracts for transportation services) exceeding the simplified acquisition level	40 U.S.C. §3702(b)
Prompt Payment	All non-TVM contracts with subcontractors if threshold for a DBE program met	49 CFR part 26.29(a)
Return of Retainage	All non-TVM contracts with subcontractors if threshold for a DBE program met	49 CFR part 26.29(b)
Veterans Preference	Contracts for capital projects	49 USC § 5325(k)
Seat Belt Use	Each third party contract	FTA Master Agreement Section 34 (a)

Clause	Threshold	Citation
Distracted Driving	Each third party agreement	FTA Master Agreement Section 34 (b)

POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if it did not include all applicable required clauses in FTA-funded procurements reviewed.

DEFICIENCY CODE P11-1: Missing FTA clauses

SUGGESTED CORRECTIVE ACTION: The recipient must provide the FTA regional office revised procurement procedures that address inclusion of all FTA-required third party contract clauses through use of a clause checklist or other mechanism. For the next procurement, submit to the FTA regional office documentation that the required process was implemented.

The recipient is deficient if required clauses were added to a FTA-funded procurement contract after contract award.

DEFICIENCY CODE P11-2: FTA clauses added after contract award

SUGGESTED CORRECTIVE ACTION: The recipient must provide the FTA regional office revised procurement procedures that address inclusion of all FTA-required third party contract clauses before award of a contract. For the next procurement, submit to the FTA regional office documentation that the required process was implemented.

The recipient is deficient if required security bonds were not obtained for an applicable FTA-funded construction procurement.

DEFICIENCY CODE P11-3: Bid security, performance security, or payment security not obtained

SUGGESTED CORRECTIVE ACTION: The recipient must provide the FTA regional office revised procurement procedures that address inclusion of all required bonding and security for FTA funded construction procurements. For the next procurement, submit to the FTA regional office documentation that the required process was implemented.

The recipient is deficient if required Davis-Bacon rates were not included in an applicable construction procurement.

DEFICIENCY CODE P11-4: Davis-Bacon rates not included

SUGGESTED CORRECTIVE ACTION: The recipient must provide the FTA regional office revised procurement procedures that addresses inclusion of Davis-Bacon rates in all required FTA funded construction procurements. For the next procurement, submit to the FTA regional office documentation that the required process was implemented.

GOVERNING DIRECTIVES

2 C.F.R. 200.325

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows: (a) A bid guarantee from each bidder

equivalent to five percent of the bid price. The “bid guarantee” must 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 acceptance of the bid, execute such contractual documents as may be required within the time specified. (b) 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 secure fulfillment of all the contractor’s obligations under such contract. (c) A payment bond on the part of the contractor for 100 percent of the contract price. A “payment 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.

Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards and FTA Master Agreement (25), section 16.e

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to 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, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR 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 Act provides that each contractor or subrecipient must be 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. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR 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 the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. 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 must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) See §200.322 Procurement of recovered materials—A non-Federal entity 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 by 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.”

FTA Master Agreement (25) Section 39(b)

(b) Notification to FTA; Flow-Down Requirement. If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third Party Agreements and must require each Third Party Participant to include an equivalent provision in its subagreements at every tier, for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220. (1) 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. (2) 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, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements. (3) The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient 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, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Recipient. 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 Recipient.

FTA Master Agreement (25), section 9(c)

Access to Recipient and Third Party Participant Records. The Recipient agrees, and assures that each Subrecipient, if any, will agree to: (1) Provide, and require its Third Party Participants at each tier to provide, sufficient access to inspect and audit records and information related to its Award, the accompanying Underlying Agreement, and any Amendments thereto to the U.S. Secretary of Transportation or the Secretary’s duly authorized representatives, to the Comptroller General of the United States, and the Comptroller General’s duly authorized representatives, and to the Recipient and each of its Subrecipients; (2) Permit those individuals listed above to inspect all work and materials related to its Award, and to audit any information related to its Award under the control of the Recipient or Third Party Participant within books, records, accounts, or other locations; and (3) Otherwise comply with 49 U.S.C. § 5325(g), and federal access to records requirements as set forth in the applicable U.S. DOT Common Rules.

49 CFR 26.13 (b) What assurances must recipients and contractors make?

Each contract you sign with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance: The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, 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 DOT-assisted contracts. 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 recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or

(4) Disqualifying the contractor from future bidding as non-responsible.

FTA Master Agreement (25), Sec. (3)(i)(6) Notice to Third Party Participants.

The Recipient agrees to include notice in each Third Party Agreement that: (i) Federal requirements that apply to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto may change due to changes in federal law, regulation, other requirements, or guidance, or changes in the Recipient's Underlying Agreement including any information incorporated by reference and made part of that Underlying Agreement; and (ii) Applicable changes to those federal requirements will apply to each Third Party Agreement and parties thereto at any tier.

FTA Master Agreement (25), Sec. (3)(i)(5) Third Party Agreements.

To comply with federal requirements, the Recipient agrees to enter into a written Third Party Agreement with each Third Party Participant in its Underlying Agreement and must include all appropriate provisions stating the Third Party Participant's responsibilities to assure the Recipient's capability to comply with applicable federal requirements and guidance and specifying the responsibilities that the Third Party Participant will fulfill on the Recipient's behalf.

§381.7 Federal Grant, Guaranty, Loan and Advance of Funds Agreements

In order to insure a fair and reasonable participation by privately owned United States-flag commercial vessels in transporting cargoes which are subject to the Cargo Preference Act of 1954 and which are generated by U.S. Government Grant, Guaranty, Loan and/or Advance of Funds Programs, the head of each affected department or agency shall require appropriate clauses to be inserted in those Grant, Guaranty, Loan and/or Advance of Funds Agreements and all third party contracts executed between the borrower/grantee and other parties, where the possibility exists for ocean transportation of items procured, contracted for or otherwise obtained by or on behalf of the grantee, borrower, or any of their contractors or subcontractors. The clauses required by this part shall provide that at least 50 percent of the freight revenue and tonnage of cargo generated by the U.S. Government Grant, Guaranty, Loan or Advance of Funds be transported on privately owned United States-flag commercial vessels. These clauses shall also require that all parties provide to the Maritime Administration the necessary shipment information as set forth in §381.3. A copy of the appropriate clauses required by this part shall be submitted by each affected agency or department to the Secretary, Maritime Administration, for approval no later than 30 days after the effective date of this part. The following are suggested acceptable clauses with respect to the use of United States-flag vessels to be incorporated in the Grant, Guaranty, Loan and/or Advance of Funds Agreements as well as contracts and subcontracts resulting therefrom:

(a) *Agreement Clauses.* "Use of United States-flag vessels:

(1) Pursuant to Pub. L. 664 (43 U.S.C. 1241(b)) at least 50 percent of any equipment, materials or commodities procured, contracted for or otherwise obtained with funds granted, guaranteed, loaned, or advanced by the U.S. Government under this agreement, and which may be transported by ocean vessel, shall be transported on privately owned United States-flag commercial vessels, if available.

"(2) Within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (a)(1) of this section shall be furnished to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590."

(b) *Contractor and Subcontractor Clauses.* "Use of United States-flag vessels: The contractor agrees—

"(1) To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to

the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.

“(2) To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, ‘on-board’ commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b) (1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

“(3) To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.”

29 CFR 3.1 Purpose and scope.

This part prescribes “anti-kickback” regulations under section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c), popularly known as the Copeland Act. This part applies to any contract which is subject to Federal wage standards and which is for the construction, prosecution, completion, or repair of public buildings, public works or buildings or works financed in whole or in part by loans or grants from the United States. 29 CFR 3.11 Regulations part of contract. All contracts made with respect to the construction, prosecution, completion, or repair of any public building or public work or building or work financed in whole or in part by loans or grants from the United States covered by the regulations in this part shall expressly bind the contractor or subcontractor to comply with such of the regulations in this part as may be applicable. In this regard, see §5.5(a) of this subtitle.

§ 41.117 Buildings built with Federal assistance.

(a) Each DOT Operating Administration assisting in the financing, through Federal grants or loans, or guaranteeing the financing, through loan or mortgage insurance programs, of newly constructed buildings will ensure that any building constructed with such assistance is constructed in accord with seismic standards set out in § 41.120 of this part.

(b) This section applies to new buildings and additions to existing buildings financed in whole or in part through Federal grants or loans administered by DOT Operating Administrations, or through guaranteed financing through loan or mortgage insurance programs administered by DOT Operating Administrations.

(c) Any building constructed with Federal financial assistance, after July 14, 1993 must be designed and constructed in accord with seismic standards approved by the DOT Operating Administration under § 41.120 of this part in order to be eligible for Federal financial assistance.

(d) For buildings built with Federal financial assistance, a certification of compliance with the seismic design and construction requirements of this part is required prior to the furnishing of such assistance. Such statements of compliance may include the engineer's and architect's authenticated verifications of seismic design codes, standards, and practices used in the design and construction of the building, construction observation reports, local or state building department plan review documents, or other documents deemed appropriate by the DOT Operating.

49 USC 5323 (d) Condition on Charter Bus Transportation Service.—(1) Agreements.

Financial assistance under this chapter may be used to buy or operate a bus only if the applicant, governmental authority, or publicly owned operator that receives the assistance agrees that, except as provided in the agreement, the governmental authority or an operator of public transportation for the governmental authority will not provide charter bus transportation service outside the urban area in which it provides regularly scheduled public transportation service. An agreement shall provide for a fair arrangement the Secretary of Transportation considers appropriate to ensure that the assistance will not enable a governmental authority or an operator for a governmental authority to foreclose a private operator from providing intercity charter bus service if the private operator can provide the service.

49 CFR 40.11 What are the general responsibilities of employers under this regulation?

(a) As an employer, you are responsible for meeting all applicable requirements and procedures of this part. (b) You are responsible for all actions of your officials, representatives, and agents (including service agents) in carrying out the requirements of the DOT agency regulations. (c) All agreements and arrangements, written or unwritten, between and among employers and service agents concerning the implementation of DOT drug and alcohol testing requirements are deemed, as a matter of law, to require compliance with all applicable provisions of this part and DOT agency drug and alcohol testing regulations. Compliance with these provisions is a material term of all such agreements and arrangements.

49 USC 5323 (f) School bus Transportation.- (1) AGREEMENTS.

Financial assistance under this chapter may be used for a capital project, or to operate public transportation equipment or a public transportation facility, only if the applicant agrees not to provide schoolbus transportation that exclusively transports students and school personnel in competition with a private schoolbus operator. This subsection does not apply—

(A) to an applicant that operates a school system in the area to be served and a separate and exclusive schoolbus program for the school system; and (B) unless a private school bus operator can provide adequate transportation that complies with applicable safety standards at reasonable rates.

49 USC 5333 (b) Employee Protective Arrangements.

(1) As a condition of financial assistance under sections 5307–5312, 5316,[1]5318, 5323(a)(1), 5323(b), 5323(d), 5328,[1] 5337, and 5338(b) of this title, the interests of employees affected by the assistance shall be protected under arrangements the Secretary of Labor concludes are fair and equitable. The agreement granting the assistance under sections 5307–5312, 5316,[1] 5318, 5323(a)(1), 5323(b), 5323(d), 5328,[1] 5337, and 5338(b) shall specify the arrangements.

40 USC 3702(b) Contract Requirements

A contract described in section 3701 of this title, and any obligation of the Federal Government, a territory of the United States, or the District of Columbia in connection with that contract, must provide that—

(1) a contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall not require or permit any laborer or mechanic, in any workweek in which the laborer or mechanic is employed on that work, to work more than 40 hours in that workweek, except as provided in this chapter; and (2) when a violation of clause (1) occurs, the contractor and any subcontractor responsible for the violation are liable—(A) to the affected employee for the employee's unpaid wages; and (B) to the Government, the District of Columbia, or a territory for liquidated damages as provided in the contract.

49 CFR 26.29 What prompt payment mechanisms must recipients have?

(a) You must establish, as part of your DBE program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment you make to the prime contractor.

(b) You must ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. You must use one of the following methods to comply with this requirement: (1) You may decline to hold retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors. (2) You may decline to hold retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. (3) You may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after your payment to the prime contractor.

49 USC 5325(k) Veterans Employment.

Recipients and subrecipients of Federal financial assistance under this chapter 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.

(3)The term “capital project” means a project for— (A)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), payments for the capital portions of rail trackage rights agreements, transit-related intelligent transportation systems, relocation assistance, acquiring replacement housing sites, and acquiring, constructing, relocating, and rehabilitating replacement housing; (B)rehabilitating a bus; (C)remanufacturing a bus; (D)overhauling rail rolling stock; (E)preventive maintenance; (F)leasing equipment or a facility for use in public transportation; (G)a joint development improvement that— (i)enhances economic development or incorporates private investment, such as commercial and residential development; (iii)provides a fair share of revenue that will be used for public transportation; (iv)provides that a person making an agreement to occupy space in a facility constructed under this paragraph shall pay a fair share of the costs of the facility through rental payments and other means; and (v)may include— (I)property acquisition; (II)demolition of existing structures; (III)site preparation; (IV)utilities; (V)building foundations; (VI)walkways; (VII)pedestrian and bicycle access to a public transportation facility; (VIII)construction, renovation, and improvement of intercity bus and intercity rail stations and terminals; (IX)renovation and improvement of historic transportation facilities; (X)open space; (XI)safety and security equipment and facilities (including lighting, surveillance, and related intelligent transportation system applications); (XII)facilities that incorporate community services such as daycare or health care; (XIII)a capital project for, and improving, equipment or a facility for an intermodal transfer facility or transportation mall; and (XIV)construction of space for commercial uses; (H)the introduction of new technology, through innovative and improved products, into public transportation; (I)the provision of nonfixed route paratransit transportation services in accordance with section 223 of the Americans with Disabilities Act of 1990 (), but only for grant recipients that are in compliance with applicable requirements of that Act, including both fixed route and demand responsive service, and only for amounts— (i)not to exceed 10 percent of such recipient’s annual formula apportionment under sections 5307 and 5311; or (ii)not to exceed 20 percent of such recipient’s annual formula apportionment under sections 5307 and 5311, if, consistent with guidance issued by the Secretary, the recipient demonstrates that the recipient meets at least 2 of the following requirements: (I)Provides an active fixed route travel training program that is available for riders with disabilities. (II)Provides that all fixed route and paratransit operators participate in a passenger safety, disability awareness, and sensitivity training class on at least a biennial basis. (III)Has memoranda of understanding in place with employers and the American Job Center to increase access to employment opportunities for people with disabilities. (J)establishing a debt service reserve, made up of deposits with a bondholder’s trustee, to ensure the timely payment of principal and interest on bonds issued by a grant recipient to finance an eligible project under this chapter; (K)mobility management— (i)consisting of short-range planning and management activities and projects for improving coordination among public transportation and other transportation service providers carried out by a recipient or subrecipient through an agreement entered into with a person, including a governmental entity, under this chapter (other than section 5309); but (ii)excluding operating public transportation services; (L)associated capital maintenance, including— (i)equipment, tires, tubes, and material, each costing at least .5 percent of the current fair market value of rolling stock comparable to the rolling stock for which the equipment, tires, tubes, and material are to be used; and (ii)reconstruction of equipment and material, each of which after reconstruction will have a fair market value of at least .5 percent of the current fair market value of rolling stock comparable to the rolling stock for which the equipment and material will be used; (M)associated transit improvements; or (N)technological changes or innovations to modify low or no emission vehicles (as defined in section 5339(c)) or facilities.

FTA Master Agreement (25) Section 34. Safe Operation of Motor Vehicles. (a) Seat Belt Use. The Recipient agrees to implement Executive Order No. 13043, “Increasing Seat Belt Use in the United States,” April 16, 1997, 23 U.S.C. § 402 note, (62 Fed. Reg. 19217), by: 90 (1) Adopting and promoting 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; and (2) Including a "Seat Belt Use" provision in each third party agreement related to the Award.

FTA Master Agreement (25) Section 34. Safe Operation of Motor Vehicles. (b) Distracted Driving, Including Text Messaging While Driving. The Recipient agrees to comply with: (1) Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. § 402 note, (74 Fed. Reg. 51225); (2) U.S. DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009; and (3) The following U.S. DOT Special Provision pertaining to Distracted Driving: (i) Safety. The Recipient 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 Recipient owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Award, or when performing any work for or on behalf of the Award; (ii) Recipient Size. The Recipient agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving; and (iii) Extension of Provision. The Recipient agrees to include the preceding Special Provision of section 34(b)(3)(i) – (ii) of this Master Agreement in its third party agreements, and encourage its Third Party Participants to comply with this Special Provision, and include this Special Provision in each third party subagreement at each tier supported with federal assistance.

P12. Did the recipient include required certifications in solicitations and receive signed certifications from bidders as part of their bid or proposal, as applicable?

BASIC REQUIREMENT

Recipients must include required certifications in its procurements and receive signed certifications from bidders.

APPLICABILITY

All recipients

DETAILED EXPLANATION FOR REVIEWER

[Certifications \(TVM, Lobbying, Buy America\) \(PSR – 63\)](#)

Transit Vehicle Manufacturer (TVM) Certification: As part of their DBE program, all recipients must require that each TVM, as a condition of being authorized to bid on transit vehicle procurements funded by FTA, certify that it has complied with the requirements of 49 CFR 26.49. Only those TVMs listed on FTA's certified list or that have submitted a goal methodology to FTA that has been approved or has not been disapproved at the time of solicitation are eligible to bid. The recipient is required to include a provision in its bid specifications requiring the TVM certification as a condition of permission to bid. The certification should reference 49 CFR Part 26 (not Part 23).

A list of certified TVMs that have submitted required DBE information to FTA is available at the FTA website: <https://www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/eligible-transit-vehicle-manufacturers>. Prior to award, evidence that this website has been checked or evidence of communication with FTA's Office of Civil Rights to validate TVM certification, should be included in applicable procurement files. FTA has instructed TVMs to submit to recipients a copy of their FTA approval letters along with the TVM certifications.

The TVM definition is codified at 49 CFR 26.5. Note that producers of vehicles that receive post-production alterations or retrofitting to be used for public transportation purposes (e.g., so-called cutaway vehicles, vans customized for service to people with disabilities) are also considered to be TVMs. Further, to the extent to which a vehicle remanufacturer is responding to a solicitation for new or remanufactured vehicles with a vehicle to which the remanufacturer has provided post-production alterations or retro-fitting, that remanufacturer is considered a TVM. Businesses that manufacture, mass-produce, or distribute vehicles solely for personal use and for sale "off the lot" are not considered TVMs.

Lobbying Certification: Recipients are required to include a lobbying certification in agreements, contracts, and subcontracts exceeding \$100,000. Signed certifications regarding lobbying must be obtained by the recipient from potential contractors with the contractors' bids. This requirement flows down. The recipient must require its prime contractors to obtain certifications from bidders for subcontracts in excess of \$100,000, and so on for all contracting tiers. Lobbying certifications are retained at the contracting tier to which they are submitted, and are not forwarded to higher contracting tiers.

Buy America Certification: Buy America regulations require that all steel, iron, and manufactured products used in the project are produced in the United States. Solicitations for steel, iron, and manufactured products must contain a Buy America certification, unless the procurement is subject to a general waiver or the small purchase waiver. Buy America requirements also apply to capital leases for rolling stock and related equipment. Buy America requirements applicable to rolling stock procurements are discussed in more detail in Question P20.

The small purchase waiver is now included in 49 U.S.C 5323(j)(13) and provides that the term "small purchase" means a purchase of not more than \$150,000. On September 16, 2016, the FTA Chief Counsel issued a Dear Colleague Letter regarding the small purchase waiver. The statutory language is clear that the small purchase waiver applies to purchases of \$150,000 or less, regardless of the size of the project. Therefore, purchases made with FTA financial assistance, including capital, planning, or operating assistance, are subject to the waiver. The waiver applies both to purchases made directly by

recipients or subrecipients and to purchases made by third-party contractors on behalf of the recipient or subrecipient. This provision of the FAST Act applies to all purchases made after October 1, 2015. The \$150,000 contract value is based on the total contract amount, including labor and options, and not just the value of the goods purchased. Also, recipients are not permitted to break up procurements in order to stay under the \$150,000 threshold. Finally, if a solicitation may result in bids near \$150,000, recipients should include the Buy America certifications in the solicitation, with a note clarifying that if the bid is more than \$150,000, the bidder must certify per the Buy America requirements, but if the bid is \$150,000 or less, no certification will be necessary.

Buy America statute applies to:

- All purchases of steel, iron, and manufactured products greater than \$150,000, regardless of whether they involve capital, operating, or planning funds,
- Contractors and subcontractors if the contract or subcontract is more than \$150,000, including labor and options,
- Purchases made using an intergovernmental agreement and jointly purchased manufactured products, and
- Purchases of used items.

For all procurements more than \$150,000, the recipient shall include in its bid or request for proposal an appropriate notice of the Buy America provision. Such specifications shall require, as a condition of responsiveness, that the bidder or offeror submit with the bid or offer a completed Buy America certificate in accordance with 49 CFR §§ 661.6 or 661.12 of this part, as appropriate. Recipients should include only the applicable Buy America certification. Inclusion of both certifications for both rolling stock and non-rolling stock procurements is discouraged and may result in confusion on the part of the contractor as to the applicable Buy America requirements.

Recipients may not obtain signed Buy America certifications after contract award for its own contracts or contracts of other recipients to make the contracts eligible for Federal funding. Recipients may, however, obtain signed Buy America certifications before buying off state GSA-type contracts to make them eligible for Federal funding. The recipient should consider the full GSA-type contract amount, not the amount of its purchase, when determining whether Buy America requirements apply to those purchases.

If a bidder or offeror cannot certify compliance with Buy America requirements, the recipient must seek a waiver of the Buy America statute before it may award the contract to the bidder or offeror. Buy America waivers are available on one of the following grounds: applying Buy America requirements would be inconsistent with the public interest; the materials produced in the United States are not produced in a sufficient and reasonably available quantity or are not of a satisfactory quality (i.e., non-availability waiver); or including domestic material will increase the cost of the overall project by more than 25 percent.

INDICATORS OF COMPLIANCE

- a. For FTA-funded vehicle procurements including procurements of remanufactured vehicles, did the recipient include the required DBE TVM certifications in solicitations and receive and verify signed certifications as part of bid responsiveness?*
- b. Did the recipient include required lobbying certifications in solicitations and receive signed certifications from contractors as part of bid responsiveness in procurements over \$100,000?*
- c. Did the recipient include required Buy America certifications in solicitations and receive signed certifications from contractors as part of bid responsiveness in applicable procurements over \$150,000 that included iron, steel or manufactured products?*

INSTRUCTIONS FOR REVIEWER

Prior to the site visit, examine the recipient's policies and procedures. During the site visit, examine procurement files for inclusion of the following required certifications and receipt of signed certifications from bidders at the time of submitting bids or proposals:

- DBE TVM certifications;
- Lobbying certifications; and
- Buy America certifications.

For transit vehicle purchases, determine if, prior to award, the recipient documented that it verified TVM certifications received by either consulting FTA's Office of Civil Rights TVM website or contacting the Office of Civil Rights directly. If the bidder is not listed on the website, confirm that recipient contacted FTA's Office of Civil Rights to verify bidder's or proposer's eligibility to bid at the time the bid or proposal was submitted. TVM status cannot be cured after bid or proposal submittal, but before contract award.

Examine procurement files for inclusion of required Lobbying certifications in solicitations and receipt of signed certifications from bidders in agreements, contracts, and subcontracts exceeding \$100,000.

Examine procurement files for inclusion of required Buy America certifications in solicitations and receipt of signed certifications from bidders for all purchases of steel, iron, and manufactured products greater than \$150,000, inclusive of labor and options.

If a bidder or offeror did not certify compliance with Buy America requirements, document if the recipient received a waiver of the Buy America statute before it awarded the contract to the bidder or offeror. **A Buy America Certification is non-compliant in circumstances where an offeror indicates both compliance and non-compliance within the certification document.**

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it does not include, where applicable, a provision in its bid specifications requiring TVM certifications or if the files do not contain TVM certifications from successful bidders. The recipient is deficient if it cannot provide evidence that it ensured that the manufacturer was an eligible TVM at the time it submitted its bid or proposal.

DEFICIENCY CODE P12-1: No TVM certification

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA RCRO procedures for obtaining signed TVM certifications and for ensuring that manufacturers are eligible TVMs at the time of bid or proposal submission. The recipient must submit to the RCRO an updated TVM certification template to be used in future transit vehicle procurements. The recipient must submit to the FTA regional office a copy of the signed form with the next revenue rolling stock procurement.

