

CAPITAL PROCUREMENT HANDBOOK

Rural Public Transportation Program

FTA Section 5311



Arizona Department of Transportation
Public Transportation Division
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CAPITAL PROCUREMENT HANDBOOK

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Chapter I. Introduction

Background to FTA Procurement Requirements

Arizona Department of Transportation (ADOT) – Public Transportation Division manages the Federal Transit Administration (FTA) Section 5311 grant program providing funding to non-urbanized or rural communities with populations of less than 50,000. In addition to providing funding for the operation of transportation systems and related administrative expense, funding for capital expenditures is also awarded to rural transit agencies.

State and federal procurement regulations are detailed, complex, and changing. It is difficult for local grantees to be aware of and comply with all requirements. The purpose of this Capital Procurement Handbook is to provide guidance in addressing procurements regulations, identify resource documents, and explain ADOT requirements for the procurement process.

FTA Circular 4220.1E, attached in Appendix A (Tab A), sets forth the requirements a grantee must adhere to in the solicitation, award and administration of third party contracts using FTA grant funding. These requirements are based on common grant rules, Federal Statutes, Executive orders, implementing regulations and FTA Policy. For the Section 5311 program, the governing FTA policy document is FTA Circular 9040.1E. For the purposes of this circular, Third Party Contracting refers to any purchase order or contract awarded by a grantee to a vendor or contractor using Federal financial assistance awarded by ADOT on behalf of the FTA.

Several overarching federal policies contained in FTA Circular 4220.1E apply to the procurement process. The impact of these policies on individual grantees is important to consider:

- **Policy:** While FTA will provide guidance, Federal agencies must refrain from “substituting their judgment for that of recipients unless the matter is primarily a Federal concern.”
 - **Impact:** *City/county/organization procurement/purchasing policies can be used as framework for bid process.*

- **Policy:** FTA relies on validity of each grantee’s self-certification.

- **Impact:** *Many of the self-certifications made in the ADOT/Grantee contract carryover to the procurement process.*

- **Policy:** General procurement standards that are applicable to all procurements include:
 - Conformance with State and Local Law
 - Must have contract administration system
 - Must have written standards of conduct.
- **Impact:** *City/county/organization procurement/purchasing policies generally include these elements.*

- **Policy:** Competition must be full and open.
 - **Impact:** *Bidding process must not include:*
 - *Unreasonable requirements placed on firms in order to qualify*
 - *Unnecessary experience and excessive bonding requirements*
 - *Noncompetitive pricing practices between firms*
 - *Noncompetitive award to persons/firm on retainer contracts*
 - *Organizational conflicts of interest*
 - *Specific brand name products without allowing an equal or approved equal product.*

In summary, most standard state and federal procurement regulations are incorporated in local government purchasing policies and procurement procedures. These policies and procedures, under the direction of a local Finance Department and/or local legal counsel, should be coordinated with the information in this Handbook.

How To Use This Handbook

While federal policies stipulate specific requirements, they also direct that local government policies will prevail unless there is an issue of primary concern. This permits significant latitude in the procurement process. However, it makes it difficult to provide detailed guidelines that will reflect the varied city/county/non-profit organization policies.

Information that has been developed to assist you with this process includes:

Chapter I: Introduction/Background to FTA Procurement Requirements

Pages 1 – 9

Identifies governing FTA documents and important policies that guide the procurement process. Outlines the elements of Capital Procurement Handbook.

Chapter II: Overview of the Procurement Process

Pages 9 - 16

Chapter Two provides an overview of a typical procurement process. This information will help you understand the steps that are included in purchasing capital equipment. Five steps that any procurement process should address are:

- 1) Pre-Bid Process
- 2) Bid Package
- 3) The Bid
- 4) Bid Review and Award
- 5) Post-Delivery Activities

It will be helpful for you to review these steps before you start the procurement process. Whether your transit agency chooses to procure capital equipment independently or works with another governmental or transit agency on a consolidated/piggyback procurement, the process should address all these steps.

Chapter III: Management Requirements/**Transit Agency Works Independently to Conduct Local Procurement Process**

Pages 17 – 20 YELLOW PAGES

Chapter Three discusses management requirements and provides checklist for required documentation if you are going to purchase capital equipment independently as a local transit agency or as part of a local city/town/county government. Local procurement has been the common method for rural transit agencies to purchase transit vehicles using funds administered by ADOT-PTD over the past years.

This chapter will be used by a transit agency that chooses to prepare an individual bid package, solicit bids directly from dealers/suppliers, and award the winning bid independently of another transit agency. All information, required forms, and checklists are included in the information presented on the YELLOW PAGES. If your transit agency is working with another agency using an intergovernmental (piggybacking) process, go directly to the BLUE PAGES.

Chapter IV: Management Requirements/**Transit Agency Works Another Agency to Conduct Intergovernmental (Piggybacking) Procurement**

Pages 21 - 27 BLUE PAGES

Chapter Four discusses management requirements and provides checklists and required documentation if you are completing an interagency procurement. This method of procurement has become increasingly available as larger governmental agencies and institutions, such as the City of Phoenix and University of Arizona, have included options for additional vehicle purchases when they issue a Request for Bid. Smaller local transit agencies can partner with the larger agencies and

take advantage of administrative and cost savings as well as ensure all federal requirements are met.

Types of intergovernmental procurements include:

- a procurement that has been completed by another agency,
- jointly procuring equipment with other grantees, or
- assignment of the contractual rights to purchase based on another agencies contract containing assignability provisions. (Piggybacking)

This chapter will be used by an agency that chooses to work with another transit agency or government or educational institution. The grantee may work with another transit agency, utilize a state or other government open bid, or obtain an assignment of bid that included a piggyback option. All information, required forms, and checklists are included in the information presented on the BLUE PAGES. If your transit agency is planning to conduct the procurement process locally, go directly to the YELLOW PAGES.

Materials that are provided for reference and review are included in the following Appendices:

Appendix A (TAB A) FTA Circular 4220.1E

Important for all grantees. Contains regulations governing all contracts awarded using federal funds.

Governing policy document for the solicitation, award and administration of contracts using FTA funding. This information was current as of April 2006. For recent updates, access current document at www.fta.dot.gov/publications.

Appendix B (TAB B) Best Practices Procurement Manual

FTA Required/Model Contract Clauses

Important for grantees when Transit Agency works independently and conducts local procurement.

The Best Practices Procurement Manual was developed by the U.S. Department of Transportation/Federal Transit Administration. Originally published in 1996, this document provides background information, best practices and new topics/regulations covering the requirements for purchasing capital equipment with federal funding. Selected model contract clauses applicable primarily to vehicle procurement have been included in this appendix. Information in this appendix has been updated through April 2006; the complete document as well as current changes can be accessed at www.fta.dot.gov/library/admin/BPPM.

Note: If your transit agency is working with another agency to conduct an Intergovernmental (Piggybacking) Procurement, many of these duplicate

contract clauses that will have been included in the original bid and forms will be provided by the manufacturer/vendors.

Appendix C (TAB C) FTA Recommended and Required Forms

Important for all agencies. Includes required forms. Several forms will be provided by manufacturer/vendors.

This appendix presents suggested as well as required forms for the bid package. The forms are presented in the order shown in APTA's Standard Bus Procurement Guidelines. The entire document can be found at www.apta.com. These forms serve two different functions:

- forms for communication of information between the procuring agency and the prospective bidders, and
- forms certifying compliance by the procuring agency and contractors with federal requirements.

Keep in mind that your sponsoring agency, city or county government, will most likely have an established purchasing policy. In most instances, this policy will cover many of the “model” contract clauses. However, several of the required forms will be specific to the purchase of equipment/capital improvements using FTA funding. At minimum, you must have addressed the information shown in the forms provided for review. Required forms, identified in bold print, must be provided. These forms are provided in Word format and may be accessed on the ADOT-Public Transportation Division website www.azdot.gov/PTD/index.asp.

Appendix D (TAB D) ADOT Required/Sample Forms

Important for all agencies. Includes required forms that may be provided by manufacturer/dealer.

This appendix includes three forms that grantees must complete and submit to ADOT as part of the capital procurement process. These forms must be completed and submitted to ADOT in order for grantees to be reimbursed for the federal share of the procurement.

Appendix E (TAB E) Management Checklists/Forms for ADOT

Complete package of all Checklists that must be submitted by grantee prior to reimbursement. .

Includes all checklists have been prepared to track the procurement process that must be submitted to ADOT prior to reimbursement payment.

- **Transit Agency Working Independently to Conduct Local Procurement Process**
 - Grantee Procurement Process Checklist
 - Bid Package Checklist/Agency Level Procurement

- **Transit Agency Works Another Agency to Conduct Intergovernmental (Piggybacking) Procurement**
 - Bid Package Checklist/Intergovernmental Procurement Agreement
 - Intergovernmental Procurement Review Checklist (for all interagency procurement agreements)
 - Piggybacking Worksheet (for piggybacking/assignment agreements)

Web Site

This handbook is available at a dedicated ADOT Public Transportation Division Website on the Internet that can be accessed through the ADOT home page at <http://www.azdot.gov/PTD/index.asp>. All forms are available in Word format to facilitate electronic completion.

At this address, readers will find a variety of resources. The website provides valuable resources for parties interested in learning more about ADOT's public transportation programs. It is also a primary source of information for participants in the Section 5311 program. This handbook is available on the website along with information on related programs and initiatives. Also, "hot-linked" access to numerous other local and national transit web sites, including the U.S. DOT/FTA web sites. Readers should periodically check this web site for Section 5311 and other ADOT Transit Program updates.

Timetable for Procurement Grant Applications and Awards

The procurement process established by ADOT-Public Transportation Division for the Section 5311 capital grant program includes:

- FTA Notifies ADOT of Section 5311 Funding (Late Fall)
- ADOT Initiates Grant Application Process (January)
- Section 5311 Grantees Submit Application (February)
- ADOT Determines Statewide Program (March)
- ADOT Notifies Grantees of Funded Projects (April)
- ADOT and Grantees Execute Contracts (May)
- Procurement Process can begin when contract is issued
 - Grantee must submit copy of specifications for Program Manager approval prior to issuing Request for Bids.
- Eligible to submit Capital Procurement Request (Funding available in October)
- Post-Delivery Activities (Following Delivery of Vehicle/Equipment)
- All required forms must be submitted prior to reimbursement.

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Federal Transit Administration
www.fta.gov

American Public Transit Association (APTA)
www.apta.com
Standard Bus Procurement Guidelines

Community Transportation Association of America
www.ctaa.org

Arizona Department of Transportation
Public Transportation Division
<http://www.azdot.gov/PTD/index.asp>



Chapter II. Capital Procurement Process

Five major steps should be included in a successful procurement process:

- 1) Pre-Bid Process
- 2) Bid Package
- 3) The Bid
- 4) Bid Review and Award
- 5) Post-Delivery Activities

This chapter outlines the basic steps for purchasing capital equipment with federal funds and will help a transit agency completing the procurement process for the first time. If your transit agency is using an intergovernmental (piggybacking) partnership, many of the steps will have been completed during the original bid process. However, you must confirm that the equipment purchased is consistent with community needs.

1) Pre-Bid Process

a. **Determine the Scope of the Procurement**

Scope of procurement will coincide with the approved Section 5311 capital grant from ADOT. Community needs must be clearly identified and supported by Transit Advisory Committee (TAC) minutes. The goal of the procurement - acquisition of specific capital equipment and/or facilities - must be clearly defined.

b. **Establish Oversight Working Group**

Effective, clear establishment of the parties involved will facilitate the overall process. Early in the process, identify who needs to be included in any procurement decision. Transit Advisory Committee (TAC) must review bid package to meet ADOT requirements.

i) Internal Agency Involvement: internal staffs with the following responsibilities are often considered:

- Department initiating the procurement
- Drivers and maintenance personnel
- Finance department
- Legal department

ii) External Resources: Smaller agencies or agencies with limited procurement experience may need outside help. An important resource will be the ADOT-Public Transportation Division staff. A strategy to reduce the need for outside assistance is to include terms in the bid package

that require the manufacturer/dealer to assume responsibility for compliance with selected bid process elements. However, the grantee has the ultimate responsibility for compliance with Federal requirements.

c. Plan the Process

The staff involved in the procurement process, including the TAC, should meet to plan the following:

- Review agency resources in terms of managing the procurement process, and determine if others need to be involved.
- Establish a bid and procurement timeline.
- Verify vehicle needs/costs are consistent with grant awarded.
- Verify local match funds are available.
- Assign specific responsibilities to each participant.
- Create advertising policy for bid solicitation.
- Review local, state and federal government requirements.
- Establish a communication and reporting process for the working group.
- Establish target dates for completing tasks and future meeting schedule.

d. Determine Procurement Options

An important initial consideration will be the type of procurement method to use. There are two basic methods: Invitation for Bid (IFB) and Request for Proposal (RFP). The ADOT capital procurement process generally lends itself to the IFB process because of the specific nature of the procurement

i) Invitation for Bid (IFB)

This is the most common method used to obtain prices for specific good and services, including transit vehicles and other equipment. In the IFB process, the award is given to the lowest responsible bidder. Design specification of goods and services to be procured under an IFB are not subject to negotiation, and bids that deviate from specifications are rejected. Typically, the IFB includes two parts: technical and financial. Bidder's responses to each part are evaluated separately; bids that deviate from the specifications are rejected as non-responsive.

ii) Request for Proposal (RFP)

The RFP is a competitive procurement method used when a general, rather than specific, description of goods and services is used. This method allows for the procurement of goods and services without detailed design specifications. The primary consideration in awarding bids need not be price. When using an RFP, bidders typically submit a "Statement of Work" and "Cost Proposal." Contractors have flexibility in how the goods or services are produced, and the award is based on an evaluation of price and quality. The RFP method is typically used for planning and engineering studies and "softer" procurements where not every detail of the work to be done can be stated, and/or when creativity on the part of the bidder is desired. RFP models are included in the APTA Standard Bus Procurement Guidelines.

e. Establish Evaluation/Appeal Process

The procuring agency must make every effort to award a contract in a fair manner following bid review, evaluation, and award procedures.

Under an IFB, the Award of Contract is generally made to the bidder quoting the lowest total bid, including delivery charges, provided the bid is responsive to stated requirements.

Under an RFP, the review and evaluation includes a broader range of items since price is not the only criteria for selection. Evaluation criteria should be developed in categories such as technical specifications, organization qualifications and resources, management expertise, bid price and other financial impacts

For either an IFB or an RFP, the procuring agency must have in place a policy to handle protests by contractors should a bidder feel that a contract award has been made unfairly or improperly. The policy should include internal appeal procedures and time frames, and address confidentially and award withholding. The contractor has the right to protest the award and must follow the administrative procedure established by the procuring agency. If the contractor disagrees with the appeal decision, it may further appeal the decision and file a protest in compliance with Circular 4220.1E (Appendix A, Paragraph 7(k), Page 11), and local and state regulations.

2) Bid Package

a. Solicit Bid

Bid package will contain a “Bid Solicitation” page at the front of the package that provides prospective bidders with important information regarding the bid package:

- Scope of the procurement,
- Date for the pre-bid conference,
- Deadlines for contractor communications
- Proposal due date

(Appendix C, Form 1, Page 5, Bid Solicitation Summary/Procuring Agency and Contracting Office)

b. Develop Draft IFB or RFP

Develop the draft IFB or RFP understanding that once the bid is awarded, it is likely to become a binding contract and protections for the agency are important. It is prudent to contact the agency’s governing body, city council, or finance and/or legal departments for assistance. The document will include the following items:

- i) Uniform Terms and Conditions

Terms most advantageous to include are: Termination for Convenience, Termination for Default, Risk of Loss, Inspection and Testing, and Nonconforming Tender.

ii) Develop Specifications: Must be in ADOT Format (see Pages 16-17)

Detailed specifications for IFB or general description of good to be purchased for RFP are established. This portion of the bid package will describe exactly what is to be purchased. Again, the IFB process will be most often used. The IFB should state the specifications for equipment to be purchased that:

- a. Meet all the latest revised Federal Emissions Standard, as well as OSHA and Federal Safety Standards.
- b. Address virtually all components of the vehicle to be purchased, from the overall vehicle dimensions and engine type to the number and type of sun visors. Americans with Disabilities Act (ADA) equipment such as wheelchair lifts, tie-down stations, and preferred seating plan must be included. Fare boxes, safety equipment required and other accessories should be identified.
- c. Request the total cash purchase price that includes the vehicle, delivery, other costs and taxes (if applicable).
- d. Establish how the vehicle(s) is to be delivered.
- e. Indicate whether any training is requested.
- f. State how the contract will be evaluated and awarded.
- g. Addresses how vehicle parts will be obtained.

iii) Appropriate Levels of Insurance

Awarded supplier should provide the recommended insurance levels: \$1,000,000 General Liability (per occurrence), \$100,000 Workman's Compensation, and Commercial Automobile Liability in a combined single limit of not less than \$1,00,000 for all owned, leased, hired and non-owned vehicles. These are recommendations only. For specific limits, contact the Risk Manager or insurance representative.

iv) Warranty Specification

Should be included in the IFB or RFP. Extended warranties may also be requested from the bidder. However, the federal and state government will not reimburse for extended warranties and thus are the responsibility of the contracting agency.

v) Outline of Evaluation Process.

vi) Required and Recommended Clauses and Assurances

These should include application forms for the IFB or RFP. Under the 5311 program, the procurement process must address specific state and federal requirements. Additional forms have been developed as a means to communicate information between the prospective bidder and procuring agency.

c. Review of IFB or RFP including TAC

The draft IFB or RFP should be transmitted to the oversight-working group for review. ADOT also requires the bid package be reviewed by the TAC to make sure the type of vehicle purchased meets the need of the community.

d. Review of IFB or RFP by ADOT

The IFB or RFP *must be reviewed by the 5311 Program Manager prior to being sent out for bids*. This assures compliance with state and federal regulations and assures the specifications in the proposed procurement comply with what ADOT has approved for funding.

