

4. TECHNICAL CAPACITY – ENHANCED REVIEW MODULE

PURPOSE OF THIS REVIEW AREA

The recipient must be able to implement Federal Transit Administration (FTA)-funded projects in accordance with the award application, FTA Master Agreement, and all applicable laws and regulations, using sound management practices.

USE OF THIS MODULE

This enhanced review module (ERM) questionnaire presents recommended questions for an enhanced review of Technical Capacity. Based on the scope of the approved ERM, all or a selection of the questions of this module will be conducted. The actual questions asked and the items sampled and observations made will be determined during the scoping meeting. The Federal Transit Administration (FTA) regional office and/or the Office of Transit Safety and Oversight may ask the reviewer to develop a unique scope of work for the ERM. Additional questions may be asked and additional sampling and observations may be performed as directed by FTA. The scope, questionnaire, sampling, and observations will be subject to final review and approval by the respective regional FTA office and the Office of Transit Safety and Oversight.

QUESTIONS TO BE EXAMINED

1. Does the recipient have a governing body that meets the requirements of state and local law and adequately performs its legal and fiduciary responsibilities?
2. Does the recipient have adequate staffing to implement the FTA programs?
3. Are the recipient's Milestone Progress Reports (MPRs) complete and accurate?
4. Does the recipient ensure timely expenditure of funds and close out of awards?

INFORMATION NEEDED FROM RECIPIENT

Recipient Information Request

- State and/or local law governing the recipient's legal structure
- Articles of incorporation
- Ethics policy
- Board Meeting minutes for the past year
- Organizational chart
- Position descriptions for senior management and positions that administer the FTA-funded programs
- Award management and reporting procedures, if written
- Closeout schedule for all open awards
- Award draw plans

Recipient Follow-up

- Governing body policy handbook
- Governing body training materials
- Correspondence from FTA regional office regarding reporting issues

TCERM1. Does the recipient have a governing body that meets the requirements of state and local law and adequately performs its legal and fiduciary responsibilities?

BASIC REQUIREMENT

Recipients must have a governing body that meets the requirements of state and local law and adequately performs its legal and fiduciary responsibilities.

APPLICABILITY

All non-state recipients

DETAILED EXPLANATION FOR REVIEWER

Recipients must have a designated body legally responsible for the organization as required by state law. The governing body should meet regularly, conduct business in an open and transparent manner, set policy and goals and objectives, provide oversight of agency finances and performance, advise transit management, and not involve itself in day-to-day operations.

INDICATORS OF COMPLIANCE

- a. *What is the size of the governing board? What are the requirements under law for the size of the governing body?*

Review Response

- b. *What is the conflict of interest policy for the governing body?*

i. *How are board members vetted?*

ii. *Are any governing body members suspended or debarred? If yes, did the recipient report the suspension or debarment to FTA?*

Review Response

- c. *How are members of the governing body selected?*

i. *What is the length of each term?*

ii. *Can members serve consecutive terms?*

Review Response

- d. *Provide details on any departures of governing body members prior to the end of their terms since the last Comprehensive Review.*

Review Response

- e. *If there are any vacancies in the membership of the governing body, provide information on how and when they will be filled. Does the agency have challenges filling vacancies?*

Review Response

f. *Is there a governing body handbook? If yes, what does it address?*

Review Response

g. *Does the governing body receive training in its roles and responsibilities? If yes, how often?*

Review Response

h. *Does the governing body participate in a formal strategic and business planning process? If yes, how often?*

Review Response

i. *Describe any standing committees to the governing body and how they are staffed.*

i. *Under what circumstances, if any, can a select committee be established?*

ii. *How is a select committee staffed?*

Review Response

j. *Describe any changes to the governing body structure since the last Comprehensive Review (e.g., number of members, voting rules, term limits).*