The recipient is deficient if it has not included the lobbying certification in its procurement solicitations that exceed \$100,000 or if it has not obtained the proper certifications from contractors awarded contracts that exceed \$100,000.

DEFICIENCY CODE P12-2: Lobbying certifications not included in procurement solicitations or signed by bidders

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office procedures for obtaining signed lobbying certifications. The recipient must submit to the FTA regional office a copy of the signed lobbying certification with the next applicable procurement.

The recipient is deficient if it did not include applicable Buy America provisions in its solicitation documents.

DEFICIENCY CODE P12-3: Buy America provisions not in solicitation and/or contract

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office revised procurement procedures that require the recipient to include Buy America provisions in solicitation documents and to obtain signed certifications from vendors when procuring steel, iron, or manufactured products not subject to a general waiver. For the next procurement, submit to the FTA regional office documentation that the required process was implemented.

For procurements for which a Buy America certification was not obtained, the recipient must provide the FTA regional office information documenting that the procurement complies with the Buy America provisions.

For procurements in progress for which bids have not been received, the recipient must submit to the FTA regional office documentation that it included, via an addendum, Buy America requirements in the solicitation.

The recipient must submit to the FTA regional office a copy of the signed Buy America certification before awarding the contract for the next procurement subject to Buy America requirements.

The recipient is deficient if it did not obtain signed Buy America certifications from vendors as part of the vendor's bid or proposal.

DEFICIENCY CODE P12-4: Contract files lacking signed Buy America certifications

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office revised procurement procedures that require the recipient to include Buy America provisions in solicitation documents and to obtain signed certifications from vendors when procuring steel, iron, or manufactured products not subject to a general waiver. For the next procurement, submit to the FTA regional office documentation that the required process was implemented.

For procurements for which a Buy America certification was not obtained, the recipient must provide the FTA regional office information documenting that the procurement complies with the Buy America provisions.

For procurements in progress for which bids have not been received, the recipient must submit to the FTA regional office documentation that it included, via an addendum, Buy America requirements in the solicitation.

The recipient must submit to the FTA regional office a copy of the signed Buy America certification before awarding the contract for the next procurement subject to Buy America requirements.

The recipient is deficient if it awarded the contract to a contractor who certified non-compliance with Buy America and did not obtain a waiver from FTA or it awarded the contract to a contractor who certified both compliance and non-compliance.

DEFICIENCY CODE P12-5: Contract awarded without Buy America waiver

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office revised procurement procedures that require the recipient to include Buy America provisions in solicitation documents and to obtain signed certifications from vendors when procuring steel, iron,

or manufactured products not subject to a general waiver. For the next procurement, submit to the FTA regional office documentation that the required process was implemented.

For procurements for which a Buy America certification was not obtained, or for which the contractor signed that it would both comply and not comply, the recipient must submit to the FTA regional office information documenting that the procurement complies with Buy America provisions.

For procurements in progress for which bids have not been received, the recipient must submit to the FTA regional office documentation that it included, via an addendum, Buy America requirements in the solicitation.

The recipient must submit to the FTA regional office a copy of the signed Buy America certification before awarding the contract for the next procurement subject to Buy America requirements.

GOVERNING DIRECTIVES

49 CFR 26.49 (a)

"If you are an FTA recipient, you must require in your DBE program that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, certify that it has complied with the requirements of this section."

FTA Circular 9030.1E Chapter V 11.

h. "The recipient is obligated to determine, by checking the TVM listing on FTA's website or by checking with FTA's Office of Civil Rights at the time of bid opening, that the manufacturer likely to receive the contract is in compliance with 49 CFR Part 26."

APPENDIX II TO PART 200—CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS. (I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)

"Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. 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 must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award."

49 CFR 661.6

"Certification requirements for procurement of steel or manufactured products. If steel, iron, or manufactured products (as defined in §§661.3 and 661.5 of this part) are being procured, the appropriate certificate as set forth below shall be completed and submitted by each bidder or offeror in accordance with the requirement contained in §661.13(b) of this part."

49 CFR 661.12

"Certification requirement for procurement of buses, other rolling stock and associated equipment. If buses or other rolling stock (including train control, communication, and traction power equipment) are being procured, the appropriate certificate as set forth below shall be completed and submitted by each bidder in accordance with the requirement contained in §661.13(b) of this part."

P13. If the recipient included liquidated damages in its procurements, did it do so appropriately?

BASIC REQUIREMENT

If recipients include liquidated damages in procurements, the rate must be stated and it must be based on a calculation. Any recovered damages should be credited back to the project account.

APPLICABILITY

All recipients

DETAILED EXPLANATION FOR REVIEWER

Liquidated Damages Provisions (PSR – 49)

Recipients are allowed to use liquidated damage clauses when there is a reasonable expectation of damages (increased costs on the project involved) from late completion or if weight requirements are exceeded and the extent or amount of such damages would be difficult or impossible to determine. Liquidated damage clauses may not be punitive. They may not be used to impose a penalty or limit or restrict competition, or used in situations where delayed performance will not affect the recipient adversely. The rate and measurement of liquidated damages must be specified in the solicitation and contract. The procurement file should include a record of the calculation and rationale for the amount of the damages assessed.

The assessment for damages is often established at a specific rate per day for each day beyond the contract's delivery date or performance period. A measurement other than a day or another period of time, however, may be established if that measurement is appropriate, such as weight requirements in a rolling stock purchase. Any liquidated damages recovered should be credited to the project account involved unless FTA permits otherwise.

Liquidated damages should not be utilized as a substitute for other contract performance requirements. Recipients are required to maintain a contract administration system to ensure that they and their third party contractors comply with the terms, conditions, and specifications of their contracts or purchase orders. There are methods that may be more appropriate than liquidated damages to incentivize or enforce contractor performance.

INDICATORS OF COMPLIANCE

- a. *If the recipient included liquidated damages in its procurements, did it specify the rate in the contract, based on a calculation and rationale?*

- b. *If the recipient recovered liquidated damages in its FTA-funded procurements, did it appropriately account for those damages with FTA?*

INSTRUCTIONS FOR REVIEWER

Prior to the site visit, examine the recipient's policies and procedures to determine how the recipient determines if it will use liquidated damages in contracts.

During the site visit, examine selected contract files, in accordance with records sampling procedures, for liquidated damage clause(s). Determine if the rationale for and calculation of the dollar value of liquidated damages was documented in the procurement file and presented in the solicitation documents as a specific rate. Examine selected contract files and correspondence in TrAMS to determine if any liquidated damages recovered were credited to the project account involved or if FTA allowed the recipient to handle the recovered damages in a different manner.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if a liquidated damages rate is not specified in the solicitation documents but is included in a resulting contract. The recipient is deficient if it cannot provide a reasonable explanation

regarding expected damages as a result of late completion and an appropriate mathematical basis for the dollar value of the liquidated damages.

DEFICIENCY CODE P13-1: Improper use of liquidated damage clause

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office written procedures for the correct use of liquidated damages clauses. If clauses are in existing contracts improperly, direct the recipient to modify the contract to eliminate the clause or provide a justification for the use and level of liquidated damages. Direct the recipient to obtain prior FTA regional office approval before awarding the next contract with a liquidated damage clause.

The recipient is deficient if it assessed liquidated damages, but did not credit these funds back to the project account or account for them as directed by FTA.

DEFICIENCY CODE P13-2: Improper accounting for recovered liquidated damages

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office procedures for appropriately accounting for recovered liquidated damages. For liquidated damages collected, submit to the FTA regional office with an accounting of those funds retained/collected so that FTA can provide appropriate instructions.

GOVERNING DIRECTIVES

FTA Master Agreement (25), section 39(c)

“Federal Interest in Recovery. The Federal Government retains the right to a proportionate share of any proceeds recovered from any third party, based on the percentage of the federal share for the Underlying Agreement. Notwithstanding the preceding sentence, the Recipient may return all liquidated damages it receives to its Award Budget for its Underlying Agreement rather than return the federal share of those liquidated damages to the Federal Government, provided that the Recipient receives FTA’s prior written concurrence.”

FTA Circular 4220.1F Chapter IV 2. b. (6) (b)1

“Liquidated Damages. FTA has determined that a recipient may use liquidated damages if the recipient reasonably expects to suffer damages through delayed contract completion, or if weight requirements are exceeded, and the extent or amount of such damages are uncertain and would be difficult or impossible to determine. The rate and measurement standards must be calculated to reasonably reflect the recipient’s costs should the standards not be met, and must be specified in the solicitation and contract. The assessment for damages is often established at a specific rate per day for each day beyond the contract’s delivery date or performance period. A measurement other than a day or another period of time, however, may be established if that measurement is appropriate, such as weight requirements in a rolling stock purchase. The procurement file should include a record of the calculation and rationale for the amount of damages established. Any liquidated damages recovered must be credited to the project account involved unless FTA permits otherwise.”

P14. Did the recipient approve, evaluate, and document change orders to procurements as described in its policies and procedures?

BASIC REQUIREMENT

The recipient is responsible for issuing, evaluating, and making necessary decisions involving any change to its third party contracts, and any change orders, or modifications it may issue.

APPLICABILITY

All recipients

DETAILED EXPLANATION FOR REVIEWER

Out of Scope Changes (PSR - 44) and Change Orders (PSR – New 59)

Recipients use their own procurement procedures that reflect applicable state and local laws and regulations, provided that the process ensures competitive procurement and the procedures conform to applicable Federal law, including 2 CFR Part 200, and FTA Circular 4220.1F, "Third Party Contracting Guidance."

A change order is an order authorized by the recipient directing the contractor to make changes, pursuant to contract provisions for such changes, with or without the consent of the contractor. Because change orders may require competition if they go beyond the original scope of a contract, or cause a contract to exceed dollar thresholds at which different federal requirements are triggered, FTA recommends that change orders be approved only by authorized recipient officials. If project managers can approve change orders with minimal or no oversight, outside of normal procurement channels, potential problems may arise.

Competitors sometimes protest the issuance of changes when they believe that a new competitive procurement process should have been used for the changed work. The criterion is whether the change was within the scope of the original competition, i.e., what the competitors should have anticipated to be within the scope of the competition. An important factor to be considered is whether the original solicitation adequately advised offerors of the potential for the type of changes during the course of the contract that in fact occurred, or whether the modification is of a nature which potential offerors would reasonably have anticipated under the changes clause.

Recipients must develop an ICE and perform a cost or price analysis in connection with every contract modification or change order over \$250,000. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation.

To be eligible for FTA assistance under the recipient's award or cooperative agreement, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its award or cooperative agreement, and reasonable for the completion of project scope.

INDICATORS OF COMPLIANCE

- a. *Did the recipient ensure that executed change orders were within the scope of the original contract?*
- b. *Did the recipient evaluate and document change orders?*
- c. *Did the recipient ensure that executed change orders were reasonable for completion of the project scope?*

INSTRUCTIONS FOR REVIEWER

Prior to the site visit, receive and review the recipient's policies and procedures to determine how the recipient describes:

1. Management of change orders;

2. Evaluations of change orders; and
3. Thresholds and responsibilities for change order approvals.

During the site visit, examine selected contract files, in accordance with records sampling procedures, for contracts that had significant change orders issued.

Determine if selected change orders were within the scope of the recipient's original award and reasonable for the completion of project's scope. A change to a contract that is beyond the scope of that contract, is a new non-competitive or sole source award that must be justified under the provisions for non-competitive procurements.

Determine if documentation for selected change orders included:

- Cost justification; and
- Approval by an authorized official.

POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if it executed change orders to contracts that were not within the scope of the contract **or were not reasonable for completion of the project scope**, or did not evaluate the cost of the change.

DEFICIENCY CODE P14-1: Insufficient documentation to support change orders

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office compliant change order procedures. For the next change order, submit to the FTA regional office documentation that the required process was implemented.

GOVERNING DIRECTIVES

2 CFR 200.319(a)

"All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements."

2 CFR 200.323(a)

"The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals."

FTA Circular 4220.1F Chapter VII 2. a. The Recipient's Role and Responsibilities

"The recipient is responsible for issuing, evaluating, and making necessary decisions involving any change to its third-party contracts, and any change orders, or modifications it may issue. The recipient is also responsible for evaluating and making the necessary decisions involving any claim of a constructive change. In general, FTA expects each recipient to comply with the following procedures: (1) Approval Requirements. FTA expects the recipient to have cost justifications supporting each change order it may issue. FTA also expects the recipient's authorized official to approve any proposed change order before

it is issued. (2) Cost Restrictions. To be eligible for FTA assistance under the recipient's grant or cooperative agreement, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope."

FTA Circular 4220.1F Chapter VI 3. i. (1) (b)

"When the recipient requires an existing contractor to make a change to its contract that is beyond the scope of that contract, the recipient has made a sole source award that must be justified."

P15. If the recipient included options in an FTA-funded procurement, did it base the number of options on its reasonably foreseeable need and evaluate the option price prior to awarding the contract?

BASIC REQUIREMENT

Recipients that include options in FTA-funded contracts must ensure that options reflect their reasonably foreseeable need, **were** evaluated prior to contract award, **and that only previously-evaluated options were exercised.**

APPLICABILITY

All recipients

DETAILED EXPLANATION FOR REVIEWER

Evaluation of Options (PSR – 40) and Exercise of Options (PSR – 43)

Recipients' contracts may include options to ensure the future availability of property or services, so long as the recipient is able to justify those options as needed for its public transportation or project purposes. An option is a unilateral right in a contract by which, for a specified time, a recipient may acquire additional equipment, supplies, or services than originally procured. An option may also extend the term of the contract.

Recipients may include options in contracts that reflect reasonably foreseeable needs. If a recipient chooses to use options, the option quantities or periods in the bid must be evaluated in order to determine contract award. The price associated with exercising the option needs to be defined at the outset, either as a specific price, or as a percentage increase of the base price, or some other calculable method. If the options were not evaluated as part of the award, the exercise of the options is considered a sole-source procurement. **The evaluation of options should be documented in writing and should be part of the cost or price analysis undertaken by the recipient for the overall procurement. Documentation awarding the contract should indicate that the award is for the base contract as well as identified options.**

If the option quantities on a rolling stock or replacement parts purchase exceed the recipient's reasonably foreseeable needs, the recipient may not assign those options to other recipients.

INDICATORS OF COMPLIANCE

- a. Did the recipient base the quantity or amount of options on its reasonably foreseeable need?*
- b. Did the recipient evaluate option prices included in solicitations prior to contract award?*
- c. Did the recipient exercise any options that it had not evaluated prior to contract award?*

INSTRUCTIONS FOR REVIEWER

Prior to the site visit, examine the recipient's policies and procedures to determine if the recipient describes the use of options. **Prior to the site visit, request a list of options that the recipient exercised during the review period; this includes options for additional property or equipment, or options extending the term of a contract.** During the site visit, examine selected contract files, in accordance with records sampling procedures, for contracts that included options. Determine if the recipient documented that the inclusion of options in the solicitation represented its foreseeable need. If the documentation does not appear to be sufficient, provide this information to the FTA regional office for their further review and action. **If options in the contract have been assigned to other recipients through a "piggybacking" process, the recipient should have documentation of why the quantities were no longer needed.**

During the site visit, examine selected contract files, in accordance with records sampling procedures, for contracts that included options. Determine if the recipient documented its evaluation of the option prices prior to contract award if it intended to exercise the option(s) at a later date.

During the site visit, verify that the recipient documented the evaluation of these options prior to award of the base contract and that the option prices exercised conformed to the evaluated and awarded price.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if the contract quantities were not based on the recipient's foreseeable needs.

DEFICIENCY CODE P15-1: Contract quantities not based on need

SUGGESTED CORRECTIVE ACTION: The recipient must develop, and submit to the FTA regional office, procedures for complying with FTA requirements when including options in solicitations.

The recipient is deficient if it exercised options that were not evaluated with the initial bid.

DEFICIENCY CODE P15-2: Options exercised not evaluated

SUGGESTED CORRECTIVE ACTION: The recipient must develop, and submit to the FTA regional office, procedures for complying with FTA requirements when evaluating contracts which included options and for exercising options. For the next applicable procurement, the recipient must submit to the FTA regional office documentation that the required process was implemented.

The recipient must submit to the FTA regional office a written assurance that it will not exercise the options unless FTA approval is granted for instances where the options that may violate the requirements have not been exercised. The recipient may not assign the options to any other FTA recipients.

The recipient is deficient if it exercised an option at a different price than noted in the award.

DEFICIENCY CODE P15-3: Exercised option differed from awarded option

SUGGESTED CORRECTIVE ACTION: The recipient must develop, and submit to the FTA regional office, procedures for complying with FTA requirements when exercising options.

GOVERNING DIRECTIVES

2 CFR 200.318(d)

"The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach."

FTA Circular 4220.1F Chapter IV. 1.b. Necessity

"... requires the recipient to establish procedures to avoid the purchase of unnecessary property and services (including duplicative items and quantities or options it does not intend to use or whose use is unlikely)."

FTA Circular 4220.1F Chapter VI 7. b. (1). Evaluation Required

"In general, FTA expects the recipient to evaluate bids or offers for any option quantities or periods contained in a solicitation if it intends to exercise those options after the contract is awarded."

P16. If the recipient procured bus or rail rolling stock or replacement parts with FTA funds, did it adhere to the time limitations on placing orders against the contracts? For non-rolling stock procurements, does the contract length seem reasonable?

BASIC REQUIREMENT

Contracts, including options, for the procurement of buses or replacement parts must not extend for more than five years after the date of the original contract or seven years for rail rolling stock. For cooperative procurement contracts, the contract duration can be for no more than a two-year initial term, with no more than three optional extensions of not more than one year each.

APPLICABILITY

All recipients

DETAILED EXPLANATION FOR REVIEWER

Contract Period of Performance Limitation (PSR-15)

Recipients must not enter into contracts for revenue rolling stock and replacement parts with a period of performance exceeding five years for bus procurements inclusive of options, extensions, or renewals, and seven years for rail procurements. The five- and seven-year rules do not mean the recipient must obtain delivery, acceptance, or even fabrication in five or seven years. The recipient, may not exercise the option to acquire buses or replacement parts later than five years (bus) or seven years (rail) after the date of its original contract. However, the maximum quantity specified in such multi-year contracts must represent the recipient's reasonably foreseeable need.

For cooperative procurement contracts, the contract duration can be for no more than a two-year initial term, with no more than three optional extensions of not more than one year each. A cooperative procurement contract means a contract between a state or an eligible nonprofit entity and one or more vendors under which the vendors agree to provide an option to purchase rolling stock and related equipment to multiple recipient participants.

Other than revenue rolling stock and replacement parts, recipients' other third party contracts (such as property, services, leases, construction, revenue, and so forth) are not encumbered by Federal requirements restricting the maximum periods of performance. Nevertheless, the duration of the recipient's other contracts must be based on sound business judgment and should contain contract terms no longer than necessary to accomplish the purpose of the contract. Contracts exceeding a total of five years may or may not be reasonable. The recipient should have a justification that reflects sound business judgment for longer term contracts that exceed five years in length.

INDICATOR OF COMPLIANCE

- a. *If the recipient procured bus or rail rolling stock or replacement parts did it ensure that the contracts met the contract term restriction?*

- b. *Are the periods of performance for the recipient's non-rolling stock contracts reasonable?*

INSTRUCTIONS FOR REVIEWER

Prior to the site visit, examine the recipient's policies and procedures to determine if the recipient describes management of options for rolling stock purchases. During the site visit, examine selected rolling stock and replacement part contracts to ensure that these met the contract term restriction. The five- and seven-year rules do not mean the recipient must obtain delivery, acceptance, or even fabrication in five or seven years. The recipient may not exercise the option to acquire buses or replacement parts later than five years (bus) or seven years (rail) after the date of its original contract.

If the recipient procured rolling stock through a cooperative purchase agreement, verify that the recipient obtained the agreement and verified that the terms of the contract were for an initial two-year period and no more than three one-year extensions for options.

For any non-rolling stock procurement reviewed that exceeds five years, determine if the recipient has justification to demonstrate that the contract term is reasonable.

POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if it exercised rolling stock options outside of the five- or seven-year period.

DEFICIENCY CODE P16-1: Contract(s) period of performance exceeds limitation

SUGGESTED CORRECTIVE ACTION: The recipient must provide the FTA regional office revised procurement procedures that include appropriate contract term restrictions on the period of performance for rolling stock and replacement part contracts supported with FTA funds. The recipient must provide the FTA regional office with an assurance that unexecuted options will not be executed on an existing contract that exceeds contract term restrictions. For the next procurement, the recipient must submit to the FTA regional office documentation that the required process was implemented.

The recipient is deficient if a non-rolling stock contract period of performance is unreasonable.

DEFICIENCY CODE P16-2: Contract(s) period of performance is unreasonable

SUGGESTED CORRECTIVE ACTION: The recipient must provide the FTA regional office revised procurement procedures that include how it will establish reasonable contract terms for non-rolling stock items. The recipient must provide the FTA regional office with an assurance that unexecuted options will not be executed on an existing contract where the contract term is unreasonable. For the next procurement, the recipient must submit to the FTA regional office documentation that the required process was implemented.

GOVERNING DIRECTIVES

49 USC § 5325(e) Multiyear rolling stock

“(1) Contracts. A recipient procuring rolling stock with Government financial assistance under this chapter may make a multiyear contract to buy the rolling stock and replacement parts under which the recipient has an option to buy additional rolling stock or replacement parts for:

(A) not more than 5 years after the date of the original contract for bus procurements; and

(B) not more than 7 years after the date of the original contract for rail procurements, provided that such option does not allow for significant changes or alterations to the rolling stock.”

FTA Circular 4220.1F Chapter IV, 2.b.(3)(b)

The recipient's other third party contracts (such as property, services, leases, construction, revenue, and so forth) are not encumbered by Federal requirements restricting the maximum periods of performance. Nevertheless, the duration of the recipient's other contracts must be reasonable.

FTA Circular 4220.1F Chapter IV 2. e. (10) Time Limits for Options on Rolling Stock Contracts

“MAP-21 amended 49 U.S.C. Section 5325(e)(1) by adding subsections (A) and (B), retaining the five (5) year option for the procurement of buses, while extending the option for rail procurements to seven (7) years. Consequently: (a) Buses. A recipient: 1. May enter into a multi-year contract to acquire buses or replacement parts, with an option not exceeding five (5) years to buy additional buses or replacement parts, 49 U.S.C. Section 5325(e)(1)(A), but 2. May not exercise the option to acquire buses or replacement parts later than five (5) years after the date of its original contract. (b) Rail. A recipient: May enter into a multi-year contract to acquire railcars or replacement parts, with an option not exceeding five (5) years to buy additional railcars or replacement parts, 49 U.S.C. Section 5325(e)(1)(B), but 2. May not

exercise the option to acquire railcars or replacement parts later than seven (7) years after the date of its original contract.

FTA interprets these five and seven-year periods as covering the recipient's "material requirements" for rolling stock and replacement needs from the first day when the contract becomes effective to its "material requirements" at the end of the fifth or seventh year, as applicable. In the case of rolling stock, which frequently cannot be delivered expeditiously, FTA recognizes that a recipient's "material requirements" for rolling stock will necessarily precede its actual need to put that rolling stock to use in public transportation service. This means that the contract may not have options for more rolling stock and replacement parts than a recipient's material requirements for the applicable five or seven-year period. This does not mean the recipient must obtain delivery, acceptance, or even fabrication in five or seven years. Instead it means only that FTA limits a contract to purchasing no more than the recipient's material requirements for rolling stock or replacement parts for five or seven years based on the effective date of the contract."

FAST Act, Section 3019 (b)(1)(B)(i)

PROCUREMENT NOT LIMITED TO INTRASTATE PARTICIPANTS. A grantee may participate in a cooperative procurement contract without regard to whether the grantee is located in the same State as the parties to the contract. (ii) VOLUNTARY PARTICIPATION. Participation by recipient in a cooperative procurement contract shall be voluntary. (iii) CONTRACT TERMS. The lead procurement agency or lead nonprofit entity for a cooperative procurement contract shall develop the terms of the contract. (iv) DURATION.—A cooperative procurement contract— (I) subject to subclauses (II) and (III), may be for an initial term of not more than 2 years; (II) may include not more than 3 optional extensions for terms of not more than 1 year each; and (III) may be in effect for a total period of not more than 5 years, including each extension authorized under subclause (II).

P17. If the recipient purchased FTA-funded assets through an assignment of options (a/k/a “piggyback”), did the underlying contract comply with applicable federal requirements regarding excessive options, inclusion of Federal requirements, assignability, and price, and no cardinal changes?

