

# FTA THIRD-PARTY PROCUREMENT BEST PRACTICES WEBINAR (RISING PRICES)

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FEDERAL TRANSIT ADMINISTRATION

# DISCLAIMER

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The contents of this presentation do not have the force and effect of law and are not meant to bind the public in any way. This presentation is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.



# Agenda

- Introductions
- Executive Opening Statement
- Pre-solicitation Phase
- Solicitation Phase
- Post-Solicitation Phase
- Process for Submitting Questions



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# Executive Opening Statement

- Procurement process
- Basic tenets
- Purpose
- Process

**Thank you for attending.**

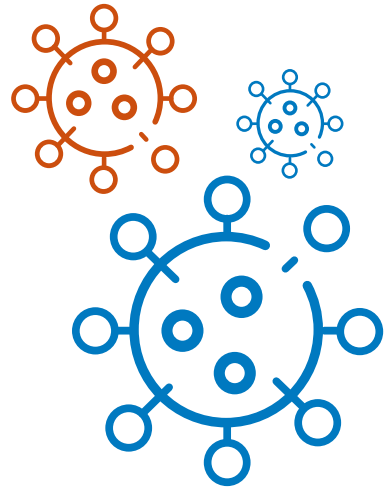


**Reginald Allen  
Associate Administrator for  
Administration  
Federal Transit Administration**



# Price Escalation Causes

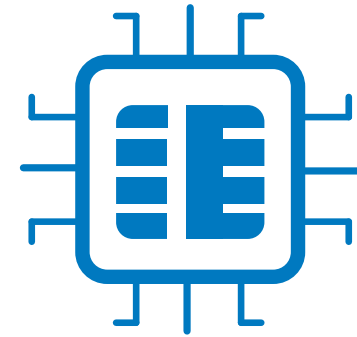
COVID-19



Worldwide Supply Chain Disruptions



Micro Chip Shortages



# Alternatives for Consideration

- Reassess lifecycle of certain vehicles
- Increase parts inventory, if possible
- Try to identify other possible sources for items, or substitute items. (*But check your contracts and warranties first!*)
- Fabricate parts, when feasible
- Take better of care / extend the life of existing inventory
- Award contracts for shorter periods of time



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## **Pre-Solicitation Phase**



# Pre-Solicitation Phase

## Process of the Pre-Solicitation Phase

- Scoping & Requirements Gathering
- Market Research
- Establish the Procurement Strategy
- Independent Cost Estimate
- Geographical Preference (BIL)

## Challenges affecting Procurement Strategy

- Efficient & Effective Scoping
- Project Team Development
- Clause Development
- Escalation Clause

For the Pre-Solicitation slides that follow please note we are not economists, we're just using these broad, non-technical descriptions to help the discussion today!





# Pre-Solicitation Phase

## Defining Inflation and Escalation

A. Inflation refers to a rise in the general price level over time. The general price level is an economy-wide average over all goods and services transacted. (The opposite trend, comparatively rare over a sustained period of time, of a decrease in the general price level is called deflation.)



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# Pre-Solicitation Phase

## Defining Inflation and Escalation

B. The term “escalation” refers to price changes of particular goods and services in specific sectors of the economy. Inflation is only one component of a price change for a particular market basket of goods and services. Equivalent terms to escalation include price change, market price change, specific price change/growth, and price escalation. Negative price escalation is called de-escalation.



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# Pre-Solicitation Phase

## Defining Inflation and Escalation

### C. Real Price Change

- Escalation has two components: inflation and real price change (RPC). By definition, inflation affects all prices in the same proportion, while RPC is the portion of escalation unexplained by inflation.
- Positive real price change indicates that the item has become more expensive relative to an economy-wide basket of goods and services, while negative RPC indicates it has become relatively less expensive.



