

Procurement Orientation

FTA 'Virtual' Procurement Training
Federal Transit Administration



KEY REGULATIONS/GUIDANCE

- 2 CFR PART 200 – UNIFORM ADMINISTRATIVE REQUIREMENTS (Super Circular)
 - Effective Date: December 26, 2014
 - Replaces “Common Grant Rule” (49 CFR Part 18)
 - Procurement Sections: 200.317 – 200.326 (Bookmark)
- FAST ACT – SEE FTA WEB SITE FOR FAST ACT “FACT SHEETS”
 - Effective Date: October 1, 2015
 - No. 3019 – Procurement and Leasing
 - Buy America Fact Sheet
- FTA MASTER AGREEMENT



FTA CIRCULAR 4220.1F

- FTA CIRCULAR 4220.1F (Under Revision to Reflect 2 CFR Part 200; *Last revision: Rev 4, March 18, 2013*)
- When consulting FTA Circular 4220.1F, recipients should be mindful that there are statutory and regulatory requirements that have superseded the current version of the circular. In that case, the federal statute or regulation must be consulted. If a recipient is unsure of the applicability of FTA Circular 4220.1F in light of the Uniform Guidance (a/k/a “Super Circular”), 2 C.F.R. part 200, or the FAST Act amendments to Title 49 United States Code, Chapter 53, please contact your FTA regional office for further guidance.



FTA CIRCULAR 4220.1F (cont.)

- Where FTA funds are used in procurements for services or supplies, or where FTA-funded facilities or assets are used in revenue contracts, FTA Circular 4220.1F applies.
- FTA funds, even operating assistance, can be segregated from local funds.
- FTA Circular 4220.1F does not apply to wholly locally-funded capital procurements. BUT when FTA funds a “project,” as defined in the grant, all project contracts are subject to the Circular—even those funded only with local funds.



FTA CIRCULAR 4220.1F (cont.)

- When FTA assistance for preventive maintenance is being applied as a percentage of total maintenance, all preventive maintenance contracts must comply with FTA Circular 4220.1F.
- Procurements of real property consisting of land and any existing buildings or structures on that land are generally beyond the scope of FTA Circular 4220.1F.
- 4220.1F does not apply to third party contractors – your contract clauses govern.

