

FTA

FEDERAL TRANSIT ADMINISTRATION

State Management Review: Top Findings

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Agenda

Part I. Program Oversight Overview

- A. Program Oversight Updates
- B. Key Findings

Part II. Highlights of Top State Management Review Deficiencies

What is Program Oversight?

FTA is responsible for conducting oversight activities to help ensure that recipients of Chapter 53 grants use the funds in a manner consistent with their intended purpose and in compliance with regulatory and statutory requirements

We do this through:

- Comprehensive Reviews (Triennial & State Management)
 - Occur every three years
 - Forward-looking instead of reactive
 - Assess management practices and program implementation
- Specialized Reviews (Financial, Procurement, & Civil Rights)
 - Occur at FTA's discretion
 - Focus on specific areas of Federal compliance

FTA Oversight in Context

Oversight is necessary and beneficial for recipients, the public, and FTA

- Strengthens the capacity of FTA funding recipients to improve public transit for America's communities
- Required in legislation
- Fulfills FTA's fiduciary responsibility to prevent and identify improper payments and to ensure every dollar counts toward improving public transit
- Confirms and promotes recipient compliance with FTA requirements
- Helps address Congressional and public questions about the use of federal funds

FY 19 Review Status

The FY19 State Management Reviews are now underway

- Delayed this year due to government shut-down and transition to a new contract

On site training/workshops for all State DOTs in FY19

Site visits may extend into the next fiscal year

FTA's Comprehensive Review Guide

Each overarching question has seven basic parts

1. **Basic Requirement:** High-level, clear statement of what a recipient is required to do
2. **Applicability:** Recipients to whom the requirement applies
3. **Explanation for Recipient:** Detailed description of the basic requirement
4. **Indicators of Compliance:** Questions to assess compliance with the basic requirement
5. **Instructions for Reviewer:** How reviewers assess compliance with indicators
6. **Potential Deficiency Determinations**
7. **Governing Directives:** Citation from law, regulation, agreement, or other guidance forming the basis of a potential finding



<https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/oversight-policy-areas/56711/fy2019-comprehensive-review-guide.pdf>

Relevant SMR Findings

Review Area	Finding	Impacted Most
Financial	Missing, insufficient, or out of date financial operating procedures	State
DBE	DBE uniform reports contain inaccuracies	State
DBE	DBE goal achievement analysis	State
EEO	Approval of EEO Plans	State
Technical	Inadequate oversight of subrecipients/contractors/lessees	State

Relevant SMR Findings

Review Area	Finding	Impacted Most
ADA	Limits on ADA complementary paratransit service	Subrecipients
ADA	Reasonable modification deficiency	Subrecipients
Procurement	No responsibility determination	Subrecipients
ADA	Weight limitations on wheelchair	Subrecipients
Maintenance	Preventive Maintenance (PM) Inspection	Subrecipients
DBE	Prompt Payment/Return of Retainage	Subrecipients

Relevant SMR Findings

Review Area	Finding	Impacted Most
Procurement	Missing FTA clauses	Both State and Subrecipients
ADA	Insufficient ADA complaint process	Both State and Subrecipients
Title VI	Language Assistance Plan deficiencies	Both State and Subrecipients
Procurement	Lacking required cost/price analysis	Both State and Subrecipients
Procurement	Pre-award and/or post-delivery certifications lacking	Both State and Subrecipients

Statement on Guidance

This presentation includes summaries of requirements found in law. It also includes advice and best practices (i.e., ‘guidance’) for meeting those standards. Any compliance recommendations that go beyond the text of relevant statutes and regulations are guidance and not legally binding. Specific individual scenarios have to be analyzed independently to ensure the binding requirement is satisfied.

SMR Findings that Impact the State

Financial

- Missing, insufficient, or out of date financial operating procedures

DBE

- DBE uniform reports contain inaccuracies
- DBE goal achievement analysis

EEO

- Approval of EEO Plans

Technical

- Inadequate oversight of subrecipients/contractors/lessees

Financial Management and Capacity

Missing, Insufficient, or Out-of-Date Financial Operating Procedures

- Purpose of the Financial Management and Capacity Review Area

The recipient must have financial policies and procedures; an organizational structure that defines, assigns and delegates authority; and financial management systems in place to match, manage, and charge only allowable cost to the award. The recipient must conduct required single audits and provide financial oversight of subrecipients.

- Relevant 2019 Review Guide Question

F1. Does the recipient have policies and procedures in place for managing federal awards, establishing internal controls, ensuring timely distribution of funds, and determining allowability of costs?