Review Response

k. *How often do the governing body and committees meet?*

i. *Does a majority of members attend meetings?*

ii. *What are the consequences for frequent absences?*

Review Response

l. *Are records of these meetings kept and available to the public?*

Review Response

m. *Does the governing body formally review results of oversight reviews and audits?*

i. *Does the recipient's auditor report to the governing body?*

ii. *Does the governing body approve the selection of the auditor?*

Review Response

- n. *Has the governing body established an internal audit function that reports to it?*
- i. *If yes, how large is the internal audit staff?*
 - ii. *How does the governing body determine subjects to be investigated by the internal auditor?*

Review Response

- o. *How does the governing body ensure that it fulfills its fiduciary responsibilities (i.e., review financial statements, evaluate financial management and financial and technical capacity)?*

Review Response

- p. *How is the governing body involved in meeting the award's reporting and program requirements?*

- i. *Are reports and budget changes reviewed prior to submission?*
- ii. *Is management required to report to the governing body on the status of FTA-funded programs?*
- iii. *Describe the type of information conveyed and how often information is provided.*
- iv. *How are comments or concerns of the governing body documented and addressed?*

Review Response

- q. *Does the governing body formally evaluate the performance of the chief executive officer? How often?*

Review Response

- r. *What is the level of involvement of the governing body in the day-to-day management of the agency and/or the FTA program? Does it appear that the governing body exercises too much influence or too little oversight?*

Review Response

- s. *Is the governing body informed in a timely manner of sensitive information, investigation, and improper acts (e.g., significant litigation, investigations by regulatory agencies, embezzlement, misuses of corporate assets)? What has been reported to the governing body since the last Comprehensive Review?*

Review Response

- t. *Does the governing body play a role in addressing improprieties of executive staff?*

Review Response

INSTRUCTIONS FOR REVIEWER

Review the state and/or local law governing the recipient and, if applicable, the articles of incorporation, to determine the duties and responsibilities, method of selection, and terms of office for members; frequency of meetings; and committee structure. Review the ethics policy which may or may not be part of the law or articles of incorporation. Interview members of the governing body to learn how the governing body sets and facilitates the implementation of policies, what kind of training members receive, and what the governing body sees as its responsibilities. Review a copy of the governing board handbook. Review the minutes for the past year to determine the governing body's activities and how it fulfills its fiduciary, policy, and oversight responsibilities, including reviews of oversight reviews and audits and discussion of the FTA-funded programs. Review reports noted in the minutes regarding financial and performance issues for an understanding of the information provided to the governing body. Also review the minutes to determine if members regularly attend meetings.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it extended or renewed an award to a subrecipient after learning the subrecipient was suspended or debarred.

DEFICIENCY CODE TC-PgM5-2: Excluded parties participating in covered transactions

SUGGESTED CORRECTIVE ACTION: Work with the FTA regional office and FTA Regional Counsel to determine the appropriate corrective action.

For other issues, work with the FTA regional office to determine the deficiency and corrective action.

GOVERNING DIRECTIVES

2 CFR 200.328 Monitoring and reporting program performance

(a) *Monitoring by the non-Federal entity.* The non-Federal entity is responsible for oversight of the operations of the Federal award supported activities. The non-Federal entity must monitor its activities under Federal awards to assure compliance with applicable Federal requirements and performance expectations are being achieved. Monitoring by the non-Federal entity must cover each program, function or activity."

FTA Circular 5010.1E, Ch. II Section 3. Roles and Responsibilities of the Management of Awards

Recipients are responsible for the day-to-day management of their Awards that provide assistance for eligible activities or projects.