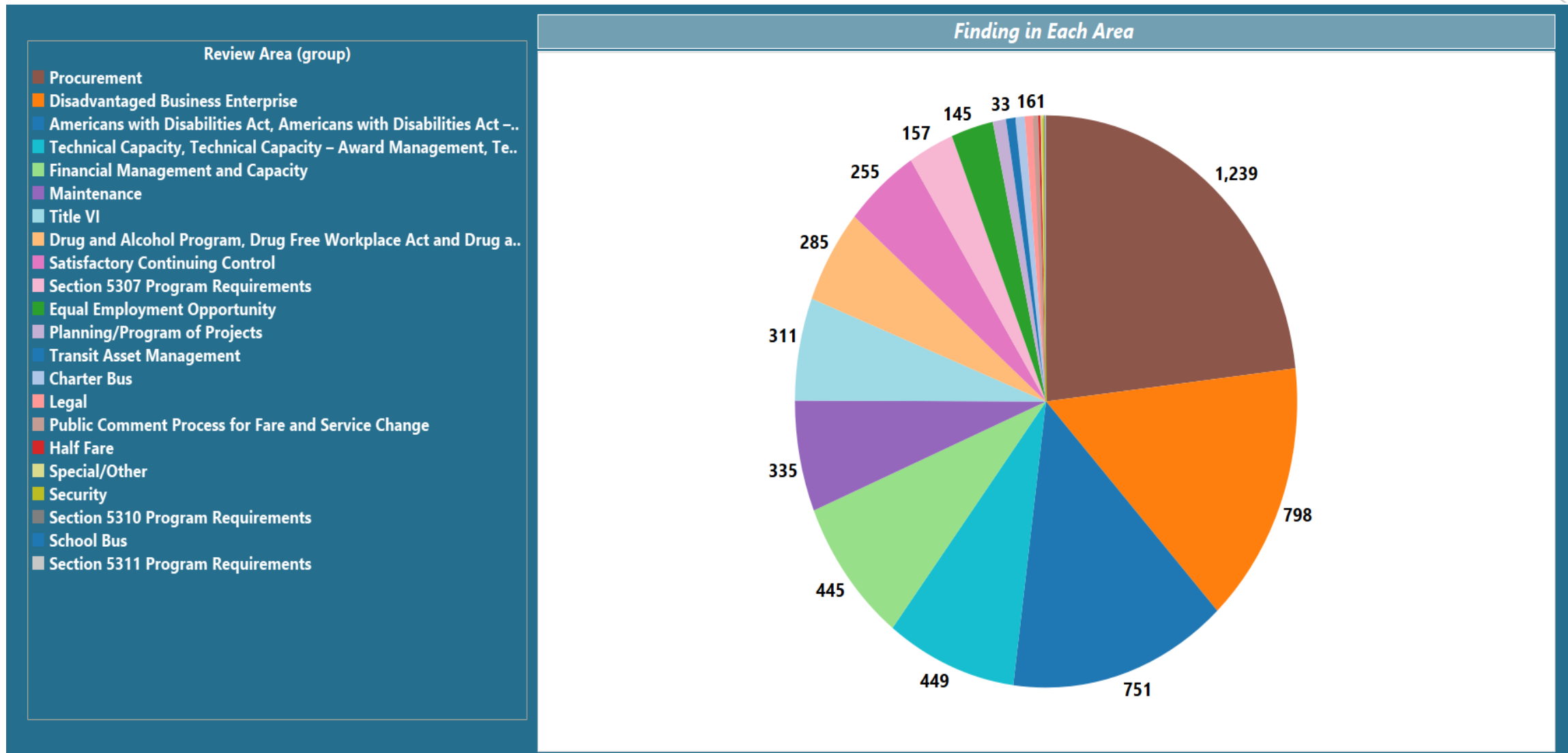


FAST ACT Procurement Changes

- Purchase from another State's procurement contracts
- Requires FTA to establish a Joint Procurement Clearinghouse to allow recipients to aggregate planned rolling stock purchases and identify joint procurement participants.
- Increases (in phases) Buy America domestic content for rolling stock (FY18 and FY19 = 65%. FY20 and beyond = 70%). Content % based on date of delivery of first production vehicle.
- Art and Landscaping – Prohibits federal funding from paying for art and/or non-functional landscaping of a transit project.



FTA Procurement Data (FY17 – FY21)



Recurring Procurement Deficiencies

Triennial Reviews (TR)

- Procurement Policies and Procedures
- Independent Cost Estimate (ICE)
- Cost or Price Analysis
- Lack of Required Federal Clauses
- Award to Responsible Contractors (specifically checking SAM)
- Various certifications (Lobbying, Buy America, Debarment)

Procurement System Reviews (PSR)

- Procurement Policies and Procedures
- Independent Cost Estimate (ICE)
- Cost or Price Analysis
- Lack of Required Federal Clauses
- Award to Responsible Contractors (specifically checking SAM)
- Written Record of Procurement History



Procurement Checklist

C4220.1F, Chapter IV, para 2:

- The recipient may also use the checklists in Appendix C of this circular as a reminder of Federal requirements, and the matrices in Appendix D of this circular for a list of clauses and provisions required by Federal laws and regulations.

BPPM: Section B-2.2

Contracting OFFICER and User Responsibilities

- Recipients may consider developing a checklist for their contracting officers and users to ensure a clear understanding of respective roles and responsibilities and that all required steps in a solicitation process are conducted.



Procurement Checklist (sample)

	Date	Initials
_____ Requisition	_____	_____
_____ ICE	_____	_____
_____ Federal Clauses	_____	_____
(See 'Clause Matrix')		
_____ Advertised	_____	_____
_____ Bid abstract	_____	_____
_____ Cost or Price	_____	_____
Analysis		
Bonds:		
_____ Bid	_____	_____
_____ Performance	_____	_____
_____ Payment	_____	_____



Requirements Procurement Checklist (sample)

___ Fair/Reasonable Determination	_____	_____
___ SAM/Excluded Parties	_____	_____
___ Buy America	_____	_____
___ Pre-Award	_____	_____
___ Post Delivery	_____	_____
___ Steel, Iron, manufactured Products	_____	_____
___ Options		
___ Evaluated	_____	_____
___ Exercised	_____	_____
___ Sole Source		
___ Justification	_____	_____
___ Cost Analysis	_____	_____



Procurement Policies and Procedures

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

Recipients must have written procurement procedures as a condition of self-certification.

- To ensure implementation, training on the policies and procedures should be conducted. It also helps to conduct self assessments to ensure staff are in compliance.
- When were the procurement procedures last updated?