Financial Management and Capacity

Missing, Insufficient, or Out-of-Date Financial Operating Procedures

Relevant Indicators

- a. Does the recipient have written financial policies and procedures?
- b. How do policies and procedures address internal control practices to prevent waste, loss and misuse of federal funds, including:
 - Responsibilities, qualifications, training, supervision, and evaluation of financial staff
 - Organizational structure, levels and delegation of authority, access, and segregation of duties
 - Financial planning
 - Safeguarding of funds
 - Recording and identification of assets; including the use of such
 - Prevention of duplicate and overbilling
 - Allowable costs in accordance with 2 CFR Part 200 Subpart E—Cost Principles. Are these policies and procedures written
 - Cash Management and Payment in accordance with 2 CFR 200.305 Payment
 - Are these policies and procedures written
 - Accounting software being used
 - Required financial reporting, review, and approval
 - Record retention
 - Financial oversight of subrecipients, if applicable
 - An audit, testing or review program for internal control systems

Financial Management and Capacity

Missing, Insufficient, or Out-of-Date Financial Operating Procedures

What drives this deficiency?

- No detailed policies and procedures for:
 - managing FTA grant funds
 - internal control practices to prevent fraud, waste and abuse
 - levels of authority
 - accounting software being used
 - required financial reporting
 - financial oversight of subrecipients

Financial Management and Capacity

Missing, Insufficient, or Out-of-Date Financial Operating Procedures

What can recipients do to prevent this deficiency?

- Develop accounting policies and procedures
- Update procedures for:
 - New accounting software
 - Audit finding resolution
 - Organizational changes
 - Changes in Federal regulatory requirements

Disadvantaged Business Enterprise (DBE)

DBE Uniform Reports Contain Inaccuracies and/or Missing Required Information

- Purpose of the DBE Review Area

Recipients must comply with 49 CFR Part 26 to ensure nondiscrimination in the award and administration of US Department of Transportation (US DOT)-assisted contracts. Recipients also must create a level playing field on which DBEs can compete fairly for US DOT-assisted contracts.

- Relevant 2019 Review Guide Question

DBE5. Are the Uniform Reports of DBE Awards or Commitments and Payments completed accurately?

Disadvantaged Business Enterprise (DBE)

*DBE Uniform Reports Contain Inaccuracies and/or
Missing Required Information*

Relevant Indicators

- a. Does a review of FTA information and selected FTA-funded procurements indicate that the recipient is completing the reports accurately?

Disadvantaged Business Enterprise (DBE)

*DBE Uniform Reports Contain Inaccuracies and/or
Missing Required Information*

What drives this deficiency?

- The recipient representative completing the form does not have the required procurement, payment, and/or contract administrative information
- Collection of information from subrecipients is not accurate or comprehensive

Disadvantaged Business Enterprise (DBE)

DBE Uniform Reports Contain Inaccuracies and/or Missing Required Information

What can recipients do to prevent this deficiency?

- Develop a process for completing the semi-annual forms that focuses on
 - Due dates - forms due June 1 (covers Oct – Mar); and December 1 (covers Apr-Sep)
 - Compilation of direct procurements awarded, ongoing, and completed for the six-month period
 - Collection and review of subrecipient awards and payments
 - Inclusion of ALL FTA-funded procurements (except for transit vehicle purchases)
 - Allocation of time to gather internal and subrecipient data – aggregate report
- Use training on FTA's DBE website

Disadvantaged Business Enterprise (DBE)

Goal Achievement Analysis Not Completed or Not Submitted

- Purpose of the DBE Review Area

Recipients must comply with 49 CFR Part 26 to ensure nondiscrimination in the award and administration of US Department of Transportation (US DOT)-assisted contracts. Recipients also must create a level playing field on which DBEs can compete fairly for US DOT-assisted contracts.

- Relevant 2019 Review Guide Question

DBE6. For each of the past three completed Federal fiscal years, if the recipient's DBE achievements (based on contract awards) were below the overall goal for the applicable year, did the recipient complete the required shortfall analysis and corrective action plan?

Disadvantaged Business Enterprise (DBE)

Goal Achievement Analysis Not Completed or Not Submitted

Relevant Indicators

- a. Was the recipient required to conduct shortfall analyses and develop a corrective action plan?
- b. If applicable, did the recipient submit shortfall analyses and corrective action plans to FTA on time?
- c. If the recipient is not considered to be a Top 50 Recipient by FTA, but was required to conduct a shortfall analysis and develop a corrective action plan, do the analysis and plan contain required elements?