BASIC REQUIREMENT

Recipients may use another recipient’s contract rights if the original contract was procured in compliance with Federal requirements, contained required Federal provisions, does not contain excessive options, the optioned vehicles do not include cardinal changes to the original vehicles, and the contract price is fair and reasonable. To reduce risk, FTA recommends that the underlying contract include an assignability clause clearly describing the assignor-recipient’s right to assign contract rights to the assignee-recipient; or, that the vendor be made a party to the assignment.

APPLICABILITY

All recipients

DETAILED EXPLANATION FOR REVIEWER

[Piggybacking \(PSR – 50, PSR - 43\)](#)

For reasons of economy, FTA permits the assignment of unneeded contract rights or options. This practice is sometimes called “piggybacking.” FTA discourages the assignment of another recipient’s contract rights as a substitute for a stand-alone procurement. Assignments are intended to be used only when a recipient has inadvertently acquired contract rights in excess of its needs due to changed circumstances or honest mistakes.

Intentionally procuring excessive quantities using Federal money is a violation of Federal regulations. Furthermore, to the extent that an improper assignment of contract rights enables an assignee to avoid otherwise required procurement procedures, it also undermines the requirement for full and open competition in federally assisted procurements.

While it has become increasingly popular for recipients to acquire vehicles through this method of procurement, piggybacking can also occur for purchases of services and property. A recipient that obtains contractual rights through assignment may use them after first determining that the contract price remains fair and reasonable, and the contract provisions are adequate for compliance with all Federal requirements. The recipient need not perform a second price analysis if a price analysis was performed for the original contract. However, FTA expects the recipient to determine whether the contract price or prices originally established are still fair and reasonable before using those rights. **The recipient may not exercise an option unless it has determined that the option price is better than prices available in the market, or that when it intends to exercise the option, the option is more advantageous.**

FTA expects the recipient seeking the assignment to review the original contract to be sure that the quantities the assigning recipient acquired, coupled with the quantities the acquiring recipient seeks, do not exceed the amounts available under the assigning recipient’s contract. Otherwise, the purchase is a “tag-on” and is considered an improper sole source procurement.

Any changes in the vehicle when assigned must be within the original scope (i.e., no major changes in configuration or design). FTA has not developed a finite list of acceptable contract changes. In the case of rolling stock, a major change in quantity or a substitution of major end items not contemplated when competition for the original award took place would generally be a cardinal change. Another cardinal change includes a change from a high-floor to a low-floor vehicle. Changing an engine might result in a cardinal change depending on the circumstances surrounding the project and whether a compatible replacement could be obtained through competition. FTA, however, considers changes to seating, fabrics, colors, exterior paint schemes, signage, floor covering, and other similar items to be permissible changes.

For purposes of Buy America, the domestic content of the option vehicles is determined based on the delivery date of the first production option vehicle. If this content is lower than the domestic content requirement the assignee-recipient would be subject to if it conducted a competition in the open market, the options exercised by the assignee-recipient will be ineligible for federal reimbursement. A manufacturer may not agree to amend the contract to provide for a higher domestic content in order to permit a recipient to piggyback on an existing contract. Such an amendment is considered a cardinal change to the original contract.

Vehicles added to the base or option amounts originally specified are called “tag-ons.” Tag-ons are not permitted. A tag-on is defined as the adding on to the contracted quantities (base or option) as originally advertised, competed, and awarded, whether for the use of the buyer or for others, and then treating the add-on portion as though it met the requirements of competition.

If a recipient is using another recipient’s procurement contract for purchasing revenue vehicles (i.e., “piggybacking”), the purchaser may rely on the pre-award audit completed prior to the original contract. However, the recipient must review the audit and prepare its own certifications to verify compliance with Buy America.

INDICATORS OF COMPLIANCE

- a. *For “piggyback” procurements, did the recipient ensure that the underlying contract was solicited and awarded in accordance with Federal and FTA requirements?*
- b. *For “piggyback” procurements, did the recipient ensure that the original contract contained an assignability clause and that the quantities it used were available?*
- c. *For “piggyback” procurements, did the recipient document that the price of assignments acquired was fair and reasonable?*
- d. *For “piggyback” procurements, did the recipient make cardinal changes to the vehicle ordered under the option (e.g., ordered a different size vehicle, fuel option, etc.)?*
- e. *Did the recipient exercise an assigned option for delivery of vehicles on a contract that was entered into before December 4, 2015? If yes:*
 1. *If the assigned option is exercised for delivery of vehicles in FY2018 or FY2019, did the original contract include a provision for domestic content of more than 65 percent?*
 2. *If the assigned option is exercised for delivery of vehicles in FY2020 and beyond, did the original contract include a provision for domestic content of more than 70 percent?*

INSTRUCTIONS FOR REVIEWER

Prior to the site visit, examine the recipient’s policies and procedures to determine how the recipient describes compliance with “piggyback” purchases. Examine the recipient’s listing of procurements to identify any piggyback procurements.

During the site visit, examine selected “piggyback” procurement files to:

- Ensure that the recipient files include sufficient documentation that the underlying contract was solicited and awarded in compliance with Federal and FTA requirements and included required contract provisions. **The recipient should be able to provide a complete procurement file for the procurement undertaken by the assigning agency.**
- Determine if the recipient verified that:
 - the original contract contained an assignability provision, and

- the quantities acquired, coupled with the quantities already assigned, did not exceed the amounts available under the assigning recipient's contract
- Ensure that the recipient files include sufficient documentation that the original contract price remained fair and reasonable. **Review the price analysis that was prepared by the assigning agency. Verify that the recipient determined that the option price was better than prices available in the market.**
- Ensure that the recipient files include sufficient documentation that the vehicle ordered under the option is substantially the same as the original vehicle in the contract. **Review any correspondence between the recipient and the vendor to identify any changes made to the specifications. Ensure that these changes were not cardinal changes to the original procurement.**

The FAST Act amendments regarding increasing domestic content do not apply to contracts entered into before October 1, 2015, even if the contract provides for the delivery of the first production vehicle after FY2017. For contracts entered into before October 1, 2015, all vehicles delivered under the original contract base order and any properly exercised options by recipients who are direct parties to the contract may contain a domestic content of more than 60 percent, per the pre-FAST Act requirements. Recipients who are not direct parties to a contract executed before October 1, 2015, however, may not exercise assigned options (a/k/a “piggybacking”) on such contracts (e.g. contracts with domestic content of 60%). Identify any piggyback procurements entered into after December 4, 2015. Onsite, review the date of the underlying contract on which the recipient is piggybacking and confirm that the exercised option conforms with FTA's September 1, 2016 policy guidance on the implementation of the phased increase in domestic content for rolling stock.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it cannot document that the:

- original award met Federal requirements,
- assigned quantities did not exceed contract allowable amounts,
- price was determined to be fair and reasonable,
- **the option price was better than prices available in the current market,** and
- option vehicle did not contain a cardinal change to the original vehicle.

DEFICIENCY CODE P17-1: Improper piggyback purchase

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office piggyback procedures that comply with FTA requirements. For the next procurement, submit to the FTA regional office documentation that the required process was implemented.

The recipient is deficient if, subsequent to December 4, 2015, it acquired options through piggybacking and the base contract did not have the correct FY2018, FY2019 or FY2020 domestic content requirement.

DEFICIENCY CODE P17-2: Domestic content requirements not met in piggyback purchase

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office piggybacking procedures that comply with FTA requirements. For the next procurement, submit to the FTA regional office documentation that the required process was implemented.

GOVERNING DIRECTIVES

FTA Circular 4220.1F Chapter V (7)(2) Assignment of Contract Rights

“...The recipient may assign those contract rights to other recipients if the original contract contains an assignability provision that permits the assignment of all or a portion of the specified deliverables under the terms originally advertised, competed, evaluated, and awarded, or contains other appropriate assignment provisions. Some refer to this process as “piggybacking...” “...A recipient that obtains contractual rights through assignment may use them after first determining that the original contract price remains fair and reasonable, and the original contract provisions are adequate for compliance with all Federal requirements. The recipient need not perform a second price analysis if a price analysis was performed for the original contract. However, FTA expects the recipient to determine whether the contract price or prices originally established are still fair and reasonable before using those rights.”

FTA Circular 4220.1F Chapter V 7. a. (1) (b). Exercise of Options

“A recipient may use contract options held by another recipient with the following limitations: ... The recipient may not exercise an option unless it has determined that the option price is better than prices available in the market, or that when it intends to exercise the option, the option is more advantageous.”

FTA Circular 4220.1F Chapter V, Section 7. b. (2) (d)

“In the case of rolling stock, a major change in quantity or a substitution of major end items not contemplated when competition for the original award took place would generally be a cardinal change. Another cardinal change would, at this time, include a change from a high-floor to a low-floor vehicle. Changing an engine might result in a cardinal change depending on the circumstances surrounding the project and whether a compatible replacement could be obtained through competition. FTA, however, considers changes to seating, fabrics, and colors, exterior paint schemes, signage, and floor covering, and other similar changes to be permissible changes.”

Notice of Policy on the Implementation of the Phased Increase in Domestic Content Under the Buy America Waiver for Rolling Stock and Notice of Public Interest Waiver of Buy America Domestic Content Requirements for Rolling Stock Procurement in Limited Circumstances IV, 81 Federal Register 60278 (September 1, 2016)

“The right to exercise an option does not create a contractual obligation until that contract is actually signed. Thus, assigning contract options to a third party will result in a new contract between that third party and the transit vehicle manufacturer, negating commenters' concerns that an increase in domestic content might be viewed as a “cardinal change.” Third parties seeking the assignment of procurement options (a/k/a “piggybacking”) have no contractual or statutory right to that option, and FTA considers that procurement to be a “new” contract and therefore subject to the applicable FAST Act standard based upon the scheduled delivery date of the first production vehicle under the new contract

P18. Did the recipient ensure that appropriate FTA approval was acquired for advance payments and that adequate protection was exercised for progress payments?

BASIC REQUIREMENT

The recipient must receive FTA approval for advance payments and protect FTA's interest on progress payments.

APPLICABILITY

All recipients

DETAILED EXPLANATION FOR REVIEWER

Advance Payments (PSR – 45) and Progress Payments (PSR – 46)

FTA does not authorize and will not participate in funding advance payments to a contractor without prior, written approval from the FTA regional office administering the project. A recipient may use its local funds for advance payments. However, advance payments made with local funds before federal funds have been awarded or before the issuance of a letter of no prejudice or other pre-award authority are ineligible for reimbursement.

There are some items for which it is customary to pay prior to receipt of products or services. Advance payments falling into this category would include such things as utility services, insurance premiums, and subscriptions to newspapers and magazines. FTA concurrence is required only when advance payment or payments customarily required in the marketplace exceed \$100,000.

FTA will allow progress payments if the payments are made to the contractor only for costs incurred in the performance of the contract. The recipient may use FTA assistance to support progress payments, provided the recipient obtains adequate security for those payments and has sufficient written documentation to substantiate the work for which payment is requested. Adequate security for progress payments may include taking title, performance and payment bonding, or obtaining a letter of credit or taking equivalent measures to protect the recipient's financial interest in the progress payment.

Payments should not be based on project milestones unless the contractor and recipient can substantiate the actual costs incurred in connection with each milestone.

INDICATORS OF COMPLIANCE

- a. *If the recipient used FTA funds for advance payments to contractors, is prior FTA approval documented in procurement files?*
- b. *If the recipient used FTA funds for progress payments to contractors, did it adequately protect FTA's interest and substantiate the work for which payment was made based on actual costs incurred?*

INSTRUCTIONS FOR REVIEWER

Prior to the site visit, examine the recipient's policies and procedures to determine how the recipient describes management of payments to contractors and administration and management of progress payments.

Close attention should be paid if the recipient used a vendor-supplied agreement for a procurement. Many vendor agreements contain payment provisions that would be categorized as advance payments, such as a provision requiring a payment upon contract execution. Use of vendor agreements is common for technology-based projects.

Examine selected contract files for description of how and when progress payments will be made. Determine if the recipient documented appropriate measures it took to protect FTA's interest before making any progress payments and that it has written documentation to substantiate the work for which payment was made.

Also, review the files for payments that may be categorized as payment to a contractor before the contractor incurred contract costs. Progress payments that do not reflect contractor incurred costs could be determined to be advance payments. If such payments are evident, determine if the recipient documented that it received prior FTA approval in advance of the payments. **Include in selection of files reviewed those projects that appear to be paid based on milestones to determine if there is documentation to support costs incurred for each milestone.**

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it has used award funds to make advance payments without prior FTA approval.

DEFICIENCY CODE P18-1: No FTA approval for advance payments

SUGGESTED CORRECTIVE ACTION: The recipient must report immediately to the FTA regional office any improper advance payments with an explanation of the circumstances surrounding the payments and await further instructions. The recipient must submit to the FTA regional office procedures for obtaining prior FTA approval for advance payments. For the next procurement, the recipient must submit to the FTA regional office documentation that the required process was implemented.

The recipient is deficient if it has made progress payments using award funds but has not obtained adequate security for those payments and does not have written documentation to substantiate the work for which payment was made.

DEFICIENCY CODE P18-2: Federal interest not protected in advance/progress payments

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office procedures for obtaining adequate security and or sufficient written documentation to substantiate the work for progress payments. For the next procurement, the recipient must submit to the FTA regional office documentation that the required process was implemented.

GOVERNING DIRECTIVES

FTA C. 5010.1E, page IV-15

“Provisions in 2 CFR §200.305 and 31 CFR Part 205 govern payments to recipients for financing operations under federal assistance and other programs. These regulations require that advance payment to a recipient be limited to the minimum amounts needed and timed to be in accord with only the actual, immediate cash requirements of the recipient in carrying out the purpose of the Award. The timing and amount of advance payments must be as close as is administratively feasible to the actual disbursements by the recipient for direct program or costs of the Award and the proportionate share of any allowable indirect costs. The recipient must make timely payment to third-party contractors in accordance with the third-party contract provisions.”

FTA C. 4220.1F, Ch. IV, Sections 2. b. (5)(b) Advance Payments

“Advance payments are payments made to a contractor before the contractor incurs contract costs. The recipient may use its local share funds for advance payments. However, if there is no automatic preaward authority for its project, then advance payments made with local share funds before FTA assistance has been awarded, or before a letter of no prejudice has been issued or other preaward authority has been provided, or before FTA approval for the specific advance payment has been obtained, are ineligible for reimbursement. The following principles and restrictions apply: 1 Use of FTA Assistance Prohibited. The recipient may not use FTA assistance to make payments to a third party contractor before the contractor has incurred the costs for which the payments would be attributable. 2 Exceptions for Sound Business Reasons. Apart from advance payments that are customary, as discussed further, FTA does occasionally make exceptions to its advance payment prohibitions, if the recipient can provide sound business reasons for doing so and has obtained FTA’s advance written

concurrence. A recipient that seeks to use FTA assistance to support advance payments should contact the regional office administering its project to obtain FTA concurrence.

a Adequate Security for Advance Payments. FTA recognizes that advance payments may be needed for certain costs supported by sound business judgment. Adequate security for the advance payment is an essential pre-condition to FTA's concurrence in the use of FTA or local share funds.

b Customary Advance Payments. FTA recognizes that advance payments are typically required for, but are not limited to, public utility connections and services, rent, tuition, insurance premiums, subscriptions to publications, software licenses, construction mobilization costs, transportation, hotel reservations, and conference and convention registrations. Accordingly, the recipient may use FTA assistance to support or reimburse the costs of such acquisitions. FTA concurrence is required only when such advance payment or payments customarily required in the marketplace exceed \$100,000."

FTA C. 4220.1F, Ch. IV, Sections 2. b. (5)(c) Progress Payments

"Progress payments are payments for contract work that has not been completed. The recipient may use FTA assistance to support progress payments provided the recipient obtains adequate security for those payments and has sufficient written documentation to substantiate the work for which payment is requested. 1. Adequate Security for Progress Payments. Adequate security for progress payments may include taking title or obtaining a letter of credit or taking equivalent measures to protect the recipient's financial interest in the progress payment. Adequate security should reflect the practical realities of different procurement scenarios and factual circumstances. FTA acknowledges the practical reality that taking title to work in progress may not be desirable in some circumstances. The recipient should always consider the costs associated with providing security (for example, the recipient may need to acquire bonds or letters of credit in the commercial marketplace) and the impact of those costs on the contract price, as well as the consequences of incomplete performance. 2. Adequate Documentation. Sufficient documentation is required to demonstrate completion of the amount of work for which progress payments are made."

P19. If the recipient procured buses with FTA funds, did it comply with requirements for bus testing reports?

BASIC REQUIREMENT

For bus procurements, the recipient must have in its possession a copy of the Altoona Bus Testing Report before final acceptance of the first vehicle.

APPLICABILITY

All recipients

DETAILED EXPLANATION FOR REVIEWER

[Bus Testing \(PSR – New 64\)](#)

The recipient must have in its possession a copy of the Altoona Bus Testing Report before final acceptance of the first vehicle. Testing applies to buses and modified vans used in transit service, including, but not limited to, new bus and van models using alternative fuels such as methanol, ethanol, compressed natural gas (CNG), hydrogen, and electricity (if stored and/or generated on-board the vehicle).

FTA does not require a vehicle manufacturer to test its model before bidding. However, recipients of FTA funds acquiring any bus model must certify that an example of that model will have been tested and the recipient will have received a copy of the resulting test report prepared on the bus model before the final acceptance of the first vehicle. Effective October 31, 2016, the effective date of the revision to 49 CFR part 665, recipients must certify that the bus models submitted to Altoona following the effective date received a passing score before FTA funds can be spent on that vehicle.

Bus testing is not required for unmodified mass-produced vans (provided they are only offered to FTA recipients in the 4-year/100,000-mile service life category). Unmodified mass-produced vans are vehicles manufactured as complete, fully assembled vehicles as provided by the original equipment manufacturer (OEM). This category includes vans with raised roofs or wheelchair lifts or ramps that are installed by the OEM or by someone other than the OEM, provided that the installation of these components is completed in strict conformance with the OEM modification guidelines.

INDICATORS OF COMPLIANCE

- a. *Were the bus models that the recipient purchased during the review period tested?*
- b. *Did the recipient obtain the bus testing report showing the bus model met FTA's bus testing requirements prior to acceptance of the first vehicle?*

INSTRUCTIONS FOR REVIEWER

Prior to the site visit, examine the make and models of all buses procured since the last Comprehensive Review. Review the Altoona Bus Research and Testing Center Database at <http://altoonabustest.psu.edu/> to determine if a bus report has been issued for that model. For bus models tested subsequent to October 31, 2016, determine if the bus model received a passing score.

During the site visit, examine selected bus procurement files to ensure that the recipient had in its possession a copy of the Altoona Bus Testing Report before final acceptance of the first vehicle and that, subsequent to October 31, 2016, any new bus model tested received a passing score.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if the bus model purchased with FTA funds was not tested or, for new bus models tested after October 31, 2016, the bus model did not receive a passing score.

DEFICIENCY CODE P19-1: Deficiency with bus model testing requirements

SUGGESTED CORRECTIVE ACTION: If any vehicles have not been tested and the recipient has accepted the vehicles, the recipient must submit to the FTA regional office information relating to the procurement. The recipient must submit to the FTA regional office procedures for only accepting vehicles that were tested and received a passing score for future bus purchases to the FTA regional office. For the next procurement, the recipient must submit to the FTA regional office documentation that the required process was implemented.

The recipient is deficient if a copy of the Altoona Bus Test Report is not in the recipient's procurement files.

DEFICIENCY CODE P19-2: Missing documentation of bus model testing

SUGGESTED CORRECTIVE ACTION: The recipient must obtain the Altoona Bus Test Report for the specific make/model purchased and provide a copy of it and procedures for obtaining the report for future bus purchases to the FTA regional office.

GOVERNING DIRECTIVE

49 CFR 665.7 Certification of compliance

“(a) In each application to FTA for the purchase or lease of any new bus model, or any bus model with a major change in configuration or components to be acquired or leased with funds obligated by the FTA, the recipient shall certify that the bus was tested at the Bus Testing Facility and that the bus received a passing test score as required in this part. The recipient shall receive the appropriate full Bus Testing Report and any applicable partial testing report(s) before final acceptance of the first vehicle.”

P20. If the recipient procured rolling stock with FTA funds, did it comply with the requirements of 49 CFR Part 663, including pre-award and post-delivery Buy America audit requirements, resident inspector requirements, and purchaser’s certifications?

BASIC REQUIREMENT

A recipient purchasing revenue service rolling stock with Federal funds must conduct pre-award and post-delivery audits verifying compliance with Buy America provisions, purchaser’s requirements, resident inspector requirements, and Federal Motor Vehicle Safety Standards (FMVSS).

APPLICABILITY

All recipients

DETAILED EXPLANATION FOR REVIEWER

Vehicle Pre-Award Review (PSR – 57) and Vehicle Post-Delivery Review (PSR – 58)

A recipient purchasing revenue service rolling stock with Federal funds must conduct pre-award and post-delivery audits verifying compliance with Buy America provisions, purchaser’s requirements, resident inspector requirements, and FMVSS. The recipient is required to keep records, including pre-award and post-delivery certifications, which show that the regulations have been followed. The audits require the recipient to complete two certifications (Buy America and Purchaser’s Requirements) at the pre-award stage and three certifications (Buy America, Purchaser’s Requirements, and FMVSS) at the post-delivery stage. The regulations do not specifically note that these five certifications must be signed in order for the recipient to certify compliance with Buy America, however the certifications must indicate that requirements have been reviewed and met.

Although procurements of rolling stock of \$150,000 or less are not subject to Buy America requirements, these contracts still must comply with the pre-award and post-delivery purchaser’s requirements and FMVSS audits required by 49 CFR Part 663.

Pre-Award Audits and Certifications

Recipients may purchase vehicles in several groups over several years using either vehicle procurement contracts with options or multi-year vehicle procurement contracts. FTA requires that each group of vehicles purchased, i.e., each “order” of vehicles, have a pre-award audit before the order is placed. One pre-award audit may suffice, provided that there is no change in vehicle configuration, i.e., no change that is expected to have a significant impact on vehicle handling and stability or structural integrity, between successive deliveries of vehicles.

If a recipient is using another recipient’s procurement contract for purchasing revenue vehicles (i.e., “piggybacking”), the purchaser may rely on the pre-award audit completed prior to the original contract. However, the recipient must review the audit and prepare its own signed certification.

Compliance with purchaser’s specifications: The recipient must complete a pre-award purchaser’s requirements certification verifying that the manufacturer’s bid specifications comply with the recipient’s solicitation requirements and that the proposed manufacturer is responsible and capable of building the bus to the solicitation specifications. The pre-award certification may be based on the recipient’s determination that the vendor is responsive and responsible. The requirement to conduct an audit for compliance with purchaser’s requirements and complete a certification applies to all purchases of revenue rolling stock, even those below the Federal simplified acquisition threshold **or Buy America threshold**. The pre-award audit is required before a recipient enters into a formal contract with a supplier.

Compliance with Buy America: If the procurement is more than \$150,000, at the pre-award stage, the recipient must complete:

- A compliance certification verifying that the rolling stock will contain the required minimum percent domestic components, by cost, and that final assembly will take place in the United States; or

- An exemption certification indicating that the recipient has a letter from FTA granting a waiver from the Buy America requirement.

The recipient or an independent third party must conduct the Buy America audit. The audit may be based on information provided by the manufacturer; however, certification by the manufacturer is not adequate.

For rolling stock contracts entered into before October 1, 2015, the domestic content must exceed 60 percent. For rolling stock contracts entered into on or after October 1, 2015, the applicable domestic content percentage under 49 U.S.C. § 5323(j)(2)(C) will be based on the scheduled delivery date of the first production vehicle (i.e., the first vehicle intended to carry passengers in revenue service), final acceptance notwithstanding. Thus, if a recipient or group of recipients as part of a joint procurement enter into a contract for rolling stock on or after October 1, 2015, then the new FAST Act provisions applicable for the date of delivery of the first production vehicle shall apply. Accordingly, if the first production vehicle is delivered in FY2018 or FY2019, the domestic content must be more than 65 percent, and if the first production vehicle is delivered in FY2020 or beyond, the domestic content must be more than 70 percent. If the scheduled delivery date is delayed such that the domestic content requirement is increased, recipients must comply with FTA's September 1, 2016 policy guidance on the implementation of the phased increase in domestic content.

Compliance with FMVSS: The recipient must receive a certification from the vehicle manufacturer at the pre-award stage that the vehicles being procured comply with FMVSS issued by the National Highway Traffic Safety Administration (49 CFR Part 571).

