



U.S. Department  
of Transportation

**Federal Transit  
Administration**

Administrator

1200 New Jersey Avenue, SE  
Washington, DC 20590

February 7, 2024

Dear Colleague:

Since President Biden signed the Bipartisan Infrastructure Law in 2021, the Federal Transit Administration (FTA) has made over \$4.5 billion available in competitive grants for investments in American-made transit buses and supporting infrastructure. In addition to competitive grants, there's \$16 billion available through formula program grants to urban, rural, and tribal areas, all of which are eligible for bus purchases. Over the next three years, this record public transportation funding will provide nearly \$30 billion more in competitive grants and formula funds to support transit agencies in buying buses, transitioning to low- or no-emission buses, modernizing bus facilities and more. This investment supports a strong U.S. bus manufacturing sector that is essential for clean transit vehicle fleets across the nation, ensuring less pollution, more U.S. jobs, and better-connected communities.

During the Biden-Harris Administration, FTA has listened to transit agencies and U.S. bus Transit Vehicle Manufacturers ([TVMs](#)) discussing current trends in federally funded bus procurements and manufacturing that affect the financial health and stability of the bus manufacturing industry. This includes identifying steps to reduce vehicle contract costs and shorten vehicle delivery times. Specifically, the discussions have covered topics like managing component prices, addressing supply chain issues, growing the bus manufacturing workforce, and reducing unnecessary customization. Particular attention has been on the increased costs to TVMs of financing vehicle production from award of a contract through delivery and acceptance of the vehicles by transit agencies.

To address such challenges, FTA encourages the use of several tools available to transit agencies and TVMs, including:

- **Contract modifications for price increases** - Federally funded contracts can be modified for price adjustments (2 CFR §200.318(k)). Allowable modifications depend on factors including: (1) contract terms and conditions, such as change clauses and Producer Price Index or Consumer Price Index adjustment clauses; (2) applicable state, local, or tribal procurement law; (3) the terms of a price adjustment; and (4) the scope of the contract modification. Certain Federal regulatory requirements may apply, such as performance of a cost or price analysis in connection with a contract modification in excess of the Simplified Acquisition Threshold (currently \$250,000), and where a cost analysis is performed, the FTA recipient must negotiate profit as a separate element of the price (2 CFR § 200.324(a)-(b)).
- **Federal funds for price increases** - FTA recipients can seek additional Federal funds to cover contract price increases. FTA formula and certain other Federal funds (e.g., [flexible](#)

[FHWA funds](#)) can be used to cover contract modifications for price increases.

- **Clauses in new procurements -**
  - FTA recipients may include price adjustment clauses (allowing for adjustments both up or down) based on cost indices. Relevant contract terms include when prices are set in the procurement process and subject to subsequent adjustment, and which index/indices to use.
  - Another type of contract clause to consider is a “brand name or equivalent” clause. Requiring a specific brand for a particular component without giving the contractor the option to provide an equivalent could result in a higher vehicle price, supply chain related delays, and may be inconsistent with Federal full and open competition requirements.
- **Advance payments** - Advance payments are payments made to the contractor prior to the contractor incurring costs and are permissible under certain circumstances. They can be made: (1) before the award of an FTA grant using local funds if the FTA recipient has either FTA automatic pre-award authority, an FTA Letter of No Prejudice, or other pre-award authority prior to making an advance payment; or, (2) after FTA grant award using local or FTA funds if the recipient provides a rationale, such as a reduction in the contract cost due to the payment, and FTA provides advance written concurrence. FTA recipients must obtain security from the contractor in the amount of the advance payment. Adequate security is subject to negotiation between the recipient and TVM, but typically is a performance bond or a letter of credit in the amount of the advance payment. *A bond or letter of credit for the full cost of the procurement is not a Federal requirement for securitization.*
- **Progress payments** - Progress payments (also sometimes called milestone payments) are payments to a contractor prior to completion of all contract work. Use of FTA funds for progress payments is permissible and does not require advance FTA concurrence if the FTA recipient: (1) obtains adequate security for those payments and (2) maintains documentation to show completion of the discrete activities associated with the progress payment. For rolling stock procurements, it is *impermissible* to tie progress payments to the percentage of completion of the contract. The security for progress payments typically is a performance bond or letter of credit in the amount of the payments but may be other types of security negotiated by the parties as appropriate, such as receipt of title to the rolling stock at an appropriate point in the manufacturing process.
- **Securing the Federal interest** - Security is only required under Federal law for rolling stock procurements utilizing advance or progress payments. Requiring a performance bond or letter of credit when no payments will be made until acceptance of vehicles is not a Federal requirement and typically will drive up the cost of procurement due to the cost to the TVM to provide the security.

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In order to increase value to the public, FTA also encourages recipients to pursue procurement strategies that lower costs and achieve economies of scale, such as state contracts and performance-based specifications.

In addition to the tools described above, FTA is taking additional actions to strengthen the American bus manufacturing industry, lower bus costs, and accelerate transit vehicle deliveries. FTA has created a bus procurement [webpage](#), making it easier to find resources and answer questions, with links to applicable Federal regulations, FTA Circulars, updated FAQs, guidance, and other resources. Procurement courses through the [National Transit Institute](#) (NTI) have expanded. Through June 2024, [NTI procurement courses](#) are offered at 16 different dates and locations, spanning every FTA region.

To bolster support for more efficient and effective bus purchases, FTA recently established an **Acquisition Oversight Division** with a team dedicated to technical assistance and resources supporting third-party procurements like bus purchases. In addition, the new Department of Energy and Department of Transportation's [Joint Office of Energy and Transportation](#) offers FTA recipients interested in planning for or procuring zero-emission buses free technical assistance, including support for fleet transition planning and financial modeling, emissions calculations, and applying for grants.

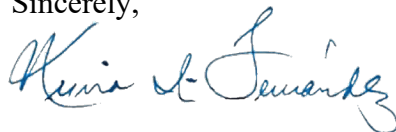
FTA is also releasing the **FY 2024 Buses and Bus Facilities and Low or No Emission Notice of Funding Opportunity (NOFO)**. Important new provisions in this NOFO will support transit agencies and strengthen bus manufacturing. Specifically, FTA will give priority consideration to NOFO applications proposing the use of any of the following: advance or progress payments, joint procurements, or procurement of base model buses. More details are in the NOFO.

Finally, FTA will hold a bus procurement [webinar](#) on February 29 from 2:30 - 3:30 PM ET. The webinar will provide transit agency leaders, procurement officials, and interested stakeholders an overview of the current U.S. bus market, FTA's guidance and resources noted above, and flexibilities and actions available to transit agencies to help lower bus costs and simplify procurements.

FTA's actions reflect the Biden-Harris Administration's focus on the needs of the traveling public and the public transportation industry. Our continued work together will deliver the benefits of the Bipartisan Infrastructure Law to accelerate our clean vehicle future, strengthen domestic manufacturing, and connect communities with reliable transit.

Thank you for your tireless efforts to serve your riders and keep public transportation moving. Should you have any questions, please consult your FTA [regional office](#).

Sincerely,



Nuria I. Fernandez