Disadvantaged Business Enterprise (DBE)

Goal Achievement Analysis Not Completed or Not Submitted

What drives this deficiency?

- Recipients do not meet their overall DBE goal, and:
 - Do not realize that they have to complete a shortfall analysis, and/or
 - Do not know what numbers on their reports to analyze
- The analysis and corrective action plan are not sufficient
 - Too much narrative, not enough facts, data, and dates
- ‘Top 50’ recipients do not submit analysis to FTA or submit it late

Disadvantaged Business Enterprise (DBE)

Goal Achievement Analysis Not Completed or Not Submitted

What can recipients do to prevent this deficiency?

- Complete the last DBE report of the fiscal year early

- Last report due Dec. 1st shortfall analysis due December 29th

- Check FTA’s website for “Top 50” determination

<https://www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/top-50-grantees>

- Use training modules on FTA’s DBE website

- Comprehensive Review Guide lists analysis contents:

- Shortfall percentage
- Shortfall explanation
 - DBE Participation on fiscal year FTA-assisted projects
 - Race-conscious/race-neutral breakdown
 - Race-neutral measures
 - Specific reasons for shortfall

Review the corrective action plans to verify if they included:

- Description of all corrective action measures
- Explanation of how proposed corrective actions will increase DBE participation in the current year
- Timeline for implementation

EEO

Approval of EEO Plans

- Purpose of the EEO Review Area

The recipient must ensure that no person in the United States shall on the grounds of race, color, religion, national origin, sex, age, or disability be excluded from participating in, or denied the benefits of, or be subject to discrimination in employment under any project, program, or activity receiving Federal financial assistance under the Federal transit laws. (Note: Equal Employment Opportunity Commission's regulation only identifies/recognizes religion and not creed as one of the protected groups.)

Relevant 2019 Review Guide Question

EEO5. Does the recipient provide oversight of subrecipients and/or contractors who meet the EEO Program threshold?

EEO

Approval of EEO Plans

Relevant Indicator

- a. Does the recipient receive and review EEO plans of subrecipients and/or contractors who meet EEO thresholds?

EEO

Approval of EEO Plans

What drives this deficiency?

- FTA's EEO Circular has been revised and oversight plans have not been adjusted accordingly
- Recipients have subrecipients and/or contractors that meet EEO thresholds
- Recipients collect the EEO plans but do not have documentation that they have reviewed the plans

EEO

Approval of EEO Plans

What can recipients do to prevent this deficiency?

- Review thresholds for EEO Plans
 - 50-99 transit-related employees
 - 100 or more transit-related employees
- Determine which subrecipients and/or contractors meet that threshold
- Use training modules on FTA's DBE website
- FTA Circular 4704.1A and Comprehensive Review Guide list plan contents

EEO Training

Upcoming Trainings/Webinars

Stay tuned for new training information.

Training Materials

- [The Updated FTA EEO Circular 4704.1A](#) (slides)
This recorded session discusses the 2016 updates to FTA's EEO Circular 4704.1A

Updated: Friday, December 7, 2018

Technical Capacity – Program Management and Subrecipient Oversight

Inadequate Oversight of Subrecipient/Third Party Contractor/Lesseees

- **Purpose of the Technical Capacity-PgM Review Area**

The recipient must follow the public involvement process for transportation plans; develop and submit a State Management Plan to the Federal Transit Administration (FTA) for approval; report in the Federal Funding Accountability and Transparency Act Subaward Reporting System (FSRS) on subawards; and ensure subrecipients comply with the terms of the award.

- **Relevant 2019 Review Guide Question**

TC-PgM7. Does the recipient's oversight program ensure subrecipient compliance with Federal requirements and performance goals, and provide for evaluation of subrecipient risk of noncompliance with those requirements?

Technical Capacity – Program Management and Subrecipient Oversight

Inadequate Oversight of Subrecipient/Third Party Contractor/Lessees

Relevant Indicators

- a. What is the recipients process for monitoring subrecipients?
- b. How does the recipient evaluate subaward and/or subrecipient risk?
- c. Has the recipient conducted risk assessments of its subrecipients?
- d. How does the recipient evaluate subaward performance?
- e. How are the outcomes of risk assessments incorporated into the oversight process?
- f. What actions has the recipient taken to address identified compliance issues or risk with subrecipients?

Note: This question covers primarily high-level subrecipient oversight. In the 2019 Comprehensive Review Guide, most sections conclude with separate additional questions on contractor oversight and subrecipient oversight.

Technical Capacity – Program Management and Subrecipient Oversight

Inadequate Oversight of Subrecipient/Third Party Contractor/Lessees

What drives this deficiency?