Post Delivery Audits and Certifications

Compliance with purchaser's specifications: The recipient must complete a post-delivery purchaser's requirements certification verifying that the buses delivered meet the contract specifications. This must be completed before a bus title is transferred to the recipient or before a bus is placed into revenue service, whichever is first. The post-delivery certification is based on the recipient's visual inspections and road tests and, if required, the resident inspector's monitoring of the final assembly process and final report of manufacturing activities. The requirement to conduct an audit for compliance with purchaser's requirements and complete a certification applies to all purchases of revenue rolling stock, even those below the Federal simplified acquisition threshold **or Buy America threshold**.

Recipients are required to have a resident inspector during final assembly process if they meet the following criteria:

- Recipient is purchasing any number of rail vehicles.
- Recipient is in an urbanized area with a population of more than 200,000 and is purchasing more than 10 buses.
- Recipient is in an area with a population of 200,000 or less and is purchasing more than 20 buses.

FTA does not require in-plant inspectors for unmodified vans manufactured by the automobile companies. FTA requires only a visual inspection and road test after delivery for such procurements.

In the case of consolidated procurements on behalf of multiple subrecipients, the in-plant inspection requirement is triggered only if any single subrecipient will receive more than 10 or more than 20 vehicles, depending on area size. One in-plant inspector can meet the requirement for multiple recipients. The inspector may not be an agent or employee of the manufacturer. The inspector must prepare a report providing accurate records of all vehicle construction activities and summarizing how the construction and operational characteristics of the vehicles met (or did not meet) the contract specifications.

Compliance with Buy America: Required post-delivery certification includes disclosure by the manufacturer of the final assembly location; a listing of the component and subcomponent parts, the cost

(actual or percent of total) of such components and subcomponents and the country of origin; a description of final assembly activities; and the cost of final assembly. Final assembly costs are not to be included when calculating the percent of domestic content of the vehicle.

The recipient or an independent third party must conduct the Buy America audits. The audit may be based on information provided by the manufacturer; however, certification by the manufacturer is not adequate.

Compliance with FMVSS: The recipient must complete, at the post-delivery stage, a certification that the recipient has received from the vehicle manufacturer at both the pre-award and post-delivery stages a copy of the manufacturer's self-certification information that the vehicle complies with the FMVSS issued by the National Highway Traffic Safety Administration (49 CFR Part 571). The requirement to conduct an audit for compliance with FMVSS and complete a certification applies to all purchases of revenue rolling stock, even those below the Federal simplified acquisition threshold **or Buy America threshold**.

INDICATORS OF COMPLIANCE

- a. *For rolling stock procurements, did the recipient include the appropriate Buy America domestic content requirements in its solicitation?*
- b. *For rolling stock purchases, did the recipient conduct pre-award and post-delivery audits to ensure the manufacturer(s) complied with contract specifications, Buy America?*
- c. *Did the recipient document its pre-award and post-delivery audits by completing and maintaining written certifications?*

INSTRUCTIONS FOR REVIEWER

Prior to the site visit, review the recipient's list of rolling stock procurements to determine which Buy America domestic content percentage is required. Onsite, review contract documents to ensure that the appropriate domestic content requirements are included.

- For contracts entered into before October 1, 2015, all vehicles delivered under the original contract base order and any properly exercised options by recipients who are direct parties to the contract must contain a domestic content of 60 percent or more.
- The FAST Act amendments regarding increasing domestic content do not apply to contracts entered into before October 1, 2015, even if the contract provides for the delivery of the first production vehicle after FY2017.
- For rolling stock contracts entered into on or after October 1, 2015, the applicable domestic content percentage is based on the scheduled delivery date of the first production vehicle (i.e., the first vehicle intended to carry passengers in revenue service), final acceptance notwithstanding.
- If the first production vehicle is delivered in FY2018 or FY2019, the domestic content must be more than 65 percent, and if the first production vehicle is delivered in FY2020 or beyond, the domestic content must be more than 70 percent.
- If the delivery date of the first production vehicle is delayed such that it will be delivered in a year with a higher domestic content, FTA will address those situations on a case-by-case basis.

Prior to the site visit, examine the recipient's policies and procedures to determine how the recipient describes compliance with pre-award and post-delivery audits and audit certifications for rolling stock purchases. During the site visit, examine selected rolling stock procurement files to ensure that, for each group of vehicles purchased, the recipient conducted the following audits and included in their files the following certifications:

- Pre-award Buy America.

- Pre-award Purchaser's Requirements (required even if procurement is below \$150,000).
- Post-delivery Buy America.
- Post-delivery Purchaser's Requirements (required even if procurement is below \$150,000).
- Post-delivery FMVSS (required even if procurement is below \$150,000).

Pre-award and post-delivery certifications do not need to be signed to be considered valid certifications. However, a blank certification that does not indicate requirements have been met would not be "complete" and could still result in a deficiency. A blank form without language, a checkbox, a signature, or other indication that requirements are met, could still result in a deficiency (e.g., a form with unchecked boxes for compliance and noncompliance). This differs from the Buy America certification noted in Question 12 of this section, which is to be signed.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it did not include the appropriate Buy America domestic content requirements in its rolling stock procurements.

DEFICIENCY CODE: P20-1 Buy America domestic content deficiencies

SUGGESTED CORRECTIVE ACTION: The recipient must stop work on the contract until FTA determines the appropriate corrective action for non-compliant vehicles already delivered and paid for under the contract and for future orders of non-compliant vehicles.

The recipient is deficient if it did not conduct all of the required audits for revenue rolling stock procurements. The recipient is deficient if it ordered a group of vehicles from a multi-year procurement before the pre-award audit was conducted.

DEFICIENCY CODE P20-2: Pre-award and/or post-delivery audits not performed

SUGGESTED CORRECTIVE ACTION: If no vehicles have been delivered under the contract, the recipient must conduct within 30 days the equivalent of a Buy America pre-award audit. If the vehicles are in the process of being delivered or have been delivered, the recipient must conduct a Buy America post-delivery audit within 30 days. The recipient must submit to the FTA regional office procedures for pre-award and post-delivery review and inspection. For the next procurement, the recipient must submit to the FTA regional office documentation that the required process was implemented.

The recipient must submit to the FTA regional office procedures for conducting pre-award audits for options and/or multi-year contracts so that future procurements will comply with this requirement. For the next procurement, the recipient must submit to the FTA regional office documentation that the required process was implemented.

The recipient is deficient if its pre-award and/or post-delivery certifications for applicable rolling stock procurements is not complete or in compliance with 49 CFR Part 663.

DEFICIENCY CODE P20-3: Pre-award and/or post-delivery certifications lacking

SUGGESTED CORRECTIVE ACTION: If no vehicles have been delivered under the contract, the recipient must submit a compliant pre-award audit within 30 days. If the vehicles are in the process of being delivered or have been delivered, the recipient must submit to the FTA regional office a compliant pre-award audit and/or post-delivery audit within 30 days. The recipient must submit to the FTA regional office the certifications for the procurement reviewed and procedures

for completing the applicable pre-award and post-delivery audits certifications for future revenue rolling stock procurements. If the recipient cannot certify compliance, it must confer with the FTA regional office for the appropriate corrective action. For the next procurement, the recipient must submit to the FTA regional office documentation that the required process was implemented.

For the next revenue rolling stock procurement, the recipient must submit to the FTA regional office pre-award audit information and certifications before awarding the contract and the post-delivery audit information and certifications before drawing FTA funds.

GOVERNING DIRECTIVES

49 U.S.C. 5323(j)

49 CFR 663 Pre-award and Post-delivery Audits of Rolling Stock Purchases “Subpart B—Pre-Award Audits

49 CFR 663.21 Pre-award audit requirements

“A recipient purchasing revenue service rolling stock with FTA funds must ensure that a pre-award audit under this part is complete before the recipient enters into a formal contract for the purchase of such rolling stock.”

49 CFR 663.23 Description of pre-award audit

“A pre-award audit under this part includes—(a) A Buy America certification as described in §663.25 of this part; (b) A purchaser's requirements certification as described in §663.27 of this part; and (c) Where appropriate, a manufacturer's Federal Motor Vehicle Safety Standards certification information as described in §663.41 or §663.43 of this part.”

49 CFR 663.25 Pre-award Buy America certification

“For purposes of this part, a pre-award Buy America certification is a certification that the recipient keeps on file that—(a) There is a letter from FTA which grants a waiver to the rolling stock to be purchased from the Buy America requirements under section 165(b)(1), (b)(2), or (b)(4) of the Surface Transportation Assistance Act of 1982, as amended; or (b) The recipient is satisfied that the rolling stock to be purchased meets the requirements of section 165(a) or (b)(3) of the Surface Transportation Assistance Act of 1982, as amended, after having reviewed itself or through an audit prepared by someone other than the manufacturer or its agent documentation provided by the manufacturer which lists—(1) Component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and (2) The location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.”

49 CFR 663.27 Pre-award purchaser's requirements certification

“For purposes of this part, a pre-award purchaser's requirements certification is a certification a recipient keeps on file that— (a) The rolling stock the recipient is contracting for is the same product described in the purchaser's solicitation specification; and (b) The proposed manufacturer is a responsible manufacturer with the capability to produce a vehicle that meets the recipient's specification set forth in the recipient's solicitation. Subpart C—Post-Delivery Audits”

49 CFR 663.31 Post-delivery audit requirements

“A recipient purchasing revenue service rolling stock with FTA funds must ensure that a post-delivery audit under this part is complete before title to the rolling stock is transferred to the recipient.”

49 CFR 663.33 Description of post-delivery audit

“A post-delivery audit under this part includes—(a) A post-delivery Buy America certification as described in §663.35 of this part; (b) A post-delivery purchaser's requirements certification as described in §663.37 of this part; and (c) When appropriate, a manufacturer's Federal Motor Vehicle Safety Standards self-certification information as described in §663.41 or §663.43 of this part.”

49 CFR 663.35 Post-delivery Buy America certification

“For purposes of this part, a post-delivery Buy America certification is a certification that the recipient keeps on file that—(a) There is a letter from FTA which grants a waiver to the rolling stock received from the Buy America requirements under sections 165 (b)(1), or (b)(4) of the Surface Transportation Assistance Act of 1982, as amended; or (b) The recipient is satisfied that the rolling stock received meets the requirements of section 165 (a) or (b)(3) of the Surface Transportation Assistance Act of 1982, as amended, after having reviewed itself or by means of an audit prepared by someone other than the manufacturer or its agent documentation provided by the manufacturer which lists—(1) Components and subcomponent parts of the rolling stock identified by manufacturer of the parts, their country of origin and costs; and (2) The actual location of the final assembly point for the rolling stock including a description of the activities which took place at the final assembly point and the cost of the final assembly.”

49 CFR 663.37 Post-delivery purchaser's requirements certification

“For purposes of this part, a post-delivery purchaser's requirements certification is a certification that the recipient keeps on file that—(a) Except for procurements covered under paragraph (c) in this section, a resident inspector (other than an agent or employee of the manufacturer) was at the manufacturing site throughout the period of manufacture of the rolling stock to be purchased and monitored and completed a report on the manufacture of such rolling stock. Such a report, at a minimum, shall—(1) Provide accurate records of all vehicle construction activities; and (2) Address how the construction and operation of the vehicles fulfills the contract specifications. (b) After reviewing the report required under paragraph (a) of this section, and visually inspecting and road testing the delivered vehicles, the vehicles meet the contract specifications. (c) For procurements of: (1) Ten or fewer buses; or (2) Procurements of twenty vehicles or fewer serving rural (other than urbanized) areas, or urbanized areas of 200,000 people or fewer; or (3) Any number of primary manufacturer standard production and unmodified vans, after visually inspecting and road testing the vehicles, the vehicles meet the contract specifications.”

49 CFR 663.39 Post-delivery audit review

“(a) If a recipient cannot complete a post-delivery audit because the recipient or its agent cannot certify Buy America compliance or that the rolling stock meets the purchaser's requirements specified in the contract, the rolling stock may be rejected and final acceptance by the recipient will not be required. The recipient may exercise any legal rights it has under the contract or at law. (b) This provision does not preclude the recipient and manufacturer from agreeing to a conditional acceptance of rolling stock pending manufacturer's correction of deviations within a reasonable period. Subpart D—Certification of Compliance With or Inapplicability of Federal Motor Vehicle Safety Standards”

49 CFR 663.41 Certification of compliance with Federal motor vehicle safety standards

“If a vehicle purchased under this part is subject to the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in part 571 of this title, a recipient shall keep on file its certification that it received, both at the pre-award and post-delivery stage, a copy of the manufacturer's self-certification information that the vehicle complies with relevant Federal Motor Vehicle Safety Standards.”

49 CFR 663.43 Certification that Federal motor vehicle standards do not apply

“(a) Except for rolling stock subject to paragraph (b) of this section, if a vehicle purchased under this part is not subject to the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in part 571 of this title, the recipient shall keep on file its certification that it received a statement to that effect from the manufacturer. (b) This subpart shall not apply to rolling stock that is not a motor vehicle.”

Notice of Policy on the Implementation of the Phased Increase in Domestic Content Under the Buy America Waiver for Rolling Stock and Notice of Public Interest Waiver of Buy America Domestic Content Requirements for Rolling Stock Procurement in Limited Circumstances IV, 81 Federal Register 60278 (September 1, 2016)

“For rolling stock contracts entered into on or after October 1, 2015, i.e., the effective date of the FAST Act, the applicable domestic content percentage under section 5323(j)(2)(C) will be based on the scheduled delivery date of the first production vehicle (i.e., the first vehicle intended to carry passengers in revenue service), final acceptance notwithstanding. Thus, if a recipient or group of recipients as part of a joint procurement entered into a contract for rolling stock on or after October 1, 2015, then the new FAST Act provisions applicable for the date of delivery of the first production vehicle shall apply. Accordingly, if the first production vehicle is delivered in FY2018 or FY2019, the domestic content must be more than 65 percent, and if the first production vehicle is delivered in FY2020 or beyond, the domestic content must be more than 70 percent. These delivery provisions apply to contracts entered into on or after October 1, 2015, unless a waiver is granted. If the delivery date of the first production vehicle is delayed such that it will be delivered in a year with a higher domestic content, FTA will address those situations on a case-by-case basis. The FAST Act amendments do not apply to contracts entered into before October 1, 2015, even if the contract provides for the delivery of the first production vehicle after FY2017. For contracts entered into before October 1, 2015, all vehicles delivered under the original contract base order and any properly exercised options by recipients who are direct parties to the contract may contain a domestic content of more than 60 percent, per the pre-FAST Act requirements.”

FTA is issuing two general public interest waivers to address two categories of recipients and manufacturers: (1) Recipients who entered into contracts or placed purchase orders against State schedules between October 1, 2015 and December 4, 2015; and (2) Recipients who have entered into contracts after December 4, 2015, as a result of solicitations for bids or requests for proposals that were advertised before December 4, 2015. In addition, FTA is issuing a third public interest waiver for recipients who solicited contracts on or after December 4, 2015, provided they entered into a contract within 60 days of publication of this Notice.

P21. Does the recipient perform oversight of its subrecipients' FTA-funded procurement activities as described in its policies and procedures?

BASIC REQUIREMENT

The recipient is responsible for ensuring that subrecipients administer FTA-funded procurements in accordance with the requirements in 2 CFR Part 200 and FTA Circular 4220.1F.

APPLICABILITY

All recipients with subrecipients

DETAILED EXPLANATION FOR REVIEWER

Subrecipient Oversight (New PSR Element)

When a recipient passes through funding to a subrecipient, competitive procurement requirements may apply to the subrecipient. Typically, this requirement would apply to any subrecipient which performs primary project activities normally performed by the recipient directly. In such circumstances, the procurement process of the subrecipient should meet Federal requirements contained in the FTA Master Agreement, including Buy America, debarment and suspension, and lobbying requirements. Furthermore, a recipient needs to have a mechanism to ensure subrecipient compliance.

Some recipients provide written guidelines or standard terms and conditions to subrecipients for direct procurements. Some recipients review subrecipients' direct procurements, particularly for vehicles, equipment, and construction. Such reviews, which generally focus on bid evaluation and selection, may be used to ensure that FTA (and state) requirements are met.

Monitoring of compliance with FTA third party contracting requirements will require a review of procurement procedures, either through site visits or a periodic review of written procurement manuals. The recipient is not required to review each subrecipient's procurement to ensure compliance with Federal requirements. The recipient may review selected procurements on a periodic basis in conjunction with a site visit or other general review of compliance with Federal requirements.

INDICATORS OF COMPLIANCE

- a. *Does the recipient implement oversight procedures of its subrecipients for FTA-funded procurements?*
- b. *Do subrecipient procurement files reviewed demonstrate adequate oversight by the recipient?*

INSTRUCTIONS FOR REVIEWER

Request and review a listing of subrecipients. Request and review the recipient's oversight procedures, State Management Plans (if the recipient is a State), and any procurement requirements that have been included in subrecipient agreements. Discuss with the recipient onsite and determine who monitors the subrecipients' procurement processes. Examine written reports or audit reports of the process to determine if the recipient is monitoring in accordance with its documented procedures.

For each subrecipient selected for a site visit, onsite:

- Confirm that the subrecipient has written procurement policies and procedures that comply with 2 CFR Part 200.
- Confirm the subrecipient has written standards of conduct for those involved in its procurement and contract administration actions.
- Confirm that the subrecipient makes protest procedures available to bidders and the public.
- Select one procurement that has been reviewed by the recipient.
 - Verify that a written responsibility determination was made for the successful bidder prior to award and that consideration was given to matters such as:
 - Contractor integrity
 - Compliance with public policy
 - Record of past performance

- Financial and technical resources.
- Verify that the subrecipient is determining that bidders were not excluded or disqualified before entering into any third-party contracts. Document that the subrecipient makes this verification by:
 - Checking System for Award Management (SAM) Exclusions (at SAM.gov); or
 - Collecting a certification; or
 - Adding a clause or condition to the covered transaction.
- Confirm that the subrecipient maintains records sufficient to detail the history of procurement actions.
- **Confirm that there is a method to ensure the most efficient and economic purchase.**
- Confirm that contract administration and oversight procedures are being implemented as described in the subrecipient's procurement policies and procedures.
- Confirm that the subrecipient is not using geographic preferences or misusing prequalification lists.
- Verify that the subrecipient used the appropriate method of procurement as described in its policies and procedures and in compliance with 2 CFR Part 200.
- **Confirm that the subrecipient did not use the cost plus percentage of cost type of contracting.**
- If reviewing an A&E procurement, determine that A&E services were procured using a qualifications-based process in accordance with the Brooks Act, where firms are ranked based only on their qualifications and price is then negotiated with the most qualified firm.
- Confirm the subrecipient developed an independent estimate prior to receipt of bids or proposals for procurements above the Simplified Acquisition Threshold.
- Confirm that a cost analysis was performed in accordance with the recipient's policies and procedures for: (1) procurements which require that offerors submit detailed elements of direct and indirect costs; (2) procurements where adequate price competition is lacking; and/or (3) sole-source procurements. If a cost analysis was not required, confirm the subrecipient documented a price analysis.
- Verify that the subrecipient included the applicable FTA clauses in its bid documents.
- **Confirm that, for applicable construction contracts, the subrecipient received bid, performance, and payment security documents in the correct amounts, and that Davis Bacon wage determinations were included in the contract documents.**
- Confirm the subrecipient included all applicable certifications in its bid documents and received signed certifications from the proposers. These certifications may include:
 - Transit Vehicle Manufacturer (TVM) certification
 - Lobby certification
 - Buy America certification
- Determine that liquidated damages in contracts were administered correctly, if assessed.
- Verify that any change orders over \$100,000 were executed correctly. **Confirm that the subrecipient performed an independent cost estimate, a cost or price analysis, was within the scope of the project, and the change order was executed by an authorized individual if change orders were over the small purchase threshold.**
- If the reviewed procurement included options, confirm that the subrecipient based the number of options on its reasonably foreseeable need and evaluated the option price prior to awarding the contract.
- If the subrecipient procured bus or rail rolling stock or replacement parts with FTA funds, verify that it adhered to the time limitations on placing orders against the contracts.
- If the subrecipient purchased FTA-funded assets through an assignment of options (a/k/a "piggyback"), confirm the underlying contract complied with applicable federal requirements regarding excessive options, inclusion of Federal requirements, assignability, and price; and no cardinal changes.
- Verify that no advance payments were made without prior FTA approval, and that there was adequate protection for progress payments.
- For bus procurements, ensure the subrecipient complied with bus testing report requirements.

- For rolling stock procurements, determine that the subrecipient complied with pre-award and post-delivery audits verifying compliance with Buy America provisions, purchaser's requirements, resident inspector requirements, and Federal Motor Vehicle Safety Standards (FMVSS). **Verify that all pre-award and post-delivery certifications were completed.**

POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if 1) it is not providing oversight of its subrecipients' procurement processes as described in its written documents, 2) it does not monitor subrecipients making direct procurements with FTA assistance for compliance with the requirements, and/or 3) during a review of subrecipient procurements, deficiencies are found.

DEFICIENCY CODE P21-1: Insufficient oversight of subrecipient procurements

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office documentation that it has implemented a procurement monitoring program.

GOVERNING DIRECTIVE

2 CFR 200.331 "Requirement for pass-through entities:

All pass-through entities must: (d) Monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved. Pass-through entity monitoring of the subrecipient must include: (1) Reviewing financial and performance reports required by the pass-through entity. (2) Following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and other means. (3) Issuing a management decision for audit findings pertaining to the Federal award provided to the subrecipient from the pass-through entity as required by §200.521 Management decision."

P22. Does the recipient have a system in place to ensure the most efficient and economic purchases?

BASIC REQUIREMENT

Recipients must avoid acquisition of unnecessary or duplicative items and purchase items in the most economical manner.

APPLICABILITY

All recipients

DETAILED EXPLANATION FOR REVIEWER

System for Ensuring Most Efficient and Economic Purchase (PSR – 5)

2 C.F.R. 200 requires that recipients have procedures in place to avoid purchasing unnecessary or duplicative items and they should consider consolidating or breaking out procurements to obtain a more economical purchase.

Recipients who invest the time and resources to develop checks and balances in their procurement program, along with development of short and long range procurement plans, can avoid last minute, emergency, or unnecessary procurements, which are contrary to open, efficient, and effective procurements.

FTA recipients vary in size and organization, therefore the system that each develops and implements to avoid unnecessary or duplicative purchases should be tailored to their agency. Whether the procurement functions are centralized, decentralized, or a combination of both, it is essential that no employee undertakes any procurement function without delegated authority and guidelines. It is easier for an entity to effectively manage its procurement responsibilities if most of the decisions and contractual actions are concentrated in one or more experienced individuals who are familiar with the requirements that span the entire procurement cycle. Because initial identification of need is often initiated by a recipient's internal customers (i.e., program or technical personnel for whom goods or services are being procured), the procurement office should be in a position to facilitate the consolidation of procurements of different internal customers with the same need.

INDICATORS OF COMPLIANCE

- a. *Does the recipient have procedures in place to avoid unnecessary and duplicative purchases?*
- b. *Does the recipient have procedures in place to evaluate procurements to determine the most economical methods?*

INSTRUCTIONS FOR REVIEWER

Prior to the site visit, review the procurement policies and/or procedures to determine if there are written procedures in place to:

- avoid unnecessary and duplicative purchases,
- consolidate or break out purchases to make more economical purchases, or
- consider lease vs. purchase alternatives.

Review the list of procurements to identify any repetitive purchases for the same items or same amounts. Onsite, gain an understanding of how the procurement function operates, if there are decentralized procurement functions, and if procurements are reviewed to ensure that they are necessary and not duplicative. Determine if there is a process in place to determine the most efficient and economical methods of procurement. Determine if, for the procurements selected, any procedures regarding the necessity and economy of procurements were followed.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it does not have or does not implement procedures to avoid unnecessary and duplicative purchases or to make the most economical purchases.

DEFICIENCY CODE P22-1: No system for efficient and economic purchases

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office documentation that it has revised its procurement policies and procedures to include procedures for efficient and economical purchases, or that it has implemented procedures it had previously developed.

GOVERNING DIRECTIVES

2 CFR 200.318(d)

“The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.”

FTA Circular 4220.1F Chapter IV. 1.b. Necessity

“... requires the recipient to establish procedures to avoid the purchase of unnecessary property and services (including duplicative items and quantities or options it does not intend to use or whose use is unlikely).”

