



U.S. Department
of Transportation

**Federal Transit
Administration**

CIRCULAR

FTA C 4220.1G

January 17, 2025

Subject: THIRD-PARTY CONTRACTING GUIDANCE

1. **PURPOSE.** This circular is a reissuance of guidance for Third Party Contracting Guidance activities for all applicable Federal Transit Administration (FTA) Federal assistance programs. This circular incorporates provisions of the Infrastructure Investment and Jobs Act (IIJA; Pub. L. 117-58 (2021)) and the most current guidance as of the date of publication. In cases where this circular is inconsistent with changes in any statute or regulation, the statute or regulation will supersede this circular. This circular is applicable as of January 17, 2025.

This circular revision also incorporates provisions of U.S. Department of Transportation (USDOT) regulations, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” 2 CFR Part 1201. These regulations incorporate by reference the Office of Management and Budget (OMB), “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” 2 CFR Part 200, which supersedes the former OMB circulars on Uniform Administrative Guidance (49 CFR Parts 18 and 19). The most recent updates to 2 CFR Part 200 were published on April 22, 2024, (89 FR 30046) and are effective October 1, 2024. The date of an award or amendment adding funds may determine the application of the specific regulatory requirements.

These requirements are intended to assist recipients in administering FTA-funded projects and in meeting the responsibilities and reporting requirements of FTA awards. Recipients have a responsibility to comply with regulatory requirements and to be aware of all pertinent materials to assist in the management of their Federally assisted awards. Recipients should familiarize themselves with all applicable legal authorities relevant to their transit operations and Federal awards.

2. **CANCELLATION.** This circular cancels FTA Circular 4220.1F, “Third Party Contracting Requirements,” dated March 18, 2013.

3. AUTHORITY.
 - a. Federal Transit Laws, codified at 49 U.S.C. Chapter 53.
 - b. 49 CFR 1.91
 - c. 2 CFR Part 200
 - d. 2 CFR Part 1201.1
 - e. 42 U.S.C. 4601 et seq.; 49 CFR Part 24
4. WAIVER. FTA reserves the right to waive any provisions of this circular to the extent permitted by Federal law or regulation.
5. FEDERAL REGISTER NOTICE. In association with the publication of this circular, a Federal Register notice will be published.
6. AMENDMENTS TO THE CIRCULAR. FTA reserves the right to update this circular to reflect changes in other revised or new guidance and regulations that undergo notice and comment, without further notice and comment on this circular. FTA will post updates on the [FTA website](#). The website allows the public to register for notification when FTA issues Federal Register notices or new guidance. Please visit the website and click on “Subscribe to Email Updates” for more information.
7. ACCESSIBLE FORMATS. This document is available in accessible formats upon request. To obtain paper copies of this circular as well as information regarding these accessible formats, call FTA’s Administrative Services Help Desk at 202-366-4865. Individuals with hearing impairments may contact the Federal Relay Service at 1-800-877-8339 for assistance with the call.



Veronica Vanterpool
Deputy Administrator

The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies. Recipients and subrecipients should refer to statutes and regulations for applicable requirements.