Procurement Policies and Procedures

“2020 FTA PROCUREMENT SYSTEM REVIEW CONTRACTOR’S MANUAL ”

63 Total Elements (2020 Guide)

- Section 1 (1.3a) of the Guide describes 6 “System-wide Elements”
- Section III of the Guide provides a list of all 63 “Procurement Elements” & includes ‘questions’ related to the Element

All of the elements must be included in the recipient’s Procurement Policies and Procedures Manual. The (latest) PSR Contractor’s Manual can be found here:

[FTA 2020 Contractor's Guide Final \(dot.gov\)](#)



Procurement System Elements

1	Written Standards of Conduct
2	Contract Administration System
3	Written Protest Procedures
4	Prequalification System
5	Procedures for Ensuring Most Efficient and Economic Purchase
6	Procurement Policies and Procedures
7	Independent Cost Estimate
8	Geographic Preferences
9	A&E Geographic Preference
10	Unreasonable Qualification Requirements
11	Unnecessary Experience and Excessive Bonding
12	Organizational Conflict of Interest
13	Arbitrary Action
14	Brand Name Restrictions
15	Contract Period of Performance Limitation
16	Written Procurement Selection Procedures
17	Solicitation Prequalification Criteria
18	Award to Responsible Contractors
19	Sound and Complete Agreement
20	No Splitting [Micro-purchase]
21	Fair and Reasonable Price Determination [Micro-purchase]
22	Micro-purchase Davis-Bacon
23	Price Quotations [Small Purchase]
24	Clear, Accurate, and Complete specification
25	Adequate Competition – Two or More Competitors

26	Firm Fixed Price [Sealed Bid]
27	Selection on Price [Sealed Bid]
28	Discussions Unnecessary [Sealed Bid]
29	Advertised/Publicized
30	Adequate Number of Sources Solicited (Sealed Bid) (RFP)
31	Sufficient Bid time [Sealed Bid]
32	Bid Opening [Sealed Bid]
33	Responsiveness [Sealed Bid]
34	Lowest Price [Sealed Bid]
35	Rejecting Bids [Sealed Bid]
36	Evaluation [RFP]
37	Price and Other Factors [RFP]
38	Sole Source if Other Award is Infeasible
39	Cost Analysis Required [Sole Source]
40	Evaluation of Options
41	Exercise of Options
42	Cost or Price Analysis
43	Written Record of Procurement History
44	Out of Scope Changes
45	Tag-Ons
46	Federal Cost Principles
47	Advance Payments
48	Progress Payments
49	Time and Materials Contracts
50	Cost Plus Percentage of Cost

51	Liquidated Damages Provisions
52	Piggybacking
53	Brooks Act/ Qualifications-based procurements
54	Qualifications Exclude Price [A&E and Other Services]
55	Serial Price Negotiations [A&E and Other Services]
56	Design-Bid-Build
57	Design-Build
58	Veteran's Preference
59	Bid Security [Construction over \$100,000]
60	Performance Security [Construction over \$100,000]
61	Payment Security [Construction over \$100,000]
62	Federal Clauses (including Veteran's Preference)
63	Certifications (TVM, Lobbying, BA)
64	SAM/EPLS (Debarment/Suspension)
65	Buy America Pre-Award Review (Steel or manufactured products)
66	Vehicle Pre-Award Review
67	Vehicle Post-Delivery
68	Transit Vehicle Manufacturer Compliance w/DBE
69	Bus Testing
70	Change Orders
71	Disputes/Breach
72	Terminations
73	DBE
74	State/Local Government Purchasing Schedules
75	Revenue Contracts
76	Single Bid
77	Unsolicited Proposals
78	Oversight of sub-recipients
79	Signature Authority



Procurement System Elements

(potential Deficiency)

Use of time and material contracts: There is mention of T&M in Appendix B, but how they handle T&M contracts is not described. When I spoke with the agency reps, I was told the County doesn't use T&M contracts, but no where does it state that. *Should I make a finding based on missing description of T&M contracts?*



INDEPENDENT COST ESTIMATE

FTA C 4220.1F Ch. VI, 6. & 2 CFR Part 200.324

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.**



INDEPENDENT COST ESTIMATE

FTA C 4220.1F Ch. VI, 6. & 2 CFR Part 200.324(a)

The ICE is a “SHOULD COST” Estimate of Current Market Prices

- Real world example: Storm Damaged Roofs in Richmond

For Commercial Items -

- Research previous competitive contract prices - Call Agencies for Info
- **Document** the contract pricing used: agency, date of award, price, vendor

For Professional Services –

- Research costs/profit negotiated for previous awards – Call Agencies for Info
- Format for ICE Details Should be Same as RFP Cost Proposal Format
 - ICE Will be Used to Evaluate Cost Proposals: Labor Hours & Rates, Materials, Etc.
 - ICE is the “First Step” in Cost or Price Analysis – It Does Not by Itself Satisfy the Cost Analysis Requirement



SAMPLE ICE FORM

Requisition Number: _____

Date of Estimate: _____

Description Goods/Services: _____

Method of Obtaining Estimate:

- For **commercial items**, attach additional **documentation** such as previous pricing **documentation**, emails, internet screen shots, estimates on letterhead, etc.
 - ☐ _____ Published Price List (attach source and date)
 - ☐ _____ Historical Pricing (attach copy of **documentation** from previous PO/Contract)
 - ☐ _____ Comparable Purchases by Other Agencies (attach email correspondence)