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# Pre-Solicitation Phase

## Contributors to Escalation

- Inflation: Increase in the general economywide average price level
- Specific market prices: Real price growth experienced at industry or economywide levels.
  - ❖ (Check Producer Price Indices, Employment Cost Indices, Professional Forecasts)



# Pre-Solicitation Phase

## Contributors to Escalation

- Contractor business effects. Real price growth attributable to factors affecting the contractor.
  - Fewer vendors in the marketplace
  - Fewer vendors willing to conduct business with government entities
  - Materials
  - Labor
  - Insurance
  - Ability to secure loans
- ❖ (Historical labor rates, FPRs, key events in the business)





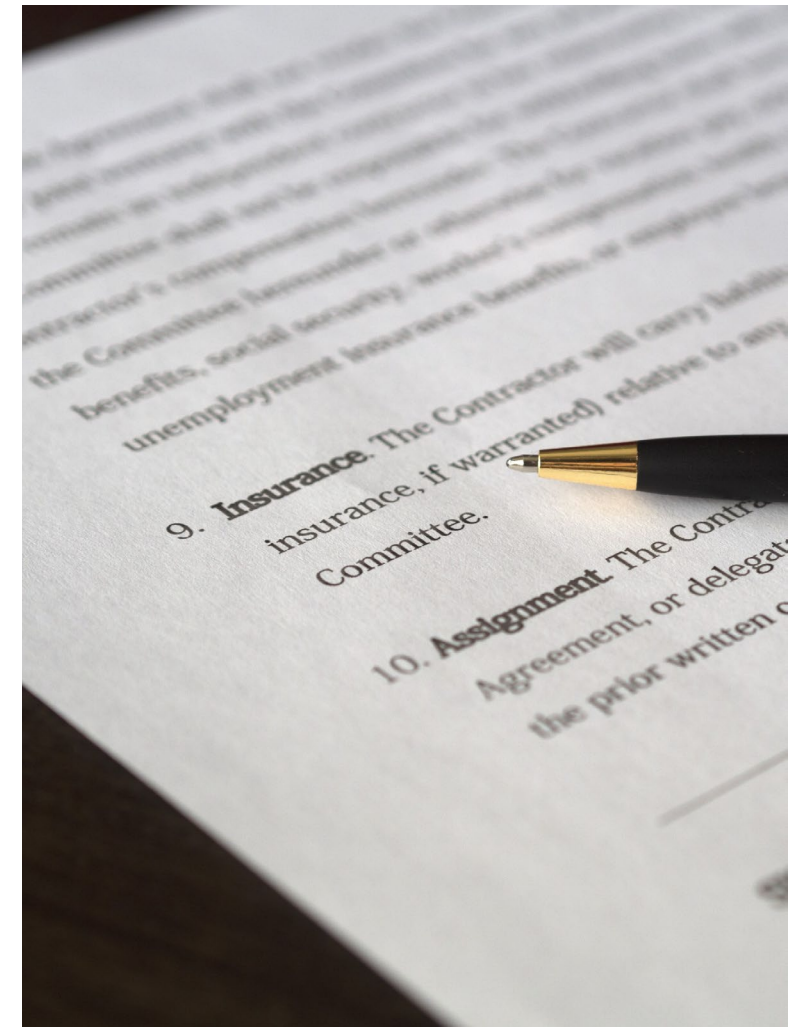
# Pre-Solicitation Phase

## Sample Escalation Clause Construction

### B.2 CONTRACT NOT TO EXCEED CEILING and TASK ORDER AMOUNTS

#### a. Estimated Cost/Price and Fee/Profit

- Each task order shall have an appropriate estimated cost or price and include appropriate fee, profit, or base and award fee as shall be negotiated in individual orders.
- It is estimated that the total cost to the Government for full performance of this contract shall not exceed \$XXXXXXXXXX, inclusive of profit or fees.