3) Bid Issuance

a) Identify and Notify Potential Bidders

Once the IFB or RFP has been approved by the ADOT 5311 Program Manger, a list of prospective bidders must be identified. Bidders must be licensed to sell buses in the State of Arizona ARS Section 28-4331-4332.

The bid must be advertised. Local or regional newspapers should be used to advertise the bid. Verify city/county requirements for notice of bid. Advertisement should state agency information, the nature of the procurement, due dates and the date of the Pre-Bid Conference.

b) Send Bid Package to Interested Parties

Transmit the bid package to the list of qualified contractors the agency has identified and those that contact the agency because of advertisements. **Every effort should be made to have a minimum of three potential bidders. Document efforts to identify potential bidders carefully in case three bidders cannot be located.**

c) Conduct a Pre-Bid Conference

A pre-bid conference allows bidders to ask questions regarding the desired purchase. The date for the pre-bid conference is stated in the Bid Solicitation. Hold the conference soon after the invitations to bid have been sent so that unclear areas may be addressed. The pre-bid conference is more effective if prospective bidders submit written questions for review prior to the conference. Attendance by prospective bidders is usually optional but can be required if desired. It is also possible for interested bidders to participate by phone.

4) Bid Review and Award

a) Convene a Review Committee

A review committee should be convened to evaluate the bids, the qualifications of the bidders, and to determine the competitiveness of the bids. This committee would logically include some or all of the individuals and functional areas represented in the Oversight Working Group. The committee should review bids or proposals, arrange for negotiations with the bidders if necessary, and select the final bidder.

b) Conduct Evaluation Process and Criteria

Example criteria and scoring procedures for the RFP procurement method are included in the APTA Standard Bus Procurement Guidelines.

c) Review Bids for Required Elements/Responsiveness

Bids or proposals must be reviewed to determine whether they contain all required elements. The contractor must submit the original bid and required number of copies by the due date as stated in the Bid Solicitation. The bid tabulation sheet provides the framework for the bid review.

i) IFB Method Each bid should be in a sealed envelope. The bids are opened publicly at the time specified in the proposal. The contractor must include documents required in the Bid Package. At a minimum, this will include the “Offer” form and Price/Cost information. Award of contract is made to the bidder quoting the lowest total bid, including delivery charges, provided the bid is responsive to all procurement requirements.

ii) RFP Method The review and evaluation process for the RFP procurement method includes a broader range of items since price is not the only criteria for selection. The procuring agency reviews the RFP to ensure that the contractor has completed both a technical and price proposal. Evaluation criteria should be developed in each of the following categories:

- Technical
- Qualifications and Resources
- Management
- Price
- Other Financial Impacts

Proposals are typically not opened publicly and are often kept confidential. Only the selection committee and evaluation team should review the proposals.

d) Notify Selected and Rejected Bidders

Once a final decision is reached on which contractor to award the bid, a representative from the agency must sign the solicitation “Award” form and deliver it to the successful bidder. Unsuccessful bidders should be notified of the final award decision.

e) Handling Appeals

A bidder has the right to protest a decision if it feels the bid was made improperly or unfairly. The procuring agency must follow the internal protest policies and procedures as established earlier in the procurement process and inform the protesting contractor of related decisions in a timely manner. The contractor may appeal the decision by filing a protest in compliance with the FTA Circular 4220.1E (Appendix A, Section 7(k), Page 11), as well as state and local regulations.

f) ADOT Notified of Award and Sent Copy of Completed Pre-Award Audit Form

ADOT requires that the 5311 Program Manager be advised of bid award and given a copy of the completed Pre-Award Audit Form with accompanying documents.

5) Post-Delivery Activities

Once vehicles or other equipment has been delivered, several activities must be addressed.

- a) Warranty Arrangements must be made with the dealer.
- b) Post Delivery Audit Form must be sent to ADOT with copies of the following:
 - Insurance certificate with ADOT listed as additional insured
 - Copy of title showing ADOT as lien holder

After the vehicle or other equipment have been put into service, grantees must comply with the reporting requirements included in the Section 5311 Handbook and Application, including performance reports, ADOT vehicle inspection, site visits and lien releases.

Grantee Procurement Process Checklist

A Grantee Procurement Process Checklist has been developed to summarize this procurement process.

If your local transit agency is conducting the procurement process locally, this Checklist must be submitted to ADOT at the time fund reimbursement is requested.

If your transit agency is using an intergovernmental (piggybacking) procurement, you DO NOT NEED to complete this checklist.

GRANTEE PROCUREMENT CHECKLIST
For Local Transit Agency Conducting Own Procurement Process

Pre-Bid Process

- Determine scope of procurement
- Establish oversight-working group
- Plan the procurement process
- Determine procurement method (IFB or RFP) including evaluation process
- Establish appeal process

Bid Package

- Develop draft IFB or RFP
 - Uniform terms and conditions
 - Warranty specifications
 - Insurance requirements
 - Detailed specifications (IFB) or general description (RFP)
 - Required and recommended forms
 - Bid Solicitation Form
 - Information about evaluation process
- Oversight Working Group and TAC review of IFB or RFP
- **First Review Point: ADOT Program Manager Review of Vehicle Specifications and IFB or RFP**

The Bid Itself

- Identify and notify potential bidders. (Minimum of Three or Document Efforts)
- Advertise IFB or RFP
- Distribute bid package to interested parties after ADOT authorization
- Conduct pre-bid conference

Bid Review and Award

- Convene a bid review committee
- Conduct evaluation process based on established criteria
- Notify selected and rejected bidders
- Handle protests on established procedures
- **Second Review Point: Submit successful bid results to ADOT (Include Pre-Award Audit form)**

Post-Delivery Activities

- Warranty arrangement made with dealer
- **Third Review Point: Post delivery audit form completed and submitted with:**
 - Insurance certificate showing ADOT as additional insured**
 - Copy of application for title showing ADOT as lien-holder**
- Request reimbursement from ADOT for federal grant funding

****Indicates ADOT Section 5311 Program Manager review and/or approval points**



Chapter III. Management Requirements: Transit Agency Independently Conducts Local Procurement Process

Traditionally, most transit agencies have elected to issue an invitation for a bid or request for proposal independently of other transit agencies. Under this process, the individual transit agency is responsible for completing all the steps outlined in Chapter II.

Chapter Three (Yellow Pages) provides background information and required forms for completing the procurement process at the local transit agency level. If you are submitting an intergovernmental (piggyback) procurement, go directly to Chapter Four (Blue Pages).

Issues for Agency Level Procurement

Several elements of the Bid Package must be given special consideration. First, vehicle specifications must be crafted to allow for full and open competition. ADOT experience requires that the specification be formatted to provide a clear response by the bidder that each individual component specification will be provided by indicating “yes/no/ or approved equal.” This requirement is based on repeated experience of vehicles not meeting agency expectations when delivered. A second recent addendum to the FTA procurement process requires that an Independent Cost Estimate be utilized to verify bid price is consistent with local market expectations.

Vehicle Specifications

Circular 4220.1E (Appendix A, Paragraph (8)(a), Pages 13-14) identifies the requirement for a full and open competition. Along with other standards, grantees are prohibited “specifying only a “brand name” product instead of allowing “an equal” product to be offered without listing its’ salient characteristics.

However, grantee may define characteristics in commonly used language such as:

“(a) ‘Original Equipment Manufacturer (OEM) part #123 or approved equal that complies with the original equipment manufacturer’s requirements or specifications and will not compromise any OEM warranties’; or

(b) ‘Original Equipment Manufacturer part #123 or approved equal that is appropriate for use with and fits properly in (describe the bus, engine, or other component the part must be compatible with) and will not compromise any OEM warranties.’”

Another significant challenge is clarifying communication between the grantee and vendor in terms of vehicle specification. To accommodate both the federal requirements and need for clear understanding the components of the vehicle bid, the following format for vehicle specification will be required.

Example:

Component	Specification	Yes	No/Approved Equal
Alternator	Heavy Duty, 200 amp output at idle minimum		
Steering	Power. Heavy Duty. Gear will be Saginaw 710 with a 17:5:1 ratio. Douglas Tilt and Telescopic column.		

Important: “Yes-No/Approved Equal” format is a required by ADOT

Independent Cost Estimate

In April 2005, the requirement to provide an “independent cost estimate” for all procurement contracts was expanded. While this process is complex for facility construction processes, it is relatively straightforward for vehicle purchases.

FTA Circular 4220.1E, (Appendix A, Paragraph 10, Pages 19-20) provides that grantees must perform a cost or price analysis in connection with every procurement action, including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals.

“Equipment estimates can often be prepared from published price lists or from past competitive procurements updated with inflation factors. Grantees may find relevant pricing data by contacting other agencies that obtained competitive bids for the same equipment or supplies. In the case of specialized equipment, care must be taken that the source of the estimates is not disproportionately obtained from one supplier.”

FTA Required Forms/Recommended Bid Package

Your sponsoring agency, city or county government will most likely have an established purchasing policy. In most instances, this policy will cover many of the “model” contract clauses necessary for procurement using federal funds. However, several of the required

forms will be specific to the purchase of equipment/capital improvements using FTA funding.

The FTA Best Practice Procurement Manual provides a series of forms that are applicable to capital procurement with federal funds. These forms serve two different functions:

- forms for communication of information between the procuring agency and the prospective bidders, and
- forms to certify compliance by the procuring agency and contractors with federal requirements.

At minimum, you must be able to provide ADOT confirmation that you have addressed the information required by the FTA. The order of materials for this Recommended Bid Package is from the American Public Transportation Association Standard Bus Procurement Guidelines and may be adapted to comply with local procurement policies.

ADOT Management Requirements: Agency Level Procurement

In order to monitor compliance with FTA regulations in the administration of the Section 5311 program, ADOT Public Transportation Division requires that all grantees review items and provide related documents at various points in the procurement process.

- After completing the Bid Package and prior to soliciting bids, the Bid Package must be submitted to the Section 5311 Program Manager for review of equipment specifications and compliance with state and federal clauses and assurances. Bids cannot be solicited until ADOT reviews the Bid Package and an authorization to solicit bids is received by the grantee from ADOT.
- After bids have been solicited and have been awarded to a contractor, the Section 5311 Program Manager must be notified and a copy of the Pre-Award Audit form (Appendix D, Page 3) must be sent to ADOT.
- Once vehicles or other equipment have been delivered, the Post-Delivery Audit form (Appendix D, Page 5) must be sent to ADOT with copies of:
 - Copy of Application for Certificate of Title showing ADOT as lien holder. (See sample title application in Appendix D, Page 8)
 - Insurance certificate with ADOT listed as an additional insured (See sample insurance certificate in Appendix D, Page 9)

All grantees completing procurement locally at the transit agency level must provide ADOT with two completed checklist with required attachments prior to reimbursement from the Section 5311 grant program:

- **Grantee Procurement Process Checklist** (Page 15)
This checklist summarizes the five steps required for any procurement process. Note review points by ADOT Program Manager
- **Bid Package Checklist/Agency Level Procurement** (Page 19)
Summary Document that includes ADOT Management and Form Requirements and includes Bid Package and FTA Required certifications.

BID PACKAGE CHECKLIST
Local Transit Agency Conducting Own Procurement Process

	ADOT Management Requirements:	When Required:	Completed By: (Initial)
<input type="checkbox"/>	Procurement Process Checklist	Prior to Reimbursement	
<input type="checkbox"/>	Bid Package Checklist	Prior to Reimbursement	
	ADOT Form Requirements:		
<input type="checkbox"/>	Pre-Award Audit	Prior to Reimbursement	
<input type="checkbox"/>	Post Delivery Audit	Prior to Reimbursement	
<input type="checkbox"/>	Overall Federal Regulation Compliance	Prior to Reimbursement	
<input type="checkbox"/>	Copy of AZ Title Application/ ADOT as lien holder	Prior to Reimbursement	
<input type="checkbox"/>	Certificate of Liability Insurance/ ADOT as Additional Insured	Prior to Reimbursement	
	Bid Package Including:	Prior to Reimbursement	
<input type="checkbox"/>	Bid Solicitation Summary	Optional	
<input type="checkbox"/>	Equipment Specifications	Must include Yes/No/ Approved Equal Format	
<input type="checkbox"/>	Request for Change or Approved Equal	Optional	
<input type="checkbox"/>	Acknowledgment of Addenda	Optional	
<input type="checkbox"/>	Bidder Service and Parts Support Data	Optional	
<input type="checkbox"/>	Buy America Certification	Contracts over \$100,000	Manufacturer
<input type="checkbox"/>	Debarment and Suspension Certification	Contracts over \$100,000	Vendor
<input type="checkbox"/>	Lobbying Certification	Contracts over \$100,000	Vendor and Manufacturer
<input type="checkbox"/>	DBE Approval; Certification	Contracts over \$250,000	Manufacturer
<input type="checkbox"/>	Certification of Compliance with Bus Testing Requirements	All contracts	Manufacturer
<input type="checkbox"/>	Overall Federal Regulation Compliance	All contracts	Vendor
<input type="checkbox"/>	ADOT Forms (Pre-Bid, Post-Delivery, Compliance)	All contracts	
<input type="checkbox"/>	Form for Proposal Deviation	Optional	
<input type="checkbox"/>	Pricing Schedule	Optional	
<input type="checkbox"/>	Offer	Optional	
<input type="checkbox"/>	Award	Optional	

Chapter IV: Management Requirements: Transit Agency Works With Another Agency to Conduct Intergovernmental (Piggybacking) Procurement

The FTA encourages grantees to utilize available state and local intergovernmental agreements for procurement of capital goods. This allows smaller agencies to utilize the expertise of larger organizations that have procurement departments with the legal and technical resources to ensure compliance with the many requirements of purchasing capital equipment with Federal funds.

Chapter Four (Blue Pages) provides background information and required forms for completing the procurement process if you are submitting a joint, interagency, or piggyback procurement. If you are completing an independent procurement at the local transit agency level, go back to Chapter Three (Yellow Pages).

The various alternatives for partnering with other government or transit agencies are outlined in [FTA Circular 4220.1E](#), (Appendix A, Paragraph 7(e), Pages 10-11). Intergovernmental procurements options include:

“e. Inter-Governmental Procurement Agreements.

1. Grantees are encouraged to utilize available state and local **intergovernmental agreements** for procurement or use of common goods and services. When obtaining goods or services in this manner, grantees must ensure all federal requirements, required clauses, and certifications (including Buy America) are properly followed and included, whether in the master intergovernmental contract or in the grantee's purchase document. [15](#)
2. Grantees are encouraged to **jointly procure** goods and services with other grantees. When obtaining goods or services in this manner, grantees must ensure all federal requirements, required clauses, and certifications are properly followed and included in the resulting joint solicitation and contract documents. [16](#)
3. Grantees may **assign contractual rights** to purchase goods and services to other grantees if the original contract contains appropriate assignability provisions. Grantees who obtain these contractual rights (commonly known as '**piggybacking**') may exercise them after first determining the contract price remains fair and reasonable. [17](#)”

15. Sub-paragraph (1) looks primarily to State government contracts that allow subordinate government agencies to buy from established schedules akin to the GSA

schedules in Federal proactive. FTA believes grantees may buy through these contracts provided all parties agree to append the required Federal clauses in the purchase order or other documents that effects the grantee's procurement. When buying from these schedule contracts, grantees should obtain Buy America certification before entering tin to the purchase order. Where the product to be purchased is Buy America compliant, the grantee will still have to obtain a waiver from FTA before proceeding.

16. Sub-paragraph (2) reflects the FTA's belief that grantees should consider combining efforts in their procurements to obtain better pricing through larger purchases. Joint procurements offer the additional advantage of being able to obtain goods and services that exactly match each cooperating grantee's requirements. We believe this is superior to the practice of "piggybacking" since "piggybacking" does not combine buying power at the pricing stage and may limit a grantee's choices to those products excess to another grantee's needs.