- For **professional services**, attach a breakdown of the required tasks and **labor categories, and hours. Estimate the probable labor rates, overhead rate, profit, materials, travel, etc.**
- _____ Engineering or Technical Estimate (attach)
- _____ Independent Third-Party Estimate (attach)
- _____ Other (specify) _____ (attach documentation)

- ❖ The format and level of detail for the ICE should correspond to the RFP cost proposal instructions so that the ICE is useful in evaluating the cost proposals received.
- ❖ Attach additional **documentation** such as previous pricing documentation, emails, internet screen shots, estimates on letterhead, etc.

- ❖ Based on the above information, the estimated cost of the goods/services is \$_____.

Signature

Date



Comparison of Contract Types

- Fixed Price:
 - Contractor bears 100% of risk for overruns
 - Contractor must complete contract and deliver finished products to be paid the contract price
- Cost Plus Fixed Fee:
 - Agency bears risk of overruns
 - Costs are reimbursed as contractor works (“best efforts”)
 - Fee must be “earned” for completion of contract. No fee on cost overruns. If contractor fails to complete contract, fee is reduced based on percent of actual completion
- T&M
 - Agency bears risk of overruns
 - Contractor bills profit for every hour worked – no responsibility to complete contract

Selection of Contract Type

Scope of Work:

- Specifications are clearly defined: fixed price
- Where cost of performing scope of work is uncertain
 - Price cannot be determined with sufficient accuracy to permit fixed price. **This rules out fixed price contract.**

Contract Value:

- Contract value is not large enough to justify the administrative costs of CPFF
 - Costs of auditing a CPFF contract vs. a small contract value (e.g., less than its \$100,000) do not justify CPFF. **This rules out CPFF contract.**

Contractor's Accounting System:

- Contractor may not have an accounting system for CPFF. **This also rules out CPFF contract.**



Methods of Procurement

FTA C4220.1F, VI, 3.

- Micro-Purchases
- Sealed Bid
- Request for Proposals (RFP)
- Two-Step Procedures
- Architectural Engineering (A&E)
 - Qualifications-Based Procedures / Brooks Act
- Construction
 - Design-Bid-Build (DBB)
 - Design Build (DB)
- Best Value



Other Than Full & Open Competition

FTA C4220.1F, VI, 3.I.

- Sole Source
- Single Bids
- Unsolicited Proposals
- Restricted:
 - Time & Materials
- Prohibited:
 - Cost plus Percent of Cost



FEDERAL CLAUSES

FTA C4220.1F, VI, 2.

1. FTA Master Agreement
2. FTA C 4220.1F, Appendix D - Clause Matrix
3. FTA Best Practices and Lessons Learned Manual, Appendix A – Available at FTA Web Site
4. <https://www.nationalrtap.org/> (National Rural Transit Assistance Program)
5. Grantees Must Evaluate Each Procurement for Specific Requirements and Incorporate Appropriate Clause Language In Contract



Updated Clause Matrix

(FY2020 Contractor's Procurement System Review Guide)

TYPE OF PROCUREMENT

PROVISION	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
No Federal Government Obligations to Third Parties (by Use of a Disclaimer)	All	All	All	All	All
False Statements or Claims Civil and Criminal Fraud	All	All	All	All	All
Notice to FTA and U.S. DOT Inspector General of information related to fraud, waste, abuse, or other legal matters FTA Master Agreement (25) Section 39(b)	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000
Access to Third Party Contract Records FTA Master Agreement (25), Sec. 9(c)(1)	All	All	All	All	All
Changes to Federal Requirements FTA Master Agreement (25), Sec. (3)(i)(6)	All	All	All	All	All
Termination Appendix II to Part 200	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.
Civil Rights (Title VI, ADA, EEO except Special DOL EEO clause for construction projects) Appendix II to Part 200	All	All	All>\$10,000	All	All



LOBBYING CERTIFICATION

FTA Best Practices Procurement Manual, Appendix A, Clause A.14

- Applies to all contracts and subcontracts of \$100,000 or more

Model Clause/Language:

- 49 C.F.R. part 20, Appendices A and B provide specific language for inclusion in FTA funded third party contracts.
- Submitted by bidders as part of their bid or proposal



Buy America Requirements

Applicability to Contracts

FTA's Buy America law and regulations apply to projects that involve the purchase of more than \$150,000 of iron, steel, manufactured goods, or rolling stock to be delivered to the recipient to be used in an FTA assisted project. Recipients can obtain detailed information on FTA's Buy America regulation at: The Federal Transit Administration's Buy America website (<https://www.transit.dot.gov/buyamerica>)



BUS TESTING

FTA C4220.1F, IV, 2.e.(7)

49 CFR 665.7 – Certification of Compliance

- 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. The recipient shall receive the appropriate full Bus Testing Report and any applicable partial testing report(s) before final acceptance of the first vehicle.
- New model buses or buses with significant alterations to an existing model must comply with 49 U.S.C. 5323(m)



ADVERTISED/PUBLICIZED

FTA C4220.1F, VI, 3.c.d.