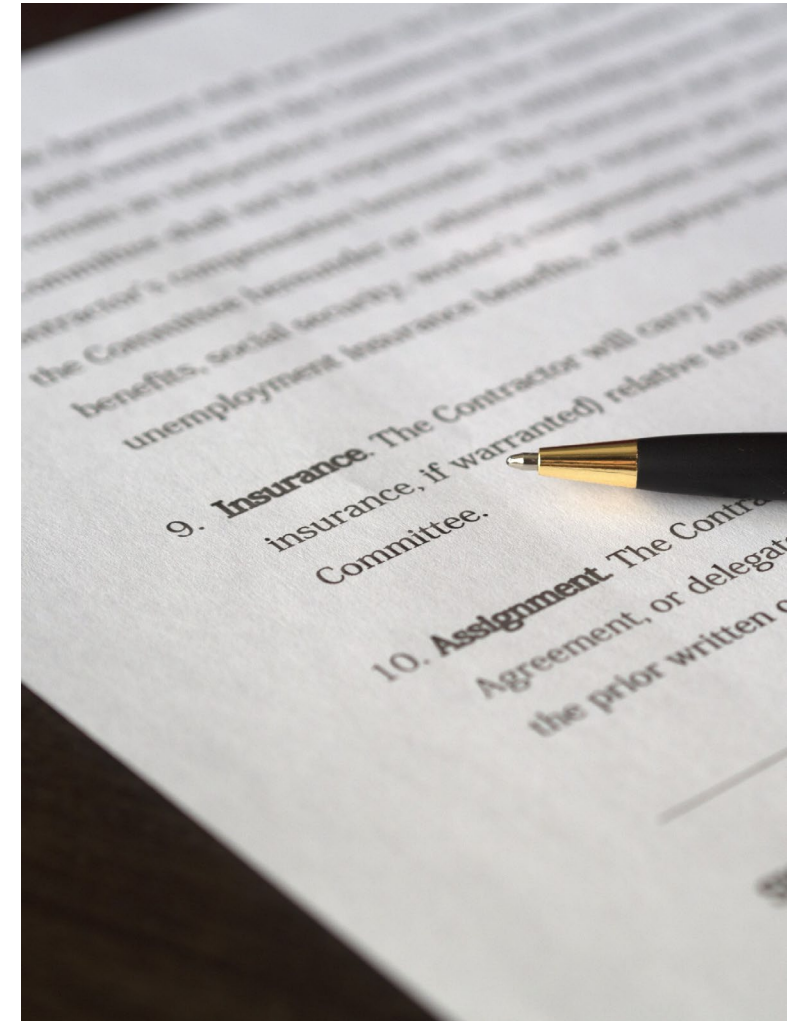


# Pre-Solicitation Phase

## Sample Escalation Clause Construction Continued

### c. B.4 BASIS OF NTE CEILING AMOUNT

- The NTE ceiling amount of this contract is based on the average direct labor rates contained below which includes 4.75% escalation per year for performance of the prime contractor.
- Notwithstanding the foregoing, the Contractor shall, in the case of an upward or downward adjustment of the provisional rates specified above, provide timely notification to the Contracting Officer, and shall comply with the requirements of Clause FAR 52.232-22, "Limitation of Funds" (APR 1984) of the contract, as appropriate, where such increase in costs causes operation of that clause.

