

FTA Procurement Webinar

- Preventing Key Procurement Deficiencies
- Procurement Aspects of FTA's COVID-19 Supplemental Funds

**The Workshop will begin soon.
Please stay logged in.**

July 2021



FTA Procurement Webinar

- Preventing Key Procurement Deficiencies
- Procurement Aspects of FTA's COVID-19 Supplemental Funds

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Purpose of This Webinar

- Highlight key areas of deficiencies in FTA's oversight review programs
 - Explain requirements related to these key areas
 - Discuss common drivers of deficiencies in these areas
 - Explore methods of preventing these deficiencies
- Procurement implications of COVID-19 supplemental funds



Statement on Guidance

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



FTA's Program Oversight Roles

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

Key Components

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



FTA Oversight Review Manuals



<https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/oversight-policy-areas/56711/fy20-comprehensive-review-contractor%E2%80%99s-manual.pdf>

<https://www.transit.dot.gov/regulations-and-programs/program-oversight/procurement-system-review-contractors-manual-fiscal-year>

- Consistent format for both manuals
- Procurement is one area of CORTAP Reviews
- PSR is a more in-depth look at procurement:
 - Larger sample size
 - More questions

FTA's PSR Contractors Manual

22 Elements/Questions for the Review

1. Procurement Policies and Procedures
2. Written Standards of Conduct
3. Written Protest Procedures
4. Award to Responsible Contractors
5. Written Record of Procurement History
6. Contract Administration System
7. Full and Open Competition
8. Methods of Procurement
9. A & E Contracting
10. ICE/Cost or Price Analysis
11. Clauses
12. Certifications
13. Liquidated Damages
14. Change Orders
15. Options
16. Contract Length
17. Piggybacking
18. Advance and Progress Payments
19. Bus Testing Reports
20. Rolling Stock Buy America
21. Subrecipient Oversight
22. Efficient and Economic Purchases

Underlined items are discussed in this presentation.



Deficiency Trends



Poll #1

Fill in the blank:

I think deficiencies in the procurement area are approximately ____% of all Triennial Review deficiencies.

- 10%
- 15%
- 20%
- 25%



Triennial Review Findings by Topic Area

Triennial Review Topic Area	2015	2016	2017	2018	2019	Total	% of All Findings
Procurement	388	333	313	372	299	1705	24%
Disadvantaged Business Enterprise	188	277	258	207	234	1164	16%
Americans with Disabilities Act	197	280	225	251	201	1154	16%
Technical Capacity	167	115	120	131	122	655	9%
Financial Management and Capacity	105	109	118	124	110	566	8%



Highlights of Key Procurement Deficiencies



Key Procurement Deficiency Areas

- **Key procurement areas discussed in this webinar:**
 - Independent Cost Estimate/Cost or Price Analysis
 - Responsibility/Suspension and Debarment
 - Clauses/Certifications
 - Buy America – Rolling Stock
 - Subrecipient Oversight
- **Areas identified based on:**
 - High number of deficiencies among recipients
 - Repeat deficiencies in these areas
 - Risk areas for recipients and FTA



Independent Cost Estimates and Cost or Price Analysis



Procurement

Lacking Required Independent Cost Estimate/Cost Analysis/Price Analysis

Relevant Question

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

*The Uniform Guidance only requires this for procurements above the Simplified Acquisition Threshold. The current Simplified Acquisition Threshold is \$250,000.

This is the question # in both the CORTAP and PSR Contractors Manual.



Procurement

Lacking Required Independent Cost Estimate/Cost Analysis/Price Analysis

Relevant Indicators

- a. Did the recipient develop an ICE prior to the receipt of bids and proposals for procurements above the Simplified Acquisition Threshold?
- b. Did the recipient conduct a cost analysis or price analysis for every procurement action above the Simplified Acquisition Threshold?

These are the *Indicators of Compliance* in both the CORTAP and PSR Contractors Manual.