- If procurement is above the small purchase threshold - the IFB or RFP must be publicly advertised.
- If procurement is below the small purchase threshold, no advertising required BUT must solicit quotes or proposals from an “adequate number of qualified sources.”



ADEQUATE COMPETITION

FTA C4220.1F, VI, 3.c.d.

- Sealed Bids – Two or more responsive and responsible bidders.
- Competitive Proposals (RFP) – “Adequate number of qualified sources.”
(At least two.)



Cost vs. Price Analysis

2 CFR Part 200.324

- Price Analysis: The comparative process of evaluating total price without regard to the individual elements that make up the total price. Use for Commercial Items/Services
- Cost Analysis: The evaluation of each cost element which makes up a total price. Use for Professional Services or where Cost Elements must be evaluated to negotiate a Fair and Reasonable Price
- Must perform a cost or price analysis for all procurements above the small purchase threshold.
- See “Pricing Guide for FTA recipients” at: <https://www.transit.dot.gov/funding/procurement/third-party-procurement/pricing-guide-fta-recipients>



PRICE ANALYSIS

METHODS OF PRICE ANALYSIS

<https://www.transit.dot.gov/funding/procurement/third-party-procurement/pricing-guide-fta-recipients>

- Adequate price competition (multiple bids)
- Prices set by law or regulation (utilities)
- Established catalog prices and market prices (substantial sales to general public)
- Comparison to previous purchases (must be prior **competitive** sales)
- Comparison to a valid recipient independent estimate
- Value analysis (based on performance differences of competing products)



COST ANALYSIS

Must Obtain Detailed Cost Proposal

Direct Labor (Categories, Hours, Rates) - Technical Evaluation/Payroll Data

Overhead Rate – Independent Auditor Review/Recommendation

Materials (Item, Quantities, Unit Prices) – Technical Evaluation/Vendor Quotes

Travel (Air Fare, Per Diem, Car Rental, etc.) – Technical Evaluation/Verify Carrier Rates/Suggest Using GSA Per Diem Rates (<https://www.gsa.gov/travel/plan-book/per-diem-rates>)

G&A Rate (If Applicable) - Independent Auditor Review/Recommendation

Profit - (Complexity/Risk/Contractor Investment/Industry Practice)

Debarment/Suspension

FTA BPPM Appendix A.13

Applies to Contracts and Subcontracts of \$25,000 or More

Three Options Available

- Check SAM (System for Award Management) Exclusions
(www.sam.gov)
- Obtain Certification from Contractor
- Add Clause to Contract or Subcontract.
 - BPPM A.13 provides language for clause or certification



RESPONSIBILITY DETERMINATION

- Debarment and Suspension: Recipients must verify contractor not debarred or suspended. This is done by: (a) checking the SAM exclusions: www.sam.gov, click on “Search Records;” (b) collecting a certification from that person; or (c) adding a clause or condition to the contract or subcontract. See BPPM Appendix A.13 for certification/clause language.
- Past Performance: Call clients of contractor to determine performance record. **Document** the results of the calls.
- Financial Condition & Technical Resources: Review D&B report and/or corporate financial statements. If contractor furnished performance bond, this should suffice.
- **Document** the Determination: Prepare a “Determination of Contractor Responsibility” and retain in contract file.
- Contract File Checklist: Include Responsibility Determination.



Responsibility Determination Form**Bid/RFP No:** _____**Supplier:** _____**Date:** _____

For each of the areas described below, check that the appropriate research has been accomplished and provide a short description of the research and the results.

	Acceptable	Comment
1. Appropriate financial, equipment, facility, and personnel	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____ _____ _____ _____
2. Ability to meet the delivery schedule	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____ _____ _____ _____
3. Satisfactory period of performance	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____ _____ _____ _____
4. Satisfactory record of integrity, not on debarred or suspended listings	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____ _____ _____ _____
5. Receipt of all necessary data from supplier	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____ _____ _____ _____



JOINT PROCUREMENTS

[FTA C 4220.1F Ch. V, 3.](#)

Two or more agencies use a single solicitation and a single contract to procure their agency needs. Unlike a State purchasing schedule, the joint procurement is not conducted for the purpose of allowing other parties to use the contract later. The agencies participating in the procurement are named parties to the contract. Each agency needs are specified in the contract.