- Recipients have contractor-operated service, subrecipients, and/or lessees
 - Contractor – hired by the recipient through a procurement action
 - Subrecipient – an entity to which the recipient passes through a portion of its FTA funds and the subrecipient ‘stands in the recipient’s shoes’
 - Lessee – an entity which leases an FTA-funded asset for transit service it controls
- Oversight is decentralized, not comprehensive or out-of-date
- Oversight activities not consistently documented
- Follow-up of oversight findings does not occur
- Complications happen when subrecipients are also direct FTA recipients

Technical Capacity – Program Management and Subrecipient Oversight

Inadequate Oversight of Subrecipient/Third Party Contractor/Lessees

What can recipients do to prevent this deficiency?

- Create a comprehensive, standardized oversight approach
 - Include oversight procedures for Comprehensive Review Guide questions that relate specifically to contractors/lessees/subrecipients – word searching the Guide can help
- When regulations change, review and revise oversight guides
- Document oversight activities and corrective measures
- Follow up with contractors/lessees/subrecipients on findings

SMR Findings that Impact Subrecipients

ADA

- Limits on ADA complementary paratransit service
- Reasonable modification deficiency
- Weight limits on wheelchairs

Procurement

- No responsibility determination

Maintenance

- PM Inspections

DBE

- Prompt Payment/Return of Retainage

ADA Complementary Paratransit

Limits or Capacity Constraints on Complementary Paratransit Service

- Purpose of the ADA Review Area

Titles II and III of the ADA of 1990 provide that no entity shall discriminate against an individual with a disability in connection with the provision of transportation service. The law sets forth specific requirements for vehicle and facility accessibility and the provision of service, including complementary paratransit service.

- Relevant 2019 Review Guide Question

CPT6. Does the recipient place limits on the availability of service to ADA paratransit eligible individuals?

ADA Complementary Paratransit

Limits or Capacity Constraints on Complementary Paratransit Service

Relevant Indicators

- a. Where the recipient cannot provide a trip at the requested time, does the recipient negotiate trip times so that trips are scheduled within one hour before or after an individual's desired departure time?
- b. Does the recipient restrict the number of trips an eligible individual will be provided?
- c. Does the recipient limit the availability of service by using waiting lists?
- d. Does any operational pattern or practice significantly limit the availability of service to eligible individuals?

ADA Complementary Paratransit

Limits or Capacity Constraints on Complementary Paratransit Service

What drives this deficiency?

- Recipients have capacity constraints
- There is inadequate data and/or reporting on trip reservations, dispatch, and/or performance
- Key definitions do not exist or are not adhered to (excessively long trips, missed trips, untimely pickups, denials)
- Performance data is gathered, but not evaluated
- Reservationists, dispatchers, and/or operators are not adhering to requirements or policies
- Complementary paratransit service exceeds the requirements and is impacting the capacity of the entire system
- Paratransit trips are co-mingled with other trips and separate data on ADA complementary paratransit is not tracked
- Disconnect between operational practices, internal procedures, and public information on the service

ADA Complementary Paratransit

Limits or Capacity Constraints on Complementary Paratransit Service

What can recipients do to prevent this deficiency?

- Gather data on the indicators in the Comprehensive Review Guide that relate to this area
- Review key ADA service definitions and consistently apply them to the internally and externally
- Review reports on ADA data to determine if potential capacity constraints are indicated
- Review internal procedures for reservationists, dispatchers, and operators to ensure that each understands the definitions in the indicators
- Observe reservationists as they are taking calls to ensure adherence to policies and requirements

ADA - General

Reasonable Modification Deficiency

- Purpose of the ADA Review Area

Titles II and III of the Americans with Disabilities Act of 1990 provide that no entity shall discriminate against an individual with a disability in connection with the provision of transportation service. The law sets forth specific requirements for vehicle and facility accessibility and the provision of service, including complementary paratransit service

Relevant 2019 Review Guide Question

ADA-GEN8. Does the recipient follow ADA provision of service requirements?

ADA Complementary Paratransit

Reasonable Modification Deficiency

Relevant Indicators

- i. Does the recipient make information about how to make requests for reasonable modifications readily available to the public through the same means it uses to inform the public about its policies and practices? Does it provide a means, accessible to and usable by individuals with disabilities, to request a modification to the recipient's policies and practices?

ADA - General

Reasonable Modification Deficiency

What drives this deficiency?