- a. Recipient Role. In addition to FTA's responsibility to monitor FTA Awards and the federally assisted projects thereunder, recipients must monitor federally assisted activities to ensure compliance with applicable federal requirements. This includes the administration and management of the Award in compliance with federal regulations, the Grant or Cooperative Agreement, and applicable FTA circulars. A recipient is also responsible for federal assistance that "passes through" to a subrecipient. In general, submission of the annual Certifications and Assurances stands in lieu of detailed FTA oversight before approval of an Award; however, the results of ongoing or routine FTA oversight activities also will be considered as applicable. Annual, independent, organization-wide audits, 2 CFR part 200, subpart F, "Audits", audits of recipients, and other recurring and specialized reviews provide FTA an opportunity to verify the recipient's Certifications and Assurances (See Chapter V, "Oversight," of this circular). The recipient's responsibilities include, but are not limited to, actions that:
 - (1) Demonstrate the legal, financial, and technical capacity to carry out the program, including safety and security aspects of the program;

- (2) Provide administrative and management support of project implementation;
- (3) Provide, directly or by contract, adequate technical inspection and supervision by qualified professionals of all work in progress;
- (4) Ensure conformity to Grant Agreements and Cooperative Agreements, applicable statutes, codes, ordinances, and safety standards;
- (5) Maintain project work schedules agreed to by FTA and the recipient and monitor activities under the Award to assure schedules are met and other performance goals are achieved;
- (6) Keep expenditures within the latest approved Award Budget;
- (7) Ensure compliance with FTA and federal requirements by agencies, consultants, contractors, and subcontractors working under approved third-party contracts or inter-agency agreements;
- (16) Obtain all necessary prior approvals and/or waivers before incurring costs or taking any requested actions....”

TCERM2. Does the recipient have adequate staffing to implement the FTA programs?

BASIC REQUIREMENT

The recipient must have adequate staffing to implement the FTA program.

APPLICABILITY

All recipients

DETAILED EXPLANATION FOR REVIEWER

Recipients should have an organizational structure with clear lines of authority and functional responsibility and adequate staff to oversee and implement FTA-funded programs.

INDICATORS OF COMPLIANCE

- a. *Describe the chains of command and organizational and functional responsibilities.*

Review Response

- b. *Since the last Comprehensive Review, has the recipient made changes to its organizational structure? If yes, please explain.*

Review Response

- c. *Has the recipient experienced turnover in executive leadership/key management positions since the last Comprehensive Review? If yes, please explain.*

Review Response

- d. *What executive leadership/key management positions are currently vacant? What is the projected timeframe to fill these positions?*

Review Response

- e. Describe the resources for administering FTA programs. What technical training have employees received in the past three years?

Review Response

Responsibility (e.g., award management, technical oversight of projects, subrecipient/contractor oversight, asset management, planning)	Number of Staff	Number of Staff with Less Than Three Years of Experience in Their Position	Staff Vacancies	Type/ Frequency and Method of Training for Responsibilities

- f. Describe any change(s) in key award or project management staff since the last Comprehensive Review.

Review Response

- g. If staff and/or positions associated with its FTA program were eliminated, explain how the recipient determined what positions would be eliminated and how responsibilities are to be redistributed.

Review Response

- h. Following reductions in staff, describe any changes the recipient made to policies and procedures used in implementing its FTA program.

Review Response

- i. If there are multiple FTA awards, how are positions and the associated level of effort documented for key personnel? How is this documentation related to the development of salaries and employee pay?

Review Response

INSTRUCTIONS FOR REVIEWER

Review the recipient’s organizational chart and position descriptions for positions that administer the FTA-funded program. Discuss with the recipient the lines of authority, staffing, and programmatic responsibilities. Discuss any changes in the organizational structure since the last Comprehensive

Review. Discuss staff turnover and vacancies since the last Comprehensive Review. Discuss training that staff receive. Discuss any vacancies and issues with staff turnover. If positions were eliminated since the last Comprehensive Review, discuss how the recipient determined which positions would be eliminated and how responsibilities were redistributed. Discuss any changes in policies and procedures to address staffing reductions.

POTENTIAL DEFICIENCY DETERMINATIONS

Work with the FTA regional office to determine the deficiency and corrective action.