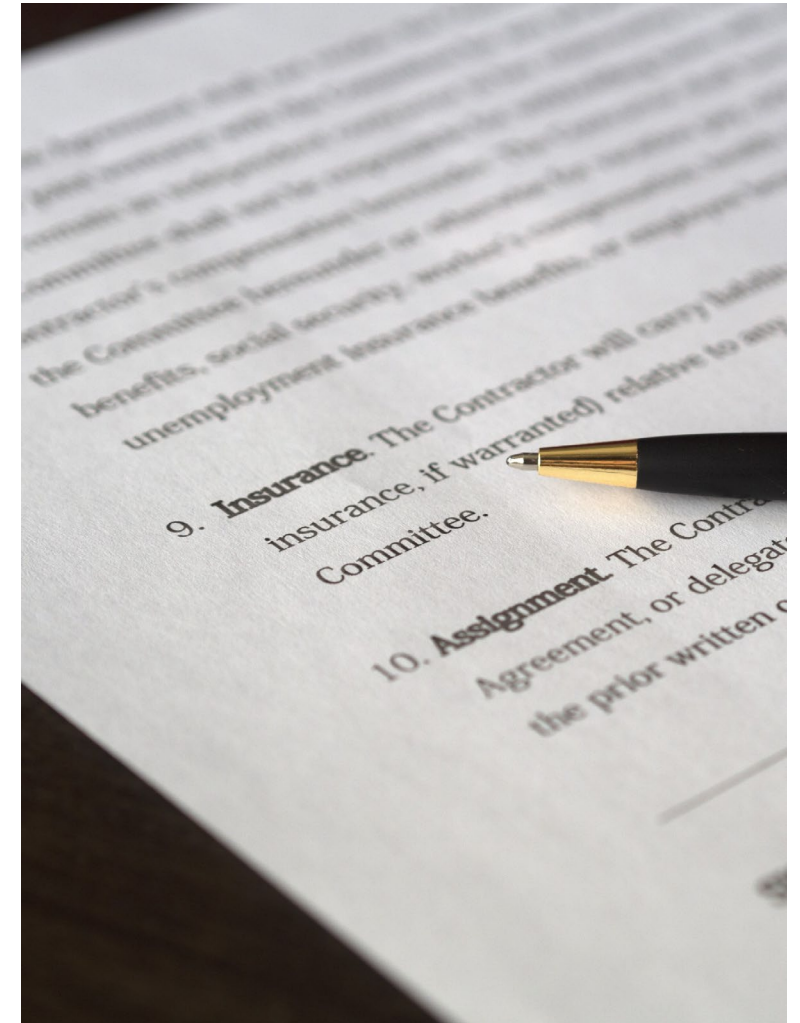


# Pre-Solicitation Phase

## Sample Escalation Clause Construction Continued

### b. Incremental Funding (for cost type orders)

- Funding for the services of cost-type task orders, as outlined in the individual task order, may be incrementally funded as required on each individual task order and subsequent modifications in accordance with the ordering terms and conditions described in Section G – Contract Administration Data, the “Limitation of Funds, APR 1984” clause, FAR 52.232-22, or as specified elsewhere in the contract. In no event, however, shall the contractor be authorized to incur costs under an individual task order in excess of the total amount of funds obligated against that task order.





# What the Rule Says: Brand Name or Equal

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“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 offers must be clearly stated.”

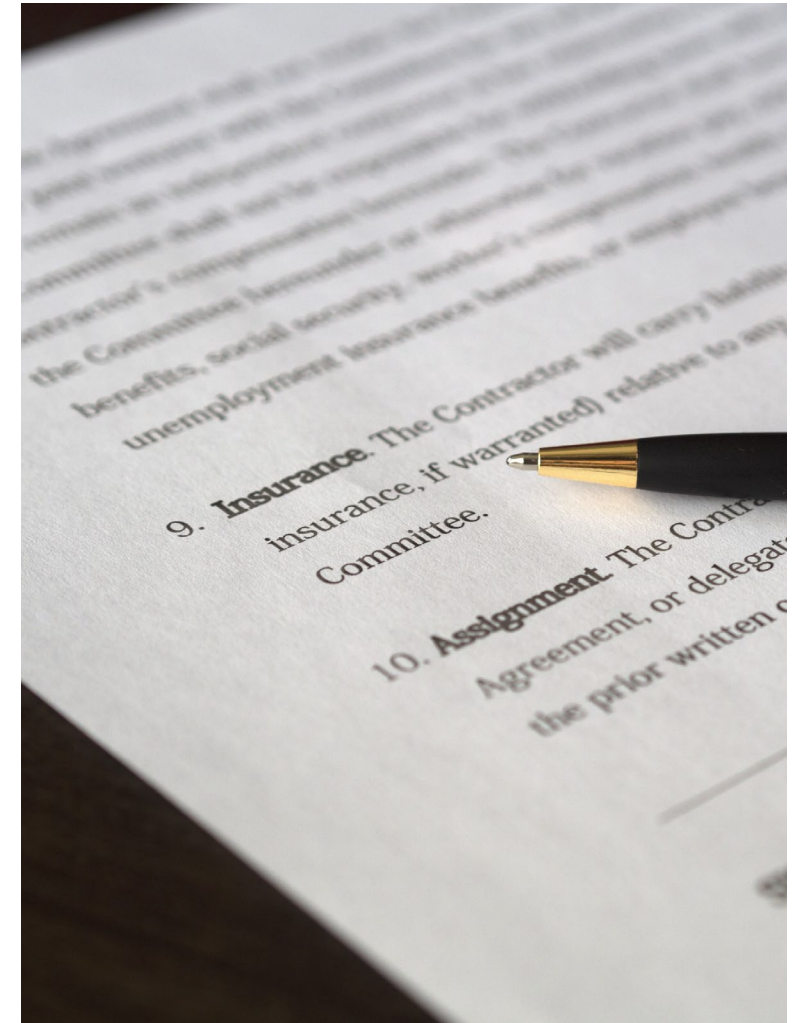
2 CFR 200.319(d).