- Recipients are unaware of what this requirement is meant to address
- Public information on the ability to request reasonable accommodations is not available or is not provided through same means as other related information
- Recipients only provide public information on reasonable accommodation in relation to their ADA complementary paratransit service

ADA - General

Reasonable Modification Deficiency

What can recipients do to prevent this deficiency?

- Review 49 CFR 37.169 to understand the requirements and procedures for reasonable modifications
- Review Appendix E of 49 CFR Part 37 for examples of reasonable accommodations that transit entities may encounter: pick up and drop off locations, assistance in ice and snow, private property, fare handling, eating and drinking, taking of medicine onboard, boarding separately from wheelchair, navigating around obstacles
- Have a training session(s) with representatives that field requests and those from operations who carry them out

Procurement

No Responsibility Determination

- Purpose of the Procurement Review Area

Recipients use their own documented procurement procedures which reflect applicable State, local, and tribal laws and regulations, and conform to applicable Federal law and the standards identified in 2 CFR Part 200. State recipients can use the state's overall policies and procedures. When applied to federal procurements, those policies and procedures must still be compliant with all federal requirements as applied to non-state recipients. The flexibility afforded by 2 CFR Part 200 should not be misconstrued as absolving a state from Federal requirements.

- Relevant 2019 Review Guide Question

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)?

Procurement

No Responsibility Determination

Relevant Indicator

- a. Do procurement files contain documentation that the recipient made written responsibility determinations prior to award, considering all required information?

Procurement

No Responsibility Determination

What drives this deficiency?

- Prior to award, an affirmative responsibility determination has not been made based on a prospective contractor's
 - integrity,
 - compliance with public policy,
 - record of past performance, and
 - financial and technical resources
- Responsibility determinations are conducted but not documented

Procurement

No Responsibility Determination

What can recipients do to prevent this deficiency?

- Encourage or require standardized forms/processes for conducting responsibility determinations
 - May vary based on contract size and/or complexity.
 - FTA's Best Practices Procurement & Lessons Learned Manual have sample forms in **Appendix B, Section B-4.1**
- Include completed responsibility determination in each procurement file
 - Inclusion on a file checklist can be helpful
- Check for this during subrecipient oversight

ADA - General

Weight Limitations On Wheelchairs

- Purpose of the ADA Review Area

Titles II and III of the ADA of 1990 provide that no entity shall discriminate against an individual with a disability in connection with the provision of transportation service. The law sets forth specific requirements for vehicle and facility accessibility and the provision of service, including complementary paratransit service.

- Relevant 2019 Review Guide Question

ADA-GEN8. Does the recipient follow ADA provision of service requirements?

ADA - General

Weight Limitations On Wheelchairs

Relevant Indicator

- f. Does the recipient deploy the lift or ramp at any stop upon request?

ADA - General

Weight Limitations On Wheelchairs

What drives this deficiency?

- Recipients place inappropriate limitations on wheelchair size or weight
- Recipients do not place limitations in practice, but their public communications indicate that they do
- Disconnects between driver/dispatcher instructions, regulations, and public communication

ADA - General

Weight Limitations On Wheelchairs

What can recipients do to prevent this deficiency?

- Determine if or what limitations are on the lift/ramp equipment currently being used for service
- Review all external communications on this subject to determine if any restrictions on weight or size are allowable
- Review operator/dispatcher training to ensure comprehensive understanding

Maintenance

Preventative Maintenance (PM) Inspections

- Purpose of the Maintenance Review Area

Recipients must keep federally funded vehicles, equipment, and facilities in good operating condition. Recipients must keep Americans with Disabilities Act (ADA) accessibility features on all vehicles, equipment, and facilities in good operating order.

- Relevant 2019 Review Guide Question

M2. Is the recipient following its program for preventive maintenance inspections for FTA-funded assets?

Maintenance

PM Inspections

Relevant Indicators

- a. For vehicles/vessels, are the recipient's actual maintenance practices consistent with the plan/program?
- b. For facilities and equipment, are the recipient's actual maintenance practices consistent with the written plan?

Maintenance

PM Inspections

What drives this deficiency?

- FTA funds a significant mix of vehicles and facilities, which necessitates a range of preventative maintenance at the recipient/subrecipient level
- PM intervals in practice differ from those in maintenance plans
- Recipients/subrecipients do not follow their preventative maintenance plans
- Documentation is lacking on the completion of preventative maintenance performed

Maintenance

PM Inspections

What can recipients do to prevent this deficiency?