IV. Interview Questionnaires and Checklists

IV.1. ONSITE REVIEW PHASE INTERVIEW QUESTIONNAIRES

The interview questionnaires include:

- Chief Executive Officer
- Attorney
- Grants Personnel
- Finance Personnel
- Head of Procurement
- Procurement Staff
- Program Manager
- Disadvantaged Business Enterprise (DBE) Representative
- Internal Auditor

Interview for Chief Executive Officer	
Suggested Questions	Comments
<p>What is the organizational structure of the agency?</p> <p>Where does the procurement department fit within the overall organization?</p>	-
<p>What other offices (such as awards management, finance, or legal) are involved in procurement activities?</p> <p>What offices are allowed to award contracts? (i.e. legal services, advertising, accounting, etc.)</p>	-
<p style="color: red;">Do you have subrecipients, and if so, who is responsible for monitoring their compliance with procurement requirements for FTA-funded purchases?</p>	-
<p>What is the role of the internal audit department in the procurement process?</p> <p>Has the internal audit department conducted contract audits of third party contractors?</p> <p>What internal audits have been conducted of the procurement function?</p>	-

Interview for Chief Executive Officer	
Suggested Questions	Comments
Who is authorized to make a contract award (Board of Directors, General Manager, Director of Procurement, other senior management)?	-
What periodic management reports do you receive from the procurement office?	-
Do you refer to FTA's <i>Best Practices Procurement Manual</i> or Procurement Frequently Asked Questions on FTA's website? Does staff refer to these resources?	-
Have there been instances in which you have not supported staff recommendations for award? If yes, what was the situation?	-
What involvement does the Board of Directors have in the procurement process?	-

Interview for Chief Executive Officer	
Suggested Questions	Comments
<p>Has the Board overturned staff recommendations on the award of contracts?</p> <p>If yes, when?</p>	-
<p>How are potential conflicts of interest (real or apparent) determined?</p> <p>Have there been any conflicts of interest identified?</p> <p>Has agency or governing body personnel recused themselves from participating in a procurement action because of a potential or real conflict of interest?</p> <p>Have there been any violations of the standards of conduct policy identified?</p>	-

Interview for Chief Executive Officer	
Suggested Questions	Comments
<p>Have there been any violations of the rules governing the acceptance of gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subagreements?</p> <p>If so, were sanctions imposed?</p>	-
<p>Have there been any contract disputes, claims, or official protests in the past two years?</p> <p>If so, how have these been settled?</p>	-

Interview for Chief Executive Officer	
Suggested Questions	Comments
<p>Have there been any complaints of violation of Federal law or regulations in procurement actions?</p> <p>If yes, how have these been resolved?</p>	-
<p>Are there any pending investigations of the procurement process or procurement actions?</p> <p>If yes, what is the nature of these investigations?</p>	-
<p>Have there been any high profile awards that received negative press coverage?</p> <p>If yes, what awards associated with what projects?</p>	-

Interview for Chief Executive Officer	
Suggested Questions	Comments
<p>Are there conflicting Federal, state, or local regulations regarding procurement activities?</p> <p>If yes, how do you deal with conflicting regulations?</p>	-
<p>Were there procurement issues in the most recent Triennial Review, single audit, or other audit or review? What were the adverse findings?</p> <p>Have the findings been resolved?</p>	-
<p>Are there any major restructuring or organizational changes planned or underway?</p> <p>If so, how will the changes affect the procurement function?</p>	-

Interview for Attorney	
Suggested Questions	Comments
<p>What involvement does the legal department have in the procurement process? (contract awards, protests, potential conflicts of interest)</p>	-
<p>Are you involved in hiring outside legal counsel?</p> <p>If yes, what procurement method do you use?</p>	-
<p>How are potential conflicts of interest (real or apparent) determined?</p> <p>Have there been any conflict of interest issues? If so, how have they been resolved?</p>	-

Interview for Attorney	
Suggested Questions	Comments
<p>Have there been any violations of the rules governing the acceptance of gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subagreements?</p> <p>If so, were sanctions imposed?</p>	-
<p>Have you become aware of any situation in which an excluded party (one suspended or debarred from Federal contracting) is participating on any of your procurements?</p>	-
<p>Have there been any contract disputes, claims, or official protests in the past two years?</p> <p>If so, how have these been settled?</p>	-
<p>Have there been any complaints of violation of Federal law or regulation in procurement actions?</p> <p>If yes, how have these been resolved?</p>	-

Interview for Attorney	
Suggested Questions	Comments
<p>Are there any pending investigations of the procurement process or procurement actions?</p> <p>If so, what are they?</p>	-
<p>Are there conflicting Federal, state, or local regulations regarding procurement activities?</p> <p>If so, how are these conflicting requirements handled?</p>	-
<p>Do you have any legal concerns related to procurement activities?</p> <p>If yes, what are they?</p>	-

Interview for Attorney	
Suggested Questions	Comments
<p>How is the legal department involved in the development of standard contract terms and conditions?</p> <p>How is the legal department involved in determining applicability of specific requirements for various types of contracts?</p>	-
<p>Do you ensure that solicitations and contracts adhere to Federal, state, and local laws and regulations, and Board of Directors (or comparable policy maker) policy?</p>	-

Interview for Grants Personnel	
Suggested Questions	Comments
What involvement, if any, do you have in the procurement process? How do you assure that purchases are appropriately allocated to FTA awards?	-
Do you have subrecipients, and if so, who is responsible for monitoring their compliance with procurement requirements for FTA-funded purchases?	-
Are you involved in the development of bid specifications? If so, how?	-
Are you involved in ensuring that Federal requirements are included in procurements using Federal funds? If so, how?	-
Are you involved in ensuring that Federally required clauses are included in procurements using Federal funds? If so, how?	-
Do you refer to FTA's <i>Best Practices Procurement Manual</i> or Procurement Frequently Asked Questions on FTA's website?	-

Interview for Grants Personnel	
Suggested Questions	Comments
What is the status of all active and inactive FTA awards? (Number, Amount expended, Balance)	-
What is the process for closing out awards?	-
How are you made aware of purchases that are made outside the procurement system? Petty cash purchases? Legal procurements?	-

Interview for Finance Personnel	
Suggested Questions	Comments
What involvement do you have in the procurement process?	-
How are you made aware of purchases that are made outside the procurement system? Petty cash purchases? Legal procurements?	-
Do you work with the procurement department in determining the most efficient and economic purchase of goods and services? If so, how?	-

Interview for Finance Personnel	
Suggested Questions	Comments
<p>Are you involved in determining the responsibility of contractors?</p> <p>If so, what are the factors considered?</p> <p>Is financial capability a criterion? If so, how do you assess?</p> <p>Do you assess the contractor's financial capability?</p> <p>How is this done?</p> <p>When is the determination of responsibility made?</p>	-

Interview for Finance Personnel	
Suggested Questions	Comments
<p>Are you involved in the development of requests for proposals for professional service contracts? (i.e., audit services, information system services, etc.)</p> <p>If so, how?</p> <p>Are you involved in the selection of a contractor for award?</p> <p>If so, how?</p>	-
<p>How are duties and functions segregated within the organization to assure that adequate checks and balances exist?</p>	-

Interview for Finance Personnel	
Suggested Questions	Comments
<p>Do you make emergency purchases?</p> <p>If so, approximately how many procurements over the past two years were classified as emergency purchases?</p>	-
<p>What was the source of funds for the past fiscal year? State %, Local %, FTA %, Other %</p>	-

Interview for Head of Procurement	
Suggested Questions	Comments
<p>Where does the procurement department fit within the overall organization? To whom do you report?</p>	-
<p>What is the organizational structure and staffing levels of the procurement department?</p>	-
<p>Are staff resources adequate to perform the functions of the department?</p> <p>Why or why not?</p>	-

Interview for Head of Procurement	
Suggested Questions	Comments
Are there currently staff vacancies? If so, how long have positions been vacant?	-
What is the typical staff turnover within the department?	-
What are the experience levels of staff?	-
How are staffing needs determined? How do you evaluate potential new employees?	-

Interview for Head of Procurement	
Suggested Questions	Comments
<p>What type of training is provided?</p> <p>Does staff attend the FTA procurement training courses, or other industry courses? If so, what are the details?</p> <p>What other types of training would be useful?</p>	-
<p>Do you have subrecipients, and if so, who is responsible for monitoring their compliance with procurement requirements for FTA-funded purchases?</p>	-
<p>What authority do you have to award contracts?</p>	-

Interview for Head of Procurement	
Suggested Questions	Comments
<p>What types of management reports are generated within the procurement department?</p>	-
<p>How are procurement policies and procedures documented? How do you assure that the documentation reflects current practice? That policies and procedures are followed? Who established procurement policies and procedures?</p>	-
<p>How is staff within the department made aware of procurement policies and procedures?</p> <p>Does staff have knowledge of the requirements of 2 CFR Parts 200.318-200.326 and the guidance in FTA Circular 4220.1F? How do you assure compliance?</p>	-

Interview for Head of Procurement	
Suggested Questions	Comments
How do you monitor staff activities?	-
<p>Is there a written code of standards of conduct? If so, where is it published?</p> <p>If so, has the code been approved and signed by the proper authority?</p> <p>How is staff made aware of the code of standards of conduct?</p>	-

Interview for Head of Procurement	
Suggested Questions	Comments
<p>What is the policy regarding acceptance of gifts, gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements?</p> <p>Is there a limit established?</p> <p>What sanctions may be imposed?</p> <p>Have there been violations? If yes, how have they been dealt with?</p>	-
<p>Does the agency have procedures for settling contract issues and disputes?</p>	-

Interview for Head of Procurement	
Suggested Questions	Comments
<p>Does the agency have written protest procedures?</p> <p>Have there been any formal protests in the award of contracts in the last two years?</p> <p>Have written protest procedures been followed?</p> <p>How have the protests been settled?</p>	-
<p>Have there been any complaints of violation of Federal law or regulation?</p> <p>If yes, how have they been resolved?</p>	-

Interview for Head of Procurement	
Suggested Questions	Comments
<p>What procedures are in place to ensure most efficient and economic purchase of goods and services?</p> <p>Who is responsible for reviewing procurements to avoid purchase of unnecessary or duplicative items?</p>	-
<p>What are the procurement department's requirements for maintaining records detailing the history of a procurement?</p>	-

Interview for Head of Procurement	
Suggested Questions	Comments
<p>Does the agency maintain a list of prequalified firms, persons, and products?</p> <p>Is the list (s) current?</p> <p>What is the process for updating the list?</p> <p>Are there an adequate number of firms to ensure maximum full and open competition?</p>	-
<p>What controls are in place to ensure that purchases are not split solely for the purpose of remaining below Federal micro or simplified acquisition purchase thresholds?</p>	-
<p>How do you ensure an equitable distribution of awards among qualified bidders when making micro-purchases?</p>	-

Interview for Head of Procurement	
Suggested Questions	Comments
How does the agency determine responsibility of contractors? What criteria are used? When is the determination of responsibility made?	-
Have you become aware of any situation in which an excluded party (one suspended or debarred from Federal contracting) is participating on any of your procurements?	-
How does the procurement department work with the customer departments in the development of specifications?	-
How many procurement actions are processed per year? How many above \$250,000?	-

Interview for Head of Procurement	
Suggested Questions	Comments
Do you maintain a contract listing? (Get copy)	-
What criteria and procedures do you follow to assure that the contract file is properly documented?	-
How are professional services procured? Have there been any retainer contracts?	-

Interview for Head of Procurement	
Suggested Questions	Comments
<p>Have there been sole source procurements?</p> <p>How many in the past two years?</p> <p>Why was it necessary to award sole source?</p>	-
<p>Have there been brand name procurements?</p> <p>Were the salient physical and functional characteristics identified?</p> <p>Was “an equal” product allowed?</p>	-
<p>What is the process for requesting an approved equal and how are these requests processed?</p>	-

Interview for Head of Procurement	
Suggested Questions	Comments
<p>Have you entered into intergovernmental agreements for the procurement of goods and services?</p> <p>If yes, how have you ensured that Federal regulations are complied with in these procurements?</p>	-
<p>Does the agency use value engineering in construction contracts?</p>	-
<p>Has the agency used Federal excess and surplus property in lieu of purchasing new equipment or property?</p>	-
<p>Do you have problems complying with Federal, state or local regulations?</p>	-

Interview for Head of Procurement	
Suggested Questions	Comments
<p>Are there conflicting regulations? If yes, how do you deal with conflicting regulations?</p>	-
<p>Were procurement issues raised in the most recent Triennial Review, single audit, internal audit, or other review or audit?</p> <p>If so how have the findings been resolved?</p>	-

Interview for Head of Procurement	
Suggested Questions	Comments
<p>Do you refer to FTA's <i>Best Practices Procurement Manual</i> or Procurement Frequently Asked Questions on FTA's website?</p> <p>Does staff refer to these resources?</p>	-
<p>Who is responsible for contract administration?</p> <p>If other than the procurement organization, ask why?</p>	-

Interview for Procurement Staff	
Suggested Questions	Comments
<p>Are you aware of the requirements of 2 CFR Parts 200.318-200.326 and the guidance in FTA Circular 4220.1F? If so, how?</p> <p>How do you know that you comply with these requirements?</p>	-
<p>Do you communicate with the FTA regional office to clarify issues related to the procurement regulations?</p> <p>If so, how?</p>	-
<p>Do you refer to FTA's <i>Best Practices Procurement Manual</i> or Procurement Frequently Asked Questions on FTA's website?</p> <p>Have you incorporated any of the best practices in your procedures? If so, which ones?</p>	-

Interview for Procurement Staff	
Suggested Questions	Comments
<p>Have there been any formal protests in the award of contracts in which you were involved in the last two years?</p> <p>Were written procedures followed?</p> <p>Have the protests been settled?</p>	-
<p>Have there been any complaints of violation of Federal law or regulation in procurements in which you were involved?</p> <p>If yes, how have they been resolved?</p>	-

Interview for Procurement Staff	
Suggested Questions	Comments
<p>Do you use lists of prequalified firms, persons, and products?</p> <p>If so, is the list (s) current?</p> <p>How is the list updated?</p> <p>How does the agency assure there are an adequate number of firms to ensure maximum full and open competition?</p>	-
<p>How do you ensure an equitable distribution of awards among qualified bidders when making micro-purchases?</p>	-
<p>How do you determine responsibility of contractors? What criteria are used? When is the determination of responsibility made?</p>	-
<p>Have you become aware of any situation in which an excluded party (one suspended or debarred from Federal contracting) is participating on any of your procurements?</p>	-

Interview for Procurement Staff	
Suggested Questions	Comments
<p>Have you been involved in sole source procurements?</p> <p>Why was it typically necessary to award sole source?</p>	-
<p>Have you been involved in brand name procurements?</p> <p>If so, how were the salient physical and functional characteristics identified?</p> <p>If so, how was “an equal” product allowed?</p>	-
<p>What is the process for requesting an approved equal and how are these requests processed?</p>	-

Interview for Program Manager	
Suggested Questions	Comments
What is your role in the acquisition process?	-
Do you recommend potential offerors or bidders? If so, what is the procedure?	-
Do you maintain a list of prequalified bidders or offerors? If so, how is the list kept current?	-
What is your role regarding DBE goals?	-
Are you asked to determine the technical responsibility of potential contractors? If so, what data do you provide?	-
Have you become aware of any situation in which an excluded party (one suspended or debarred from Federal contracting) is participating on any of your procurements?	-
What is your responsibility in the case of a protest?	-

Interview for Program Manager	
Suggested Questions	Comments
Have you been involved in a protest in the past two years? If so, describe your involvement.	-
How do you ensure that you have a copy of the current Procurement Procedures Manual? What changes would you make to these procedures?	-
How would you characterize the performance of the Procurement Department?	-
What issues do you have regarding procurement?	-
What can your Department do to improve procurement?	-
How are conflicts with the contractor resolved?	-

Interview for Program Manager	
Suggested Questions	Comments
What contract files are maintained in your Department?	-
What is your role in contract close out?	-
What happens to your contract files after the contract is completed?	-
When writing specifications, do you use brand name descriptions? If so, do you include the required salient physical and functional characteristics? What is the process for requesting an approved equal and how are these requests processed?	-
Do you use a value engineering clause in your contracts? If so, please describe.	-

Interview for Program Manager	
Suggested Questions	Comments
<p>How are you made aware of the code of standards of conduct?</p> <p>How is your staff made aware of the code?</p> <p>What are the potential conflicts of interest regarding procurement?</p> <p>Have there been any conflict of interest issues?</p> <p>Please describe.</p>	-
<p>How are you made aware of the policy regarding acceptance of gifts, gratuities, favors or anything of monetary value from contractors or potential contractors?</p>	-
<p>Do you have authority to award a contract? Simplified Acquisition Purchases? Micro Purchases? Credit Card? If so, what record keeping is required?</p>	-
<p>How are you aware of the requirements of 2 CFR Parts 200.318-200.326 and the guidance in FTA Circular 4220.1F? ?</p>	-
<p>Have you had any procurement training? Would it be useful? If so, what topics?</p>	-

Interview for Disadvantaged Business Enterprise (DBE) Representative	
Suggested Questions	Comments
<p>What is the role of your department in the procurement process?</p>	-
<p>Do you have a DBE goal? If so, how is it determined?</p> <p>How is compliance assessed?</p> <p>Please describe your DBE program. (Get a copy)</p>	-
<p>Do you review all procurements over a set dollar threshold to recommend DBE participation?</p> <p>If so, what is the threshold?</p> <p>Do you maintain listings of DBE firms? Where is it maintained?</p>	-
<p>What issues or problems do you have with the procurement process?</p>	-

Interview for Disadvantaged Business Enterprise (DBE) Representative	
Suggested Questions	Comments
<p>Do you have any recommended improvements for procurement?</p> <p>If so, can you explain?</p>	-
<p>Do you prepare any regular periodic report to management relative to DBE in procurement?</p> <p>If so, can we get copies?</p>	-
<p>How are you made aware of the requirements of 2 CFR Parts 200.318-200.326 and the guidance in FTA Circular 4220.1F? ?</p>	-

Interview for Internal Auditor	
Suggested Questions	Comments
<p>What is the role of your department in the procurement process?</p>	-
<p>What issues or problems have you found in the procurement process?</p>	-
<p>What recommendations do you have (or have made) to improve procurement?</p> <p>Has management failed to implement any of your recommendations? (Any open recommendations?)</p>	-
<p>Have there been any violations of internal regulations; state or Federal law?</p> <p>If so, what were the violations?</p>	-

Interview for Internal Auditor	
Suggested Questions	Comments
<p>Are any audits in process now?</p> <p>If so, can you explain?</p>	-
<p>How are you made aware of the requirements of 2 CFR Parts 200.318-200.326 and the guidance in FTA Circular 4220.1F? ?</p>	-
<p>When was the procurement function last audited? [Request copies of all procurement audit reports for the past two years]</p>	-

IV.2 a Systemwide Elements

SYSTEMWIDE ELEMENTS			
Element	ND	D	Evaluation/Comments (Include work/paper references)
Written Standards of Conduct			
<p>Def Code 2-1 Standards of Conduct Are Written [2 CFR 200.318 (c)(1) & (2)]</p> <p>The recipient has a written code of conduct</p>	-	-	-
<p>Def Code 2-2 Standards of Conduct Include All Elements [2 CFR 200.318 (c)(1) & (2)]</p> <p>At a minimum, standards of conduct:</p> <ul style="list-style-type: none"> • Preclude any employee, officer, or agent from participating in the selection, award, or administration of a contract supported with FTA assistance if he or she has any real or apparent conflict of interest. • Include a restriction that the recipient's officers, employees, or agents may neither solicit nor accept gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements. • Provide for disciplinary action for conflict of interest violations by the recipient's officers, employees, or agents. • If the recipient has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, verify the written standards of conduct cover organizational conflicts of interest. 	-	-	-
<p>Def Code 2-3 Standards of Conduct Are Enforced When Necessary [2 CFR 200.318 (c)(1)]</p> <p>Appropriate actions are taken when a conflict of interest is identified.</p>	-	-	-
Contract Administration System			
<p>Def Code 6-1 Contract Administration System [2 CFR 200.318(b)]</p> <p>The recipient has a contract administration system that ensures that it and its third party contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.</p>	-	-	-
Protests			
<p>Def Code 3-1 Protest Procedures Available to the Public [2 CFR 200.318(k)]</p> <p>The recipient's protest procedures are available to potential bidders.</p>	-	-	-

SYSTEMWIDE ELEMENTS			
<p>Def Code 3-2 Written Protest Procedures <i>[2 CFR 200.318(k)]</i> The recipient has written protest procedures.</p>	-	-	-
<p>Def Code 3-3 Protest Procedures Followed <i>[2 CFR 200.318(k)]</i> If applicable, the recipient followed its written procedures for protests received.</p>	-	-	-
Prequalification System			
<p>Def Code 7-3 Prequalification System <i>[2 CFR 200.319(d)]</i> The recipient has a system of prequalification which ensures 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, the recipient does not preclude potential bidders from qualifying during the solicitation period. If the recipient does not prequalify bidders and offerors, so state in the comments column and mark NA in the Not Deficient column.</p>	-	-	-
System for Ensuring Most Efficient and Economic Purchase			
<p>Def Code 22-1 System for Ensuring Most Efficient and Economic Purchase <i>[2 CFR 200.318(d)]</i> The recipient has a system for review of proposed procurements to avoid purchase of unnecessary or duplicative items. It provides for analysis of lease versus purchase alternatives and for considering consolidating or breaking out procurements to obtain a more economical purchase.</p>	-	-	-
Subrecipient Oversight			
<p>Def Code 21-1 Subrecipient Oversight <i>[2 CFR 200.331]</i> Recipient maintains adequate oversight of subrecipients' procurements and procurement processes.</p>	-	-	-
Procurement Policies and Procedures			
<p>Def Code 1-1 Procurement Policies and Procedures Exist <i>[2 CFR 200.319(c)]</i> The recipient has written procurement policies and procedures.</p>	-	-	-
<p>Def Code 1-2 Written Procurement Policies and Procedures Require Clear and Accurate Description and Evaluation Factors <i>[2 CFR 200.319(c)]</i> The recipient has written procurement procedures that ensure solicitations:</p> <ul style="list-style-type: none"> • incorporate clear and accurate description of technical requirements • identify evaluation factors. 	-	-	-

SYSTEMWIDE ELEMENTS

Def Code 1-3 The Following Policies are Written and Do Not Conflict with Federal Requirements, or Implementation Can be Demonstrated [2 CFR 200.318-326]

The following items are either addressed in written policies and procedures and do not conflict with Federal requirements or they are not written in the policies and procedures but their implementation can be demonstrated through review of other documents/procedures or through review of selected procurement files. *Complete Procurement Policies and Procedures Review table below.*

Procurement Policies and Procedures Review			
Requirements	Addressed? (Y/N)	Page Reference	Comments/Notes
Does the recipient have written procedures for procurement transactions that ensure that all procurements <ul style="list-style-type: none"> • incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured, and • identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals? 	-	-	-
<i>General Procurement Standards</i>			
Maintenance of contract oversight (Contract Administration System)	-	-	-
Maintenance of written standards of conduct	-	-	-
Avoidance of unnecessary or duplicative items	-	-	-
Contracting with responsible contractors	-	-	-
Maintenance of written procurement history	-	-	-
Use of time and material contracts	-	-	-
Procedures for contract dispute resolution	-	-	-
<i>Competition</i>			
Promotion of full and open competition	-	-	-
Prohibition on geographic preference	-	-	-
Procedures for procurement transactions	-	-	-

Procurement Policies and Procedures Review			
Requirements	Addressed? (Y/N)	Page Reference	Comments/Notes
Use and maintenance of prequalification lists, if permitted	-	-	-
<i>Methods of procurement (Recipient is not required to use a listed method if such method is prohibited by state or local law)</i>			
Allowed methods of procurement:	-	-	-
(1) micro-purchases;	-	-	-
(2) small purchases;	-	-	-
(3) sealed bid;	-	-	-
(4) competitive proposals;	-	-	-
(5) non-competitive proposals;	-	-	-
<i>DBE participation</i>			
Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms	-	-	-
<i>Cost and price</i>			
Cost or price analysis	-	-	-
Negotiation of contractor profit	-	-	-
Use of estimated costs	-	-	-
Prohibition of cost plus contracts	-	-	-
<i>Contract provisions</i>			
Inclusion of required contract provisions	-	-	-
<i>Bonding requirements</i>			
Bonding requirements for construction or facility improvement contracts	-	-	-
<i>Other requirements</i>			
Prohibition of exclusionary or discriminatory specifications	-	-	-
Compliance with Buy America	-	-	-

IV.2.b. MICRO-PURCHASES

This checklist is to be used for all procurements that meet the definition of a micro-purchase as indicated below. If the recipient is exceeding these requirements by obtaining multiple price quotes according to simplified acquisition procedures, the reviewer should consider advising on best practices.