17. Sub-paragraph (3) reflects grantees' continuing ability to assign contractual rights to others – "piggybacking." FTA believes it is extremity important that grantees ensure they contract only for the reasonable anticipated need and do not add qualities or options to contracts solely to allow them to assign these quantities or options at a later date.

Additional clarification provided by the FTA for intergovernmental procurements includes:

1. "Tag-ons" are not permitted. This term is defined as the adding on to the contracted quantified (base and options) as originally advertised, completed, and awarded, whether for the use of the buyer or for others and then treating the add-on portion as though it met the requirement of competition. *An entity may not increase/modify elements to the original bid proposal. The original bid must have included details about potential additional purchases.*
2. The term "piggyback" is defined as the post-award use of a contractual document/process that allows someone who was not contemplated in the original procurement to purchase the same supplies or equipment through the original document/process.

Piggybacking is permissible when the solicitation document and the resultant contract contain an assignability clause that provided for the assignment of all or part of the specified deliverables as originally advertised, competed, and awarded. This includes the base and options quantities. In addition, the original solicitation and resultant contract must contain both a minimum and maximum quantity, which represent the reasonably foreseeable need of the parties to the solicitation. *An entity must specific the number of potential additional purchases in the original bid proposal.*

ADOT Management Requirements: Transit Agency Works Another Agency to Conduct Intergovernmental (Piggybacking) Procurement

Over the past several years, several grantees have successfully worked together with other agencies to procure equipment. Examples include partnering with the University of Arizona, City of Phoenix, and Phoenix Metro. These large organizations issued a bid

proposal for equipment for their internal service needs and included an option for additional purchases in the original bid along with an assignability clause.

Compliance with ADOT Management and federal requirements remain the responsibility of the individual grantee. **In order to review these elements, you must obtain a complete copy of the original bid package from the agency you are working with on the procurement.** Bid packages are often posted on the website of the partnering agency. If the package is not on the website, you can obtain a copy from the agency procurement officer. Keep the bid package on file for reference.

Four documents/checklists with required attachments must be provided to ADOT prior to reimbursement:

- **Copy of the Bid Specifications:** (From Original Bid Package)
The specifications for the vehicle to be purchased must be submitted to the Section 5311 Program Manager prior to committing to any interagency agreement. After receiving approval for the purchase, you may proceed to submit the documentation required by the partner agency to proceed with the procurement.
- **Bid Package Checklist:** (Page 24)
Summary document that includes ADOT Management Requirements as well as FTA Required Forms.

ADOT Management Requirements:

- Verification that the TAC/Advisory Committee/Council approved the purchase of the vehicle.
- FTA Intergovernmental Procurement Review
- Memorandum of Record: a one-page summary providing an overview of the procurement process.
- Piggybacking Checklist: only if procurement process was passed on assignment of post-award vehicles.
- Application for AZ Certificate of Title, ADOT lien holder
- Certificate of Liability Insurance, ADOT additional insured

FTA Required Forms

- Most provided by Vendor/Manufacturer
- Based on contract cost levels – over \$100,000, \$250,000, etc.

- **FTA Intergovernmental Procurement Review Checklist** (Page 25)
Information to complete this checklist will come from Original Bid Package and requires Yes/No Responses. As part of this FTA Checklist, you must prepare a Memorandum of Record. For specific requirements, see FTA Circular 4220.1E (Appendix A, Paragraph 7(i), Page 11). It is suggested this Memorandum be limited to not more than one page and include:

- The rationale for the method of procurement: advantage of partnership to ensure all federal requirements are met, take advantage of existing contracts in terms of administration and cost savings, etc.
 - Selection of contract type: intergovernmental procurement agreement met needs of agency, or joint procurement leveraged needs of multiple small agencies, or assignment/piggybacking of other agencies procurement was available, etc.
 - Reasons for contractor selection: contract was awarded based on qualification, experience etc.
 - Basis for Contract Price: contract was awarded based on low price, best delivery, etc.
- **Piggybacking Worksheet** (Page 26)
Only to be completed if procurement is made using assignment of post-award contracts.

These forms are provided in Word format and may be accessed on the ADOT-Public Transportation Division website, www.azdot.gov/PTD/index.asp.

BID PACKAGE CHECKLIST

Transit Agency Works With Another Agency to Conduct Intergovernmental
(Piggybacking) Procurement

	ADOT Management Requirements:	When Required:	Completed by: (Initial)
<input type="checkbox"/>	Copy of Vehicle Specification for approval by Program Manager	Prior to Submitting Purchase Documents	
<input type="checkbox"/>	Minutes from TAC/Advisory Meeting approving procurement of selected vehicle/equipment.	Prior to Reimbursement	
<input type="checkbox"/>	FTA Intergovernmental Procurement Review Checklist	Prior to Reimbursement	
<input type="checkbox"/>	Memorandum of Record	Prior to Reimbursement	
<input type="checkbox"/>	Piggybacking Procurement Checklist (if applicable)	Prior to Reimbursement	
<input type="checkbox"/>	Application for AZ Certificate of Title/ADOT as lien holder	Prior to Reimbursement	
<input type="checkbox"/>	Certificate of Liability Insurance/ADOT as Additional Insured	Prior to Reimbursement	
	FTA Required Forms:	Prior to Reimbursement	
<input type="checkbox"/>	Buy America Certification	Contracts over \$100,000	Manufacturer
<input type="checkbox"/>	Debarment and Suspension Certification	Contracts over \$100,000	Vendor
<input type="checkbox"/>	Lobbying Certification	Contracts over \$100,000	Vendor and Manufacturer
<input type="checkbox"/>	DBE Approval; Certification	Contracts over \$250,000	Manufacturer
<input type="checkbox"/>	Certification of Compliance with Bus Testing Requirements	All contracts	Manufacturer
<input type="checkbox"/>	Overall Federal Regulation Compliance	All contracts	Vendor

FTA INTERGOVERNMENTAL PROCUREMENT REVIEW CHECKLIST

	Yes	No
1. Did you determine that the contract is still in effect or can be modified by the awarding Agency to permit sufficient lead time to make the required deliveries to you Agency?		
2. Did you determine that the specifications in the existing contract would meet your needs?		
3. Did you review the terms and conditions carefully to determine that they are acceptable to you, e.g. warranty provisions, insurances requirements, etc?		
4. Did you determine that the requirements needed by your agency would not be beyond the scope of the existing contact?		
5. Did you determine that the contract was awarded competitively, either through sealed bids or competitive proposals?		
6. Did you determine that the contract prices originally established are still fair and reasonable?		
7. Did you determine that the contract has submitted all federally required certification to the awarding agency?		
8. Did you complete the Piggybacking Worksheet"? <i>(Some of the items on the Piggybacking Worksheet may overlap this Checklist)</i>		
9. Did you prepare a Memorandum of Record documenting your analysis of the various items mentioned above?		

PIGGYBACKING WORKSHEET

	YES	NO
1. Have you obtained a copy of the contract and the solicitation document, including the specifications and any Buy America Pre-award or Post-delivery audits/		
2. Does the solicitation and contract contain an express “assignability” clause that provides for the assignment of all or part of the specified deliverables?		
3. Did the Contractor submit the “certifications” required by Federal regulations” See BPPM Section 4.3.3.2		
4. Does the contract contain the clauses required by Federal regulations? (See Appendix C)		
5. Were the piggybacking quantities included in the original solicitation; i.e. were they in the original bid and were they evaluated as part of the contract award decision?		
6. If this is an indefinite quantity contract, did the original solicitation and resultant contract contain both a minimum and maximum quantity, and did these represent the reasonable foreseeable needs of the parties to the contract?		
7. If this piggybacking action represents the exercise of an action in the contract, is the option provision still valid or has it expired?		
8. Does Arizona state law allow for the procedures used by the original contracting agency: e.g. negotiations vs. sealed bids?		
9. Was a cost or price analysis performed by the original contracting agency documenting the reasonableness of the price? Obtain a copy for your files.		
10. Does the contract term comply with the five-year limit established by the FTA?		
11. Was there a proper evaluation of the bids or proposals? Include a copy of the analysis in your files.		
12. If you will require changes to the vehicle, are they “within the scope” of the contract or are they “cardinal changes”? See BPPM Section 9.2.1		



Appendix A

FTA CIRCULAR 4220.1 E

Third Party Contracting Requirements

This circular sets forth the requirements a grantee must adhere to in the solicitation, award and administration of its third party contracts. These requirements are based on the common grant rules, Federal statutes, Executive orders and their implementing regulations, and FTA policy. Information is current as of January 2006. For updates go to the FTA website. Hot-linked access is available from the ADOT Public Transportation Division website at <http://www.azdot.gov/PTD>.

Significant Points:

Recognizing that most FTA grantees have experience with the third party contracting requirements of the "common grant rules" (49 C.F.R. parts 18 and 19), FTA will rely primarily on grantees' "self-certifications" that their procurement system meets FTA requirements and that a grantee has the technical capacity to comply with Federal procurement requirements. All grantees must "self certify" as part of the Annual Certification/Assurance Process. (Note: This is part of Annual ADOT/Agency Contract)

Grantees alone will be responsible in accordance with good administrative practice and sound business judgment for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the grantee of any contractual responsibility under its contracts.

New Requirement: Independent Cost Estimate

Effective April 2005, FTA Circular 4220.1E, Paragraph 10 provides that grantees must perform a cost or price analysis in connection with every procurement action, including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals.

For a vehicle purchase, the Independent Cost Estimate can be completed by contacting another transit agency to verify that bid cost is consistent. For facility construction, local costs must be reviewed.

BPPM Discussion of Independent Cost Estimate

A logical element of your annual procurement plan is a cost estimate for each major procurement. It is normally cost-effective to have an independent cost estimate that also satisfies the Federal requirement and to have such an estimate at some time before receiving bids or proposals. You may obtain such estimates from published competitive prices, results of competitive procurements, or estimates by in-house or outside estimators.

BPPM Appendix B.20 – Independent Cost Estimate Form, provides a format and guidance for grantee in-house estimators that should be helpful. This form was developed by one transit agency to assist its user organizations with the development of independent cost estimates and statements of work.

Purpose

The following are purposes of establishing a cost estimate using a method independent from the prospective offerors in advance of the offer:

- it ensures a clear basis for the grantee's determination that the benefits of the procurement warrant its cost;
- it provides essential procurement and financial planning information (see "Advance Procurement Plan," above); and
- it provides a basis for price analysis, which may assist in obviating the need for a more burdensome cost analysis.

Although it may seem self-evident that the agency has at least implicitly prepared a cost estimate in deciding to proceed with a procurement, many projects can change in scope without clear communication among the people responsible. For example, a management information system for parts inventory control may seem cost-effective, but may grow during discussions to include unanticipated electronic imaging, scanning of repair manual diagrams, unanticipated distributed processing devices, and multi-user programming. An independent cost estimate prepared when the agency first undertook the project could alert all involved that the project had grown beyond the scope originally intended. A deliberate decision to reduce the scope or revise the cost estimate can be made at each step of the project's development.

The cost estimate is essential information for procurement planning. It gives the contracting official some indication of the complexity of the project and the degree of investment that offerors will want to make in the procurement process, thus allowing planning of procurement time and personnel. It is also the basis for

determining which procurement procedures apply to the project. If the cost estimate exceeds \$100,000, for example, a competitive solicitation is normally required. (State or local requirements may be stricter.) Similarly, certification and bonding requirements imposed by Federal regulations are triggered based on the value of the contract. (See "Methods of Procurement" FTA Circular 4220.1E, § 9; "Bonding Requirements", § 11; "Buy America," Master Agreement § 14 (a); "Debarment and Suspension" Master Agreement §3 b.) However, the application of these and most other requirements depends not on the cost estimate, but on the contract amount.

A final purpose of the independent cost estimate is for price analysis. Either a cost or price analysis is required for every contract and every change order so that the essential objective of a reasonable price is assured. The adequacy of the price or cost analysis is a critical responsibility of the contracting official. In many contract awards the bids alone may be adequate to assure a reasonable price. However, in all negotiated procurements, most contract changes, sealed bids where price competition was not sufficient, and non-competitive awards, further analysis is required. An independent cost estimate prepared before receipt of offers is invaluable in these circumstances. The estimate alone may, if prepared with sufficient detail and reliability in the contracting official's judgment, be sufficient to determine whether the price is reasonable. It will at least supplement other pricing data in making the determination. Because cost analysis can be time consuming, expensive, and raise disputes, the availability of an independent pre-bid estimate, which allows for price analysis and obviates cost analysis, is worth material pre-bid effort.

In these circumstances, it is essential that the grantee's cost estimate be developed independently from the offerors' pricing submissions. If a bus purchase is being prepared, for example, the prospective offerors should not be relied upon for the independent cost estimate, except in the form of prior bids submitted with adequate competition.

Equipment estimates can often be prepared from published price lists or from past competitive procurements updated with inflation factors. Grantees may find relevant pricing data by contacting other agencies that obtained competitive bids for the same equipment or supplies. In the case of specialized equipment, care must be taken that the source of the estimates is not disproportionately obtained from one supplier.

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Third Party Contracting Requirements

Number C 4220.1E

06-19-03

U.S. Department
of Transportation

**Federal Transit
Administration**

In addition to the Circular, there is a fully annotated version of the Circular that explains FTA's interpretations of the various provisions of the Circular and is regularly updated to reflect changes in procurement practices. Get this annotated (footnoted) version: [\[HTML\]](#) [\[Word\]](#).

1. PURPOSE. This circular sets forth the requirements a grantee must adhere to in the solicitation, award and administration of its third party contracts. These requirements are based on the common grant rules, Federal statutes, Executive orders and their implementing regulations, and FTA policy.

2. CANCELLATION. This circular cancels FTA Circular 4220.1D "Third Party Contracting Requirements," dated 4-15-96.

3. REFERENCES.

a. Federal Transit Laws, 49 U.S.C. Chapter 53.

b. Transportation Equity Act for the 21st Century 1998 (TEA-21), P.L. 105-178 as amended, TEA-21 Restoration Act 1998, P.L. 105-206.

c. Sections 4001 and 1555 of the Federal Acquisition Streamlining Act of 1994, 41 U.S.C. § 403(11) and 40 U.S.C. § 481(b), respectively,

d. 49 C.F.R. part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

e. 49 C.F.R. part 19, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations.

f. Executive Order 12612, "Federalism," dated 10-26-87.

g. FTA Circular 5010.1C, "Grant Management Guidelines," dated 10-1-98.

h. FTA Master Agreement [PDF].

i. Appendix D, Best Practices Procurement Manual.

4. APPLICABILITY. This circular applies to all FTA grantees and subgrantees that contract with outside sources under FTA assistance programs. FTA grant recipients who utilize FTA formula funds for operating assistance are required to follow the requirements of this circular for all operating contracts. These requirements do not apply to procurements undertaken in support of capital projects completely accomplished without FTA funds or to those operating and planning contracts awarded by grantees that do not receive FTA operating and planning assistance.

Congestion Mitigation and Air Quality (CMAQ) and Job Access/Reverse Commute (JARC) project funds may be used for operations. Although grantees must follow circular requirements for any specific contracts that utilize CMAQ or JARC funds, the use of CMAQ and JARC funds for operations does not trigger the applicability of the circular to all other operating contracts.

Grantees who utilize formula capital funds for preventive maintenance contracts are subject to the following requirements of the circular: If FTA formula capital funds are fully allocated to discrete preventive maintenance contracts, then the requirements of this circular will apply only to those discrete contracts and must be identified and tracked by the grantee. If the FTA formula funds are not allocated to discrete contracts then all preventive maintenance contracts are subject to the requirements of the circular.

a. States. When procuring property and services under a grant, a State will follow the same procurement policies and procedures that it uses for acquisitions that are not paid for with Federal funds. States must, at a minimum, comply with the requirements of paragraphs 7m, 8a and b, and 9e of this circular and ensure that every purchase order and contract executed by it using Federal funds includes all clauses required by Federal statutes and executive orders and their implementing regulations.

b. All Other Recipients. Subgrantees of states and all other FTA grantees (to include regional transit authorities) will administer contracts in accordance with this circular.

5. POLICY. FTA's role in grantee procurements is reflective of Executive Order 12612, Federalism. The executive order directs Federal agencies to refrain from substituting their judgment for that of their recipients unless the matter is primarily a Federal concern and to defer, to the maximum extent feasible, to the States to establish standards rather than setting national standards.

In 1996, FTA reduced its role in grantee third party procurement activity in several important respects. To ensure compliance with Federal procurement requirements, FTA will continue to provide guidance and technical assistance

to its grantees consistent with its Federal oversight responsibilities.

a. Grantee Self-Certification. Recognizing that most FTA grantees have experience with the third party contracting requirements of the "common grant rules" (49 C.F.R. parts 18 and 19), FTA will rely primarily on grantees' "self-certifications" that their procurement system meets FTA requirements and that a grantee has the technical capacity to comply with Federal procurement requirements. All grantees must "self certify" as part of the Annual Certification/Assurance Process.