Poll #2

An Independent Cost Estimate (ICE) must be dated.

- True
- False



Procurement

Lacking Required Independent Cost Estimate/Cost Analysis/Price Analysis

What drives these deficiencies?

- Recipients misclassify procurements as locally-funded
 - Often occurs when recipient is part of a state or local government that does not routinely procure FTA-funded products or services
- Recipients do not conduct an ICE and/or Cost or Price analysis when applicable
 - Often happens with one type of procurement or buyer, and/or where procurement is a decentralized function
- An ICE/cost or price analysis was conducted but not documented
- The ICE is documented but *after* receipt of bids





Procurement

Lacking Required Independent Cost Estimate/Cost Analysis/Price Analysis

What drives these deficiencies? (cont'd)

- Recipients do not provide sufficient documentation or backup information to support the ICE
- When necessary, there is no evidence that the ICE was factored into a cost or price analysis
- Cost analysis was required but not completed
 - For example: when there is no price competition (e.g., sole source, change order)



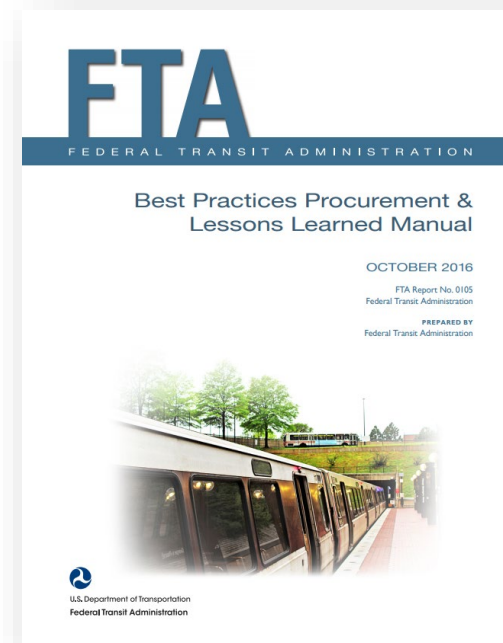
Procurement

Lacking Required Independent Cost Estimate/Cost Analysis/Price Analysis

What can recipients do to prevent these deficiencies?

- Include the completion of an ICE and cost/price analysis in a checklist
- Develop a standardized form for ICE and cost/price analysis
 - FTA's *Best Practices Procurement Manual* includes guidance (Section 4.6) and sample forms and checklists
 - FTA's *Pricing Guide for FTA Grantees* also provides guidance materials

(<https://www.transit.dot.gov/funding/procurement/t hird-party-procurement/pricing-guide-fta-grantees>)



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

Responsibility Determinations and Suspension and Debarment



Procurement

Required Responsibility determination deficiencies/No verification that excluded parties are not participating

Relevant Question

P4. Does the recipient make awards only to responsible contractors as described in its policies and procedures and in compliance with the requirements of 49 U.S.C. 5325(j) and 2 CFR 200.318(h)?



Procurement

Required Responsibility determination deficiencies/No verification that excluded parties are not participating

Relevant Indicators

- a. Do procurement files contain documentation that the recipient made written responsibility determinations prior to award, considering all required information?
- b. Prior to award, does the recipient have documentation that third party contractors are not suspended or debarred?



Poll #3

What methods can be used to document that contractors are not suspended or debarred?

- Collect a certification from the contractor
- Include a contract clause
- Conduct a SAM.gov search
- Any of the above



Procurement

Required Responsibility determination deficiencies/No verification that excluded parties are not participating

What drives these deficiencies?

- Lack of consistency and/or documentation when determining contractor's responsibility *prior* to award in areas of:
 - Integrity
 - Compliance with public policy
 - Past performance
 - Financial and technical resources
- Recipients do not document one of the allowed methods regarding excluded parties for awards of \$25,000 or more :
 - Inclusion of clause in contract, or
 - Collection of certification, or
 - Review of System for Award Management (SAM.gov) search conducted *prior* to award



Procurement

Required Responsibility determination deficiencies/No verification that excluded parties are not participating

What can recipients do to prevent these deficiencies?