All FTA requirements apply: clauses, certifications, minimum/maximum quantities if IDIQ, etc.



PIGGYBACKING

[FTA C 4220.1F Ch. V, 7.a\(2\)](#)

PIGGYBACKING: *An assignment of existing contract rights to purchase supplies, equipment, or services.*

FTA Requirements for Original Contract:

- Assignability Clause
- Minimum/Maximum Quantities
- All Federal Clauses (Buy America, etc.). Cannot add Federal clauses later!
- Price Analysis to Determine that Option Prices are the Best Obtainable on the Market at the Time
- For rolling stock must obtain copies of all Buy America pre-award audits and certifications from awarding agency. Piggybacking agency must also certify Buy America compliance.



STATE PURCHASING SCHEDULES/CONTRACTS

[FTA C 4220.1F Ch. V, 4.](#)

- May now use the Purchasing Schedules and Contracts of other States if those States allow (FAST ACT).
- All FTA Requirements Apply: But Recipients may add Federal clauses and certifications, such as Buy America, in their first purchase orders issued under the State contract if the State did not include them in the State contract. This addition of Federal clauses may not be done with piggybacking actions.
- No Assignability Clause Needed. No Min/Max Quantities Required.
- Must Determine State Did Not Use Geographic Preference.



Contract Administration System

FTA C4220.1F, III, 3

- Recipients must maintain a contract administration system to ensure that its contractors comply with the terms, conditions and specifications of their contracts
- Important to **assign** contract administration **responsibilities in writing** so agency personnel know what is required of them (invoice approvals, inspection of deliverables, etc.)



Written Record of Procurement History

Procurement Self-Assessment Guide (Deficient Documentation of Procurement History)

<https://www.transit.dot.gov/funding/procurement-system-self-assessment-guide>

- Recipients are required to maintain and make available records detailing the history of each procurement.
- One of the most consistent findings in all procurement system reviews is that the contract file, in whatever form or location, does not contain adequate **documentation**.
- A **contract file checklist** (see sample) is a good method for both the preparer and the reviewer to ensure the completeness of the contract file.



Written Record of Procurement History

PROCUREMENT HISTORY FILE CHECKLIST							
CONTRACT NUMBER		CONTRACTOR NAME		CONTRACT AWARD DATE			
COMMODITY CODE/ BRIEF ITEM DESCRIPTION				AMOUNT \$	CONTRACT START DATE		
NO.	ITEM	IN FILE	N/A	NO.	ITEM	IN FILE	N/A
1.	PROCUREMENT REQUEST			16.	NEGOTIATION MEMORANDUM (If Applicable)		
	Funding/Accounting Code			17.	SOURCE SELECTION REPORT AND RELATED DOCUMENTS		
2.	INDEPENDENT COST ESTIMATE			18.	CONTRACTOR RESPONSIBILITY DETERMINATION		
3.	STATEMENT OF WORK (SPECIFICATION)			19.	REQUIRED AWARD APPROVALS		
4.	PROCUREMENT PLAN AND TIMELINE			20.	NOTICE OF INTENT TO AWARD		
5.	SINGLE-SOURCE JUSTIFICATION (If Applicable)			21.	PROTESTS		
6.	MARKET RESEARCH DOCUMENTS			22.	SIGNED (CONFORMED) CONTRACT		
7.	BIDDERS LIST			23.	CONTRACT MODIFICATIONS		
8.	SOURCE SELECTION PLAN AND DOCUMENTS			24.	OPTION EXERCISES AND RELATED DOCUMENTS		
9.	SOLICITATION AND AMENDMENTS			25.	CONTRACT DATA AND REPORTS		
10.	PRE-SOLICITATION APPROVALS			26.	COMPLAINT AND PERFORMANCE REPORTS		
11.	ADVERTISING			27.	DOCUMENTATION CONCERNING PRE- OR POST AWARD MISTAKES IN BID		
12.	PRE-BID OR PROPOSAL CONFERENCE NOTES AND QUESTIONS & ANSWERS (If Applicable)			28.	INVOICES/ VOUCHERS		
13.	BIDS/PROPOSALS AND SOLICITATION AMENDMENT ACKNOWLEDGEMENTS			29.	OTHER CORRESPONDENCE		
14.	"NO BID" LETTERS OR OFFEROR DISQUALIFICATION CORRESPONDENCE			30.	GENERAL CONTRACT CORRESPONDENCE		
15.	COST OR PRICE ANALYSIS			31.	CONTRACT CLOSE-OUT		
REMARKS							
BUYER'S SIGNATURE						DATE	

Winston-Salem Transit Authority

November 30, 2015



Written Record of Procurement History

BPPM: 2.4.1

- A well-documented file speaks for itself, without need of interpretation from the contract administrator.
- A well-documented file also supports actions taken, provides information for reviews and investigations, and furnishes essential facts in the event of litigation or legislative inquiries.
- **This documentation is the history of the public procurement.**



Written Record of Procurement History

FTA C 4220.1F Ch. III, 3.d(1)

Recipients are required to maintain and make available records detailing the history of each procurement.