FTA will monitor compliance with this circular as part of its routine oversight responsibilities. If FTA becomes aware of circumstances that might invalidate a grantee's self-certification, FTA will investigate and recommend appropriate measures to correct whatever deficiency may exist.

b. FTA Review of Third Party Contracts. FTA relies on the validity of each grantee's self-certification rather than on a pre-award review of third party contracts. Accordingly, FTA will rely on periodic, post-grant reviews to ensure that grantees comply with Federal requirements and standards. Grantees are still free to request FTA's pre-award review of their procurements as part of FTA's technical assistance program. Conversely, if FTA requests to review the record of a particular procurement, grantees must make their procurement documents available for FTA's pre-award (or post-award) review.

c. Procurement System Reviews. FTA is required by 49 U.S.C. §5307 to perform reviews and evaluations of grant programs and to perform a full review and evaluation of the performance of grantees in carrying out grant programs with specific reference to their compliance with statutory and administrative requirements. Accordingly, FTA will perform procurement system reviews as part of its on-going oversight responsibility. FTA may recommend "best practices" in order to assist the grantee in improving its procurement practices. In such cases, FTA will identify such recommendations as "advisory."

d. FTA Procurement Technical Assistance. FTA provides procurement training and technical assistance at both regional and national levels by offering various instructional courses, by conducting regional technical assistance conferences, by providing assistance by a contractor on an as-needed basis, and by updating and revising the FTA "Best Practices Procurement Manual." The manual contains procurement guidance and "best practices" that grantees may choose to follow in performing their procurement functions.

e. Contract Clauses and Provisions. The Master Agreement, issued annually, lists many but not all FTA and other crosscutting Federal requirements

applicable to FTA grantees. Many of these requirements are related to grantee procurements. Further guidance and suggested wording for contract clauses and provisions is provided in the "Best Practices Procurement Manual."

f. Use of GSA Schedules is restricted to those transit properties with specific legislative authority to use them.

6. DEFINITIONS. All definitions in 49 U.S.C. §5302 are applicable to this circular. The following definitions are provided:

a. "Grantee" means the public or private entity to which a grant or cooperative agreement is awarded by FTA. The grantee is the entire legal entity even if only a particular component of the entity is designated in the assistance award document.

For the purposes of this circular, "grantee" also includes any subgrantee of the grantee. Furthermore, a grantee is responsible for assuring that its subgrantees comply with the requirements and standards of this circular, and that subgrantees are aware of requirements imposed upon them by Federal statutes and regulations.

b. "State" means any of the several states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. "State" does not include any public and Indian housing agency under the United States Housing Act of 1937.

c. "FTA" refers to the Federal Transit Administration.

d. "Third party contract" refers to any purchase order or contract awarded by a grantee to a vendor or contractor using Federal financial assistance awarded by FTA.

e. "Piggybacking" is an assignment of existing contract rights to purchase supplies, equipment, or services.

f. "Tag-on" is defined as the addition of work (supplies, equipment or services) that is beyond the scope of the original contract that amounts to a cardinal change as generally interpreted in Federal practice by the various Boards of Contract Appeals. "In scope" changes are not tag-ons.

g. "Best Value" is a selection process in which proposals contain both price and qualitative components, and award is based upon a combination of price and qualitative considerations. Qualitative considerations may include technical design, technical approach, quality of proposed personnel, and/or management plan. The award selection is based upon consideration of a

combination of technical and price factors to determine {or derive} the offer deemed most advantageous and of the greatest value to the procuring agency.

h. Design-Bid-Build. The project delivery approach where the grantee commissions an architect or engineer to prepare drawings and specifications under a design services contract, and separately contracts for at-risk construction, by engaging the services of a contractor through sealed bidding or competitive negotiations.

i. Design-Build. A system of contracting under which one entity performs both architectural/engineering and construction under one contract.

7. GENERAL PROCUREMENT STANDARDS APPLICABLE TO THIRD-PARTY PROCUREMENTS.

a. Conformance with State and Local Law. Grantees and subgrantees shall use their own procurement procedures that reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law, including the requirements and standards identified in this circular. If there is no State law on a particular aspect of procurement, then Federal contract law principles will apply.

b. Contract Administration System. Grantees shall maintain a contract administration system that ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

c. Written Standards of Conduct. Grantees shall maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer, agent, immediate family member, or Board member of the grantee shall participate in the selection, award, or administration of a contract supported by FTA funds if a conflict of interest, real or apparent, would be involved.

Such a conflict would arise when any of the following has a financial or other interest in the firm selected for award:

- (1) The employee, officer, agent, or Board member,
- (2) Any member of his/her immediate family,
- (3) His or her partner, or
- (4) An organization that employs, or is about to employ, any of the above.

The grantee's officers, employees, agents, or Board members will neither

solicit nor accept gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantees may set minimum rules when the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by state or local law or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary action for violation of such standards by the grantee's officers, employees, or agents, or by contractors or their agents.

d. Ensuring Most Efficient and Economic Purchase. Grantee procedures shall provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase.

Where appropriate, an analysis will be made of lease versus purchase alternatives and any other appropriate analysis to determine the most economical approach.

e. Intergovernmental Procurement Agreements.

(1) Grantees are encouraged to utilize available state and local intergovernmental agreements for procurement or use of common goods and services. When obtaining goods or services in this manner, grantees must ensure all federal requirements, required clauses, and certifications (including Buy America) are properly followed and included, whether in the master intergovernmental contract or in the grantee's purchase document.

(2) Grantees are also encouraged to jointly procure goods and services with other grantees. When obtaining goods or services in this manner, grantees must ensure all federal requirements, required clauses, and certifications are properly followed and included in the resulting joint solicitation and contract documents.

(3) Grantees may assign contractual rights to purchase goods and services to other grantees if the original contract contains appropriate assignability provisions. Grantees who obtain these contractual rights (commonly known as 'piggybacking') may exercise them after first determining the contract price remains fair and reasonable.

f. Use of Excess Or Surplus Federal Property. Grantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property, whenever such use is feasible and reduces project costs.

g. Use of Value Engineering in Construction Contracts. Grantees are encouraged to use value engineering clauses in contracts for construction

projects. FTA cannot approve a New Starts grant application for final design funding or a full funding grant agreement until value engineering is complete (see FTA Circular 5010.1C).

h. Awards to Responsible Contractors. Grantees shall make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

i. Written Record of Procurement History. Grantees shall maintain records detailing the history of each procurement. At a minimum, these records shall include:

- (1) the rationale for the method of procurement,
- (2) selection of contract type,
- (3) reasons for contractor selection or rejection, and
- (4) the basis for the contract price.

j. Use of Time and Materials Type Contracts. Grantees will use time and material type contracts only:

- (1) After a determination that no other type of contract is suitable; and
- (2) If the contract specifies a ceiling price that the contractor shall not exceed except at its own risk.

k. Responsibility for Settlement of Contract Issues/Disputes. Grantees alone will be responsible in accordance with good administrative practice and sound business judgment for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the grantee of any contractual responsibility under its contracts.

FTA will not substitute its judgment for that of the grantee or subgrantee, unless the matter is primarily a Federal concern. Violations of the law will be referred to the local, State, or Federal authority having proper jurisdiction.

l. Written Protest Procedures. Grantees shall have written protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding protests to FTA. All protest decisions must be in writing. A protester must exhaust all administrative

remedies with the grantee before pursuing a protest with FTA.

Reviews of protests by FTA will be limited to:

- (1) a grantee's failure to have or follow its protest procedures, or its failure to review a complaint or protest; or
- (2) violations of Federal law or regulation.

An appeal to FTA must be received by the cognizant FTA regional or Headquarters Office within five (5) working days of the date the protester learned or should have learned of an adverse decision by the grantee or other basis of appeal to FTA.

m. Contract Term Limitation. Grantees shall not enter into any contract for rolling stock or replacement parts with a period of performance exceeding five (5) years inclusive of options. All other types of contracts (supply, service, leases of real property, revenue and construction, etcetera) should be based on sound business judgment. Grantees are expected to be judicious in establishing and extending contract terms no longer than minimally necessary to accomplish the purpose of the contract. Additional factors to be considered include competition, pricing, fairness and public perception. Once a contract has been awarded, an extension of the contract term length that amounts to an out of scope change will require a sole source justification

n. Revenue Contracts. Revenue contracts are those third party contracts whose primary purpose is to either generate revenues in connection with a transit related activity, or to create business opportunities utilizing an FTA funded asset. FTA requires these contracts to be awarded utilizing competitive selection procedures and principles. The extent of and type of competition required is within the discretionary judgment of the grantee.

o. Tag-ons. The use of tag-ons is prohibited and applies to the original buyer as well as to others as defined in paragraph 6f.

p. Piggybacking. Piggybacking is permissible when the solicitation document and resultant contract contain an assignability clause that provides for the assignment of all or a portion of the specified deliverables as originally advertised, competed, evaluated, and awarded. If the supplies were solicited, competed and awarded through the use of an indefinite-delivery-indefinite-quantity (IDIQ) contract, then both the solicitation and contract award must contain both a minimum and maximum quantity that represent the reasonably foreseeable needs of the party(s) to the solicitation and contract. If two or more parties jointly solicit and award an IDIQ contract, then there must be a total minimum and maximum.

q. E-Commerce. E-Commerce is an allowable means to conduct procurements. If a grantee chooses to utilize E-Commerce, written procedures need to be developed and in place prior to solicitation and all requirements for full and open competition must be met in accordance with this circular.

8. COMPETITION.

a. Full and Open Competition. All procurement transactions will be conducted in a manner providing full and open competition. Some situations considered to be restrictive of competition include, but are not limited to:

(1) Unreasonable requirements placed on firms in order for them to qualify to do business;

(2) Unnecessary experience and excessive bonding requirements;

(3) Noncompetitive pricing practices between firms or between affiliated companies;

(4) Noncompetitive awards to any person or firm on retainer contracts;

(5) Organizational conflicts of interest. An organizational conflict of interest means that because of other activities, relationships, or contracts, a contractor is unable, or potentially unable, to render impartial assistance or advice to the grantee; a contractor's objectivity in performing the contract work is or might be otherwise impaired; or a contractor has an unfair competitive advantage;

(6) Specifying only a "brand name" product instead of allowing "an equal" product to be offered without listing its' salient characteristics.

Grantees may define the salient characteristics in language similar to the following:

(a) 'Original Equipment Manufacturer (OEM) part #123 or approved equal that complies with the original equipment manufacturer's requirements or specifications and will not compromise any OEM warranties'; or

(b) 'Original Equipment Manufacturer part #123 or approved equal that is appropriate for use with and fits properly in [describe the bus, engine, or other component the part must be compatible with] and will not compromise any OEM warranties'; and

(c) Any arbitrary action in the procurement process.

b. Prohibition Against Geographic Preferences. Grantees shall conduct procurements in a manner that prohibits the use of statutorily or

administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. This does not preempt State licensing laws. However, geographic location may be a selection criterion in procurements for architectural and engineering (A&E) services provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

c. Written Procurement Selection Procedures. Grantees shall have written selection procedures for procurement transactions. All solicitations shall:

(1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features that unduly restrict competition. The description may include a statement of the qualitative nature of the material, product, or service to be procured and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use.

Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. 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 equal” description may be used as a means to define the performance or other salient characteristics of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated.

(2) Identify all requirements that offerors must fulfill and all other factors to be used in evaluating bids or proposals.

d. Prequalification Criteria. Grantees shall ensure that all lists of prequalified persons, firms, or products that are used in acquiring goods and services are current and include enough qualified sources to ensure maximum full and open competition. Also, grantees shall not preclude potential bidders from qualifying during the solicitation period, which is from the issuance of the solicitation to its closing date.

9. METHODS OF PROCUREMENT. The following methods of procurement may be used as appropriate:

a. Procurement by Micro-Purchases. Micro-purchases are those purchases

under \$2,500. Purchases below that threshold may be made without obtaining competitive quotations. Such purchases are exempt from Buy America requirements. There should be equitable distribution among qualified suppliers and no splitting of procurements to avoid competition. The Davis-Bacon Act applies to construction contracts between \$2,000 and \$2,500. Minimum documentation is required: A determination that the price is fair and reasonable and how this determination was derived. The other requirements of paragraph 7(i) do not apply to micro-purchases.

b. Procurement by Small Purchase Procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that cost more than \$2,500 but do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. § 403(11) (currently set at \$100,000). If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.

c. Procurement By Sealed Bids/Invitation For Bid (IFB). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest in price.

(1) In order for sealed bidding to be feasible, the following conditions should be present:

(a) A complete, adequate, and realistic specification or purchase description is available;

(b) Two or more responsible bidders are willing and able to compete effectively for the business;

(c) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price; and

(d) No discussion with bidders is needed.

(2) If this procurement method is used, the following requirements apply:

(a) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time to prepare bids prior to the date set for opening the bids;

(b) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services sought in order for the bidder to properly respond;

(c) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(d) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. When specified in bidding documents, factors such as discounts, transportation costs, and life cycle costs shall be considered in determining which bid is lowest;

Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(e) Any or all bids may be rejected if there is a sound documented business reason.

(3) The sealed bid method is the preferred method for procuring construction if the conditions in paragraph 9c(1) above apply.

d. Procurement By Competitive Proposal/Request for Proposals (RFP). The competitive proposal method of procurement is normally conducted with more than one source submitting an offer, i.e., proposal. Either a fixed price or cost reimbursement type contract is awarded. This method of procurement is generally used when conditions are not appropriate for the use of sealed bids. If this procurement method is used the following requirements apply:

(1) Requests for proposals will be publicized. All evaluation factors will be identified along with their relative importance;

(2) Proposals will be solicited from an adequate number of qualified sources;

(3) Grantees will have a method in place for conducting technical evaluations of the proposals received and for selecting awardees;

(4) Awards will be made to the responsible firm whose proposal is most advantageous to the grantee's program with price and other factors considered; and

(5) In determining which proposals is most advantageous, grantees may award (if consistent with State law) to the proposer whose proposals offer the greatest business value to the Agency based upon an analysis of a tradeoff of qualitative technical factors and price/cost to derive which proposal represents the "best value" to the Procuring Agency as defined in Section 6, Definitions. If the grantee elects to use the best value selection method as the basis for award, however, the solicitation must contain language which establishes that an award will be made on a "best value" basis.

e. Procurement Of Architectural and Engineering Services (A&E). Grantees

shall use qualifications-based competitive proposal procedures (i.e., Brooks Act procedures) when contracting for A&E services as defined in 40 U.S.C. §541 and 49 U.S.C. §5325(d). Services subject to this requirement are program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, and related services.

Qualifications-based competitive proposal procedures require that:

- (1) An offeror's qualifications be evaluated;
- (2) Price be excluded as an evaluation factor;
- (3) Negotiations be conducted with only the most qualified offeror; and
- (4) Failing agreement on price, negotiations with the next most qualified offeror be conducted until a contract award can be made to the most qualified offeror whose price is fair and reasonable to the grantee.

These qualifications-based competitive proposal procedures can only be used for the procurement of the services listed above. This method of procurement cannot be used to obtain other types of services even though a firm that provides A&E services is also a potential source to perform other types of services.

These requirements apply except to the extent the grantee's State adopts or has adopted by statute a formal procedure for the procurement of these services.

f. Procurement of Design-Bid-Build. Grantees may procure design-bid-build services through means of sealed bidding or competitive negotiations. These services must be procured in a manner that conforms to applicable state and local law, the requirements of this Circular relative to the method of procurement used and all other applicable federal requirements.

g. Procurement of Design-Build. Grantees must procure design-build services through means of qualifications-based competitive proposal procedures based on the Brooks Act as set forth in Section 9e when the preponderance of the work to be performed is considered to be for architectural and engineering (A&E) services as defined in Section 9e, Qualifications-based competitive proposal procedures should not be used to procure design-build services when the preponderance of the work to be performed is not of an A&E nature as defined in Section 9e, unless required by State law.

h. Procurement By Noncompetitive Proposals (Sole Source). Sole Source procurements are accomplished through solicitation of a proposal from only

one source, or after solicitation of a number of sources, competition is determined inadequate. A contract change that is not within the scope of the original contract is considered a sole source procurement that must comply with this subparagraph.

(1) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and at least one of the following circumstances applies:

(a) The item is available only from a single source;

(b) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(c) FTA authorizes noncompetitive negotiations—e.g., if FTA provides a joint procurement grant or a research project grant with a particular firm or combination of firms, the grant agreement is the sole source approval;

(d) After solicitation of a number of sources, competition is determined inadequate; or

(e) The item is an associated capital maintenance item as defined in 49 U.S.C. §5307(a)(1) that is procured directly from the original manufacturer or supplier of the item to be replaced. The grantee must first certify in writing to FTA:

1 that such manufacturer or supplier is the only source for such item; and

2 that the price of such item is no higher than the price paid for such item by like customers.