- Use a standardized format to determine if the contractor has the:
 - Appropriate financial and technical resources
 - Record of satisfactory performance
 - Record of integrity (such as not being debarred or suspended)
 - Compliance with public policy issues (such as items certified to)
- Document SAM.gov search with date *prior* to all contract awards
 - While other methods are acceptable, this may be the most effective, but often the one that lacks documentation



Clauses and Certifications



Procurement

Missing FTA Clauses/Certifications

Relevant Questions

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

P12. Did the recipient include required certifications in solicitations and receive signed certifications from bidders as part of their bid or proposal, as applicable?



Procurement

Missing FTA Clauses/Certifications

Relevant Indicators

P-11

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

P-12

- a. Did the recipient *include* the required DBE transit vehicle manufacturer (TVM) certification in solicitations, *receive* signed certifications with bids *and verify*?
- b. Did the recipient include required lobbying certifications in solicitations and receive signed certifications with bids in procurements over \$100,000?
- c. Did the recipient include required Buy America certifications in solicitations and receive signed certifications with bids in procurements over \$150,000 that included iron, steel or manufactured products?



Procurement

Missing FTA Clauses/Certifications

What drives these deficiencies?

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

Procurement

Missing FTA Clauses/Certifications

What drives certification deficiencies?

- Certifications not signed, are incomplete, or indicate both compliance and non-compliance
- Recipients require a signed 'certification' but rely on the bidder to develop the certification wording
- Signed certifications not received at time of bid submission
- TVM Certifications not verified with FTA information prior to award



Procurement

Missing FTA Clauses/Certifications

What can recipients do to prevent these deficiencies?

- Use a clause and certification checklist, based on
 - Contract provisions noted in 2 CFR 200, Appendix II
 - Clause checklist in the PSR Contractors' Guide
 - FTA's Master Agreement (issued annually)
(<https://www.transit.dot.gov/funding/grantee-resources/sample-fta-agreements/fta-grant-agreements>)
- Develop a method for identifying FTA-funded procurements
 - Across departments
 - With others conducting procurements on transit's behalf
- Read/verify certifications when submitted



Buy America For Vehicle Purchases



Procurement

Pre-award and/or Post-Delivery Certifications Lacking

Relevant Question

P20. If the recipient procured rolling stock with FTA funds, did it comply with the requirements of 49 CFR part 663, including pre-award and post-delivery Buy America audit requirements, resident inspector requirements, and purchaser's certifications?



Poll #4

Are Buy America audits and certifications the same thing?

- Yes
- No



Procurement

Pre-award and/or Post-Delivery Certifications Lacking

Relevant Indicators

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



Procurement

Pre-award and/or Post-Delivery Certifications Lacking

What drives this deficiency?

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



Procurement

Pre-award and/or Post-Delivery Certifications Lacking

What can recipients do to prevent this deficiency?

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



Procurement

Pre-award and/or Post-Delivery Certifications Lacking

What can recipients do to prevent this deficiency?

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

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



Subrecipient Oversight



Procurement

Insufficient oversight of subrecipient procurements

Relevant Question

P21. Does the recipient perform oversight of its subrecipients' FTA-funded procurement activities as described in its policies and procedures?



Procurement

Insufficient oversight of subrecipient procurements

Relevant Indicators

- a. Does the recipient implement oversight procedures of its subrecipients for FTA-funded procurements?
- b. Do subrecipient procurement files reviewed demonstrate adequate oversight by the recipient?



Procurement

Insufficient oversight of subrecipient procurements

What drives this deficiency?