Definition: Micro-purchases are those purchases of \$3,500 or less. The threshold for micro-purchases executed after June 20, 2018 can be up to \$10,000 if allowed by the recipient’s procurement policies and procedures.

REVIEW FINDINGS CHECKLIST

Purchase Order Number _____

Date of Award _____

Contractor _____

Purchase Order Value \$ _____

Brief Description of Supplies or Services:

Observations:

Recipient _____

Reviewer _____

Date Reviewed

MICRO-PURCHASES				
Element	ND	D	NA	Evaluation/Comments (Include work/paper references)
Def Code 8-1 Micro-purchase Procurement Procedures <i>[2 CFR 200.320 (a) Procurement by micro-purchases]</i> The file contains documentation of a determination that the price is fair and reasonable and how this determination was derived.	-	-		-
Def Code 8-8 No Splitting for Micropurchase <i>[FTA 4220.1F Chapter VI 3. a. (2) (b) Prohibited Divisions]</i> There is no evidence in this procurement that the recipient is splitting procurements to avoid competition.	-	-		-
Def Code 11-4 Micro - Purchase Davis Bacon <i>[40 U.S.C. 3142 (a)]</i> This is a construction purchase order exceeding \$2,000, and the Davis Bacon Act has been made applicable. If this procurement is not for construction, check NA.	-	-	-	-

IV.2.c. SIMPLIFIED ACQUISITION

This checklist is to be used for all procurements where the recipient's system allows the use of simplified acquisition procedures. This may range between \$3,500 and \$150,000 for purchases executed prior to June 20, 2018 and between \$10,000 and \$250,000 for purchases executed after June 20, 2018.

[For example, if the recipient's simplified acquisition threshold is \$25,000 and the file being reviewed is a \$28,000 purchase using sealed bid procedures, the Sealed Bid Checklist must be used.]

REVIEW FINDINGS CHECKLIST

Purchase Order Number _____

Date of Award _____

Contractor _____

Purchase Order Value \$ _____

Brief Description of Supplies or Services:

Observations:

Recipient _____

Reviewer _____

Date Reviewed _____

SIMPLIFIED ACQUISITION THRESHOLD PURCHASES				
Element	ND	D	NA	Evaluation/Comments (Include work/paper references)
<p>Def Code 8-9 No Splitting for Small Purchase [FTA 4220.1F Chapter VI 3. a. (2) (b) Prohibited Divisions]</p> <p>There is no evidence in this procurement that the recipient is splitting procurements to avoid competition.</p>	-	-		-
<p>Def Code 4-1 Award to Responsible Contractor [49 U.S.C 5325(j) AWARDS TO RESPONSIBLE CONTRACTORS]</p> <p>The recipient made a determination that it was awarding to a responsible contractor considering such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources and debarment/suspension.</p>	-	-		-
<p>Def Code 4-2 Suspension and Debarment Verification [2 CFR 180.300]</p> <p>The recipient verified through inclusion of a clause, collection of a signed certification, or review of SAM.gov that the vendor was not suspended or debarred prior to award.</p> <p>NOTE: This is only for contracts of \$25,000 or more. If the contract amount is less than \$25,000, check NA.</p>	-	-	-	-
<p>Def Code 4-3 Contract Actions for Contractors Suspended or Debarred After Contract Award [2 CFR 180.310] The recipient took appropriate action if a contractor became suspended or debarred subsequent to contract award.</p> <p>NOTE: This is only for contracts of \$25,000 or more. If the contract amount is less than \$25,000, check NA.</p>	-	-	-	-
<p>Def Code 7-4 Unreasonable Qualification Requirements [2 CFR 200.319 (a)]</p> <p>This solicitation did not contain unreasonable requirements on firms for them to qualify to do business.</p>	-	-		-
<p>Def Code 7-8 Arbitrary Action [2 CFR 200.319 (a)]</p> <p>There was no arbitrary action in the procurement process. (An example of arbitrary action is when award is made to other than the contractor who most satisfied all the recipient's requirements as specified in the solicitation and as evaluated by staff.)</p>	-	-		-

SIMPLIFIED ACQUISITION THRESHOLD PURCHASES				
Element	ND	D	NA	Evaluation/Comments (Include work/paper references)
<p>Def Code 7-6 Brand Name Restrictions [2 CFR 200.319 (c)(1)] A “brand name or equal” specification is used and the solicitation has identified the minimum needs and clearly set forth those salient physical and functional characteristics of the brand name required by the recipient.</p> <p>If the solicitation specifies “brand name” only without specifying an equal or listing the physical or functional characteristics needed, check Deficient.</p> <p>If the procurement does not specify a “brand name”, check NA.</p>	-	-	-	-
<p>Def Code 7-2 Geographic Preferences [2 CFR 200.319 (b)] The solicitation contains no in-State or local geographic preferences except where Federal statutes expressly mandate or encourage them.</p>	-	-		-
<p>Def Code 16-2 Contract Term Limitation for Non-Rolling Stock [FTA C 4220.1F, IV, 2.b.(3)(b)] The contract files for contracts for <u>non</u>-rolling stock and replacement parts, with terms of over five years, contains evidence that the contract term is based upon sound business judgment.</p> <p>If contract term does not exceed five year, check N/A.</p>	-	-	-	-
<p>Def Code 8-10 Price Quotations [2 CFR 200.320(b)] Price or rate quotations were obtained from an adequate number of qualified sources.</p>	-	-		-
<p>Def Code 5-1 Written Record of Procurement History [2 CFR 200.318(i)] The file contains records detailing the history of this procurement. At a minimum, these records include:</p> <ul style="list-style-type: none"> • Rationale for the method of procurement, • Selection of contract type, • Reasons for contractor selection or rejection, and • Basis for the contract price. 	-	-		-

SIMPLIFIED ACQUISITION THRESHOLD PURCHASES				
Element	ND	D	NA	Evaluation/Comments (Include work/paper references)
<p>Def Code 11-1 Clauses <i>[Appendix II to 2 CFR Part 200]</i> This contract contains the appropriate FTA required clauses.</p> <ul style="list-style-type: none"> The contract clauses located in 2 CFR Part 200 and FTA’s Master Agreement should be used to determine the applicability of the clauses to the procurement type. FTA C 4220.1F, Appendix D, and The Best Practices Procurement Manual, Appendix A.1, can be used to determine the applicability of the specific language of a clause that a recipient may use. 	-	-		-
<p>Def Code 11-2 Clauses Added to Existing Contracts <i>[Appendix II to 2 CFR Part 200]</i> Appropriate clauses were added to a state’s GSA-type contract with the purchase order.</p>	-	-		-
<p>Def Code 12-2 Signed Lobbying Certification <i>[31 U.S.C. 1352]</i> The recipient collected signed Lobbying certifications from each bidder for procurements <u>over \$100,000</u>.</p> <p>If the procurement is \$100,000 or less, check NA.</p>	-	-	-	-
<p>Def Code 12-3 Buy America Certification Included in Solicitation <i>[49 CFR 661.6 or 49 CFR 661.12]</i> The recipient <u>included</u> the Buy America certification in applicable procurements <u>over \$150,000</u>; the certification for buses, rolling stock, and associated equipment is at 661.12; for all other procurements that include steel, iron, and manufactured products, the certification is at 661.6.</p> <p>If the procurement is \$150,000 or less or it does not involve steel, iron, and manufactured products, check NA.</p>	-	-	-	-
<p>Def Code 12-4 Signed Buy America Certification <i>[49 CFR 661.6 or 49 CFR 661.12]</i> The recipient <u>collected signed</u> Buy America certifications from each bidder for procurements <u>over \$150,000</u>; the certification for buses, rolling stock, and associated equipment is 661.12; for all other procurements that include steel, iron, and manufactured products, the certification is at 661.6.</p> <p>If the procurement is \$150,000 or less or it does not involve steel, iron, and manufactured products, check NA.</p>	-	-	-	-

SIMPLIFIED ACQUISITION THRESHOLD PURCHASES				
Element	ND	D	NA	Evaluation/Comments (Include work/paper references)
<p>Def Code 12-5 Buy America Waivers [49 CFR 661.6 or 49 CFR 661.12]</p> <p>The recipient did not award a contract if the apparent-winning contractor certified non-compliance with Buy America and did not have a Buy America waiver, or certified both compliance and non-compliance.</p> <p>If the procurement is \$150,000 or less or it does not involve steel, iron, and manufactured products, check NA</p>	-	-	-	-

IV.2.d. SEALED BIDS

This checklist is to be used for all procurements where the recipient has selected the sealed bid method of procurement. If the contract is for construction, the supplemental Construction Checklist must also be used.

REVIEW FINDINGS CHECKLIST

Purchase Order Number _____

Date of Award _____

Contractor _____

Purchase Order Value \$ _____

Brief Description of Supplies or Services:

Observations:

Recipient _____

Reviewer _____

Date Reviewed _____

SEALED BIDS				
Element	ND	D	NA	Evaluation/Comments (Include work/paper references)
<p>Def Code 10-1 Independent Cost Estimate [2 CFR §200.323, 2 CFR 200.324]</p> <p>The recipient made and documented an independent cost estimate with every procurement action above the simplified acquisition threshold before receipt of proposals.</p> <p>NOTE: This is only for contracts over the simplified acquisition threshold. If the contract amount is less than that, check NA.</p>	-	-	-	-
<p>Def Code 10-4 Sufficient Independent Cost Estimate [2 CFR 200.323, 2 CFR 200.324]</p> <p>The recipient made an independent cost estimate that includes a date prior to the date of proposal or bid receipt and includes the basis for the estimate.</p> <p>NOTE: This is only for contracts over the simplified acquisition threshold. If the contract amount is less than that, check NA.</p>	-	-	-	-
<p>Def Code 7-4 Unreasonable Qualification Requirements [2 CFR 200.319 (a)]</p> <p>This solicitation did not contain unreasonable requirements on firms for them to qualify to do business.</p>	-	-		-
<p>Def Code 7-5 Unnecessary Experience and Excessive Bonding [2 CFR 200.319 (a)]</p> <p>Unnecessary experience and excessive bonding requirements were not included in this solicitation or contract documents.</p>	-	-		-
<p>Def Code 7-7 Organizational Conflict of Interest (OCI) [2 CFR 200.319 (a)]</p> <p>There is an apparent or potential OCI and the solicitation contains provisions to eliminate or mitigate the conflict (e.g. by inserting a clause that prohibits the contractor from competing for the follow-on contract to the current design or research contact).</p> <p>If there is no apparent or potential OCI, check NA.</p>	-	-	-	-
<p>Def Code 7-8 Arbitrary action [2 CFR 200.319 (a)]</p> <p>There was no arbitrary action in the procurement process. (An example of arbitrary action is when award is made to other than the contractor who most satisfied all the recipient's requirements as specified in the solicitation and as evaluated by staff.)</p>	-	-		-

SEALED BIDS				
Element	ND	D	NA	Evaluation/Comments (Include work/paper references)
<p>Def Code 7-6 Brand Name Restrictions [2 CFR 200.319 (c)(1)] A “brand name or equal” specification is used and the solicitation has identified the minimum needs and clearly set forth those salient physical and functional characteristics of the brand name required by the recipient.</p> <p>If the solicitation specifies “brand name” only without specifying an equal or listing the physical or functional characteristics needed, check Deficient.</p> <p>If the procurement does not specify a “brand name”, check NA.</p>	-	-	-	-
<p>Def Code 7-2 Geographic Preferences [2 CFR 200.319 (b)] The solicitation contains no in-State or local geographic preferences except where Federal statutes expressly mandate or encourage them.</p>	-	-		-
<p>Def Code 16-2 Contract Term Limitation for Non-Rolling Stock [FTA C 4220.1F, IV, 2.b.(3)(b)] The contract files for contracts for <u>non</u>-rolling stock and replacement parts, with terms of over five years, contains evidence that the contract term is based upon sound business judgment.</p> <p>If contract term was not over five years, check NA</p>	-	-	-	-
<p>8-26 Written Procurement Selection Procedures [2 CFR 200.319 (c)(2)] The recipient has written selection procedures and the solicitation also identifies all requirements that offerors must fulfill and all other factors to be used in evaluating bids or proposals.</p>	-	-		-
<p>Def Code 7-3 Solicitation Prequalification Criteria [2 CFR 200.319 (d)] The solicitation required prequalification of persons, firms, or products. The list is current, includes enough qualified sources to ensure maximum full and open competition, and potential bidders are not precluded from qualifying during the solicitation period from issuance of the solicitation to its closing date.</p> <p>If the solicitation does not contain a prequalification requirement, check NA.</p>	-	-	-	-

SEALED BIDS				
Element	ND	D	NA	Evaluation/Comments (Include work/paper references)
<p>Def Code 4-1 Award to Responsible Contractor [49 U.S.C 5325(j) AWARDS TO RESPONSIBLE CONTRACTORS] The recipient made a determination that it was awarding to a responsible contractor considering such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources and debarment/suspension.</p>	-	-		-
<p>Def Code 4-2 Suspension and Debarment Verification [2 CFR 180.300] The recipient verified through inclusion of a clause, collection of a signed certification, or review of SAM.gov that the vendor was not suspended or debarred prior to award.</p> <p>NOTE: This is only for contracts of \$25,000 or more. If the contract amount is less than \$25,000, check NA.</p>	-	-	-	-
<p>Def Code 4-3 Contract Actions for Contractors Suspended or Debarred After Contract Award [2 CFR 180.310] The recipient took appropriate action if a contractor became suspended or debarred subsequent to contract award.</p> <p>NOTE: This is only for contracts of \$25,000 or more. If the contract amount is less than \$25,000, check NA.</p>	-	-	-	-
<p>Def code 8-14 Clear, Accurate, and Complete Specification [2 CFR 200.320(c)(1)(i)] A complete, adequate, and realistic specification or purchase description was provided.</p>	-	-		-
<p>Def Code 8-13 Adequate Competition - Two or More Competitors [2 CFR 200.320(c)] Two or more responsible bidders were willing and able to compete effectively for the business.</p>	-	-		-
<p>Def Code 8-15 Firm Fixed Price [2 CFR 200.320(c)] A firm fixed price contract was appropriate for this procurement.</p>	-	-		-
<p>Def Code 8-16 Selection on Price [2 CFR 200.320(c)] The selection of the successful bidder could be made principally on the basis of price.</p>	-	-		-
<p>Def Code 8-17 Discussions Unnecessary [2 CFR 200.320(c)] In this procurement, other than a pre-bid conference, discussions with bidders should not be needed between solicitation and award.</p>	-	-		-

SEALED BIDS				
Element	ND	D	NA	Evaluation/Comments (Include work/paper references)
Def Code 8-11 Advertised/Publicized [2 CFR 200.320(c)] For local and tribal governments, the Invitation for Bids was publically advertised.	-	-		-
Def Code 8-12 Adequate Number of Sources Solicited [2 CFR 200.320(c)] Bids were solicited from an adequate number of known suppliers.	-	-		-
Def Code 8-18 Sufficient Bid Time [2 CFR 200.320(c)] Prospective bidders were provided sufficient time to prepare bids prior to the date set for opening the bids.	-	-		-
Def Code 8-19 Bid Opening [2 CFR 200.320(c)] All bids were publicly opened at the time and place prescribed in the invitation for bids.	-	-		-
Def Code 8-20 Responsiveness [2 CFR 200.320(c)] A firm fixed price contract was awarded in writing to the lowest responsive bidder.	-	-		-
Def Code 8-21 Lowest Price [2 CFR 200.320(c)] A firm fixed price contract award was made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs were considered in determining which bid was lowest. Payment discounts were only used to determine the low bid when prior experience indicated that such discounts are usually taken advantage of.	-	-		-
Def Code 8-22 Rejecting Bids [2 CFR 200.320(c)] A bid (or bids) was rejected for a sound documented business reason. If no bids were rejected, check NA.	-	-	-	-
Def Code 15-1 Options Based on Foreseeable Need [2 CFR 200.318(d)] The recipient awarded a contract with options, and the quantity of those options was based on the recipient's foreseeable need. If the contract does not contain options, check NA.	-	-	-	-

SEALED BIDS				
Element	ND	D	NA	Evaluation/Comments (Include work/paper references)
<p>Def Code 15-2 Evaluation of Options [FTA C 4220.1F, VI, 7. b.]</p> <p>The option quantities or periods contained in the contractor’s bid or offer were evaluated in order to determine contract award. (To be eligible for Federal funding, options must be evaluated as part of the price evaluation of offers, or must be treated as sole source awards.)</p> <p>If the contract does not contain options, check NA.</p>	-	-	-	-
<p>Def Code 15-3 Exercise of Options [FTA C 4220.1F, V, 7. a. (1) (a) (b)]</p> <p>The recipient exercised an option on this contract adhering to the terms and conditions of the option stated in the contract.</p> <p>If an option was not exercised under this contract, check NA.</p>	-	-	-	-
<p>Def Code 10-2 Cost or Price Analysis [2 CFR §200.323(b)]</p> <p>Either a cost analysis, with associated profit negotiation, or a price analysis was performed and documented in the procurement file with every procurement action above the simplified acquisition threshold with respect to the initial contract award.</p> <p>NOTE: This requirement is only for procurements over the simplified acquisition threshold. If the contract amount is less than that, check NA.</p>	-	-	-	-
<p>Def Code 10-6 Profit Negotiation Required [2 CFR §200.323(b)]</p> <p>The recipient negotiated profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed</p> <p>NOTE: This requirement is only for procurements over the simplified acquisition threshold for which a cost analysis was completed. If the contract amount is less than that, check NA.</p>	-	-	-	-
<p>Def Code 5-1 Written Record of Procurement History [2 CFR 200.318(i)]</p> <p>The file contains records detailing the history of this procurement. At a minimum, these records include:</p> <ul style="list-style-type: none"> • Rationale for the method of procurement, • Selection of contract type, • Reasons for contractor selection or rejection, and • Basis for the contract price. 	-	-		-

SEALED BIDS				
Element	ND	D	NA	Evaluation/Comments (Include work/paper references)
<p>Def Code 14-1 Out of Scope Changes [FTA C 4220.1F, VI, 3.i.(1)(b)]</p> <p>The recipient executed a change order that was within the scope of work, was essential to the completion of the project scope and evaluated the cost of the change.</p> <p style="text-align: center;">or</p> <p>The recipient amended this contract outside the scope of the original contract and the amendment was treated as a sole source procurement (complying with the FTA requirements for a justification, cost analysis and profit negotiation).</p> <p>If the contract was not modified or if all modifications reviewed were within the scope of the contract, check NA.</p>	-	-	-	-
<p>Def Code 18-1 Advance Payment Provisions [FTA C 4220.1F, IV, 2. b. (5)(6)]</p> <p>The contractor did not receive an advance payment utilizing FTA funds and the contract does not contain advance payment provisions or, if it did, prior written concurrence was obtained from FTA.</p>	-	-		-
<p>Def Code 18-2 Progress Payment Provisions [FTA C 4220.1F, IV, 2. b. (5) (c)]</p> <p>The contract contains progress payments based on costs incurred (as opposed to percent of completion, except that percent of completion may be used in construction contracts) and the contract contains a provision giving the recipient title to property (materials, work in progress, and finished goods) for which progress payments are made. The contract may contain other security in lieu of obtaining title.</p> <p>If the contract does not contain progress payments, check NA.</p>	-	-	-	-
<p>Def Code 8-7 Time and Materials Contracts [2 CFR 200.318(j)(1)]</p> <p>This is a time and materials contract; the recipient determined that no other type of contract is suitable; and the contract specifies a ceiling price.</p> <p>If this is not a time and materials contract, check NA.</p>	-	-	-	-
<p>Def Code 8-25 Cost Plus Percentage of Cost [2 CFR 200.323(d)]</p> <p>This is not a cost plus a percentage of cost type contract.</p>	-	-		-

SEALED BIDS				
Element	ND	D	NA	Evaluation/Comments (Include work/paper references)
<p>Def Code 13-1 Liquidated Damages Provisions [FTA C 4220.1F, IV, 2. b.(6)(b) 1] This contract contains liquidated damages provisions and the assessment for damages is specified in the contract at a specific rate per day for each day of overrun in contract time.</p> <p>If this contract does not contain liquidated damages provisions, check NA.</p>	-	-	-	-
<p>Def Code 13-2 Accounting for Received Liquidated Damages [FTA Master Agreement, Section 39(c), FTA C 4220.1F, IV, 2.b.(6)(b) 1] The recipient recovered liquidated damages and either returned FTA’s share or returned the full amount to the award budget.</p> <p>If this contract does not contain liquidated damages provisions, check NA.</p>	-	-	-	-
<p>Def Code 17-1 Piggyback Purchase [FTA C 4220.1F, V, 7. a. (2)] For this contract:</p> <ul style="list-style-type: none"> • Federal requirements were met • Assigned quantities did not exceed contract allowable amounts • Price was determined to be fair and reasonable • Option vehicle(s) did not contain cardinal changes <p>If this is not a “Piggybacking” contract, check NA.</p>	-	-	-	-
<p>Def Code 11-1 Clauses [Appendix II to 2 CFR Part 200] This contract contains the appropriate FTA required clauses.</p> <ul style="list-style-type: none"> • The contract clauses located in 2 CFR Part 200 and FTA’s Master Agreement should be used to determine the applicability of the clauses to the procurement type. FTA C 4220.1F, Appendix D, and The Best Practices Procurement Manual, Appendix A.1, can be used to determine the applicability of the specific language of a clause that a recipient may use. 	-	-	-	-
<p>Def Code 11-2 Clauses Added to Existing Contracts [Appendix II to 2 CFR Part 200] Appropriate clauses were added to a state’s GSA-type contract with the purchase order.</p>	-	-	-	-
<p>Def Code 12-2 Signed Lobbying Certification [31 U.S.C. 1352] The recipient collected signed Lobbying certifications from each bidder for procurements <u>over \$100,000</u>.</p> <p>If the procurement is \$100,000 or less, check NA.</p>	-	-	-	-

SEALED BIDS

Element	ND	D	NA	Evaluation/Comments (Include work/paper references)
<p>Def Code 2 Buy America Certification Included in Solicitation <i>[49 CFR 661.6 or 49 CFR 661.12]</i> The recipient <u>included</u> the Buy America certification in applicable procurements <u>over \$150,000</u>; the certification for buses, rolling stock, and associated equipment is at 661.12; for all other procurements that include steel, iron, and manufactured products, the certification is at 661.6.</p> <p>If the procurement is \$150,000 or less or it does not involve steel, iron, and manufactured products, check NA.</p>	-	-	-	-
<p>Def Code 12-4 Signed Buy America Certification <i>[49 CFR 661.6 or 49 CFR 661.12]</i> The recipient <u>collected signed</u> Buy America certifications from each bidder for procurements <u>over \$150,000</u>; the certification for buses, rolling stock, and associated equipment is 661.12; for all other procurements that include steel, iron, and manufactured products, the certification is at 661.6.</p> <p>If the procurement is \$150,000 or less or it does not involve steel, iron, and manufactured products, check NA.</p>	-	-	-	-
<p>Def Code 12-5 Buy America Waivers <i>[49 CFR 661.6 or 49 CFR 661.12]</i> The recipient did not award a contract if the apparent-winning contractor certified non-compliance with Buy America and did not have a Buy America waiver, or certified both compliance and non-compliance.</p> <p>If the procurement is \$150,000 or less or it does not involve steel, iron, and manufactured products, check NA.</p>	-	-	-	-

IV.2.e. COMPETITIVE PROPOSALS (RFP)

This checklist is to be used for all procurements where the recipient has chosen to use a method of selection based on technical or qualification factors as well as price. If the contract is for construction, architectural, and engineering services, or for rail and bus purchases, the respective checklist supplement must be used.