(2) A cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required.

i. Options. Grantees may include options in contracts. An option is a unilateral right in a contract by which, for a specified time, a grantee may elect to purchase additional equipment, supplies, or services called for by the contract, or may elect to extend the term of the contract. If a grantee chooses to use options, the requirements below apply:

(1) Evaluation of Options. The option quantities or periods contained in the contractor's bid or offer must be evaluated in order to determine contract award. When options have not been evaluated as part of the award, the exercise of such options will be considered a sole source procurement.

(2) Exercise of Options.

(a) A grantee must ensure that the exercise of an option is in accordance with the terms and conditions of the option stated in the initial contract awarded.

(b) An option may not be exercised unless the grantee has determined that the option price is better than prices available in the market or that the option is the more advantageous offer at the time the option is exercised.

10. CONTRACT COST AND PRICE ANALYSIS FOR EVERY PROCUREMENT ACTION.

Grantees must perform a cost or price analysis in connection with every procurement action, including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals.

a. Cost Analysis. A cost analysis must be performed when the offeror is required to submit the elements (i.e., labor hours, overhead, materials, etc.) of the estimated cost, (e.g., under professional consulting and architectural and engineering services contracts, etc.).

A cost analysis will be necessary when adequate price competition is lacking and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or on the basis of prices set by law or regulation.

b. Price Analysis. A price analysis may be used in all other instances to determine the reasonableness of the proposed contract price.

c. Profit. Grantees will 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. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

d. Federal Cost Principles. Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles. Grantees may reference their own cost principles that comply with applicable Federal cost principles.

e. Cost Plus Percentage of Cost Prohibited. The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

11. **BONDING REQUIREMENTS.** For those construction or facility improvement contracts or subcontracts exceeding \$100,000, FTA may accept the bonding policy and requirements of the grantee, provided FTA determined that the policy and requirements adequately protect the Federal interest. FTA has determined that grantee policies and requirements that meet the following minimum criteria adequately protect the Federal interest

- a. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified;
- b. A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract; and
- c. A payment bond on the part of the contractor. A payment bond is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts determined to adequately protect the federal interest are as follows:
 - (1) Fifty percent of the contract price if the contract price is not more than \$1 million;
 - (2) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
 - (3) Two and a half million dollars if the contract price is more than \$5 million.
- d. A Grantee may seek FTA approval of its bonding policy and requirements if they do not comply with these criteria.

12. **PAYMENT PROVISIONS IN THIRD PARTY CONTRACTS.**

a. **Advance Payments.** FTA does not authorize and will not participate in funding payments to a contractor prior to the incurrence of costs by the contractor unless prior written concurrence is obtained from FTA. There is no prohibition on a grant recipient's use of local match funds for advance payments. However, advance payments made with local funds before a grant has been awarded, or before the issuance of a letter of no prejudice or other pre-award authority, are ineligible for reimbursement.

b. Progress Payments. Grantees may use progress payments provided the following requirements are followed:

(1) Progress payments are only made to the contractor for costs incurred in the performance of the contract.

(2) The grantee must obtain adequate security for progress payments. Adequate security may include taking title, letter of credit or equivalent means to protect the grantee's interest in the progress payment.

13. LIQUIDATED DAMAGES PROVISIONS. A grantee may use liquidated damages if it may reasonably expect to suffer damages and the extent or amount of such damages would be difficult or impossible to determine.

The assessment for damages shall be at a specific rate per day for each day of overrun in contract time; and the rate must be specified in the third party contract. Any liquidated damages recovered shall be credited to the project account involved unless the FTA permits otherwise.

14. CONTRACT AWARD ANNOUNCEMENT. If a grantee announces contract awards with respect to any procurement for goods and services (including construction services) having an aggregate value of \$500,000 or more, the grantee shall:

a. Specify the amount of Federal funds that will be used to finance the acquisition in any announcement of the contract award for such goods or services; and

b. Express the said amount as a percentage of the total costs of the planned acquisition.

15. CONTRACT PROVISIONS. All contracts shall include provisions to define a sound and complete agreement. In addition, contracts and subcontracts shall contain contractual provisions or conditions that allow for:

a. Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, including sanctions and penalties as may be appropriate. (All contracts in excess of the small purchase threshold.)

b. Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000.)

16. STATUTORY AND REGULATORY REQUIREMENTS. A current but not all inclusive and comprehensive list of statutory and regulatory

requirements applicable to grantee procurements (such as Davis-Bacon Act, Disadvantaged Business Enterprise, Clean Air, and Buy America) is contained in the FTA Master Agreement. Grantees are responsible for evaluating these requirements for relevance and applicability to each procurement. For example, procurements involving the purchase of iron, steel and manufactured goods will be subject to the "Buy America" requirements in 49 C.F.R.

Part 661. Further guidance concerning these requirements and suggested wording for contract clauses may be found in FTA's Best Practices Procurement Manual.

For specific guidance concerning the crosscutting requirements of other Federal agencies, grantees are advised to contact those agencies.

Sincerely,

Jennifer L. Dorn
Administrator



Appendix B

BEST PRACTICES PROCUREMENT MANUAL

Federally Required and Other Model Contract Clauses

The Federal Transit Administration (FTA) has prepared the Best Practices Procurement Manual (BPPM) to assist grantee in meeting the Federal standards of FTA Circular 4220.1E. This Manual presents the *best practices* developed by grantees and industry representatives. The procedures and practices presented include both required and non-mandatory elements and are meant to be informative and helpful to the grantee community. Goods and service to be purchased by FTA grantees are not limited to rural areas or to rolling stock (vehicle) purchase. Procurement of a wide range of goods and services is addressed including operational services, turnkey facilities, construction, architectural engineering and professional services.

The Best Practices Procurement Manual identifies 31 clauses. The following 18 selected model contract clauses apply to the purchase of rolling stock and transit vehicles. If you are completing a construction project, you must review all clauses. To review all required and model clauses, go to www.fta.dot.gov/library/admin/BPPM.

- Buy America Requirements
- Cargo Preference Requirements
- Energy Conservation Requirements
- Clean Water Requirements
- Bus Testing
- Pre-Award and Post Delivery Audit Requirements
- Lobbying
- Federal Changes
- Clean Air
- Recycled Products
- No Government Obligation to Third Parties
- Program Fraud and False or Fraudulent Statements and Related Acts
- Termination
- Government-wide Debarment and Suspension (Nonprocurement)
- Civil Rights Requirements

Breaches and Dispute Resolution
 Disadvantaged Business Enterprises (DBE)
 Incorporation of Federal Transit Administration (FTA) Terms

Appendix B includes the specific recommended and required forms to be included in the ADOT Bid Package and is primarily for vehicle (rolling stock) and other smaller capital purchases made by rural transit agencies. Grantees using federal funds to complete facilities construction will need to review all required and model clauses for applicability.

Clause:	Applicability to Procurement:	Form Required
Buy America Requirements	Contracts over \$100,000	Yes
Cargo Preference Requirements	Equipment, materials, or commodities transported by ocean vessel.	Yes
Energy Conservation Requirements	All Contracts	
Clean Water Requirements	Contracts over \$100,000	
Bus Testing	All Contracts	Yes
Pre-Award and Post Delivery Audit Requirements	All Contracts	Yes
Lobbying	Contracts over \$100,000	Yes
Federal Changes	All Contracts	
Clean Air	Contracts over \$100,000	
Recycled Products	Procurement of at least \$10,000 recycled items designated by EPA	
No Government Obligation to Third Parties	All Contracts	
Program Fraud and False or Fraudulent Statements and Related Acts	All Contracts	
Termination	All contracts	
Debarment and Suspension	Contracts over \$100,000	Yes
Civil Rights Requirements	All Contracts	
Breaches and Dispute Resolution	Contracts over \$100,000	
Disadvantaged Business Enterprises (DBE)	Contracts over \$250,000	Yes
Incorporation of Federal Transit Administration (FTA) Terms	All Contracts	

Note: *The dollar threshold applies to federal funding. Local match dollars should not be included in the threshold.*

BUY AMERICA REQUIREMENTS**49 U.S.C. 5323(j)****49 CFR Part 661****Applicability to Contracts**

The Buy America requirements apply to the following types of contracts: Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$100,000).

Flow Down

The Buy America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance. The \$100,000 threshold applies only to the grantee contract, subcontracts under that amount are subject to Buy America.

Mandatory Clause/Language

The Buy America regulation, at 49 CFR 661.13, requires notification of the Buy America requirements in FTA-funded contracts, but does not specify the language to be used. The following language has been developed by FTA.

Buy America - The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification (below) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

Certification requirement for procurement of buses, other rolling stock and associated equipment.

Certificate of Compliance with 49 U.S.C. 5323(j)(2)(C).

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 C.F.R. Part 661.11.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11, but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date _____

Signature _____

Company Name _____ Title _____

CARGO PREFERENCE REQUIREMENTS

46 U.S.C. 1241
46 CFR Part 381

Applicability to Contracts

The Cargo Preference requirements apply to all contracts involving equipment, materials, or commodities which may be transported by ocean vessels.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

The Cargo Preference requirements apply to all subcontracts when the subcontract may be involved with the transport of equipment, material, or commodities by ocean vessel.

Model Clause/Language

The MARAD regulations at 46 CFR 381.7 contain suggested contract clauses. The following language is proffered by FTA.

Cargo Preference - Use of United States-Flag Vessels - The contractor agrees: a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.) c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

ENERGY CONSERVATION REQUIREMENTS

**42 U.S.C. 6321 et seq.
49 CFR Part 18**

Applicability to Contracts

The Energy Conservation requirements are applicable to all contracts.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

The Energy Conservation requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subagreements at every tier.

Model Clause/Language

No specific clause is recommended in the regulations because the Energy Conservation requirements are so dependent on the state energy conservation plan. The following language has been developed by FTA.

Energy Conservation - The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

CLEAN WATER REQUIREMENTS**33 U.S.C. 1251****Applicability to Contracts**

The Clean Water requirements apply to each contract and subcontract which exceeds \$100,000.

Flow Down

The Clean Water requirements flow down to FTA recipients and subrecipients at every tier.

Model Clause/Language

While no mandatory clause is contained in the Federal Water Pollution Control Act, as amended, the following language developed by FTA contains all the mandatory requirements.

Clean Water - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

BUS TESTING**49 U.S.C. 5323(c)****49 CFR Part 665****Applicability to Contracts**

The Bus Testing requirements pertain only to the acquisition of Rolling Stock/Turnkey.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

The Bus Testing requirements should not flow down, except to the turnkey contractor as stated in [Master Agreement](#).

Model Clause/Language

Clause and language therein are merely suggested. 49 CFR Part 665 does not contain specific language to be included in third party contracts but does contain requirements applicable to subrecipients and third party contractors. Bus Testing Certification and language therein are merely suggested.

Bus Testing - The Contractor [Manufacturer] agrees to comply with 49 U.S.C. A 5323(c) and FTA's implementing regulation at 49 CFR Part 665 and shall perform the following:

- 1) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient at a point in the procurement process specified by the recipient which will be prior to the recipient's final acceptance of the first vehicle.
- 2) A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.
- 3) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.
- 4) If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

CERTIFICATION OF COMPLIANCE WITH FTA'S BUS TESTING REQUIREMENTS

The undersigned [Contractor/Manufacturer] certifies that the vehicle offered in this procurement complies with 49 U.S.C. A 5323(c) and FTA's implementing regulation at 49 CFR Part 665.

The undersigned understands that misrepresenting the testing status of a vehicle acquired with Federal financial assistance may subject the undersigned to civil penalties as outlined in the Department of Transportation's regulation on Program Fraud Civil Remedies, 49 CFR Part 31. In addition, the undersigned understands that FTA may suspend or debar a manufacturer under the procedures in 49 CFR Part 29.

Date: _____

Signature: _____

Company Name: _____

Title: _____

PRE-AWARD AND POST DELIVERY AUDITS REQUIREMENTS**49 U.S.C. 5323
49 CFR Part 663****Applicability to Contracts**

These requirements apply only to the acquisition of Rolling Stock/Turnkey.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

These requirements should not flow down, except to the turnkey contractor as stated in [Master Agreement](#).

Model Clause/Language

- Clause and language therein are merely suggested. 49 C.F.R. Part 663 does not contain specific language to be included in third party contracts but does contain requirements applicable to subrecipients and third party contractors.

- Buy America certification is mandated under FTA regulation, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 C.F.R. 663.13.

-- Specific language for the Buy America certification is mandated by FTA regulation,

"Buy America Requirements--Surface Transportation Assistance Act of 1982, as amended,"

49 C.F.R. 661.12, but has been modified to include FTA's Buy America requirements codified at 49 U.S.C. A 5323(j).

Pre-Award and Post-Delivery Audit Requirements - The Contractor agrees to comply with 49 U.S.C. § 5323(l) and FTA's implementing regulation at 49 C.F.R. Part 663 and to submit the following certifications:

(1) Buy America Requirements: The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists 1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and 2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

(2) Solicitation Specification Requirements: The Contractor shall submit evidence that it will be capable of meeting the bid specifications.

(3) Federal Motor Vehicle Safety Standards (FMVSS): The Contractor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

BUY AMERICA CERTIFICATE OF COMPLIANCE WITH FTA REQUIREMENTS FOR BUSES, OTHER ROLLING STOCK, OR ASSOCIATED EQUIPMENT

(To be submitted with a bid or offer exceeding the small purchase threshold for Federal assistance programs, currently set at \$100,000.)

Certificate of Compliance

The bidder hereby certifies that it will comply with the requirements of 49 U.S.C. Section 5323(j)(2)(C), Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, and the regulations of 49 C.F.R. 661.11:

Date: _____

Signature: _____

Company Name: _____ Title _____

Certificate of Non-Compliance

The bidder hereby certifies that it cannot comply with the requirements of 49 U.S.C. Section 5323(j)(2)(C) and Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, but may qualify for an exception to the requirements consistent with 49 U.S.C. Sections 5323(j)(2)(B) or (j)(2)(D), Sections 165(b)(2) or (b)(4) of the Surface Transportation Assistance Act, as amended, and regulations in 49 C.F.R. 661.7.

Date: _____

Signature: _____

Company Name: _____

Title: _____

LOBBYING

31 U.S.C. 1352

49 CFR Part 19

49 CFR Part 20

Applicability to Contracts

The Lobbying requirements apply to Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

The Lobbying requirements mandate the maximum flow down, pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5) and 49 C.F.R. Part 19, Appendix A, Section 7.

Mandatory Clause/Language

- Clause and specific language therein are mandated by 49 CFR Part 19, Appendix A.

Modifications have been made to the Clause pursuant to Section 10 of the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.*]

- Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d)

- Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 CFR Part 20, Appendix A.

Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995.

- Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A.

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.*] -

Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

FEDERAL CHANGES**49 CFR Part 18****Applicability to Contracts**

The Federal Changes requirement applies to all contracts.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

The Federal Changes requirement flows down appropriately to each applicable changed requirement.

Model Clause/Language

No specific language is mandated. The following language has been developed by FTA.

Federal Changes - Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the [Master Agreement](#) between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

CLEAN AIR**42 U.S.C. 7401 et seq****40 CFR 15.61****49 CFR Part 18****Applicability to Contracts**

The Clean Air requirements apply to all contracts exceeding \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year.

Flow Down

The Clean Air requirements flow down to all subcontracts which exceed \$100,000.

Model Clauses/Language

No specific language is required. FTA has proposed the following language.

Clean Air - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

RECYCLED PRODUCTS**42 U.S.C. 6962****40 CFR Part 247****Executive Order 12873****Applicability to Contracts**

The Recycled Products requirements apply to all contracts for items designated by the EPA, when the purchaser or contractor procures \$10,000 or more of one of these items during the fiscal year, or has procured \$10,000 or more of such items in the previous fiscal year, using Federal funds. New requirements for "recovered materials" will become effective May 1, 1996. These new regulations apply to all procurement actions involving items designated by the EPA, where the procuring agency purchases \$10,000 or more of one of these items in a fiscal year, or when the cost of such items purchased during the previous fiscal year was \$10,000.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

These requirements flow down to all to all contractor and subcontractor tiers.

Model Clause/Language

No specific clause is mandated, but FTA has developed the following language.

Recovered Materials - The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**Background and Application**

The Contract Work Hours and Safety Standards Act is codified at 40 USC 3701, et seq. The Act applies to grantee contracts and subcontracts “financed at least in part by loans or grants from ... the [Federal] Government.” 40 USC 3701(b)(1)(B)(iii) and (b)(2), 29 CFR 5.2(h), 49 CFR 18.36(i)(6). Although the original Act required its application in any construction contract over \$2,000 or non-construction contract to which the Act applied over \$2,500 (and language to that effect is still found in 49 CFR 18.36(i)(6)), the Act no longer applies to any “contract in an amount that is not greater than \$100,000.” 40 USC 3701(b)(3)(A)(iii).