- Compare current asset listings to the assets addressed in maintenance plans.
- Compare maintenance checklists with maintenance plans to ensure there is a way to ensure completion and documentation of PM s completed
- If there are maintenance reports generated, review them for trends
- Conduct monitoring of plans and completed PMs to ensure consistency

Disadvantaged Business Enterprise (DBE)

Prompt Payment/Return of Retainage

- Purpose of the DBE Review Area

Recipients must comply with 49 CFR Part 26 to ensure nondiscrimination in the award and administration of US Department of Transportation (US DOT)-assisted contracts. Recipients also must create a level playing field on which DBEs can compete fairly for US DOT-assisted contracts.

- Relevant 2019 Review Guide Question

DBE12. Does the recipient monitor and enforce contractual requirements consistent with its approved DBE Program?

Disadvantaged Business Enterprise (DBE)

Prompt Payment/Return of Retainage

Relevant Indicator

- d. Does the recipient implement the prompt payment monitoring and enforcement mechanisms described in its approved DBE program?

Disadvantaged Business Enterprise (DBE)

Prompt Payment/Return of Retainage

What drives this deficiency?

- Prompt payment and return of retainage timeframes are included in the recipients' DBE Program Plan, but different contractual language is in their or subrecipients' procurements
- Monitoring and enforcement of prompt payment and/or return of retainage is not conducted as described in the recipient's DBE Program Plan
- To comprehensively implement, prompt payment requires coordination with finance, procurement, contract administration, and project management—they are not always plugged into the DBE requirements

Disadvantaged Business Enterprise (DBE)

Prompt Payment/Return of Retainage

What can recipients do to prevent this deficiency?

- Review the prompt payment language and enforcement sections of the DBE Program Plan
- Review direct and subrecipient procurements to ensure correct language is being used
- Ensure that the monitoring of prompt payment is as described in the DBE Program Plan
- Use USDOT’s current guidance on prompt payment which included suggested template and enforcement activities



<https://www.transportation.gov/sites/dot.gov/files/docs/mission/civil-rights/civil-rights-learning-center/307421/guidance-prompt-payment-and-retainage-final.pdf>

SMR Findings that Impact Both

Procurement

- Missing FTA clauses
- Lacking required cost/price analysis
- Pre-award and/or post-delivery certifications lacking

Title VI

- Language Assistance Plan deficiencies

Procurement

Missing FTA Clauses

- Purpose of the Procurement Review Area

Recipients use their own documented procurement procedures which reflect applicable State, local, and tribal laws and regulations, and conform to applicable Federal law and the standards identified in 2 CFR Part 200. State recipients can use the state's overall policies and procedures. When applied to federal procurements, those policies and procedures must still be compliant with all federal requirements as applied to non-state recipients. The flexibility afforded by 2 CFR Part 200 should not be misconstrued as absolving a state from Federal requirements.

Where Federal Transit Administration (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.

- Relevant 2019 Review Guide Question

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

Procurement

Missing FTA Clauses

Relevant Indicator

- a. Did the recipient include applicable required clauses in FTA-funded procurements?

Procurement

Missing FTA Clauses

What drives this deficiency?

- Recipients do not recognize a procurement as being FTA-funded
- Recipients are not using a current checklist for clauses
- Lack of consistency
 - If procurement is decentralized in an agency, one department may be compliant, while another has deficiencies
- An unanticipated high bid or increased contract cost causes a procurement to cross a monetary threshold, requiring additional clauses

Procurement

Missing FTA Clauses

What can recipients do to prevent this deficiency?

- Use a clause checklist
 - Check FTA’s Comprehensive Guide
 - Review FTA’s Master Agreement when it is issued each year (<https://www.transit.dot.gov/funding/grantee-resources/sample-fta-agreements/fta-grant-agreements>)
- Develop standard clause language
 - See FTA’s *Best Practices Procurement Manual*
- Develop a method for identifying FTA-funded procurements
 - Across departments
 - With others conducting procurements on transit’s behalf
- National RTAP’s ProcurementPro

<http://www.nationalrtap.org/Web-Apps-Old/ProcurementPRO>

ADA - General

Insufficient Complaint Process

- Purpose of the ADA Review Area

Titles II and III of the ADA of 1990 provide that no entity shall discriminate against an individual with a disability in connection with the provision of transportation service. The law sets forth specific requirements for vehicle and facility accessibility and the provision of service, including complementary paratransit service.

- Relevant 2019 Review Guide Question

ADA-GEN1. Does the recipient track, resolve, and respond to ADA-related complaints?