REVIEW FINDINGS CHECKLIST

Purchase Order Number _____

Date of Award _____

Contractor _____

Purchase Order Value \$ _____

Brief Description of Supplies or Services:

Observations:

Recipient _____

Reviewer _____

Date Reviewed _____

COMPETITIVE PROPOSALS (RFP)				
Element	ND	D	NA	Evaluation/Comments (Include work/paper references)
<p>Def Code 10-1 Independent Cost Estimate [2 CFR §200.323, 2 CFR §200.324]</p> <p>The recipient made and documented an independent cost estimate with every procurement action above the simplified acquisition threshold before receipt of proposals.</p> <p>NOTE: This is only for contracts over the simplified acquisition threshold. If the contract amount is less than that, check NA.</p>	-	-	-	-
<p>Def Code 10-4 Sufficient Independent Cost Estimate [2 CFR §200.323, 2 CFR §200.324]</p> <p>The recipient made an independent cost estimate that includes a date prior to the date of proposal or bid receipt and includes the basis for the estimate.</p> <p>NOTE: This is only for contracts over the simplified acquisition threshold. If the contract amount is less than that, check NA.</p>	-	-	-	-
<p>Def Code 7-4 Unreasonable Qualification Requirements [2 CFR 200.319 (a)]</p> <p>This solicitation did not contain unreasonable requirements on firms for them to qualify to do business.</p>	-	-		-
<p>Def Code 7-5 Unnecessary Experience and Excessive Bonding [2 CFR 200.319 (a)]</p> <p>Unnecessary experience and excessive bonding requirements were not included in this solicitation or contract documents.</p>	-	-		-
<p>Def Code 7-7 Organizational Conflict of Interest (OCI) [2 CFR 200.319 (a)]</p> <p>There is an apparent or potential OCI and the solicitation contains provisions to eliminate or mitigate the conflict (e.g. by inserting a clause that prohibits the contractor from competing for the follow-on contract to the current design or research contact).</p> <p>If there is no apparent or potential OCI, check NA.</p>	-	-	-	-
<p>Def Code 7-8 Arbitrary Action [2 CFR 200.319 (a)]</p> <p>There was no arbitrary action in the procurement process. (An example of arbitrary action is when award is made to other than the contractor who most satisfied all the recipient's requirements as specified in the solicitation and as evaluated by staff.)</p>	-	-		-

COMPETITIVE PROPOSALS (RFP)				
Element	ND	D	NA	Evaluation/Comments (Include work/paper references)
<p>Def Code 7-6 Brand Name Restrictions [2 CFR 200.319 (c)(1)] A “brand name or equal” specification is used and the solicitation has identified the minimum needs and clearly set forth those salient physical and functional characteristics of the brand name required by the recipient.</p> <p>If the solicitation specifies “brand name” only without specifying an equal or listing the physical or functional characteristics needed, check Deficient.</p> <p>If the procurement does not specify a “brand name”, check NA.</p>	-	-	-	-
<p>Def Code 7-2 Geographic Preferences [2 CFR 200.319 (b)] The solicitation contains no in-State or local geographic preferences except where Federal statutes expressly mandate or encourage them.</p>	-	-		-
<p>Def Code 8-26 Written Procurement Selection Procedures [2 CFR 200.319 (c)(2)] The recipient has written selection procedures and the solicitation also identifies all requirements that offerors must fulfill and all other factors to be used in evaluating bids or proposals.</p>	-	-		-
<p>Def Code 7-3 Solicitation Prequalification Criteria [2 CFR 200.319 (d)] The solicitation required prequalification of persons, firms, or products. The list is current, includes enough qualified sources to ensure maximum full and open competition, and potential bidders are not precluded from qualifying during the solicitation period from issuance of the solicitation to its closing date.</p> <p>If the solicitation does not contain a prequalification requirement, check NA.</p>	-	-	-	-
<p>Def Code 4-1 Award to Responsible Contractor [49 U.S.C 5325(j) AWARDS TO RESPONSIBLE CONTRACTORS] The recipient made a determination that it was awarding to a responsible contractor considering such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources and debarment/suspension.</p>	-	-		-

COMPETITIVE PROPOSALS (RFP)				
Element	ND	D	NA	Evaluation/Comments (Include work/paper references)
<p>Def Code 4-2 Suspension and Debarment Verification [2 CFR 180.300] The recipient verified through inclusion of a clause, collection of a signed certification, or review of SAM.gov that the vendor was not suspended or debarred prior to award.</p> <p>NOTE: This is only for contracts of \$25,000 or more. If the contract amount is less than \$25,000, check NA.</p>	-	-	-	-
<p>Def Code 4-3 Contract Actions for Contractors Suspended or Debarred After Contract Award [2 CFR 180.310] The recipient took appropriate action if a contractor became suspended or debarred subsequent to contract award.</p> <p>NOTE: This is only for contracts of \$25,000 or more. If the contract amount is less than \$25,000, check NA.</p>	-	-	-	-
<p>Def Code 8-13 Adequate Competition - Two or More Competitors [2 CFR 200.320(d)] For this procurement, more than one qualified source submitted offers, i.e. proposals. (If not, the reviewer should review the contract as a noncompetitive negotiation.)</p>	-	-		-
<p>Def Code 8-11 Advertised/Publicized [2 CFR 200.320(d)] For this procurement, the Request for Proposals was publicized.</p>	-	-		-
<p>Def Code 8-12 Adequate Number of Sources Solicited [2 CFR 200.320(d)] For this procurement, proposals were solicited from an adequate number of qualified sources.</p>	-	-		-
<p>Def Code 8-23 Evaluation Factors in RFP [2 CFR 200.320(d)] A method is in place for conducting technical evaluations of the proposals received and the solicitation has evaluation factors identified along with their relative importance.</p>	-	-		-
<p>Def Code 8-24 Price and Other Factors [2 CFR 200.320(d)(4)] For this procurement, award was made to the responsible firm whose proposal is most advantageous to the recipient's program with price and other factors considered.</p>	-	-		-
<p>Def Code 15-1 Options Based on Foreseeable Need [2 CFR 200.318(d)] The recipient awarded a contract with options, and the quantity of those options was based on the recipient's foreseeable need.</p> <p>If the contract does not contain options, check NA.</p>	-	-	-	-

COMPETITIVE PROPOSALS (RFP)

Element	ND	D	NA	Evaluation/Comments (Include work/paper references)
<p>Def Code 15-2 Evaluation of Options [FTA C 4220.1F, VI, 7. b.] The option quantities or periods contained in the contractor’s bid or offer were evaluated in order to determine contract award. (To be eligible for Federal funding, options must be evaluated as part of the price evaluation of offers, or must be treated as sole source awards.)</p> <p>If the contract does not contain options, check NA.</p>	-	-	-	-
<p>Def Code 15-3 Exercise of Options [FTA C 4220.1F, V, 7. a. (1) (a) (b)] The recipient exercised an option on this contract adhering to the terms and conditions of the option stated in the contract.</p> <p>If an option was not exercised under this contract, check NA.</p>	-	-	-	-
<p>Def Code 10-2 Cost or Price Analysis [2 CFR §200.323(b)] Either a cost analysis, with associated profit negotiation, or a price analysis was performed and documented in the procurement file with every procurement action above the simplified acquisition threshold with respect to the initial contract award.</p> <p>NOTE: This requirement is only for procurements over the simplified acquisition threshold. If the contract amount is less than that, check NA.</p>	-	-	-	-
<p>Def Code 10-6 Profit Negotiation Required [2 CFR §200.323(b)] The recipient negotiated profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed</p> <p>NOTE: This requirement is only for procurements over the simplified acquisition threshold for which a cost analysis was completed. If the contract amount is less than that, check NA.</p>	-	-	-	-
<p>Def Code 5-1 Written Record of Procurement History [2 CFR 200.318(i)] The file contains records detailing the history of this procurement. At a minimum, these records include:</p> <ul style="list-style-type: none"> • Rationale for the method of procurement, • Selection of contract type, • Reasons for contractor selection or rejection, and • Basis for the contract price. 	-	-		-

COMPETITIVE PROPOSALS (RFP)				
Element	ND	D	NA	Evaluation/Comments (Include work/paper references)
<p>Def Code 14-1 Changes Orders [FTA C 4220.1F, VI, 3.i.(1)(b)] The recipient executed a change order that was within the scope of work, was essential to the completion of the project scope and evaluated the cost of the change.</p> <p style="text-align: center;">or</p> <p>The recipient amended this contract outside the scope of the original contract and the amendment was treated as a sole source procurement (complying with the FTA requirements for a justification, cost analysis and profit negotiation).</p> <p>If the contract was not modified or if all modifications reviewed were within the scope of the contract, check NA.</p>	-	-	-	-
<p>Def Code 18-1 Advance Payment Provisions [FTA C 4220.1F, IV, 2. b. (5)(6)] The contractor did not receive an advance payment utilizing FTA funds and the contract does not contain advance payment provisions or, if it did, prior written concurrence was obtained from FTA.</p>	-	-		-
<p>Def Code 18-2 Progress Payment Provisions [FTA C 4220.1F, IV, 2. b. (5) (c)] The contract contains progress payments based on costs incurred (as opposed to percent of completion, except that percent of completion may be used in construction contracts) and the contract contains a provision giving the recipient title to property (materials, work in progress, and finished goods) for which progress payments are made. The contract may contain other security in lieu of obtaining title.</p> <p>If the contract does not contain progress payments, check NA.</p>	-	-	-	-
<p>Def Code 8-7 Time and Materials Contracts [2 CFR 200.318(j)(1)] This is a time and materials contract; the recipient determined that no other type of contract is suitable; and the contract specifies a ceiling price.</p> <p>If this is not a time and materials contract, check NA.</p>	-	-	-	-
<p>Def Code 16-2 Contract Term Limitation for Non-Rolling Stock [FTA C 4220.1F, IV, 2.b.(3)(b)] The contract files for contracts for <u>non</u>-rolling stock and replacement parts, with terms of over five years, contains evidence that the contract term is based upon sound business judgment.</p> <p>If contract term was not over five years, check NA.</p>	-	-	-	-

COMPETITIVE PROPOSALS (RFP)				
Element	ND	D	NA	Evaluation/Comments (Include work/paper references)
<p>Def Code 8-25 Cost Plus Percentage of Cost [2 CFR 200.323(d)] This is not a cost plus a percentage of cost - type contract.</p>	-	-		-
<p>Def Code 13-1 Liquidated Damages Provisions [FTA C 4220.1F, IV, 2. b.(6)(b) 1] This contract contains liquidated damages provisions and the assessment for damages is specified in the contract at a specific rate per day for each day of overrun in contract time. If this contract does not contain liquidated damages provisions, check NA.</p>	-	-	-	-
<p>Def Code 13-2 Accounting for Received Liquidated Damages [FTA Master Agreement, Section 39(c), FTA C 4220.1F, IV, 2.b.(6)(b) 1] The recipient recovered liquidated damages and either returned FTA's share or returned the full amount to the award budget. If this contract does not contain liquidated damages provisions, check NA.</p>	-	-	-	-
<p>Def Code 17-1 Piggyback Purchase [FTA C 4220.1F, V, 7. a. (2)] For this contract:</p> <ul style="list-style-type: none"> Federal requirements were met Assigned quantities did not exceed contract allowable amounts Price was determined to be fair and reasonable Option vehicle(s) did not contain cardinal changes <p>If this is not a "Piggybacking" contract, check NA.</p>	-	-	-	-
<p>Def Code 11-1 Clauses [Appendix II to 2 CFR Part 200] This contract contains the appropriate FTA required clauses.</p> <ul style="list-style-type: none"> The contract clauses located in 2 CFR Part 200 and FTA's Master Agreement should be used to determine the applicability of the clauses to the procurement type. FTA C 4220.1F, Appendix D, and The Best Practices Procurement Manual, Appendix A.1, can be used to determine the applicability of the specific language of a clause that a recipient may use. 	-	-		-
<p>Def Code 11-2 Clauses Added to Existing Contracts [Appendix II to 2 CFR Part 200] Appropriate clauses were added to a state's GSA-type contract with the purchase order.</p>	-	-		-

COMPETITIVE PROPOSALS (RFP)				
Element	ND	D	NA	Evaluation/Comments (Include work/paper references)
<p>Def Code 12-2 Signed Lobbying Certification [31 U.S.C. 1352] The recipient collected signed Lobbying certifications from each bidder for procurements <u>over \$100,000</u>.</p> <p>If the procurement is \$100,000 or less, check NA.</p>	-	-	-	-
<p>Def Code 12-3 Buy America Certification Included in Solicitation [49 CFR 661.6 or 49 CFR 661.12] The recipient <u>included</u> the Buy America certification in applicable procurements <u>over \$150,000</u>; the certification for buses, rolling stock, and associated equipment is at 661.12; for all other procurements that include steel, iron, and manufactured products, the certification is at 661.6.</p> <p>If the procurement is \$150,000 or less or it does not involve steel, iron, and manufactured products, check NA.</p>	-	-	-	-
<p>Def Code 12-4 Signed Buy America Certification [49 CFR 661.6 or 49 CFR 661.12] The recipient <u>collected signed</u> Buy America certifications from each bidder for procurements <u>over \$150,000</u>; the certification for buses, rolling stock, and associated equipment is 661.12; for all other procurements that include steel, iron, and manufactured products, the certification is at 661.6.</p> <p>If the procurement is \$150,000 or less or it does not involve steel, iron, and manufactured products, check NA.</p>	-	-	-	-
<p>Def Code 12-5 Buy America Waivers [49 CFR 661.6 or 49 CFR 661.12] The recipient did not award a contract if the apparent-winning contractor certified non-compliance with Buy America and did not have a Buy America waiver, or certified both compliance and non-compliance.</p> <p>If the procurement is \$150,000 or less or it does not involve steel, iron, and manufactured products, check NA.</p>	-	-	-	-

IV.2.f. NON-COMPETITIVE PROPOSALS (SOLE SOURCE or SINGLE BID)

This checklist is to be used for all procurements where the recipient has only solicited or negotiated with one source for the product or service and the amount is greater than \$3,500 for procurements executed prior to June 20, 2018 or \$10,000 for procurements executed after June 20, 2018. It should also be used for changes that are outside the scope of the contract and for the exercise of options that were not evaluated in awarding the base contract containing the option.

REVIEW FINDINGS CHECKLIST

Purchase Order Number _____

Date of Award _____

Contractor _____

Purchase Order Value \$ _____

Brief Description of Supplies or Services:

Observations:

Recipient _____

Reviewer _____

Date Reviewed _____

NON-COMPETITIVE PROPOSALS (SOLE SOURCE or SINGLE BID)				
Element	ND	D	NA	Evaluation/Comments (Include work/paper references)
<p>Def Code 10-3 Independent Cost Estimate for Change Orders or Sole Source [2 CFR §200.323, 2 CFR §200.324] The recipient made and documented an independent cost estimate for change orders and sole source procurements above the simplified acquisition threshold before receipt of proposals, including.</p> <p>NOTE: This is only for contracts over the simplified acquisition threshold. If the contract amount is less than that, check NA.</p>	-	-	-	-
<p>Def Code 10-4 Sufficient Independent Cost Estimate [2 CFR §200.323, 2 CFR §200.324] The recipient made an independent cost estimate that includes a date prior to the date of proposal or bid receipt and includes the basis for the estimate.</p> <p>NOTE: This is only for contracts over the simplified acquisition threshold. If the contract amount is less than that, check NA.</p>	-	-	-	-
<p>Def Code 7-5 Unnecessary Experience and Excessive Bonding [2 CFR 200.319 (a)] Unnecessary experience and excessive bonding requirements were not included in this solicitation or contract documents.</p>	-	-		-
<p>Def Code 7-7 Organizational Conflict of Interest (OCI) [2 CFR 200.319 (a)] There is an apparent or potential OCI and the solicitation contains provisions to eliminate or mitigate the conflict (e.g. by inserting a clause that prohibits the contractor from competing for the follow-on contract to the current design or research contact).</p> <p>If there is no apparent or potential OCI, check NA.</p>	-	-	-	-
<p>Def Code 7-8 Arbitrary Action [2 CFR 200.319 (a)] There was no arbitrary action in the procurement process. (An example of arbitrary action is when award is made to other than the contractor who most satisfied all the recipient's requirements as specified in the solicitation and as evaluated by staff.)</p>	-	-		-

NON-COMPETITIVE PROPOSALS (SOLE SOURCE or SINGLE BID)				
Element	ND	D	NA	Evaluation/Comments (Include work/paper references)
<p>Def Code 7-6 Brand Name Restrictions [2 CFR 200.319 (c)(1)] A “brand name or equal” specification is used and the solicitation has identified the minimum needs and clearly set forth those salient physical and functional characteristics of the brand name required by the recipient.</p> <p>If the solicitation specifies “brand name” only without specifying an equal or listing the physical or functional characteristics needed, check Deficient.</p> <p>If the procurement does not specify a “brand name”, check NA.</p>	-	-	-	-
<p>Def Code 7-2 Geographic Preferences [2 CFR 200.319 (b)] The solicitation contains no in-State or local geographic preferences except where Federal statutes expressly mandate or encourage them.</p>	-	-		-
<p>Def Code 16-2 Contract Term Limitation for Non-Rolling Stock [FTA C 4220.1F, IV, 2.b.(3)(b)] The contract files for contracts for <u>non</u>-rolling stock and replacement parts, with terms of over five years, contains evidence that the contract term is based upon sound business judgment.</p> <p>If the contract term does not exceed five years, check NA.</p>	-	-	-	-
<p>Def Code 4-1 Award to Responsible Contractor [49 U.S.C 5325(j) AWARDS TO RESPONSIBLE CONTRACTORS] The recipient made a determination that it was awarding to a responsible contractor considering such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources and debarment/suspension.</p> <p>Note this is only for purchases above the micro-purchase threshold. If the contract amount is less than that, check NA.</p>	-	-	-	-
<p>Def Code 4-2 Suspension and Debarment Verification [2 CFR 180.300] The recipient verified through inclusion of a clause, collection of a signed certification, or review of SAM.gov that the vendor was not suspended or debarred prior to award.</p> <p>NOTE: This is only for contracts of \$25,000 or more. If the contract amount is less than \$25,000, check NA.</p>	-	-	-	-

NON-COMPETITIVE PROPOSALS (SOLE SOURCE or SINGLE BID)				
Element	ND	D	NA	Evaluation/Comments (Include work/paper references)
<p>Def Code 4-3 Contract Actions for Contractors Suspended or Debarred After Contract Award [2 CFR 180.310] The recipient took appropriate action if a contractor became suspended or debarred subsequent to contract award.</p> <p>NOTE: This is only for contracts of \$25,000 or more. If the contract amount is less than \$25,000, check NA.</p>	-	-	-	-
<p>This contract is a sound and complete agreement. In addition, it includes remedies for breach of contract and provisions covering termination for cause and convenience</p>	-	-		-
<p>Def Code 8-5 Sole Source if Other Award is Infeasible [2 CFR 200.320(f)] The contract file contains documentation that award of a contract was infeasible under simplified acquisition purchase procedures, sealed bids, or competitive proposals and at least one of the following circumstances applies:</p> <ol style="list-style-type: none"> (1) The item was available only from a single source. (2) Public exigency or an emergency for the requirement did not permit a delay resulting from a competitive solicitation. (3) The FTA authorized noncompetitive negotiations in response to a written request. (4) Competition was determined inadequate after solicitation of a number of sources. 	-	-		-
<p>Def Code 8-6 Single Bid Documentation [FTA 4220.1F, Chapter VI.3.i (1)(b) 2] The contract file contains documentation that after solicitation of a number of sources competition was determined to be inadequate, and it took actions such as reviewing for undue restrictive.</p>	-	-		-
<p>Def Code 10-5 Cost Analysis Required [2 CFR §200.323(b)] Cost analysis was performed (initial award and modifications) and documented or price reasonableness was 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.</p> <p>NOTE: This requirement is only for procurements over the simplified acquisition threshold. If the contract amount is less than that, check NA.</p>	-	-	-	-

NON-COMPETITIVE PROPOSALS (SOLE SOURCE or SINGLE BID)				
Element	ND	D	NA	Evaluation/Comments (Include work/paper references)
<p>Def Code 10-6 Profit Negotiation Required [2 CFR §200.323(b)]</p> <p>The recipient negotiated profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed</p> <p>NOTE: This requirement is only for procurements over the simplified acquisition threshold. If the contract amount is less than that, check NA.</p>	-	-	-	-
<p>Def Code 15-1 Options Based on Foreseeable Need [2 CFR 200.318(d)]</p> <p>The recipient awarded a contract with options, and the quantity of those options was based on the recipient's foreseeable need.</p> <p>If the contract does not contain options, check NA.</p>	-	-	-	-
<p>Def Code 15-2 Evaluation of Options [FTA C 4220.1F, VI, 7. b.]</p> <p>The option quantities or periods contained in the contractor's bid or offer were evaluated in order to determine contract award. (To be eligible for Federal funding, options must be evaluated as part of the price evaluation of offers, or must be treated as sole source awards.)</p> <p>If the contract does not contain options, check NA.</p>	-	-	-	-
<p>Def Code 15-3 Exercise of Options [FTA C 4220.1F, V, 7. a. (1) (a) (b)]</p> <p>The recipient exercised an option on this contract adhering to the terms and conditions of the option stated in the contract.</p> <p>If an option was not exercised under this contract, check NA.</p>	-	-	-	-
<p>Def Code 5-1 Written Record of Procurement History [2 CFR 200.318(i)]</p> <p>The file contains records detailing the history of this procurement. At a minimum, these records include:</p> <ul style="list-style-type: none"> • Rationale for the method of procurement, • Selection of contract type, • Reasons for contractor selection or rejection, and • Basis for the contract price. 	-	-		-

NON-COMPETITIVE PROPOSALS (SOLE SOURCE or SINGLE BID)				
Element	ND	D	NA	Evaluation/Comments (Include work/paper references)
<p>Def Code 14-1 Change Orders [FTA C 4220.1F, VI, 3.i.(1)(b)]</p> <p>The recipient executed a change order that was within the scope of work, was essential to the completion of the project scope and evaluated the cost of the change.</p> <p>or</p> <p>The recipient amended this contract outside the scope of the original contract and the amendment was treated as a sole source procurement (complying with the FTA requirements for a justification, cost analysis and profit negotiation).</p> <p>If the contract was not modified or if all modifications reviewed were within the scope of the contract, check NA.</p>	-	-	-	
<p>Def Code 18-1 Advance Payment Provisions [FTA C 4220.1F, IV, 2. b. (5)(6)]</p> <p>The contractor did not receive an advance payment utilizing FTA funds and the contract does not contain advance payment provisions or, if it did, prior written concurrence was obtained from FTA.</p>	-	-		-
<p>Def Code 18-2 Progress Payment Provisions [FTA C 4220.1F, IV, 2. b. (5) (c)]</p> <p>The contract contains progress payments based on costs incurred (as opposed to percent of completion, except that percent of completion may be used in construction contracts) and the contract contains a provision giving the recipient title to property (materials, work in progress, and finished goods) for which progress payments are made. The contract may contain other security in lieu of obtaining title.</p> <p>If the contract does not contain progress payments, check NA.</p>	-	-	-	-
<p>Def Code 8-7 Time and Materials Contracts [2 CFR 200.318(j)(1)]</p> <p>This is a time and materials contract; the recipient determined that no other type of contract is suitable; and the contract specifies a ceiling price.</p> <p>If this is not a time and materials contract, check NA.</p>	-	-	-	-
<p>Def Code 8-25 Cost Plus Percentage of Cost [2 CFR 200.323(d)]</p> <p>This is not a cost plus a percentage of cost type contract.</p>				

NON-COMPETITIVE PROPOSALS (SOLE SOURCE or SINGLE BID)				
Element	ND	D	NA	Evaluation/Comments (Include work/paper references)
<p>Def Code 13-1 Liquidated Damages Provisions [FTA C 4220.1F, IV, 2. b.(6)(b) 1] This contract contains liquidated damages provisions and the assessment for damages is specified in the contract at a specific rate per day for each day of overrun in contract time.</p> <p>If this contract does not contain liquidated damages provisions, check NA</p>	-	-	-	-
<p>Def Code 13-2 Accounting for Received Liquidated Damages [FTA Master Agreement, Section 39(c), FTA C 4220.1F, IV, 2.b.(6)(b) 1] The recipient recovered liquidated damages and either returned FTA’s share or returned the full amount to the award budget.</p> <p>If this contract does not contain liquidated damages provisions, check NA</p>	-	-	-	-
<p>Def Code 17-1 Piggyback Purchase [FTA C 4220.1F, V, 7. a. (2)] For this contract:</p> <ul style="list-style-type: none"> • Federal requirements were met • Assigned quantities did not exceed contract allowable amounts • Price was determined to be fair and reasonable • Option vehicle(s) did not contain cardinal changes <p>If this is not a “Piggybacking” contract, check NA.</p>	-	-	-	-
<p>Def Code 11-1 Clauses [Appendix II to 2 CFR Part 200] This contract contains the appropriate FTA required clauses.</p> <ul style="list-style-type: none"> • The contract clauses located in 2 CFR Part 200 and FTA’s Master Agreement should be used to determine the applicability of the clauses to the procurement type. FTA C 4220.1F, Appendix D, and The Best Practices Procurement Manual, Appendix A.1, can be used to determine the applicability of the specific language of a clause that a recipient may use. 	-	-		-
<p>Def Code 11-2 Clauses Added to Existing Contracts [Appendix II to 2 CFR Part 200] Appropriate clauses were added to a state’s GSA-type contract with the purchase order.</p>	-	-		-
<p>Def Code 12-2 Signed Lobbying Certification [31 U.S.C. 1352] The recipient collected signed Lobbying certifications from each bidder for procurements over \$100,000.</p> <p>If the procurement is \$150,000 or less or it does not involve steel, iron, and manufactured products, check NA.</p>	-	-	-	-

NON-COMPETITIVE PROPOSALS (SOLE SOURCE or SINGLE BID)				
Element	ND	D	NA	Evaluation/Comments (Include work/paper references)
<p>Def Code 12-3 Buy America Certification Included in Solicitation [49 CFR 661.6 or 49 CFR 661.12]</p> <p>The recipient <u>included</u> the Buy America certification in applicable procurements <u>over \$150,000</u>; the certification for buses, rolling stock, and associated equipment is at 661.12; for all other procurements that include steel, iron, and manufactured products, the certification is at 661.6.</p> <p>If the procurement is \$100,000 or less, check NA.</p>	-	-	-	-
<p>Def Code 12-4 Signed Buy America Certification [49 CFR 661.6 or 49 CFR 661.12]</p> <p>The recipient <u>collected signed</u> Buy America certifications from each bidder for procurements <u>over \$150,000</u>; the certification for buses, rolling stock, and associated equipment is 661.12; for all other procurements that include steel, iron, and manufactured products, the certification is at 661.6.</p> <p>If the procurement is \$150,000 or less or it does not involve steel, iron, and manufactured products, check NA.</p>	-	-	-	-
<p>Def Code 12-5 Buy America Waivers [49 CFR 661.6 or 49 CFR 661.12]</p> <p>The recipient did not award a contract if the apparent-winning contractor certified non-compliance with Buy America and did not have a Buy America waiver, or certified both compliance and non-compliance.</p> <p>If the procurement is \$150,000 or less or it does not involve steel, iron, and manufactured products, check NA.</p>	-	-	-	-

IV.2.g. SUPPLEMENT: ARCHITECT & ENGINEERING SERVICES

This checklist is to be used in addition to either the Simplified Acquisition Purchase Checklist or the Competitive Proposal Checklist whenever the specifications require a licensed architect or engineer to perform the services. This checklist should also be used in contracts for design-build services (when preponderance of work is A&E), program management, construction management, feasibility studies, preliminary engineering, design, surveying, and mapping which require performance by a registered or licensed architect or engineer. (This does not apply to contracts with a value less than \$3,500 if the procurement was executed before June 20, 2018 or \$10,000 for procurements executed after June 20, 2018.)