The Act applies to construction contracts and, in very limited circumstances, non-construction projects that employ “laborers or mechanics on a public work.” These non-construction applications do not generally apply to transit procurements because transit procurements (to include rail cars and buses) are deemed “commercial items.” 40 USC 3707, 41 USC 403 (12). A grantee that contemplates entering into a contract to procure a developmental or unique item should consult counsel to determine if the Act applies to that procurement and that additional language required by 29 CFR 5.5(c) must be added to the basic clause below.

The clause language is drawn directly from 29 CFR 5.5(b) and any deviation from the model clause below should be coordinated with counsel to ensure the Act’s requirements are satisfied.

Clause Language**Contract Work Hours and Safety Standards**

(1) **Overtime requirements** - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in

paragraph (1) of this section.

(3) **Withholding for unpaid wages and liquidated damages** - The (write in the name of the grantee) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

NO GOVERNMENT OBLIGATION TO THIRD PARTIES**Applicability to Contracts**

Applicable to all contracts.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

Not required by statute or regulation for either primary contractors or subcontractors, this concept should flow down to all levels to clarify, to all parties to the contract, that the Federal Government does not have contractual liability to third parties, absent specific written consent.

Model Clause/Language

While no specific language is required, FTA has developed the following language.

No Obligation by the Federal Government.

- (1) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- (2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS
AND RELATED ACTS**

**31 U.S.C. 3801 et seq.
49 CFR Part 31 18 U.S.C. 1001
49 U.S.C. 5307**

Applicability to Contracts

These requirements are applicable to all contracts.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

These requirements flow down to contractors and subcontractors who make, present, or submit covered claims and statements.

Model Clause/Language

These requirements have no specified language, so FTA proffers the following language.

Program Fraud and False or Fraudulent Statements or Related Acts.

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

TERMINATION

49 U.S.C. Part 18

FTA Circular 4220.1E

Applicability to Contracts

All contracts (with the exception of contracts with nonprofit organizations and institutions of higher education,) in excess of \$10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement. (For contracts with nonprofit organizations and institutions of higher education the threshold is \$100,000.) In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

Flow Down

The termination requirements flow down to all contracts in excess of \$10,000, with the exception of contracts with nonprofit organizations and institutions of higher learning.

Model Clause/Language

FTA does not prescribe the form or content of such clauses. The following are suggestions of clauses to be used in different types of contracts:

a. Termination for Convenience (General Provision) The (Recipient) may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to (Recipient) to be paid the Contractor. If the Contractor has any property in its possession belonging to the (Recipient), the Contractor will account for the same, and dispose of it in the manner the (Recipient) directs.

b. Termination for Default [Breach or Cause] (General Provision) If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the (Recipient) may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the (Recipient) that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are

beyond the control of the Contractor, the (Recipient), after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

c. Opportunity to Cure (General Provision) The (Recipient) in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to (Recipient)'s satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from (Recipient) setting forth the nature of said breach or default, (Recipient) shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude (Recipient) from also pursuing all available remedies against Contractor and its sureties for said breach or default.

d. Waiver of Remedies for any Breach In the event that (Recipient) elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by (Recipient) shall not limit (Recipient)'s remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

e. Termination for Convenience (Professional or Transit Service Contracts) The (Recipient), by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the Recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

f. Termination for Default (Supplies and Service) If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

GOVERNMENT-WIDE DEBARMENT AND SUSPENSION**49 CFR Part 29
Executive Order 12549****Background and Applicability**

In conjunction with the Office of Management and Budget and other affected Federal agencies, DOT published an update to 49 CFR Part 29 on November 26, 2003. This government-wide regulation implements Executive Order 12549, *Debarment and Suspension*, Executive Order 12689, *Debarment and Suspension*, and 31 U.S.C. 6101 note (Section 2455, Public Law 103-355, 108 Stat. 3327).

The provisions of Part 29 apply to all grantee contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contract or subcontract (at any level) for Federally required auditing services. 49 CFR 29.220(b). This represents a change from prior practice in that the dollar threshold for application of these rules has been lowered from \$100,000 to \$25,000. These are contracts and subcontracts referred to in the regulation as “covered transactions.”

Grantees, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) they propose to contract or subcontract with is not excluded or disqualified. They do this by (a) Checking the Excluded Parties List System, (b) Collecting a certification from that person, or (c) Adding a clause or condition to the contract or subcontract. This represents a change from prior practice in that certification is still acceptable but is no longer required. 49 CFR 29.300.

Grantees, contractors, and subcontractors who enter into covered transactions also must require the entities they contract with to comply with 49 CFR 29, subpart C and include this requirement in their own subsequent covered transactions (i.e., the requirement flows down to subcontracts at all levels).

Clause Language

The following clause language is suggested, not mandatory. It incorporates the optional method of verifying that contractors are not excluded or disqualified by certification.

Suspension and Debarment

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered

transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by **{insert agency name}**. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to **{insert agency name}**, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

CIVIL RIGHTS REQUIREMENTS

**29 U.S.C. § 623, 42 U.S.C. § 2000
42 U.S.C. § 6102, 42 U.S.C. § 12112
42 U.S.C. § 12132, 49 U.S.C. § 5332
29 CFR Part 1630, 41 CFR Parts 60 et seq.**

Applicability to Contracts

The Civil Rights Requirements apply to all contracts.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

The Civil Rights requirements flow down to all third party contractors and their contracts at every tier.

Model Clause/Language

The following clause was predicated on language contained at 49 CFR Part 19, Appendix A, but FTA has shorten the lengthy text.

Civil Rights - The following requirements apply to the underlying contract:

(1) **Nondiscrimination** - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) **Equal Employment Opportunity** - The following equal employment opportunity requirements apply to the underlying contract:

(a) **Race, Color, Creed, National Origin, Sex** - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq ., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e

note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

BREACHES AND DISPUTE RESOLUTION

49 CFR Part 18 **FTA Circular 4220.1E**

Applicability to Contracts

All contracts in excess of \$100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

Flow Down

The Breaches and Dispute Resolutions requirements flow down to all tiers.

Model Clauses/Language

FTA does not prescribe the form or content of such provisions. What provisions are developed will depend on the circumstances and the type of contract. Recipients should consult legal counsel in developing appropriate clauses. The following clauses are examples of provisions from various FTA third party contracts.

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of (Recipient)'s [title of employee]. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by (Recipient), Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the (Recipient) and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties

mutually agree, or in a court of competent jurisdiction within the State in which the (Recipient) is located.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the (Recipient), (Architect) or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

49 CFR Part 26

For assistance with a contract clause incorporating the requirements of the new DBE rule in 49 CFR Part 26, contact the FTA HelpLine at <http://www.fta.dot.gov/ftahelp/index.htm>.

Background and Applicability

The newest version on the Department of Transportation's Disadvantaged Business Enterprise (DBE) program became effective July 16, 2003. The rule provides guidance to grantees on the use of overall and contract goals, requirement to include DBE provisions in subcontracts, evaluating DBE participation where specific contract goals have been set, reporting requirements, and replacement of DBE subcontractors. Additionally, the DBE program dictates payment terms and conditions (including limitations on retainage) applicable to all subcontractors regardless of whether they are DBE firms or not.

The DBE program applies to all DOT-assisted contracting activities. A formal clause such as that below must be included in all contracts above the micro-purchase level. The requirements of clause subsection b flow down to subcontracts.

A substantial change to the payment provisions in this newest version of Part 26 concerns retainage (see section 26.29). Grantee choices concerning retainage should be reflected in the language choices in clause subsection d.

Clause Language

The following clause language is suggested, not mandatory. It incorporates the payment terms and conditions applicable to all subcontractors based in Part 26 as well as those related only to DBE subcontractors. The suggested language allows for the options available to grantees concerning retainage, specific contract goals, and evaluation of DBE subcontracting participation when specific contract goals have been established.

Disadvantaged Business Enterprises

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is __ %. A separate contract goal [of __ % DBE participation has] [has not] been established for this procurement.

b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as **{insert agency name}** deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

c. *{If a separate contract goal has been established, use the following}* Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following **[concurrent with and accompanying sealed bid] [concurrent with and accompanying an initial proposal] [prior to award]**:

1. The names and addresses of DBE firms that will participate in this contract;
2. A description of the work each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
6. If the contract goal is not met, evidence of good faith efforts to do so.

[Bidders][Offerors] must present the information required above **[as a matter of responsiveness] [with initial proposals] [prior to contract award]** (see 49 CFR 26.53(3)).

{If no separate contract goal has been established, use the following} The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

d. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the **{insert agency name}**. In addition, **[the contractor may not hold retainage from its subcontractors.] [is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.] [is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the {insert agency name} and contractor's receipt of the partial retainage payment related to the**

subcontractor's work.]

e. The contractor must promptly notify **{insert agency name}**, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of **{insert agency name}**.

INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

Applicability to Contracts

The incorporation of FTA terms applies to all contracts.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

The incorporation of FTA terms has unlimited flow down.

Model Clause/Language

FTA has developed the following incorporation of terms language:

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in [FTA Circular 4220.1E](#) are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.



Appendix C

FTA RECOMMENDED AND REQUIRED FORMS FOR BID PACKAGE

This appendix presents suggested as well as required forms for the bid package. These forms were taken from the FTA Best Practice Procurement Manual and are presented below in the order shown in APTA's Standard Bus Procurement Guidelines. These forms serve two different functions:

- (1) forms for communication of information between the procuring agency and the prospective bidders, and
- (2) forms certifying compliance by the procuring agency and contractors with federal requirements.

these forms will be used by grantees completing a procurement at the local transit agency level. For those transit agencies completing an intergovernmental agreement, most of these forms will have been completed in the Original Bid Package provided by your partner agency.

Keep in mind that your sponsoring agency, city or county government, will most likely have an established purchasing policy. In most instances, this policy will cover many of the “model” contract clauses. However, several of the required forms will be specific to the purchase of equipment/capital improvements using FTA funding. At minimum, you must be able to provide ADOT confirmation that you have addressed the information shown in the following list of forms. Required forms must be provided as shown.

The required forms are shown in bold type face. Please note that most of the required forms have a threshold of \$100,000 or more and therefore are not applicable to most grantee procurements.

1. Bid Solicitation Summary: Procuring Agency and Contracting Officer
2. Request for Change or Approved Equal
3. Acknowledgment of Addenda
4. Bidder Service and Parts Support Data

5. **Buy America Certification (\$100,000 threshold, certification from manufacturer)**
6. **Debarment and Suspension Certification (\$100,000 threshold, certification from vendor)**
7. **Lobbying Certification (\$100,000 threshold, certification from vendor)**
8. **DBE Approval; Certification (\$250,000 threshold, certification from vendor and manufacturer)**
9. **Certification of Compliance with Bus Testing Requirements (certification from manufacturer)**
10. **Overall Federal Regulation Compliance (certification from vendor)**
11. Form for Proposal Deviation
12. Pricing Schedule (procuring agency)
13. Offer
14. Award

In order to help you understand and respond to each form appropriately, a cover sheet is included before each form. The cover sheet addresses the following for each form:

- The applicability of each form to the agency and the bidding contractor (note that not all forms are required for all procurements).
- A summary description of the form.
- Directions for completing each form.

Forms are provided in electronic format using Microsoft Word 6.0. Form fields have been added to accommodate information from individual agencies. Use of the form fields will allow you to insert responses without changing formatting in the rest of the document.

If you do not want to use these response boxes, you may override this tool.

- *Under “View”, Click on “Toolbars,” Click on “Forms.”*
- *Last symbol is “Protect Form,” a padlock. If this is “unlocked,” you may move around document and make changes. This must be “locked” or darker in order to insert data into the form fields.*
- *When the “Protect Form” is locked, the cursor will only move between the form fields.*

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1. Bid Solicitation Summary: Procuring Agency and Contracting Officer

Applicability: This form is provided for your information as a suggested form. Its use is not specifically required by ADOT.

Summary Description. The “Procuring Agency and Contracting Officer” form provides prospective bidders with important information regarding the procurement, including the agency’s name, address, phone number, and the contact person or contracting officer. This form describes the type and scope of the procurement, and gives dates for communications with the agency, bid conference and proposal due dates.

What To Do With This Form. The procuring agency provides this information to bidders in the bid package and copies are kept in the agency’s file for each procurement.

**Bid Solicitation Summary
Procuring Agency and Contracting Officer
(Sample Form)**

RFP or IFB #: _____
Date: _____
Procuring Agency: _____ Name

Address

Contracting Officer
Telephone: _____ Fax: _____

SCOPE

Procuring Agency requests proposals for the manufacture and delivery of transit buses/spare parts in accordance with the terms and conditions set forth below. The contract shall be a firm fixed-price Contract.

SOLICITATION SCHEDULE

The following is the solicitation schedule for Bidders:

Pre-proposal Conference _____

Bidder Communications and Requests Due at least (15 days) before proposal due date

Proposal Due Date _____

PRE-PROPOSAL CONFERENCE

The pre-proposal conference will be held by the Procuring Agency at the address below.

Name of Location:

Address:

City, State, Zip:

2. Request for Change or Approved Equal

Applicability: This form is provided for your information as a suggested form. Its use is not specifically required by ADOT. It is to be filled out by prospective bidders only if they need clarification of the bid specifications, or if they want to request changes or substitutions in completing the bid package regarding the items being purchased. This form is identical for both the IFB and RFP procurement methods.

Summary Description: Prospective bidders have until the time indicated in the “Solicitation Schedule” to request clarification of specifications or addenda items, or changes or substitutions of brand names in items being purchased by the agency. The requests must be made in writing on the attached form as far in advance of the proposal due date as possible, and made only to the “Contracting Officer” of the procuring agency. The requests must include technical data to support any changes in the bid package. Verbal communication between the procuring agency and prospective bidders is to be done at the pre-bid conference. After that, all communication will be in writing only.

What To Do With This Form: This form is to be sent in the bid package by the procuring agency with the IFB or RFP numbers included on the form. If prospective bidders submit the form to the procuring agency for changes or clarification, copies of the completed form must be kept in the procuring agency’s file for each procurement.

3. Acknowledgment of Addenda

Applicability: This form is included as a suggested form and is not specifically required by ADOT. It is included in the bid package to prospective bidders. It should be signed by bidders and returned to the procuring agency to acknowledge any addenda to the proposal specifications made by the procuring agency during the bid process. If addenda is not acknowledged in writing on this form, the bid may be considered non-responsive and possibly rejected. This form is identical for both the IFB and RFP procurement methods.

Summary Description: The procuring agency may modify the bid solicitation document at any time. The “Acknowledgment of Addenda” form is a signed acknowledgment by the bidder that he/she has received any amendments made by the procuring agency. Changes made in the contract specifications will not be considered official unless they are made in writing by the procuring agency and acknowledged by the bidding contractor on this form. The proposal deadlines and bid opening dates may be affected by an addenda revision. The procuring agency may have to change the deadline to allow bidders time to revise their proposals. The final deadline and bid opening date should be at least five days after the last addendum.

What To Do With This Form: Copies of this form returned by bidders must be kept in the procuring agency’s procurement file for each procurement.

Acknowledgment of Addenda

(Sample Form)

The undersigned acknowledges receipt of the following addenda to the documents:

Addendum No.	Dated
Addendum No. _____	Dated _____
Addendum No. _____	Dated _____
Addendum No. _____	Dated _____

Bidder:

Name

Street Address

City, State, Zip

Signature of Authorized Signer

Title

Phone

4. Bidder Service and Parts Support Data

Applicability: **This form is included as a suggested form, not specifically required by ADOT.** It should be filled out by all prospective bidders as an information piece for the procuring agency. This form is identical for both the IFB and RFP procurement methods.

Summary Description: This form is for prospective bidders to use in providing the procuring agency information regarding parts and services for the equipment to be purchased. The bidder will name the representative responsible for assisting the procuring agency in the area of service, as well as providing a listing of the names and locations of the nearest distribution and service centers to the procuring agency for parts and repair services.

What To Do With This Form: Copies of completed forms must be kept in the procuring agency's file for each procurement.

**Bidder Service and Parts Support Data
(Sample Form)**

Location of nearest Technical Service Representative to Procuring Agency

Name:

Address::

Telephone::

Bidder to describe technical services readily available from said representative..

Location of nearest Parts Distribution Center to Procuring Agency

Name: _____

Address:: _____

Telephone:: _____

Bidder shall describe the extent of parts available at said center.

Policy for Delivery of Parts and Components to be Purchased for Service and Maintenance

Regular Method of Shipment: _____

Cost to Procuring Agency: _____

5. Buy America Certification

(Required form for procurements of \$100,000 or more.)