GOVERNING DIRECTIVES

2 CFR 200.308 Statutory and national policy requirements

“(b) The non-Federal entity is responsible for complying with all requirements of the Federal award. For all Federal awards, this includes the provisions of FFATA, which includes requirements on executive compensation, and also requirements implementing the Act for the non-Federal entity at 2 CFR part 25 Financial Assistance Use of Universal Identifier and System for Award Management and 2 CFR part 170 Reporting Subaward and Executive Compensation Information...”

2 CFR 200.308 Revision of budget and program plans

“(c)(1) For non-construction Federal awards, recipients must request prior approvals from Federal awarding agencies for one or more of the following program or budget-related reasons:

(i) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(ii) Change in a key person specified in the application or the Federal award.

(iii) The disengagement from the project for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.”

2 CFR 200.328 Monitoring and reporting program performance

(a) *Monitoring by the non-Federal entity.* The non-Federal entity is responsible for oversight of the operations of the Federal award supported activities. The non-Federal entity must monitor its activities under Federal awards to assure compliance with applicable Federal requirements and performance expectations are being achieved. Monitoring by the non-Federal entity must cover each program, function or activity.

FTA Circular 5010.1E, Ch. II Section 3. Roles and Responsibilities of the Management of Awards

Recipients are responsible for the day-to-day management of their Awards that provide assistance for eligible activities or projects.

- b. **Recipient Role.** In addition to FTA’s responsibility to monitor FTA Awards and the federally assisted projects thereunder, recipients must monitor federally assisted activities to ensure compliance with applicable federal requirements. This includes the administration and management of the Award in compliance with federal regulations, the Grant or Cooperative Agreement, and applicable FTA circulars. A recipient is also responsible for federal assistance that “passes through” to a subrecipient. In general, submission of the annual Certifications and Assurances stands in lieu of detailed FTA oversight before approval of an Award; however, the results of ongoing or routine FTA oversight activities also will be considered as applicable. Annual, independent, organization-wide audits, 2 CFR part 200, subpart F, “Audits”, audits of recipients, and other recurring and specialized reviews provide

FTA an opportunity to verify the recipient's Certifications and Assurances (See Chapter V, "Oversight," of this circular). The recipient's responsibilities include, but are not limited to, actions that:

- (8) Demonstrate the legal, financial, and technical capacity to carry out the program, including safety and security aspects of the program;
- (9) Provide administrative and management support of project implementation;
- (10) Provide, directly or by contract, adequate technical inspection and supervision by qualified professionals of all work in progress;
- (11) Ensure conformity to Grant Agreements and Cooperative Agreements, applicable statutes, codes, ordinances, and safety standards;
- (12) Maintain project work schedules agreed to by FTA and the recipient and monitor activities under the Award to assure schedules are met and other performance goals are achieved;
- (13) Keep expenditures within the latest approved Award Budget;
- (14) Ensure compliance with FTA and federal requirements by agencies, consultants, contractors, and subcontractors working under approved third-party contracts or inter-agency agreements;
- (17) Obtain all necessary prior approvals and/or waivers before incurring costs or taking any requested actions...."

TCERM3. Are the recipient's MPRs complete and accurate?

BASIC REQUIREMENT

Recipients are required to submit MPRs that are as complete as possible, highlighting progress toward project objectives and any potential problem areas.

APPLICABILITY

All recipients

DETAILED EXPLANATION FOR REVIEWER

Refer to question TC-AM3 in the baseline review.

INDICATORS OF COMPLIANCE

- a. *Does the MPR provide a list of claims or litigation involving third party contracts and potential third party contracts that:*
 - *Have a value exceeding \$100,000?*
 - *Involve a controversial matter, irrespective of amount?*
 - *Involve a highly publicized matter, irrespective of amount?*

Review Response

- b. *What are the procedures for obtaining and validating project information (for the recipient and its contractors/subrecipients) for inclusion in MPRs? Is there a designated individual or office responsible for inputting and providing assurances for required reports?*

Review Response

- c. *What are the procedures for reconciling the data reported in the MPRs to the FFRs and the recipient's records? Did the review of FFRs in the baseline portion of the Comprehensive Review disclose any potential deficiencies that should be addressed in coordination with the MPRs?*

Review Response

INSTRUCTIONS FOR REVIEWER

Refer to question TC-AM3 in the baseline review.