These requirements apply except to the extent any State adopts or has adopted by statute a formal procedure for the procurement of architectural and engineering services.

A&E SERVICES (SUPPLEMENT)				
Element	ND	D	NA	Evaluation/Comments (Include work/paper references)
<p>Def Code 9-1 Qualifications Exclude Price [2 CFR 200.320 (d)(5)] The recipient evaluated the offeror's qualifications and excluded price as an evaluation factor.</p>	-	-		-
<p>Def Code 9-2 Serial Price Negotiations [40 USC 1104(b)] The recipient conducted negotiations with only the most qualified offeror and failing agreement on price would conduct negotiations with the next most qualified offeror until contract award could be made to the most qualified offeror whose price is fair and reasonable to the recipient.</p>	-	-		-
<p>Def Code 9-3 A&E Geographic Preferences [2 CFR 200.319 (b)] Geographic location is not a selection criterion or it is a selection criterion and its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.</p>	-	-		-
<p>Def Code 9-4 A&E On-Call Services [FTA Frequently Asked Procurement Questions] The recipient issued a multiple-award A&E on-call type contract and has defined the process for assignments under the award, and assignments of tasks are made to the firm that was the highest technically-ranked firm for that type of work.</p>	-	-		-

IV.2.h. SUPPLEMENT: CONSTRUCTION PROCUREMENTS

This checklist is to be used in addition to the Simplified Acquisition Purchases Checklist, the Sealed Bids Checklist, or the Competitive Proposals Checklist whenever the procurement is for construction or facility improvement.

CONSTRUCTION PROCUREMENTS (SUPPLEMENT)				
Element	ND	D	NA	Evaluation/Comments (Include work/paper references)
<p>Def Code 11-3 Security Bonds Obtained [2 CFR 200.325] Appropriate bid security, performance security and/or payment security was obtained for the following contracts over the simplified acquisition threshold:</p> <ul style="list-style-type: none"> • 5% bid guarantee such as a bid bond, certified check, or other negotiable instrument that assures that the bidder will execute contract documents within the time specified • 100% performance bond or other security. (A cash deposit, certified check or other negotiable instrument may be accepted by the recipient in lieu of a performance bond, provided the recipient has established a procedure to assure that the interest of FTA is adequately protected.) • The contract exceeds the simplified acquisition threshold and the contractor furnished a payment bond as a minimum in the following amount: <ol style="list-style-type: none"> (1) 50% of the contract price if the contract price is not more than \$1 million. (2) 40% of the contract price if the contract price is more than \$1 million but not more than \$5 million, or (3) \$2.5 million if the contract price is more than \$5 million. (A cash deposit, certified check or other negotiable instrument may be accepted by the recipient in lieu of a payment bond, provided the recipient has established a procedure to assure that the interest of FTA is adequately protected.) <p>If the procurement was not over the Simplified Acquisition Threshold, check NA.</p>	-	-	-	-
<p>Def Code 11-4 Davis Bacon [40 U.S.C. 3142 (a)] The construction contract was over \$2,000 and the recipient included a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation.</p>	-	-	-	-

IV.2.i. SUPPLEMENT: VEHICLE CHECKLIST (RAIL)

This checklist is used in addition to the appropriate Review Findings Checklist whenever the procurement is for rail vehicles. The reviewer will complete this form for all rail vehicle procurements made by the recipient in the past five (5) years.

REQUIREMENTS AND CHECKLIST

RAIL VEHICLE _____
CONTRACT NO. _____

RAIL SUPPLEMENTAL CHECKLIST				
Element	ND	D	NA	Evaluation/Comments (Include work/paper references)
Def Code 12-1 Signed Transit Vehicle Manufacturer (TVM) Certification [49 CFR 26.49] The recipient <u>collected signed</u> TVM certifications from each bidder for vehicles meeting the definition of 'transit vehicles'.	-	-	-	-
Def Code 16-1 Contract Term Limitation for Rolling Stock [49 USC 5325(e)] The contract period of performance for rolling stock and replacement parts does not exceed five (5) years inclusive of options for buses and seven (7) years for rail cars without prior written FTA approval.	-	-	-	-
Def Code 17-2 Domestic Content for Vehicle Piggyback [September 1, 2016 Phased Increased Domestic Content Policy Notice] The recipient, subsequent to December 4, 2015, acquired options through piggybacking and the base contract had the correct FY2018, FY2019 or FY2020 domestic content requirement.	-	-	-	-
Def Code 20-1 Buy America Domestic Content [September 1, 2016 Phased Increased Domestic Content Policy Notice] The recipient included the appropriate Buy America domestic content requirements in its rolling stock procurements.	-	-	-	-

<p>Def Code 20-2 Pre-Award and/or Post Delivery Audits [49 CFR 663] The recipient conducted all of the required audits for revenue rolling stock procurements. If the recipient ordered a group of vehicles from a multi-year procurement, a pre-award audit had previously been conducted.</p> <p>Def Code 20-3 Pre-Award and/or Post Delivery Certifications [49 CFR 663] The recipient completed and has on file completed certifications of pre-award and/or post-delivery audit activities (see checklist below).</p> <p><u>PRE-AWARD</u></p> <p>Buy America Certification</p> <p>A. Recipient has a self-certification on file that: ____ Recipient, or by means of an audit prepared by someone other than the manufacturer, reviewed and verified 60 Percent (increased to 65 percent in 2018 and 2019, and 70 percent in 2020) domestic content for vehicles <i>proposed</i>; and</p> <p>____ Recipient reviewed and verified <i>proposed</i> U.S. Final Assembly Location, Operations, and Total Cost</p> <p style="text-align: center;">OR</p> <p>B. ____ Requested and received Buy America Waiver</p> <p>Purchaser's Requirements Certification</p> <p>____ Recipient has a self-certification on file that (a) The rolling stock it is contracting for is the same product described in its solicitation specification; and (b) The proposed manufacturer is a responsible manufacturer with the capability to produce a vehicle that meets the solicitation's specification.</p> <p><u>POST-DELIVERY</u></p> <p>Buy America Certification</p> <p>A. Recipient has self-certification on file that: ____ Recipient, or by means of an audit prepared by someone other than the manufacturer, reviewed and verified 60 Percent (increased to 65 percent in 2018 and 2019, and 70 percent in 2020) domestic content for vehicles <i>received</i>; and</p> <p>____ Recipient reviewed and verified <i>actual</i> U.S. Final Assembly Location, Operations, and Total Cost</p> <p style="text-align: center;">OR</p> <p>B. ____ Recipient requested and received Buy America Waiver</p> <p>Purchaser's Requirements Certification</p>	-	-	-	-
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RAIL SUPPLEMENTAL CHECKLIST

Element	ND	D	NA	Evaluation/Comments (Include work/paper references)
<p>A. Recipient has a self-certification on file that, for procurements of any number of rail vehicles, it: ___ completed and reviewed Resident Inspector's Report; AND ___ conducted visual inspections and road tests</p> <p>Federal Motor Vehicle Safety Standards (FMVSS) Certification</p> <p>A. ___ Recipient has self-certification on file that it received from the vehicle manufacturer at both the pre-award and post-delivery stages a copy of the manufacturer's self-certification information that the vehicle complies with the FMVSS issued by the National Highway Traffic Safety Administration OR</p> <p>B. ___ Requested and received manufacturer's letter stating that the vehicles are not subject to FMVSS</p> <p><i>All certifications must be kept on file. Supporting documentation should accompany each certification.</i></p>				

IV.2.j SUPPLEMENT: VEHICLE CHECKLIST (BUS)

This checklist is used in addition to the appropriate Review Findings Checklist whenever the procurement is for buses. The reviewer will complete this form for all bus procurements made by the recipient in the past five (5) years whether or not the procurement is chosen for review.

BUS _____
CONTRACT NO. _____

BUS SUPPLEMENTAL CHECKLIST				
Element	ND	D	NA	Evaluation/Comments (Include work/paper references)
Def Code 12-1 Signed Transit Vehicle Manufacturer (TVM) Certification [49 CFR 26.49] The recipient collected signed TVM certifications from each bidder for vehicles meeting the definition of ‘transit vehicles’.	-	-	-	-
Def Code 16-1 Contract Term Limitation for Rolling Stock [49 USC 5325(e)] The contract period of performance for rolling stock and replacement parts does not exceed five (5) years inclusive of options for buses and seven (7) years for rail cars without prior written FTA approval.	-	-	-	-
Def Code 17-2 Domestic Content for Vehicle Piggyback [September 1, 2016 Phased Increased Domestic Content Policy Notice] The recipient, subsequent to December 4, 2015, acquired options through piggybacking and the base contract had the correct FY2018, FY2019 or FY2020 domestic content requirement.	-	-	-	-
Def Code 19-1 Bus Testing Requirements [49 CFR 665.7] The recipient purchased buses and the bus was tested. For new buses tested after October 31, 2016, the bus model received a ‘passing’ score.	-	-	-	-
Def Code 19-2 Bus Testing Report [49 CFR 665.7] The recipient purchased buses had a copy of the bus testing report on file.	-	-	-	-
Def Code 20-1 Buy America Domestic Content [September 1, 2016 Phased Increased Domestic Content Policy Notice] The recipient included the appropriate Buy America domestic content requirements in its rolling stock procurements.	-	-	-	-

<p>Def Code 20-2 Pre-Award and/or Post Delivery Audits [49 CFR 663] The recipient conducted all of the required audits for revenue rolling stock procurements. If the recipient ordered a group of vehicles from a multi-year procurement, a pre-award audit had previously been conducted.</p> <p>Def Code 20-3 Pre-Award and/or Post Delivery Certifications [49 CFR 663] The recipient completed and has on file completed certifications of pre-award and/or post-delivery audit activities (complete checklist below).</p> <p><u>PRE-AWARD</u></p> <p>Buy America Certification</p> <p>A. Recipient has a self-certification on file that: ____ Recipient, or by means of an audit prepared by someone other than the manufacturer, reviewed and verified 60 Percent (increased to 65 percent in 2018 and 2019, and 70 percent in 2020) domestic content for vehicles <i>proposed</i>; and</p> <p>____ Recipient reviewed and verified <i>proposed</i> U.S. Final Assembly Location, Operations, and Total Cost</p> <p style="text-align: center;">OR</p> <p>B. ____ Requested and received Buy America Waiver</p> <p>Purchaser's Requirements Certification</p> <p>____ Recipient has a self-certification on file that (a) The rolling stock it is contracting for is the same product described in its solicitation specification; and (b) The proposed manufacturer is a responsible manufacturer with the capability to produce a vehicle that meets the solicitation's specification.</p> <p><u>POST-DELIVERY</u></p> <p>Buy America Certification</p> <p>A. Recipient has self-certification on file that: ____ Recipient, or by means of an audit prepared by someone other than the manufacturer, reviewed and verified 60 Percent (increased to 65 percent in 2018 and 2019, and 70 percent in 2020) domestic content for vehicles <i>received</i>; and</p> <p>____ Recipient reviewed and verified <i>actual</i> U.S. Final Assembly Location, Operations, and Total Cost</p> <p style="text-align: center;">OR</p> <p>B. ____ Recipient requested and received Buy America Waiver</p> <p>Purchaser's Requirements Certification</p> <p>A. Recipient has a self-certification on file that, for procurements of:</p>	-	-	-	-
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BUS SUPPLEMENTAL CHECKLIST

Element	ND	D	NA	Evaluation/Comments (Include work/paper references)
<ul style="list-style-type: none"> • more than 10 buses or modified vans if recipient is in urbanized area with a population of more than 200,000 • more than 20 buses or modified vans if recipient is in urbanized area with population of 200,000 or less, it: <ul style="list-style-type: none"> ___ completed and reviewed Resident Inspector’s Report; and ___ conducted visual inspections and road tests <p align="center">OR</p> <p>B. For procurements of:</p> <ul style="list-style-type: none"> • 10 or fewer buses or modified vans • any number of unmodified vans, it ___ completed visual inspections and road tests <p>Federal Motor Vehicle Safety Standards (FMVSS) Certification</p> <p>A. ___ Recipient has self-certification on file that it received from the vehicle manufacturer at both the pre-award and post-delivery stages a copy of the manufacturer’s self-certification information that the vehicle complies with the FMVSS issued by the National Highway Traffic Safety Administration</p> <p align="center">OR</p> <p>B. ___ Requested and received manufacturer’s letter stating that the vehicles are not subject to FMVSS</p> <p><i>All certifications must be kept on file. Supporting documentation should accompany each certification.</i></p>				

V. Report Documents

V.1. Summary Matrix

#	Description	Governing Directive	ND	D	NA	TOTAL
Systemwide Elements						
2-1	Standards of Conduct are Written	2 CFR 200.318 (c)(1) & (2)	-	-	-	-
2-2	Standards of Conduct Include All Elements	2 CFR 200.318 (c)(1) & (2)	-	-	-	-
2-3	Standards of Conduct Are Enforced When Necessary	2 CFR 200.318 (c)(1) & (2)	-	-	-	-
6-1	Contract Administration System	2 CFR 200.318(b)	-	-	-	-
3-1	Protest Procedures Available to Public	2 CFR 200.318(k)	-	-	-	-
3-2	Written Protest Procedures	2 CFR 200.318(k)	-	-	-	-
3-3	Protest Procedures Followed	2 CFR 200.318(k)	-	-	-	-
7-3	Prequalification System	2 CFR 200.319(d)	-	-	-	-

#	Description	Governing Directive	ND	D	NA	TOTAL
22-1	System for Ensuring Most Efficient and Economic Purchase	2 CFR 200.318(d)	-	-	-	-
1-1	Procurement Policies and Procedures Exist	2 CFR 200.319(c)	-	-	-	-
1-2	Procurement Policies and Procedures Require Clear and Accurate Description and Evaluation Factors	2 CFR 200.319(c)	-	-	-	-
1-3	Procurement Policies and Procedures Written and Do Not Conflict with Federal Requirements, or Implementation Can be Demonstrated	2 CFR 200.319 - 326	-	-	-	-
21-1	Subrecipient Oversight	2 CFR 200.331	-	-	-	-
Procurement File Elements						
10-1	Independent Cost Estimate	2 CFR 200.323, 200.324	-	-	-	-
10-3	Independent Cost Estimate For Change Orders	2 CFR 200.323, 200.324	-	-	-	-
10-4	Sufficient Independent Cost Estimate	2 CFR 200.323, 200.324	-	-	-	-
9-3	A&E Geographic Preference	2 CFR 200.320 (d)(5)	-	-	-	-

#	Description	Governing Directive	ND	D	NA	TOTAL
7-4	Unreasonable Qualification Requirements	2 CFR 200.319 (a)	-	-	-	-
7-5	Unnecessary Experience and Excessive Bonding	2 CFR 200.319 (a)	-	-	-	-
7-7	Organizational Conflict of Interest	2 CFR 200.319 (a)	-	-	-	-
7-8	Arbitrary Action	2 CFR 200.319 (a)	-	-	-	-
7-6	Brand Name Restrictions	2 CFR 200.319 (c)(1)	-	-	-	-
7-2	Geographic Preferences	2 CFR 200.319 (b)	-	-	-	-
16-1	Contract Term Limitation- Vehicle	49 USC 5325 (e)	-	-	-	-
16-2	Contract Term Limitation For Non Rolling Stock	FTA C 4220.1F. IV, 2.b.(3)(b)	-	-	-	-
8-26	Written Procurement Selection Procedures	2 CFR 200 319 (c)(2)	-	-	-	-
7-3	Solicitation Prequalification Criteria	2 CFR 200.319 (d)	-	-	-	-

#	Description	Governing Directive	ND	D	NA	TOTAL
4-1	Award to Responsible Contractors	49 U.S.C 5325(j)	-	-	-	-
4-2	Suspension and Debarment Verification	2 CFR 180.300	-	-	-	-
4-3	Contract Actions for Contractors Suspended or Debarred After Contract Award	2 CFR 180.310	-	-	-	-
8-1	Micro-Purchase Procedures	2 CFR 200.320 (a)	-	-	-	-
8-8	No Splitting [Micro-purchase]	FTA C 4220.1F,VI, 3. a. (2) (b)	-	-	-	-
11-4	Micro-Purchase Davis Bacon	40 U.S.C. 3142 (a)	-	-	-	-
8-10	Price Quotations [Small Purchase]	2 CFR 200.320 (b)	-	-	-	-
8-9	No Splitting - Small Purchase	FTA C 4220.1F,VI, 3. a. (2) (b)	-	-	-	-
8-14	Clear, Accurate, and Complete Specification	2 CFR 200 319(c)(1)	-	-	-	-
8-13	Adequate Competition - Two or More Competitors	2 CFR 200.320 (c), 2 CFR 200.320 (d)	-	-	-	-

#	Description	Governing Directive	ND	D	NA	TOTAL
8-15	Firm Fixed Price [Sealed Bid]	2 CFR 200.320 (c)	-	-	-	-
8-16	Selection on Price [Sealed Bid]	2 CFR 200.320 (c)	-	-	-	-
8-17	Discussions Unnecessary [Sealed Bid]	2 CFR 200.320 (c)	-	-	-	-
8-11	Advertised/Publicized	2 CFR 200.320 (c), 2 CFR 200.320 (d)	-	-	-	-
8-12	Adequate Number of Sources Solicited	2 CFR 200.320 (c), 2 CFR 200.320 (d)	-	-	-	-
8-18	Sufficient Bid Time [Sealed Bid]	2 CFR 200.320 (c)	-	-	-	-
8-19	Bid Opening [Sealed Bid]	2 CFR 200.320 (c)	-	-	-	-
8-20	Responsiveness [Sealed Bid]	2 CFR 200.320 (c)	-	-	-	-
8-21	Lowest Price [Sealed Bid]	2 CFR 200.320 (c)	-	-	-	-
8-22	Rejecting Bids [Sealed Bid]	2 CFR 200.320(c)(2)(v)	-	-	-	-

#	Description	Governing Directive	ND	D	NA	TOTAL
8-23	Evaluation Factors [RFP]	2 CFR 200.320 (d)	-	-	-	-
8-24	Price and Other Factors [RFP]	2 CFR 200.320 (d)(4)	-	-	-	-
8-5	Sole Source if Other Award is Infeasible	2 CFR 200.320 (f)	-	-	-	-
10-5	Cost Analysis Required [Sole Source]	2 CFR 200.323 (b)	-	-	-	-
15-1	Options Based on Foreseeable Need	2 CFR 200.318 (d)	-	-	-	-
10-2	Cost or Price Analysis	2 CFR 200.323 (b)	-	-	-	-
10-6	Profit Negotiation Required	2 CFR 200.323 (b)	-	-	-	-
5-1	Written Record of Procurement History	2 CFR 200.318(i)	-	-	-	-
15-2	Exercise of Options Evaluated	FTA C 4220.1F, VI, 7.b.	-	-	-	-
15-3	Evaluation of Options	FTA C 4220.1F, V, 7.a.(1)(a)(b)	-	-	-	-

#	Description	Governing Directive	ND	D	NA	TOTAL
14-1	Exercise of Options	FTA C 4220.1F, VI, 3.i. (1) (b)	-	-	-	-
18-1	Change Orders	FTA C 4220.1F, IV, 2.b.(5)(c)	-	-	-	-
18-2	Advance Payment Provisions	FTA C 4220.1F, IV, 2. b.(5)(c)	-	-	-	-
8-7	Time and Materials Contracts	2 CFR 200.318 (j)(1)	-	-	-	-
8-25	Cost Plus Percentage of Cost	2 CFR 200.323(d)	-	-	-	-
13-1	Liquidated Damages Provisions	FTA C 4220.1F, IV, 2.b.(6)(b) 1	-	-	-	-
13-2	Accounting for Received Liquidated Damages	FTA C 4220.1F, IV, 2.b.(6)(b) 1	-	-	-	-
17-1	Piggyback Purchase	FTA C 4220.1F, V, 7. a. (2)	-	-	-	-
17-2	Domestic Content for Vehicle Piggyback	September 1, 2016 Phased Increased Domestic Content Policy Notice	-	-	-	-
9-1	Qualifications Exclude Price [A&E]	2 CFR 200.320(d)(5)	-	-	-	-

#	Description	Governing Directive	ND	D	NA	TOTAL
9-2	Serial Price Negotiations [A&E]	40 U.S.C. 1104 (b)	-	-	-	-
11-3	Bid Security, Performance Security or Payment Security [Construction over \$100,000]	2 CFR 200.325	-	-	-	-
11-1	Clauses Included	Appendix II to 2 CFR Part 200	-	-	-	-
11-2	Clauses Added to Existing Contracts	Appendix II to 2 CFR Part 200	-	-	-	-
12-1	TVM Certifications	49 CFR 26.49	-	-	-	-
12-2	Signed Lobbying Certifications	31 U.S.C. 1352	-	-	-	-
12-3	Buy America Certification Included in Solicitation	49 CFR 661.6 or 661.12	-	-	-	-
12-4	Signed Buy America Certification	49 CFR 661.6 or 661.12	-	-	-	-
12-5	Buy America Waivers	49 CFR 661.6 or 661.12	-	-	-	-
8-6	Single Bid Documentation	FTA 4220.1F, VI, 3.i(1)(b)	-	-	-	-

#	Description	Governing Directive	ND	D	NA	TOTAL
19-1	Bus Testing Requirements	49 CFR 665.7	-	-	-	-
19-2	Bus Testing Report	49 CFR 665.7	-	-	-	-
20-1	Buy America Domestic Content	September 1, 2016 Phased Increased Domestic Content Policy Notice	-	-	-	-
20-2	Pre-Award and/or Post Delivery Audits	49 C.F.R. 663	-	-	-	-
20-3	Pre-Award and/or Post Delivery Certifications	49 C.F.R. 663	-	-	-	-