TABLE OF CONTENTS

CIRCULAR	I
CHAPTER I: INTRODUCTION AND ROLE OF THE FEDERAL TRANSIT ADMINISTRATION	I-1
1. THE FEDERAL TRANSIT ADMINISTRATION (FTA).....	I-1
2. AUTHORIZING LEGISLATION AND GUIDANCE.....	I-1
3. HOW TO CONTACT FTA.....	I-2
4. BACKGROUND.....	I-2
5. DEFINITIONS:	I-2
6. FTA’S ROLE.....	I-8
CHAPTER II: APPLICABILITY.....	II-1
1. LEGAL EFFECT OF THE CIRCULAR	II-1
2. APPLICABILITY OF THE CIRCULAR	II-1
3. FEDERAL LAWS AND REGULATIONS	II-6
4. STATE AND LOCAL LAWS AND REGULATIONS.....	II-7
CHAPTER III: THE RECIPIENT’S RESPONSIBILITY.....	III-1
1. WRITTEN STANDARDS OF CONDUCT.....	III-1
2. SELF-CERTIFICATION	III-1
3. THIRD-PARTY CONTRACTING CAPACITY.....	III-1
4. DATA RIGHTS.....	III-6
5. AUDIT.....	III-6
6. FRAUD.....	III-7
7. RECIPIENT RESPONSIBILITIES AND FTA ROLE IN PROCUREMENT DISPUTES	III-7
CHAPTER IV: THE RECIPIENT’S PROPERTY AND SERVICES NEEDS AND FEDERAL REQUIREMENTS AFFECTING THOSE NEEDS.....	IV-1
1. DETERMINING THE RECIPIENT’S NEEDS.....	IV-1
2. FEDERAL REQUIREMENTS THAT MAY AFFECT A RECIPIENT’S ACQUISITIONS.....	IV-4
CHAPTER V: SOURCES	V-29
1. FORCE ACCOUNT.....	V-29
2. SHARED USE.....	V-29
3. JOINT PROCUREMENTS.....	V-29
4. STATE OR LOCAL GOVERNMENT PURCHASING SCHEDULES OR PURCHASING CONTRACTS.....	V-29
5. INTERGOVERNMENTAL AGREEMENTS.....	V-31
6. COOPERATIVE PROCUREMENT OF ROLLING STOCK AND RELATED EQUIPMENT.....	V-31
7. FEDERAL EXCESS AND SURPLUS PROPERTY.....	V-32
8. FEDERAL SUPPLY SCHEDULES.....	V-32
9. EXISTING CONTRACTS (ASSIGNMENTS).....	V-34

CHAPTER VI: PROCEDURAL GUIDANCE FOR OPEN MARKET PROCUREMENTS
.....**VI-1**

1. COMPETITION REQUIRED VI-1
2. SOLICITATION REQUIREMENTS AND RESTRICTIONS..... VI-2
3. METHODS OF PROCUREMENT VI-7
4. ELIGIBLE COSTS..... VI-18
5. COST ANALYSIS AND PRICE VI-2
6. EVALUATIONS. THE FOLLOWING STANDARDS APPLY:..... VI-19
7. CONTRACT AWARD. THE FOLLOWING PROVISIONS APPLY TO THIRD
PARTY CONTRACT AWARDS VI-20

APPENDIX A: REFERENCES..... A-1

CHAPTER I:

INTRODUCTION AND ROLE OF THE FEDERAL TRANSIT ADMINISTRATION

1. **THE FEDERAL TRANSIT ADMINISTRATION (FTA).** FTA is one of 10 operating administrations within the U.S. Department of Transportation (USDOT). Headed by an administrator appointed by the President of the United States, FTA functions through a Headquarters Office in Washington, DC, 10 Regional Offices, and several Metropolitan Offices that assist transit agencies in all 50 States; the District of Columbia; Puerto Rico; the U.S. Virgin Islands; Guam; Northern Mariana Islands; American Samoa; and federally recognized Indian tribes.

As defined in 49 U.S.C. 5302, “public transportation“ means “regular, continuing shared-ride surface transportation services that are open to the general public or open to a segment of the general public defined by age, disability, or low income” and does not include “intercity passenger rail transportation [provided by Amtrak], intercity bus service, charter bus service, school bus service, sightseeing service, courtesy shuttle service for patrons of one or more specific establishments, or intra-terminal or intra-facility shuttle services.” Public transportation can be either fixed-route or demand-response service. It generally includes but is not limited to transportation services provided by buses; heavy rail; light rail; commuter rail; fixed guideway; bus rapid transit; passenger ferryboats; trolleys; inclined railways; people movers; vans; streetcars; jitneys; and aerial tramways.