(Vendor obtains certification from manufacturer and submits to ADOT.)

Applicability: This form is included in the bid package and submitted by prospective bidding contractors to the procuring agency **only when the purchase price of goods or equipment is \$100,000 or more.** The form is identical for both the RFP and IFB procurement methods.

Summary Description: Buy America is a domestic products provision which requires that on purchases of over \$100,000, the equipment being purchased must contain a minimum of 60% domestic content and have final assembly in the United States. The contractor signs a certification of either compliance or non-compliance with the Buy America Requirements. If certifying compliance, the contractor must submit documentation to the procuring agency that lists product component and sub-component parts, their origin and costs, and the location of the final assembly point, including a description of activities to take place at the final assembly and the costs involved. On procurements of 10 or more vehicles, on-site inspectors are required to conduct a post-delivery inspection to assure that the purchaser's and Federal Motor Vehicle Safety Standards (FMVSS) are met. General waivers to this provision may be obtained and are explained in 49 CFR 661.7. They include 15-passenger vans or wagons manufactured by the Chrysler Corporation, microcomputer equipment and software, if it can be shown that materials required to produce the products are not available or are of poor quality in the United States. A waiver may also be given if the Buy America provision is inconsistent with the public interest.

What To Do With This Form: Copies of this form, signed by the manufacturer, certifying compliance or non-compliance with the Buy America Requirements, must be kept in the procuring agency's file for each procurement.

Buy America Certification
(Required Form for Procurement of \$100,000 or More)

Certificate of Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 CFR Part 661.5.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date _____

Signature _____

Company Name _____

Title _____

Certification requirement for procurement of buses, other rolling stock and associated equipment.

Certificate of Compliance with 49 U.S.C. 5323(j)(2)(C).

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 C.F.R. Part 661.11.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11, but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date _____

Signature _____

Company Name _____ Title _____

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6. Debarment and Suspension Certification

(Required form for procurements of \$25,000 or more in lieu of verifying Excluded Parties List System.)
(Vendor certifies.)

Applicability: This form is **only required for purchases of \$25,000 or more** and applies to bidding contractors, as well as any sub-contractors, used for contracts of \$100,000 or more. This form is identical for both the IFB and RF procurement methods.

Summary Description: Recipients of Federal Transit Administration (FTA) funds are prohibited from contracting for goods or services from organizations or contractors that have been debarred or suspended from receiving federally-assisted contracts and must certify that they will not enter into a contract of \$25,000 or more with any such contractor. Contractors also must certify to the procuring agency that neither they nor any of their sub-contractors are suspended or debarred from participation in a federally-assisted contract.

What To Do With This Form: This form should be included in the bid package and must be signed by the prospective contractor and returned to the procuring agency with the bid proposal. The procuring agency must also sign a Debarment and Suspension Certification form. Copies signed by both the procuring agency and the prospective contractor must be kept on file by the procuring agency.

**Debarment and Suspension Certification (Lower Tier Covered Transaction)
(Required Form for Procurements of \$25,000 or more)
(Vendor certifies)**

The prospective lower tier participant _____ certifies by submission of this Offer that neither it nor its “principals,” as defined at 49 CFR, Section 29.105(p), is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

If the prospective lower tier participant (Bidder) is unable to certify to the statement above, it shall attach an explanation and indicate that it has done so by placing an “X” in the following space_____.

THE BIDDER _____, CERTIFES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF EACH STATEMENT OF ITS CERITIFCATION AND EXPLANATION, IF ANY. IN ADDITION, THE BIDDER OR OFFERER UNDERSTANDS AND AGREES THAT THE PROVISIONS OF 31 U.S.C., SECTIONS 3801, ET SEQ., APPLY TO THIS CERTIFICATION AND EXPLANATION, IF ANY.

Signature of the Bidder Authorized Official

Name and Title of the Bidder Authorized Official

Date

7. Lobbying Certification
(Required form for procurements of \$100,000 or more.)
(Vendor certifies.)

Applicability: This form is **only required if the procurement is \$100,000 or more.** For contracts of \$100,000 or more, the bidding contractor, as well as its sub-contractors, must sign this certification and submit it to the procuring agency. This form is identical for both the IFB and RFP procurement methods.

Summary Description: This is a certification by the contractor to the procuring agency that the contractor or any of its sub-contractors have not in the past and will not in the future use federal funds to influence any employee of a federal agency or any member or employee of Congress in obtaining a federal award, grant or contract.

What To Do With This Form: This form is included in the bid package to prospective bidders, and a copy of the completed vendor certification must be kept in the procuring agency's file for each procurement.

Lobbying Certification

**(Required Form for Procurements of \$100,000 or More)
(Vendor certifies)**

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*.)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

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8. Disadvantaged Business Enterprise (DBE) Provision
(Required form for procurements of \$250,000 in capital or \$100,000 in Planning)
(Vendor and manufacturer certifies.)

Applicability: This certification applies to Department of Transportation-assisted contracts and to Federal Transit Administration **recipients of at least \$250,000 in capital and operating funds, or \$100,000 in FTA planning funds.** This form is identical for both the IFB and RFP procurement methods.

Summary Description: The procuring agency and its contractors use this form to certify that they will not discriminate on the basis of race, color, national origin, religion, sex, age or physical handicap in awarding a contract, and that they will take reasonable and necessary steps to ensure that Disadvantaged Business Enterprises, as defined in 49 C.F.R., Part 26, will have maximum opportunity to participate in the performance of a federal contract.

What To Do With This Form: The procuring agency and contractors will document compliance with this program and keep records in their files for each procurement. Contractors must also submit to the Federal Transportation Administration a statement of its goals around the DBE provisions, and the DBE policies of any sub-contractors it may use.

DBE Approval Certification
(Vendor and manufacturer certification)

I hereby certify that the Vendor has complied with the requirements of 49 C.F.R.26, Participation by Disadvantaged Business Enterprises in DOT Programs, and that its goals have not been disapproved by the Federal Transit Administration.

Signature of the **Vendor's** Authorized Official

Name and Title of the **Vendor's** Authorized Official

Date

Signature of the **Manufacturer's** Authorized Official

Name and Title of the **Manufacturer's** Authorized Official

Date

9. Certification of Compliance with Bus Testing Requirements
(Required form)
(Vendor obtains certification from manufacturer.)

Applicability: This form is to be included in the bid package and used by the manufacturer to certify to the procuring agency that new buses have been tested or that they do not need to be tested. This form is identical for both the IFB and RFP procurement methods.

Summary Description: The FTA is responsible for ensuring that all new model rolling stock purchased or leased by FTA recipients after September 30, 1989 be tested at the New Bus Model Testing Facilities owned and operated by Pennsylvania State University. In addition, buses manufactured with a major change in components or configuration from the original bid request shall also be tested for safety, reliability, performance, structural durability, noise level and fuel economy. The manufacturer must agree to comply with 49 U.S.C., Section 5323(c) and FTA's implementing regulation at 49 CFR Part 665. Please see the Standard Bus Procurement Guidelines, Section 2.10.2, "Bus Testing," page 93. The manufacturer will provide the procuring agency a copy of the final test report prior to the agency's final acceptance of the vehicles.

What To Do With This Form: The signed certification form must be kept in the procuring agency's procurement files.

**Certificate of Compliance with Bus Testing Requirement
(Required Form)
(Vendor obtains certification from manufacturer)**

The Contractor [Manufacturer] agrees to comply with 49 U.S.C. A 5323(c) and FTA's implementing regulation at 49 CFR Part 665 and shall perform the following:

- 1) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient at a point in the procurement process specified by the recipient which will be prior to the recipient's final acceptance of the first vehicle.
- 2) A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.
- 3) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.
- 4) If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

CERTIFICATION OF COMPLIANCE WITH FTA'S BUS TESTING REQUIREMENTS

The undersigned [Contractor/Manufacturer] certifies that the vehicle offered in this procurement complies with 49 U.S.C. A 5323(c) and FTA's implementing regulation at 49 CFR Part 665.

The undersigned understands that misrepresenting the testing status of a vehicle acquired with Federal financial assistance may subject the undersigned to civil penalties as outlined in the Department of Transportation's regulation on Program Fraud Civil Remedies, 49 CFR Part 31. In addition, the undersigned understands that FTA may suspend or debar a manufacturer under the procedures in 49 CFR Part 29.

Date: _____

Signature: _____

Company Name: _____ Title: _____

10. Overall Federal Regulation Compliance
(Grantees/Vendor certifies.)

Applicability: This form is included in the bid package as an overall assurance of compliance with federal and state regulations..

Summary Description: Bidders must assure the procuring agency that they comply with all relevant state and federal regulations.

What To Do With This Form: This form should be executed by Vendors and Grantee and submitted with all bids.

Overall Federal Regulation Compliance

All contractual provisions required by ADOT, as set forth in FTA Circular 4220.1E dated January 2006 are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any grantee requests which would cause grantee to be in violation of the FTA terms and conditions.

Grantee Representative

Vendor Representative

Date: _____

Date: _____

Grantee Agency

Vendor

11. Form for Proposal Deviation

Applicability: **This form is suggested, but not required, by ADOT.** It is used by the bidding contractor when submitting any deviations to the original proposal when using **an RFP procurement method.**

Summary Description: A bidder may submit to the procuring agency a proposal containing exceptions or alternative measures to the original bid package with an explanation for each deviation and how it will meet the specifications. This alternative proposal will not be submitted in place of the original bid proposal specifications, but in addition to it. For each alternative proposal, a Form for Proposal Deviation will be submitted along with a separate Price Schedule following Price Proposal Requirements.

What To Do With This Form: Copies of this completed form from the bidding contractor must be kept in the procuring agency's file for each procurement.

**Form for Proposal Deviation
(Sample Form)**

The following form shall be completed for each condition, exception, reservation or understanding (i.e., deviation) in the proposal according to “Conditions, Exceptions, Reservation and Understandings” (Section 1.1.2.4). One copy, without any price/cost information, is to be placed in the technical proposal as specified in “Technical Proposal Requirements” (Section 1.1.3.2), and a separate copy, with any price/cost information, placed in the price proposal as specified in the “Price Proposal Requirements” (Section 1.1.3.3).

Deviation #: _____

Bidder: _____

Solicitation Ref _____

Page: _____ Section: _____

Complete Description of Deviation: _____

Rationale (pros & cons): _____

12. Pricing Schedule

Applicability: **This form is suggested, but not required, by ADOT.** It is to be filled out by all prospective bidders and provided in the bid proposal to the procuring agency. This form is identical for both the IFB and RFP procurement methods.

Summary Description: A breakout of the price of the goods and equipment being purchased must be provided by prospective bidders. The price schedule will include applicable local and state taxes as well as the delivery costs of the goods and services. The procuring agency will provide prospective bidders with a list of applicable local and state taxes for use in the price schedule.

What To Do With This Form: Copies of this completed form must be kept in the procuring agency's file for each procurement.

**Pricing Schedule
(Sample Form)**

(Procuring Agency to insert Pricing Schedule)

13. Offer

Applicability: **This form is suggested, but not required, by ADOT.** It is to be filled out by the bidder when submitting a proposal to the procuring agency. This form is identical for both the IFB and RFP procurement methods.

Summary Description: When this offer form is signed and submitted to the procuring agency, the bidding contractor offers to provide the goods and equipment specified in the bid documents. **The bidding contractor also agrees that, if selected, it will execute the three forms (pre-award audit, post-delivery audit and overall federal regulation compliance) the procuring agency is required to send to ADOT (see Appendix D).**

What To Do With This Form: This form is included in the bid package to prospective bidders with the procuring agency's name and IFB or RFP numbers inserted. Offers made on this form by bidders are to be kept in the procuring agency's file for each procurement.

**Offer
(Sample Form)**

OFFER

By execution below, Bidder hereby offers to furnish equipment and services as specified in *(Procuring Agency insert name)* Request for Proposals No. *(Procuring Agency insert IFB or RFP number)*. **Bidder also certifies that, if selected, it will execute the three forms required by ADOT, as follows:**

- 1. Pre-Award Audit form**
- 2. Post-Delivery Audit form**
- 3. Overall Federal Regulation and Compliance form**

Bidder:

Name

Street Address

City, State, Zip

Signature of Authorized Signer

Title

Phone #

14. Award

Applicability: **This form is suggested, but not required, by ADOT.** It is to be signed by the procuring agency when accepting an offer by a bidding contractor. This form is identical for both the IFB and RFP procurement methods.

Summary Description: The formal acceptance of an offer from a bidding contractor by the procuring agency is done by signing the Award form. The award is either delivered in person or sent by registered mail to the successful contractor.

What To Do With This Form: The signed Award form must be kept in the procuring agency's procurement file for each procurement.

Award
(Sample Form)

By execution below, the Procuring Agency accepts the Offer as indicated above.

Contracting Officer: _____

Date of Award: _____



Appendix D

ADOT REQUIRED /SAMPLE FORMS

Pre-Award, Post-Delivery, and Federal Compliance Forms

When a transit agency independently conducts a local procurement process, these forms are included in the original bid package. They must be completed and submitted to ADOT.

The forms that must be completed and submitted are:

- Pre-Award Audit
- Post-Delivery Audit; and
- Overall Federal Regulation Compliance

As stated in the “Offer” form in Appendix C-page 33, a copy of these forms should be included in the bid package in order that bidders are aware of the need to execute these forms if selected.

If you are submitting a joint, interagency, or piggyback procurement, you do not need to submit these forms. These forms were submitted by the vendor in response to the original bid package.

Application for Title/Certificate of Insurance Forms

Attached for your information two sample forms that will need to be included with the ADOT Post-Delivery Audit Form after delivery of the vehicles. These are sample forms only and are not intended for reuse.

These forms must be submitted by all applicants:

- Copy of “Application for Arizona Certificate of Title.” Must show ADOT as lienholder.
- Copy of “Certificate of Liability Insurance.” Must show ADOT as Additional Insured.

**Pre-Award Audit
(Required from Grantee to ADOT)**

Applicability: This form assures ADOT that the procurement process is in compliance with FTA Pre-Award Audit Requirements.

Summary Description: Grantees must submit this form to ADOT. The form must include the signature of bidders to whom a contract was awarded. It is therefore suggested that this form be included in the bid document, as indicated in the Offer form of the suggested bid package (*see Appendix Two*).

What To Do With This Form: This form should be executed by bidders and submitted with bids to the procuring agency. The procuring agency then executes its part of the form and submits it to ADOT prior to being reimbursed for the federal share of project expenditures.

**Pre-Award Audit
(Required Form, Grantee to ADOT)**

Solicitation Number: _____

Equipment Being Purchased:

Vendor Name: _____

Vendor Address: _____

_____ Buy America

- 60% + domestic content?
- Final assembly in U.S.?
- Meets all activities related to final assembly?
- Manufacturer certifies that it will comply.
- Manufacturer certifies that it cannot comply. Explain:

_____ Bid meets solicitation specifications, including but not limited to:

- _____ Altoona Bus Testing Regulations?
- _____ Americans With Disabilities Act (ADA) Requirements?

_____ Federal Motor Vehicle Safety Standards (FMVSS)?

_____ Vendor/manufacturer understands that a similar post-delivery review will be conducted, which will include, but may not be limited to, evaluation of the above-noted items.

_____ Manufacturer/vendor satisfactorily meets all of the above-stated criteria.

Grantee Representative Vendor/Manufacturer Representative

Grantee Representative Vendor/Manufacturer Representative

Date(s) Audit/Review Conducted

**Post-Delivery Audit
(Required from Grantee to ADOT)**

Applicability: This form assures ADOT that the procurement process is in compliance with FTA Post-Delivery Audit Requirements.

Summary Description: Grantees must submit this form to ADOT. The form must include the signature of bidders to whom a contract was awarded. It is therefore suggested that this form be included in the bid document as indicated in the “Offer” form of the suggested bid package (*see Appendix Two*).

What To Do With This Form: This form should be executed by bidders and the procuring agency prior to acceptance of delivery of equipment. The procuring agency then submits the completed form to ADOT prior to being reimbursed for the federal share of project expenditures.

**Post-Delivery Audit
(Required Form Grantee to ADOT)**

Solicitation Number: _____

Equipment Being Purchased:

Vendor Name: _____

Vendor Address: _____

Buy America

- 60% + domestic content?
- Final assembly in U.S.?
- Meets all activities related to final assembly?
- Subcomponent and manufacturer list provided?
- Manufacturer certifies that it will comply.
- Manufacturer certifies that it cannot comply. Explain:

Vendor/Secondary Manufacturer additionally understands that failure to comply with or accurately report on Buy America provisions may result in forfeiture of invoice payment and rejection by ADOT of rolling stock per federal regulations?

Bid meets solicitation specifications, including but not limited to:

- Altoona Bus Testing Regulations?
- Americans With Disabilities Act (ADA) Requirements?