ADA - General

Insufficient Complaint Process

Relevant Indicators

- a. Is the process for filing a complaint advertised to the public, such as on the recipient's website?
- b. Does public information about the complaint process include the appropriate contact information?
- c. Are the complaint procedures accessible to and usable by individuals with disabilities?
- d. Do the procedures provide for the prompt and equitable resolution of complaints, including a procedure for responding to complaints and tracking the responses?
- e. Does the recipient retain ADA-related complaints for at least one year and a summary of all ADA-related complaints for at least five years?

ADA - General

Insufficient Complaint Process

What drives this deficiency?

- Recipients missed new July 2015 requirements
 - ADA complaint process must be sufficiently advertised
 - Complaint responses must be promptly communicated
- ADA complaints not retained for required intervals
 - 1 year for the individual complaint
 - 5 years for the complaint log

ADA - General

Insufficient Complaint Process

What can recipients do to prevent this deficiency?

- Review current versions of 49 CFR Parts 27 and 37 for the requirements on ADA complaints
- Review website, ride guide, and other external communications for compliance, accuracy, and consistency
- Review internal tracking and retention policies for compliance
- If all service complaints go to a common center, ensure that ADA complaints can be distinguished
- Review contracted or subrecipient practices for compliance

Title VI

Language Assistance Plan Deficiencies

- Purpose of the Title VI Review Area

The recipient must ensure that no person shall, on the grounds of race, color, or national origin, be excluded from participating in, or be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance without regard to whether specific projects or services are federally funded. The recipient must ensure that all transit services and related benefits are distributed in an equitable manner.

Relevant 2019 Review Guide Question

TVI2. Does the recipient provide meaningful access to Limited English Proficient (LEP) persons?

Title VI

Language Assistance Plan Deficiencies

Relevant Indicators

- a. Has the recipient implemented its Language Assistance Plan (LAP)?

Title VI

Language Assistance Plan Deficiencies

What drives this deficiency?

- Recipients are not implementing their Title VI program as described
- Recipient personnel that crafted the Language Assistance Plan are not the same that need to implement it, and the implementers are not aware of what FTA approved
- Implementing the LAP is an ongoing activity, not something that is reported on or evaluated at set intervals

Title VI

Language Assistance Plan Deficiencies

What can recipients do to prevent this deficiency?

- Review the LAP within the approved Title VI Program
- Integrate the implementation strategies within the organization
 - Marketing, outreach, communications, planning representatives often need to play key roles.
- Embed the LAP plan into other planning, communication, and outreach procedures

Procurement

Lacking Required Cost/Price Analysis

- Purpose of the Procurement Review Area

Where Federal Transit Administration (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. IF applies. FTA funds, even operating assistance, can be segregated from local funds. FTA Circular 4220. IF does not apply to wholly locally-funded capital procurements.

- Relevant 2019 Review Guide Question

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

*The Uniform Guidance only requires this for procurements above the Simplified Acquisition Threshold.

Procurement

Lacking Required Cost/Price Analysis

Relevant Indicator

- b. Did the recipient conduct a cost analysis or price analysis for every procurement action above the Simplified Acquisition Threshold?

Procurement

Lacking Required Cost/Price Analysis

What drives this deficiency?

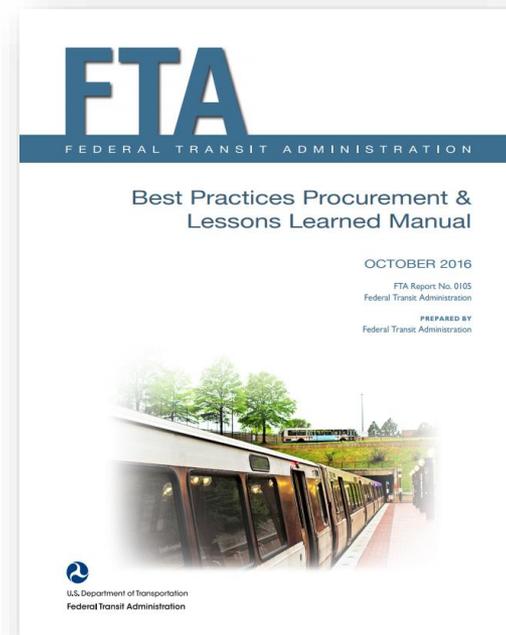
- Recipients do not conduct a cost or price analysis when applicable:
 - Often happens with one type of procurement or buyer, and/or where procurement is a decentralized function
- Recipients conduct a cost or price analysis but do not document it
- Recipients misclassify procurement as locally-funded
 - Often occurs when recipient is part of a state or local government that does not routinely procure FTA-funded products or services
- New recipients may not understand FTA procurement requirements

Procurement

Lacking Required Cost/Price Analysis

What can recipients do to prevent this deficiency?