# Pre-Solicitation Phase

## Sample Escalation Clause Construction

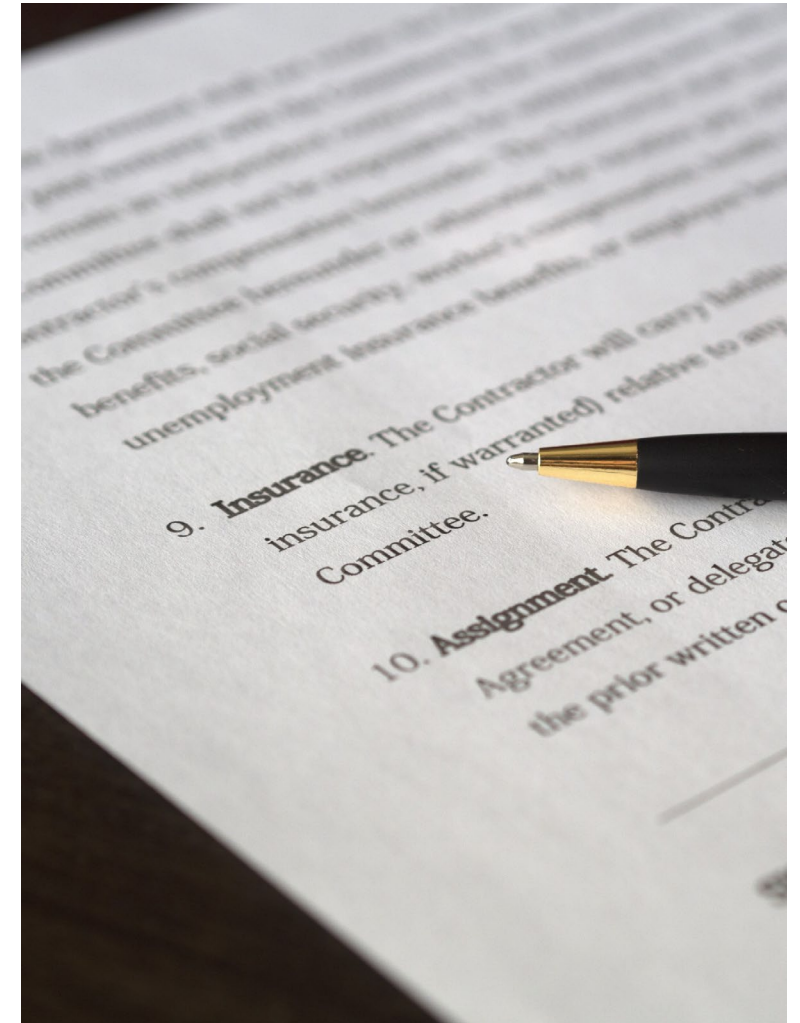
- Brand Name or Equal
  - (a) If an item in this solicitation is identified as "brand name or equal," the purchase description reflects the characteristics and level of quality that will satisfy the Government's needs.  
The salient physical, functional, or performance characteristics that "equal" products must meet are specified in the solicitation.
  - (b) To be considered for award, offers of "equal" products, including "equal" products of the brand name manufacturer, must-
    - (1) Meet the salient physical, functional, or performance characteristic specified in this solicitation;



# Pre-Solicitation Phase

## Sample Escalation Clause Construction

- Brand Name or Equal continued:
  - (2) Clearly identify the item by-
    - (i) Brand name, if any; and
    - (ii) Make or model number;
  - (3) Include descriptive literature such as illustrations, drawings, or a clear reference to previously furnished descriptive data or information available to the Contracting Officer; and
  - (4) Clearly describe any modifications the offeror plans to make in a product to make it conform to the solicitation requirements. Mark any descriptive material to clearly show the modifications.