Federal Motor Vehicle Safety Standards, including FMVSS 220 (School Bus Roll Over) Certification provided?

Debarment Certification provided?

Lobbying Certification provided?

Manufacturer/vendor satisfactorily meets all of the above-stated criteria (i.e., vehicles have been delivered or are in the process of final delivery to ADOT which meet or exceed above criteria).

Grantee Representative

Vendor/Manufacturer Representative

Date of Audit Review Completed by Grantee _____

**Overall Federal Regulation Compliance
(Required From Grantee to ADOT)**

Applicability: This form assures ADOT that the procurement process is in compliance with federal and state regulations.

Summary Description: Grantees must submit this form to ADOT and it is suggested that grantees also require bidders to execute the form.

What To Do With This Form: This form should be executed by bidders and submitted with bids to the procuring agency. The procuring agency then executes this form and submits it to ADOT prior to being reimbursed for the federal share of project expenditures.

Overall Federal Regulation Compliance

(Required form, Grantee to ADOT)

All contractual provisions required by USDOT, as set forth in the FTA Circular 4220.1 E dated May 1, 1995, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (grantee) requests which would cause (grantee) to be in violation of the FTA terms and conditions.

Grantee Representative

Vendor Representative

Grantee Agency

Vendor Company

Date: _____

Sample Application for Arizona Certificate of Title

STAPLE HERE		APPLICATION FOR ARIZONA CERTIFICATE OF TITLE				REGISTRATION EXPIRES LAST DAY OF	
Type or print in BLACK INK.		When validated, THIS IS YOUR REGISTRATION and must be carried in vehicle at all times.					
48-0508 (5) R6/06							
VEHICLE APP. TYPE	Check the type of application desired: <input type="checkbox"/> DUPLICATE (see below) <input type="checkbox"/> TITLE ONLY <input type="checkbox"/> TRANSFER <input type="checkbox"/> DISMANTLING <input type="checkbox"/> SALVAGE <input type="checkbox"/> OTHER If duplicate is checked, the original certificate of title must not have been assigned and/or surrendered to anyone. The original certificate has become: (check one) <input type="checkbox"/> LOST <input type="checkbox"/> DESTROYED <input type="checkbox"/> MUTILATED <input type="checkbox"/> ILLEGIBLE (Mutilated or illegible title must be attached)						
	VEHICLE	PLATE NO.	TAB NO.	VEHICLE ID NO.	MAKE	BODY STYLE	YEAR
VEHICLE	MTH/YFR	MODEL	LIST PRICE	GVW/GCW	FUEL	ODOMETER READING *	MOBILE HM LW
VEHICLE				<input type="checkbox"/> Actual <input type="checkbox"/> B <input type="checkbox"/> C			
APPLICANTS INFORMATION	NAME (First/Middle/Last)			OR, AND, AND/OR	DATE OF BIRTH	DRIVER LICENSE OR ID NO	
	Important: Show ADOT as lien holder.			MAILING ADDRESS			
				CITY/STATE/ZIP CODE			
	RESIDENCE ADDRESS OF OWNER OR LESSEE (if different from mailing)				CITY	STATE	
LEI-HOLDER	1ST LIENHOLDER NAME			AMOUNT	DATE		
	MAILING ADDRESS						
	2ND LIENHOLDER NAME			AMOUNT	DATE		
IMH	MAILING ADDRESS						
	3RD LIENHOLDER NAME			AMOUNT	DATE		
	MAILING ADDRESS						
APPLICANTS CERTIFICATION Must Be Completed In Full	MOBILE HOME MANUFACTURER			PHYSICAL LOCATION OF MOBILE HOME			
	The vehicle was acquired <input type="checkbox"/> New <input type="checkbox"/> Used on _____ 19____			Are your registration rights under suspension? <input type="checkbox"/> Yes <input type="checkbox"/> No			
	from Name _____			Is the vehicle specially constructed or reconstructed? <input type="checkbox"/> Yes <input type="checkbox"/> No			
	City/State _____			Will the vehicle be rented without a driver? <input type="checkbox"/> Yes <input type="checkbox"/> No			
I warrant the vehicle described above to be free from all liens and encumbrances except those indicated above. I certify that the information contained on this application is true and correct. I acknowledge that the odometer reading above is qualified by the seller and that it is not the responsibility of the Division to determine the accuracy of the odometer statement. I understand that vehicles registered for use in, or being used to commute to, the Phoenix or Tucson metropolitan areas may be subject to emissions testing. <input type="checkbox"/> I do not want my name and address released for commercial mailing lists.							
ALL APPLICANTS MUST SIGN HERE							
1. _____ 2. _____							
Additional Applicants _____							
LEGAL STATUS "OR" ONLY	The undersigned having applied for a certificate of title in our names, do hereby state that we hold this property as joint tenants and furthermore empower and authorize each other as attorney in fact to assign the certificate of title by his or her signature alone and thereby transfer, sell, mortgage or otherwise encumber the vehicle in the same manner as though all joint owners had acted and signed.						
	FOR "OR" LEGAL STATUS, ALL APPLICANTS MUST ALSO SIGN HERE						
1. _____ 2. _____							
Additional Applicants _____							
MVD USE	BATCH NO/DATE/COUNTY/BRANCH	CAT	STATUS	PLATE CANCELLED/PLATE NO./AGENT			
				<input type="checkbox"/> F <input type="checkbox"/> R			
	NEW TITLE NO.	NEW FILM REFERENCE NO.		TYPE			
	PREVIOUS TITLE NO.	STATE	PREVIOUS FILM REFERENCE NO.	MVD TAX ACCT NO.			
FEES VLT _____ REG _____ CRF _____ WGT _____ LWT _____ EIF _____ AQF _____ SPL _____ COL _____ TRN _____ LOP _____ UTX _____ DOR _____ SNO _____ PST _____ PEN _____ TTL _____ TOTAL _____							
* See Reverse Side MVD							

Sample Certificate of Insurance

ACORD CERTIFICATE OF LIABILITY INSURANCE		ID CR CATHO-3	DATE (MM/DD/YY) 08/01/99
PRODUCER THE MAHONEY GROUP - TUCSON P. O. Box 42950 Tucson AZ 85733 Phone: 520-795-8511 Fax: 520-795-8542		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
		INSURERS AFFORDING COVERAGE	
INSURED		INSURER A: <u>Scottsdale Insurance Company</u>	
		INSURER B:	
		INSURER C:	
		INSURER D:	
		INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
	GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				EACH OCCURRENCE \$ FIRE DAMAGE (Any one fire) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COM/POP AGG \$
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS <input checked="" type="checkbox"/> Uninsured Motorist <input checked="" type="checkbox"/> Underinsured	CAS0052776	08/01/99	08/01/00	COMBINED SINGLE LIMIT (Ea accident) \$ 1000000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
A	EXCESS LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE RETENTION \$	XLS000499201	08/01/99	08/01/00	EACH OCCURRENCE \$ 500000 AGGREGATE \$ 500000 \$ \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				WC STATUS: <input type="checkbox"/> OTHER TORY LIMITS: <input type="checkbox"/> ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
	OTHER				

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS
 CERTIFICATE HOLDER IS ADDITIONAL INSURED AS REQUIRED BY CONTRACT WITH INSURED TO PROVIDE SIERRA VISTA TRANSIT SERVICES. ALSO NAMED AS LOSS PAYEE WITH RESPECTS TO 99 FORD BUS VIN# 1FDXE40S4XHA88311 & 99 FORD BUS #1FDFF30F5XHA70648.

Important:
 Show ADOT as additional Insured.

CERTIFICATE HOLDER	<input checked="" type="checkbox"/> ADDITIONAL INSURED; INSURER LETTER: <u>ADOT--1</u>	CANCELLATION
Arizona Department of Transportation 206 S. 17th Ave (340B) Phoenix AZ 85007		SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>10</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. Theresa E. White <i>Theresa E. White</i>

ACORD 25-S (7/97)

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Appendix E

MANAGEMENT CHECKLISTS FOR ADOT

Several checklists have been prepared to track the procurement process and **must be submitted to ADOT prior to reimbursement payment.**

- **Transit Agency Independently Conducts Local Procurement Process**
 - Grantee Procurement Process Checklist
 - Bid Package Checklist/Agency Procurement
- **Transit Agency Works With Another Agency to Conduct Intergovernmental (Piggybacking) Procurement**
 - Bid Package Checklist/Intergovernmental Procurement Agreement
 - Intergovernmental Procurement Review Checklist (for all interagency procurement agreements)
 - Piggybacking Worksheet (for piggybacking/assignment agreements)

Forms are provided in electronic format using Microsoft Word 6.0. Form fields have been added to accommodate information from individual agencies. Use of the form fields will allow you to insert responses without changing formatting in the rest of the document.

If you do not want to use these response boxes, you may override this tool.

- *Under “View”, Click on “Toolbars,” Click on “Forms.”*
- *Last symbol is “Protect Form,” a padlock. If this is “unlocked,” you may move around document and make changes. This must be “locked” or darker in order to insert data into the form fields.*
- *When the “Protect Form” is locked, the cursor will only move between the form fields.*

In some instances, the Vendor/Manufacturer will provide the forms to the agency.

GRANTEE PROCUREMENT CHECKLIST
For Local Transit Agency Conducting Own Procurement Process

Pre-Bid Process

- Determine scope of procurement
- Establish oversight-working group
- Plan the procurement process
- Determine procurement method (IFB or RFP) including evaluation process
- Establish appeal process

Bid Package

- Develop draft IFB or RFP
 - Uniform terms and conditions
 - Warranty specifications
 - Insurance requirements
 - Detailed specifications (IFB) or general description (RFP)
 - Required and recommended forms
 - Bid Solicitation Form
 - Information about evaluation process
- Oversight Working Group and TAC review of IFB or RFP
- **First Review Point: ADOT Program Manager Review of Vehicle Specifications and IFB or RFP**

The Bid Itself

- Identify and notify potential bidders. (Minimum of Three or Document Efforts)
- Advertise IFB or RFP
- Distribute bid package to interested parties after ADOT authorization
- Conduct pre-bid conference

Bid Review and Award

- Convene a bid review committee
- Conduct evaluation process based on established criteria
- Notify selected and rejected bidders
- Handle protests on established procedures
- **Second Review Point: Submit successful bid results to ADOT (Include Pre-Award Audit form)**

Post-Delivery Activities

- Warranty arrangement made with dealer
- **Third Review Point: Post delivery audit form completed and submitted with:**
 - Insurance certificate showing ADOT as additional insured**
 - Copy of application for title showing ADOT as lien-holder**
- Request reimbursement from ADOT for federal grant funding

****Indicates ADOT Section 5311 Program Manager review and/or approval points**

BID PACKAGE CHECKLIST
Local Transit Agency Conducting Own Procurement Process

	ADOT Management Requirements:	When Required:	Completed By: (Initial)
<input type="checkbox"/>	Procurement Process Checklist	Prior to Reimbursement	
<input type="checkbox"/>	Bid Package Checklist	Prior to Reimbursement	
	ADOT Form Requirements:		
<input type="checkbox"/>	Pre-Award Audit	Prior to Reimbursement	
<input type="checkbox"/>	Post Delivery Audit	Prior to Reimbursement	
<input type="checkbox"/>	Overall Federal Regulation Compliance	Prior to Reimbursement	
<input type="checkbox"/>	Copy of AZ Title Application/ ADOT as lien holder	Prior to Reimbursement	
<input type="checkbox"/>	Certificate of Liability Insurance/ ADOT as Additional Insured	Prior to Reimbursement	
	Bid Package Including:	Prior to Reimbursement	
<input type="checkbox"/>	Bid Solicitation Summary	Optional	
<input type="checkbox"/>	Equipment Specifications	Must include Yes/No/ Approved Equal Format	
<input type="checkbox"/>	Request for Change or Approved Equal	Optional	
<input type="checkbox"/>	Acknowledgment of Addenda	Optional	
<input type="checkbox"/>	Bidder Service and Parts Support Data	Optional	
<input type="checkbox"/>	Buy America Certification	Contracts over \$100,000	Manufacturer
<input type="checkbox"/>	Debarment and Suspension Certification	Contracts over \$100,000	Vendor
<input type="checkbox"/>	Lobbying Certification	Contracts over \$100,000	Vendor and Manufacturer
<input type="checkbox"/>	DBE Approval; Certification	Contracts over \$250,000	Manufacturer
<input type="checkbox"/>	Certification of Compliance with Bus Testing Requirements	All contracts	Manufacturer
<input type="checkbox"/>	Overall Federal Regulation Compliance	All contracts	Vendor
<input type="checkbox"/>	ADOT Forms (Pre-Bid, Post-Delivery, Compliance)	All contracts	
<input type="checkbox"/>	Form for Proposal Deviation	Optional	
<input type="checkbox"/>	Pricing Schedule	Optional	
<input type="checkbox"/>	Offer	Optional	
<input type="checkbox"/>	Award	Optional	

BID PACKAGE CHECKLIST

Transit Agency Works With Another Agency to Conduct Intergovernmental (Piggybacking) Procurement

	ADOT Management Requirements:	When Required:	Completed by: (Initial)
<input type="checkbox"/>	Copy of Vehicle Specification for approval by Program Manager	Prior to Submitting Purchase Documents	
<input type="checkbox"/>	Minutes from TAC/Advisory Meeting approving procurement of selected vehicle/equipment.	Prior to Reimbursement	
<input type="checkbox"/>	FTA Intergovernmental Procurement Review Checklist	Prior to Reimbursement	
<input type="checkbox"/>	Memorandum of Record	Prior to Reimbursement	
<input type="checkbox"/>	Piggybacking Procurement Checklist (if applicable)	Prior to Reimbursement	
<input type="checkbox"/>	Application for AZ Certificate of Title/ADOT as lien holder	Prior to Reimbursement	
<input type="checkbox"/>	Certificate of Liability Insurance/ADOT as Additional Insured	Prior to Reimbursement	
	FTA Required Forms:	Prior to Reimbursement	
<input type="checkbox"/>	Buy America Certification	Contracts over \$100,000	Manufacturer
<input type="checkbox"/>	Debarment and Suspension Certification	Contracts over \$100,000	Vendor
<input type="checkbox"/>	Lobbying Certification	Contracts over \$100,000	Vendor and Manufacturer
<input type="checkbox"/>	DBE Approval; Certification	Contracts over \$250,000	Manufacturer
<input type="checkbox"/>	Certification of Compliance with Bus Testing Requirements	All contracts	Manufacturer
<input type="checkbox"/>	Overall Federal Regulation Compliance	All contracts	Vendor

INTERGOVERNMENTAL PROCUREMENT REVIEW CHECKLIST

	Yes	No
1. Did you determine that the contract is still in effect or can be modified by the awarding Agency to permit sufficient lead time to make the required deliveries to you Agency?		
2. Did you determine that the specifications in the existing contract would meet your needs?		
3. Did you review the terms and conditions carefully to determine that they are acceptable to you, e.g. warranty provisions, insurances requirements, etc?		
4. Did you determine that the requirements needed by your agency would not be beyond the scope of the existing contact?		
5. Did you determine that the contract was awarded competitively, either through sealed bids or competitive proposals?		
6. Did you determine that the contract prices originally established are still fair and reasonable?		
7. Did you determine that the contract has submitted all federally required certification to the awarding agency?		
8. Did you complete the Piggybacking Worksheet"? <i>(Some of the items on the Piggybacking Worksheet may overlap this Checklist)</i>		
9. Did you prepare a Memorandum of Record documenting your analysis of the various items mentioned above?		

PIGGYBACKING WORKSHEET

	YES	NO
1. Have you obtained a copy of the contract and the solicitation document, including the specifications and any Buy America Pre-award or Post-delivery audits/		
2. Does the solicitation and contract contain an express “assignability” clause that provides for the assignment of all or part of the specified deliverables?		
3. Did the Contractor submit the “certifications” required by Federal regulations” See BPPM Section 4.3.3.2		
4. Does the contract contain the clauses required by Federal regulations? (See Appendix C)		
5. Were the piggybacking quantities included in the original solicitation; i.e. were they in the original bid and were they evaluated as part of the contract award decision?		
6. If this is an indefinite quantity contract, did the original solicitation and resultant contract contain both a minimum and maximum quantity, and did these represent the reasonable foreseeable needs of the parties to the contract?		
7. If this piggybacking action represents the exercise of an action in the contract, is the option provision still valid or has it expired?		
8. Does Arizona state law allow for the procedures used by the original contracting agency: e.g. negotiations vs. sealed bids.		
9. Was a cost or price analysis performed by the original contracting agency documenting the reasonableness of the price? Obtain a copy for your files.		
10. Does the contract term comply with the five-year limit established by the FTA?		
11. Was there a proper evaluation of the bids or proposals? Include a copy of the analysis in your files.		
12. If you will require changes to the vehicle, are they “within the scope” of the contract or are they “cardinal changes”? See BPPM Section 9.2.1		