- Recipients have subrecipients that purchase items with FTA funds
- Oversight is decentralized, not comprehensive, or non-existent
- Oversight activities not consistently documented
- Follow-up of oversight findings does not occur
- Oversight procedures/checklists not updated as procurement requirements change
- Complications when subrecipients are also direct FTA recipients



Procurement

Insufficient oversight of subrecipient procurements

What can recipients do to prevent this deficiency?

- Create a comprehensive, standardized oversight approach
 - Include oversight procedures from question P21 of the PSR or CORTAP Contractors Manual
 - Sample include in next slides
- When regulations change, review and revise oversight guides
- Document oversight activities and corrective measures
- Follow up with subrecipients on findings



Procurement

Insufficient oversight of subrecipient procurements

Subrecipient Oversight Items in PSR Contractors Manual
Review systemwide elements:
Written procurement policies and procedures
Written standards of conduct
Protest procedures
Select one procurement that has been reviewed by the recipient to verify:
Responsibility & suspension/debarment determination
Written record procurement of actions
Method to ensure the most efficient and economic purchase
Contract administration and oversight procedures
No use of geographic preferences or mis-use of prequalification lists
Appropriate method of procurement was used
No use of the cost plus percentage of cost type of contracting
A&E services procured using a qualifications-based process
Independent estimate completed
Cost or price analysis conducted



Procurement

Insufficient oversight of subrecipient procurements

Subrecipient Oversight Items in PSR Contractors Manual

Select one procurement that has been reviewed by the recipient to verify:

Inclusion of clauses

Receipt of bid, performance, and payment security and inclusion of Davis Bacon wage determinations for applicable construction contracts

Receipt of all applicable certifications for:

- Transit Vehicle Manufacturer (TVM) certification
- Lobby certification
- Buy America certification

Correct administration of liquidated damages

Change order management

Correct use of options

Adherence to time limitations for bus or rail rolling stock or replacement parts

Correct use of piggybacking

No use of advance payments and adequate protection for progress payments

Receipt of bus testing reports

Compliance with Buy America requirements for rolling stock



Overall Tips for Preventing Procurement Deficiencies

- Review past areas of deficiency
 - Triennial/State Management Reviews
 - PSR/FMO/DBE Reviews
- Have a system for identifying FTA-funded procurements
- Use checklists to standardize compliance
- Document internal processes
- Thoroughly review all documentation and certifications received for compliance prior to award



Overall Tips for Preventing Procurement Deficiencies

- Determine if policies and procedures cover:
 - 2 CFR 200.318 – 327
 - Other regulations such as Buy America, DBE, etc.
- Update policies and procedures, especially when:
 - Requirements change
 - Internal processes are modified
 - Relevant sections of FTA's Master Agreement are revised
- Train all that perform procurement, contract administrative, or project management roles on policies and procedures