Minimum Requirements:

1. The rationale for the method of procurement
2. The reason for selection of the contract type
3. **The reason for contractor selection (evaluation should discuss the relative technical strengths and weaknesses, not just scores)**
4. **The basis for the contract price (negotiation memorandum with cost or price analysis)**
5. Extent of **documentation** commensurate with size and complexity of procurement



Written Record of Procurement History

Where appropriate, per [BPPM: 2.4.1](#) the procurement documentation file should contain:

- Purchase request, acquisition planning information, other pre-solicitation documents,
- Evidence of availability of funds,
- Rationale for the method of procurement (negotiations, formal advertising),
- List of sources solicited,
- Independent Cost Estimate,
- Statement of Work/ Scope of services,
- Copies of published notices of proposed contract action,
- Copy of the solicitation, all addenda, and all amendments,
- Liquidated damages determination,
- An abstract of each offer or quote,
- Contractor's contingent fee representations and other certifications and representations,
- Source selection documentation, if applicable,
- Contracting Officer's determination of contractor responsiveness and responsibility,
- Cost or pricing data,
- Determination that price is fair and reasonable, (including an analysis of the cost and pricing data)
- Required internal approvals for award,
- Notice of award,
- Notice to unsuccessful quoters or offerors and record of any debriefing,
- Record of any protest,
- Bid, Performance, Payment, or other bond documents, and notices to sureties,
- Required insurance documents, if any,
- Notice to proceed, and
- Negotiation Memorandum.



Auditing Your Procurement Files

- Does each purchase order or contract file include **documentation** of an independent cost estimate (ICE)?
- Do you use a clause checklist?
- Do you use a procurement file checklist? Does it include information on what type of procurement was used and why?
- Who documents responsibility determinations?
- How often do you modify your procurement policy?



Auditing Your Procurement Files

- Do you ensure that each contract contains total contract amount, start and end dates, and termination provisions?
- Are you precise about what you are ordering, with minimal need for clarifications/addenda?
- How do you **document** cost or price analysis?
- What is your process for obtaining price quotations for small purchases?
- In addition to a sole source justification, do you conduct a cost analysis for each sole source procurement?



RESOURCES

- FTA Procurement Page: <https://www.transit.dot.gov/funding/procurement/procurement>
- 2 CFR 200.317 – 200.326: https://www.ecfr.gov/cgi-bin/text-idx?SID=a272dd086cf13e6914be2707e24ba670&mc=true&node=pt2.1.200&rgn=div5#se2.1.200_133_2
- C 4220.1F Third Party Procurement Guidance: <https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/third-party-contracting-guidance>
- Best Practices Procurement Manual (BPPM): <https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/funding/procurement/8286/fta-best-practices-procurement-and-lessons-learned-manual-2016.pdf>



RESOURCES cont.

Third Party Procurement FAQs: <https://www.transit.dot.gov/funding/procurement/third-party-procurement/third-party-procurement-faqs>

The screenshot shows the Federal Transit Administration website. The header includes the FTA logo, the text "Federal Transit Administration", and a search bar labeled "Search FTA site". Below the header is a navigation bar with links for "About", "Funding", and "Regulations & Guidance". The main content area is titled "Third Party Procurement FAQs" and includes a breadcrumb trail: "Home » Funding » Procurement » Third Party Procurement". A sidebar on the left contains a menu with "Funding", "Grant Programs", "Applying", "Grantee Tools", and "Resources". The main content area contains a paragraph: "Got a question? Need an answer fast? The following is a topical listing of questions frequently asked of the Federal Transit Administration's Office of Procurement. Follow the topical link to learn more about related questions and answers." Below this is a list of links organized by letter: A, J, L, and M. The "A" list includes links like "A&E Contracts", "Acquiring Real Estate", "ADA Requirements", "Advance Payments", "Airline Passenger Complaints", "Allowable Costs for Grants", "Alternate Bids", "Altoona Testing", "Applicability of FTA Circular 4220.1E to Grantee Contractors", "Applicability of FTA Circular 4220.1F", "ARRA", "ARRA Contract Clauses", "Artwork", "Asset Life", "Assignment of Grant Funds", "Associated Capital Maintenance Items", "Audits of Third Party Contracts", "Availability of FTA Grants for Private Business", and "Availability of FTA Grants for Transit Safety Equipment". The "J" list includes "JARC", "Joint Procurements", and "Justifying Sole Source Procurements". The "L" list includes "Late Proposals", "Leases", "Legal Services", "Letters of Credit", "Licensing of Contractors", "Light Rail Window Standards", "Limited Product Liability", "Limiting the Number of Bids", "Liquidated Damages", "Listing of Transit Agencies", "Local Matching Funds", "Local vs. Federal Funds", and "Locating FTA Documents". The "M" list is partially visible. To the right of the main content area, there is a "Related Links" section with "Sign Up for Updates" and "Ask Us a Question about Third-Party Procurement". Below that is a "Share" section with social media icons for Facebook, Twitter, Google+, and a generic share icon.