# What the Rule Says: Economic Price Adjustments

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## Sample Economic Price Adjustment Clause Construction

If the Contractor's applicable established price is increased after the contract date, the corresponding contract unit price shall be increased, upon the Contractor's written request to the Contracting Officer, fully documenting the need for and reasons for the increase, by the same percentage that the established price is increased, and the contract shall be modified accordingly, subject to the following limitations:

(1) The aggregate of the increases in any contract unit price under this clause shall not exceed XX percent of the original contract unit price.

(2) The increased contract unit price shall be effective-

(i) On the effective date of the increase in the applicable established price if the Contracting Officer receives the Contractor's written request within 10 days thereafter; or

(ii) If the written request is received later, on the date the Contracting Officer receives the request.



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## **Solicitation Phase**



# Solicitation Phase

## Elements of the Solicitation Phase

- RFP Development & Administration
- Evaluations & Demonstrations
- Selection Determination

## Common Challenges

- Relatively less internal tacit knowledge
- Typically, more resource-intensive
- Different tech. requires tailored approach
- Cost/Price Analyses



# What the Rule Says: Changes to Contract Cost and Price

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“The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold [\$250,000] including contract modifications.”

“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.”

2 CFR 200.324



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## **Contract Phase**





# Post-Solicitation Phase

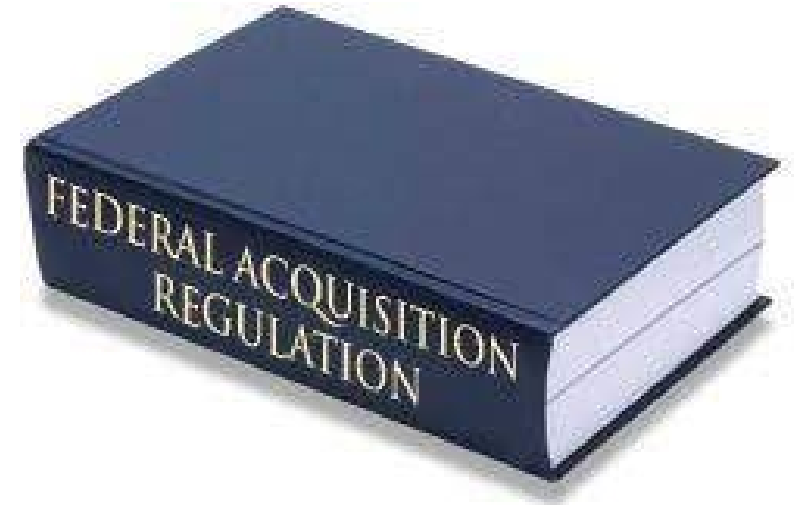
## Post-Solicitation Actions

- Roll-Out & Deployment
- Organizational Change Management & Adoption
- Long-Term Operation
- Proper Contract Administration and Oversight



# Contract Escalation/ Price Volatility Guidance

- Federal Acquisition Regulation (*Only as a source of inspiration! Grantees are not required to use FAR clauses!*)
- 2 CFR PART 200—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Super Circular)
- Local Regulations





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## Questions / Discussion

**Please enter questions in the chat !**

# FTA Mission, Vision, Values

## Mission

Improve America’s Communities through Public Transportation



## Vision

A Better Quality of Life for All Built on Public Transportation Excellence



## VALUES

<b>Service</b>	Provide reliable, transparent, responsive, and anticipatory services to meet stakeholder needs
<b>Integrity</b>	Commitment to the highest professional and ethical standards
<b>Innovation</b>	Foster new ideas, concepts, and solutions for improved outcomes
<b>Sustainability</b>	Optimize decisions, resources, and systems to make long-term positive impacts on the environment, infrastructure, and safety
<b>Equity</b>	Remove barriers for systemically underserved communities to access all aspects of economic, social, and civic life





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# Thank You!