Procurements with FTA COVID-19 Supplemental Funds

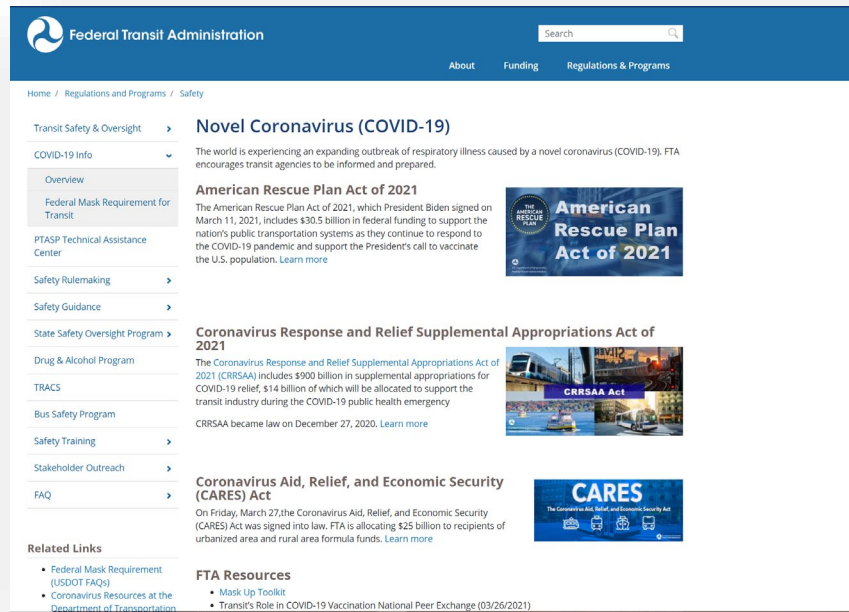


FTA Coronavirus Funding

Act	Date	Amount for Transit
Coronavirus Aid, Relief, and Economic Security (CARES) Act	March 27, 2020	\$25 Billion
Coronavirus Response and Relief Supplemental Appropriations Act of 2021 (CRRSAA)	December 27, 2020	\$14 Billion
American Rescue Plan Act (ARP)	March 11, 2021	\$30.5 Billion

FTA Coronavirus Information and Resources

FTA Coronavirus Landing Page



The screenshot shows the Federal Transit Administration's Coronavirus Landing Page. The page features a navigation menu with 'About', 'Funding', and 'Regulations & Programs'. The main content area is titled 'Novel Coronavirus (COVID-19)' and includes sections for 'American Rescue Plan Act of 2021' and 'Coronavirus Response and Relief Supplemental Appropriations Act of 2021'. A sidebar on the left lists various transit programs and safety resources. The page also includes a search bar and a 'Related Links' section at the bottom.

<https://www.transit.dot.gov/coronavirus>

FTA Coronavirus FAQs



The screenshot shows the Federal Transit Administration's Coronavirus FAQs page. The page features a navigation menu with 'About', 'Funding', and 'Regulations & Programs'. The main content area is titled 'Frequently Asked Questions from FTA Grantees Regarding Coronavirus Disease 2019 (COVID-19)'. The page includes a list of frequently asked questions and a 'Related Links' section at the bottom. The page also includes a search bar and a 'Related Links' section at the bottom.

<https://www.transit.dot.gov/frequently-asked-questions-fta-grantees-regarding-coronavirus-disease-2019-covid-19>

Key FTA COVID-19 Funding Procurement Concepts

- All 5307 (even in large urbanized areas), 5310 (CRRSAA and ARP only), and 5311 recipients eligible for operating assistance at 100%.
- Under certain circumstances, administrative leave for maintenance and operations contracts is eligible.
- Recipients may modify contracts to pay for eligible operating/maintenance expenses to retain readiness or eligible fixed operations/maintenance expenses.
- Funds can be used for operations and maintenance expenses incurred after January 20, 2020, even if the original contract did not meet all Federal requirements. New contracts need to follow all federal requirements.
- 2 CFR 200. 320 already permitted the use of a noncompetitive (sole source) procurement for emergencies.



Resources

- 2 CFR 200.317 thru 2 CFR 200.327
https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl
- FTA Master Agreement
<https://www.transit.dot.gov/funding/grantee-resources/sample-fta-agreements/fta-grant-agreements>
- FTA Procurement Resources Website
<https://www.transit.dot.gov/funding/procurement/procurement>
- FTA Best Practices Procurement Manual
<https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/funding/procurement/8286/fta-best-practices-procurement-and-lessons-learned-manual-2016.pdf>
- National RTAP ProcurementPRO
<http://www.nationalrtap.org/Web-Apps/ProcurementPRO>
- National Transit Institute
www.ntionline.com
- FTA Calculating, Documenting, and Charging Operating Expenses Webinar
<https://www.transit.dot.gov/safety/triennial-reviews/calculating-documenting-and-charging-operating-expenses-webinars>



Questions and Answers



Thank You!

This session has been recorded and may be posted on FTA's website





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