POTENTIAL DEFICIENCY DETERMINATION

Refer to question TC-AM3 in the baseline review.

GOVERNING DIRECTIVE

Refer to question TC-AM3 in the baseline review.

TCERM4. Does the recipient ensure timely expenditure of funds and close out of awards?

APPLICABILITY

All recipients

BASIC REQUIREMENT

The recipient must expend awards timely and close out projects and awards when project activity is completed.

DETAILED EXPLANATION FOR REVIEWER

Refer to question TC-AM5 in the baseline review.

INDICATORS OF COMPLIANCE

- a. *Access TrAMS and assess whether the recipient uses the following practices in managing its awards.*

Procedure	Evaluation/Comments
1. Only apply for funds for projects that are ready to be started within a year instead of applying for the full year's apportionment	
2. Spend oldest funds first for on-going expenses such as project management, operating assistance, ADA complementary paratransit, and preventive maintenance	
3. Tie third party contracts to projects, not directly to awards	
4. Set project time limits (less than 2 years)	

Procedure	Evaluation/Comments
5. Use available funding in open awards before including projects in a new award	
6. Move delayed projects to newer awards and active projects to older awards	
7. Transfer small remaining balances to new line items	
8. Deobligate project balances and reapply for funds (if within period of availability and allowed by the regional office)	
9. Regularly reconcile award balances with those in TrAMS	
10. When funding a project out of multiple awards, develop an award drawdown plan	
11. When funding a project out of multiple awards, charge retainage to the newest award (and report it as an unliquidated obligation) to enable the closing of older awards	

INSTRUCTIONS FOR REVIEWER

Fill out the attached award analysis table. For each FPC/scope, list the TrAMS balance and the date of the last draw. Complete the other items for the award as a whole.

1. Review the account classification codes for open awards to determine if there are multiple years of funds in awards. If not, review award activity to determine if projects were begun as planned or within the first year of the award.
2. Compare the last draw date for ongoing expenses for all open awards. If a recipient draws from the oldest award with available funds, there will be no draws from a newer award for that activity.
3. Review the project descriptions for each open award to determine if the same project is funded from multiple awards. Compare the draw dates for the awards to determine if the recipient is drawing from more than one award for the project. Onsite, discuss with the recipient.
4. Review the recipient's award management procedures to determine if it sets time limits on its projects. Review the state/program management plan(s), subrecipient applications, and subrecipient agreements to determine if time limits are established for projects.
5. Review awards and programs of projects to determine if they have been revised or amended to add projects to spend down remaining funds.
6. Review awards and programs of projects to determine if they have been revised or amended to move delayed projects to newer awards and active projects to older awards.
7. Review awards to determine if there have been budget revisions to move funds between activity line items or scopes.

8. Ask the FTA regional office if it allows recipients to deobligate and reapply for funds. If yes, ask it if the recipient does so to help close awards more quickly.
9. Onsite, ask the recipient how often it reconciles award balances and to what level of detail (project, activity line item, scope, FPC, or award).
10. Review the award draw plan(s). Review draws to determine if the recipient is following the plan(s).
11. Review MPRs for awards addressed in the draw plan to determine which awards addressed in the plan report unliquidated obligations. Onsite, determine if the unliquidated obligations include funds for projects funded from multiple awards.

Refer to question TC-AM5 in the baseline review for additional information.

POTENTIAL DEFICIENCY DETERMINATION

Refer to question TC-AM5 in the baseline review.

GOVERNING DIRECTIVES

Refer to question TC-AM5 in the baseline review.

Attachment

STATUS OF OPEN AWARDS AS OF: (date)								
Award No.	Date Executed	Year Funds App'd	FPC/ Scope	TrAMS Balance	Date of Last Draw	FFR Unliquidated Obligations as of (date)	Projected Close Date	Comment