Federal Transit Administration

Search FTA site

About Funding Regulations & Guidance

Home » Funding » Procurement » Third Party Procurement

Funding

Grant Programs

Applying

Grantee Tools

Resources

Third Party Procurement FAQs

Got a question? Need an answer fast? The following is a topical listing of questions frequently asked of the Federal Transit Administration's Office of Procurement. Follow the topical link to learn more about related questions and answers.

A

- A&E Contracts
- Acquiring Real Estate
- ADA Requirements
- Advance Payments
- Airline Passenger Complaints
- Allowable Costs for Grants
- Alternate Bids
- Altoona Testing
- Applicability of FTA Circular 4220.1E to Grantee Contractors
- Applicability of FTA Circular 4220.1F
- ARRA
- ARRA Contract Clauses
- Artwork
- Asset Life
- Assignment of Grant Funds
- Associated Capital Maintenance Items
- Audits of Third Party Contracts
- Availability of FTA Grants for Private Business
- Availability of FTA Grants for Transit Safety Equipment

J

- JARC
- Joint Procurements
- Justifying Sole Source Procurements

L

- Late Proposals
- Leases
- Legal Services
- Letters of Credit
- Licensing of Contractors
- Light Rail Window Standards
- Limited Product Liability
- Limiting the Number of Bids
- Liquidated Damages
- Listing of Transit Agencies
- Local Matching Funds
- Local vs. Federal Funds
- Locating FTA Documents

M

Related Links

- Sign Up for Updates
- Ask Us a Question about Third-Party Procurement

Share

f t G +

RESOURCES cont.

- Buy America Handbook: <https://www.transit.dot.gov/regulations-and-guidance/buy-america/conducting-pre-award-and-post-delivery-audits-rolling-stock>
- Joint Procurement Clearinghouse: <https://www.transit.dot.gov/funding/procurement/joint-procurement-clearinghouse>
- Contact Us Tool: <https://ftawebprod.fta.dot.gov/ContactUsTool/Public/FAQs.aspx?CategoryID>



RESOURCES cont.

On-line “Tools & Resources:

<https://www.transit.dot.gov/funding/procurement/online-tools-resources>

- Pricing Guide
- Procurement System Self-Assessment Guide



Procurement Virtual Training Module: 1 – Pre-award

- Written Standards of Conduct
- Ensuring Most Economical Purchase
- Unreasonable Qualifications
- Unnecessary Experience and Excessive Bonding
- Prequalification
- Geographic Preference
- Organizational Conflicts
- Protests
- Brand Names Restrictions
- Procurement Selection Procedures
- Contract Term Limitations
- DBE
- Sound and Complete Agreement
- Signature Authority
- Federal Clauses
- Independent Cost Estimate
- Advertised/Publicized
- Adequate Competition
- Record of Procurement History



Procurement Virtual Training Module: 2 – Contract Methodologies

- Micro-Purchase
- Small Purchase
- Sealed Bid
- Request For Proposal
- Best Value
- Options
- Architectural and Engineering
- Revenue Contracts
- Sole Source
- Joint Procurements
- Piggybacking
- State Purchasing Schedules
- Single Bids
- Unsolicited Proposals
- Cost Plus Percent of Cost
- Contract Types
- Time and Materials
- Cost Plus Fixed Fee
- Federal Cost Principles
- Bonding
- Change Orders
- Advance & Progress Payments
- Liquidated Damages



Procurement Virtual Training Module: 3 - Award

- Cost or Price Analysis
- Price Analysis
- Cost Analysis
- Debarment/Suspension
- Responsibility Determination
- Contract Administration
- Oversight of Sub-recipients



Procurement Virtual Training Module: 4 – Buy America

- Buy ‘America’ vs Buy ‘American’
- Buy America Requirements
- Buy America Waivers
- Buy America Certifications (iron, steel, manufactured products)
- Rolling Stock: Pre-Award Audits
- Rolling Stock: Post-Delivery Audits
- TVM DBE Certification
- Bus Testing



Thank you!





[TRANSIT.DOT.GOV](https://www.transit.dot.gov)