- Include the completion of a cost or price analysis in file checklist
- Develop standardized form for cost or price analysis
 - FTA's *Best Practices Procurement Manual* includes guidance (Section 4.6) and sample forms and checklists
 - FTA's *Pricing Guide for FTA Grantees* also provides guidance materials (<https://www.transit.dot.gov/funding/procurement/third-party-procurement/pricing-guide-fta-grantees>)



<https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/funding/procurement/8286/fta-best-practices-procurement-and-lessons-learned-manual-2016.pdf>

Procurement

Pre-award and/or Post-Delivery Certifications Lacking

- **Purpose of the Procurement Review Area**

Where Federal Transit Administration (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.

- **Relevant 2019 Review Guide Question**

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?

Procurement

Pre-award and/or Post-Delivery Certifications Lacking

Relevant Indicator

- b. For rolling stock purchases, did the recipient conduct pre-award and post-delivery audits to ensure the manufacturer(s) complied with contract specifications and Buy America?
- c. Did the recipient document its pre-award and post-delivery audits by completing and maintaining written certifications?

Procurement

Pre-award and/or Post-Delivery Certifications Lacking

What drives this deficiency?

- Recipients or subrecipients purchase rolling stock vehicles with FTA funds
- Recipients do not make internal file documentation that they conducted the pre-award and/or post-delivery activities
- Pre-award and/or post-delivery activities are conducted by someone outside of procurement (operations, maintenance, subrecipient, contractor), but signed certifications cannot be located when needed

Procurement

Pre-award and/or Post-Delivery Certifications Lacking

What can recipients do to prevent this deficiency?

- Pre-award, recipient must
 - Conduct Buy America audit (>\$150,000) and **sign certification** of compliance with Buy America
 - Certification by the manufacturer is not adequate
 - **Sign certification** of compliance with FMVSS
 - Review proposed vehicle specifications and **sign certification** of compliance with purchaser's requirements
- Post-delivery, recipient must
 - Conduct Buy America audit (>\$150,000) and **sign certification** of compliance with Buy America
 - Certification by the manufacturer is not adequate
 - Observe FMVSS sticker and **sign certification** of compliance with FMVSS
 - Inspect and road test vehicles and **sign certification** of compliance with purchaser's requirements

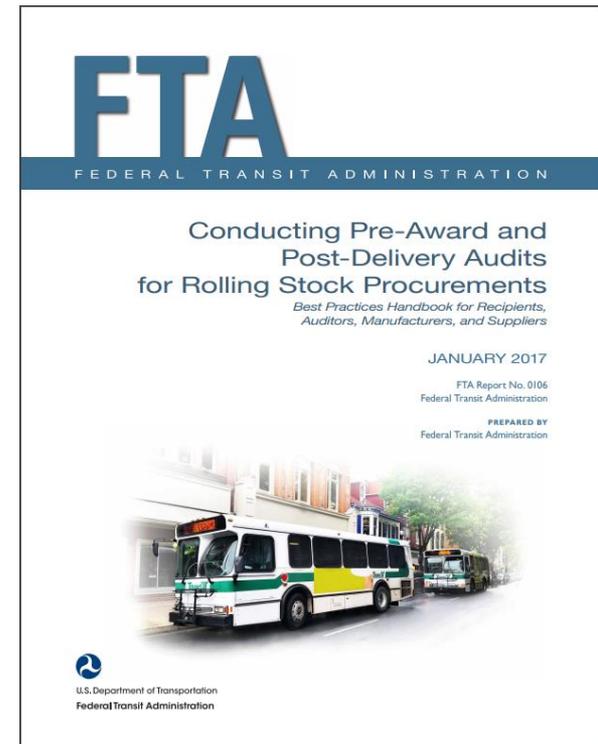
Procurement

Pre-award and/or Post-Delivery Certifications Lacking

What can recipients do to prevent this deficiency?

- Determine who is conducting pre-award/post-delivery audits and who is signing the internal certifications
- Develop a retention policy for the certifications
- Utilize FTA's 'Buy America Handbook'

<https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/regulations-and-guidance/buy-america/58191/buy-america-handbook-rpt0106.pdf>



Overall Tips For Compliance

- Review previous review reports
 - Document corrective action implementation
 - Avoid repeat deficiencies
- Conduct a self-assessment in non-Review years
 - FTA updates the Comprehensive Guide annually
- Understand how information provided for one section of the review provides input for others, such as:
 - Procurement lists for DBE
 - Inventory lists for Maintenance
- Manage subrecipients
- Sign up for FTA's email subscription

Thank You!

Questions?