The Federal Government, through FTA, provides financial assistance to develop new transit systems and improve, maintain, and operate existing systems. FTA oversees thousands of awards with hundreds of State and local transit providers primarily through its 10 Regional Offices. Recipients and subrecipients of Federal assistance are responsible for managing their projects and programs in accordance with Federal requirements, and FTA is responsible for ensuring that recipients follow Federal statutory and administrative requirements. FTA monitors the awards for compliance with Federal statutory and administrative requirements. FTA is also authorized to establish national standards and requirements, to conduct necessary safety oversight, and to issue directives to ensure the safety of the Nation’s public transportation systems.

2. **AUTHORIZING LEGISLATION AND GUIDANCE.** Most Federal transit laws are codified at 49 U.S.C. Chapter 53. Authorizing legislation enacted by Congress establishes or continues the legal operation of a Federal program or agency. FTA’s most recent authorizing legislation is the Infrastructure Investment and Jobs Act (IIJA), Pub. L. 117-58, signed into law on November 15, 2021. The legislation reauthorizes Surface Transportation Programs (STPs) for Fiscal Year (FY) 2022 through FY 2026.

The Fixing America’s Surface Transportation (FAST) Act (Pub. L. 114-94) authorized FTA programs FY 2016 through 2021; the Moving Ahead for Progress in the 21st Century Act

(MAP-21) (Pub. L. 112-141) authorized FTA programs for FY 2013 through FY 2015; and the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (Pub. L. 109-59) authorized FTA programs from FY 2005 through FY 2012. Changes have been added to this circular to reflect the IIJA provisions applicable to Federal transit and other laws that have become effective since the circular was last published in 2013.

This circular revision also incorporates provisions of the Office of Management and Budget (OMB), “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” 2 CFR Part 200, as it has been adopted by USDOT at 2 CFR Part 1201.

USDOT regulations, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” 2 CFR Part 1201, supersede and replace the requirements of the DOT Common Rule, former 49 CFR Parts 18 and 19, except that former 49 CFR Parts 18 and 19 will continue to apply to grant and cooperative agreements awarded before December 26, 2014, as in effect on the date of such grant or cooperative agreements. Historical versions of the Code of Federal Regulations can be found on the [GovInfo](#) website.

3. **HOW TO CONTACT FTA.** FTA’s Regional and Metropolitan Offices are responsible for managing financial assistance to FTA recipients and oversight of implementation for most FTA programs. Certain programs are the responsibility of FTA’s Headquarters Offices. Inquiries should be directed to either the FTA Regional or Metropolitan Office responsible for the geographic area in which the recipient is located. See [FTA’s website](#) for contact information. For further information regarding FTA Regional offices visit the [FTA website](#) or contact FTA at the following address and phone number:

Federal Transit Administration
Office of Communications and Congressional Affairs
1200 New Jersey Avenue SE
Room E56–205
Washington, DC 20590
Phone: 202-366-4043
Fax: 202-366-3472

4. **BACKGROUND.** Because FTA awards a substantial amount of Federal assistance to support public transportation through its grants and cooperative agreements, Federal laws and regulations require FTA to ensure that its recipients use that Federal assistance in compliance with all applicable Federal requirements. While FTA’s enabling legislation includes several provisions governing recipient procurements financed with FTA assistance (third party contracts), other government-wide Federal requirements seek to ensure fair and economical procurements when Federal assistance is expended.
5. **DEFINITIONS.** All definitions in 49 U.S.C. 5302 and 2 CFR Part 200, Subpart A apply to this circular, as do the following definitions:

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- a. Alternate Contracting Method (ACM) is any method of contracting for a construction project other than traditional design-bid-build. ACMs include, but are not limited to, design-build, progressive design-build, construction manager/general contractor, construction manager-at-risk, public-private partnership, and other innovative methods with or without a name.
 - b. Approval, Authorization, Concurrence, Waiver refers to a written communication from an authorized Federal Government official, granting permission to the recipient to proceed with or refrain from a specific action.
 - c. Best Value characterizes a procurement strategy that prioritizes obtaining the most advantageous offer for the recipient. It goes beyond evaluating proposals solely on cost or price, allowing for a comprehensive assessment that includes additional factors to secure technical superiority, even at a higher cost. The 'premium' is identified as the cost difference between the lowest-priced proposal and the proposal deemed to offer the greatest overall benefit. 'Best value' procurement is aimed at achieving the most favorable outcome for the recipient, considering a project's specific requirements and what is deemed most critical for its success. While FTA does not prescribe specific evaluation criteria, criteria must be transparently disclosed in solicitation documents. Potential factors may include, but are not limited to, technical design and approach, delivery schedules, quality of personnel, past performance, and management plans.
 - d. Cardinal Change means a major deviation from the original purpose of the work or the intended method of achievement, or a revision of contract work so extensive, significant, or cumulative that, in effect, the contractor is required to perform very different work from that described in the original contract.
 - e. Change Order refers to a formal directive issued by the recipient under the authority of a contract, compelling the contractor to implement specified contractual modifications. These changes adhere to predefined contract clauses for such adjustments and may proceed with or without the contractor's explicit agreement.
 - f. Construction Manager/General Contractor (CM/GC) or Construction Manager at Risk (CMAR) is a delivery method that consists of two phases: design and construction. In this delivery method, the recipient selects a Construction Manager based on qualifications, experience, or best value. The Construction Manager helps the recipient with design up to approximately 60%-90%, after which the recipient and Construction Manager negotiate a maximum price, generally called the Guaranteed Maximum Price (GMP), for the Construction phase. If both parties agree on the GMP, they sign a construction contract, at which point the Construction Manager becomes a General Contractor. The CM/GC method can help optimize efficiency, especially on complex or technically challenging projects. Variations on this process occur. For example, a project owner and construction manager may agree to a GMP early during the design phase, with or without a subsequent price negotiation as design nears completion.

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- g. Constructive Change occurs through an action or failure to act by the recipient that effectively alters the contractual scope of work without a formal ‘change order.’ This concept recognizes that changes in project work, whether explicitly directed or inferred from the recipient’s conduct, necessitate adjustments in contract terms and potentially in budget.
 - h. Contract means a mutually binding legal relationship obligating the seller to furnish supplies or services (including construction) and the buyer to pay for them. It encompasses various commitments that obligate the recipient to expenditure in writing, including bilateral instruments, awards, job orders, letter contracts, and purchase orders that become effective by acceptance or performance. Contracts under Federal awards must adhere to procurement standards established in 2 CFR 200.317–200.327.
 - i. Cooperative Agreement means a financial assistance instrument FTA awards to a specific recipient for a particular project in which FTA retains substantial involvement, as described in 31 U.S.C. 6305.
 - j. Design-Bid-Build is the traditional delivery method for construction projects under which a recipient commissions an architect or engineer to prepare drawings and specifications under a design services contract, and separately contracts for construction, by engaging the services of a contractor through sealed bidding or competitive negotiations to complete delivery of the project.
 - k. Design-Build, as delineated in 49 U.S.C. 5325(d)(1), is a delivery method where a recipient contracts with a seller, firm, or consortium of firms to design and build a public transportation system, or an operable segment thereof, meeting specified performance criteria. This contract may include an option to extend to the financing, operating, or the maintenance of the system or segment. The essence of the design-build delivery method is the integration of design and construction services into a single contract, potentially offering benefits such as expedited completion times and cohesive project execution. Beyond the primary scope defined in 49 U.S.C. 5325(d)(1), design-build also extends to contracts combining the design and construction of public transportation facilities, aiming to streamline project delivery and enhance performance outcomes.
 - l. Electronic Commerce (E-Commerce) consists of electronic techniques for accomplishing business transactions including electronic mail or messaging, World Wide Web internet technology, electronic bulletin boards, purchase cards, electronic funds transfer, electronic signatures, and electronic data interchange.
 - m. Force Account means the recipient’s own labor forces and equipment, as discussed in this circular in the context of performing project work.
 - n. FTA means the Federal Transit Administration.
 - o. Full and Open Competition means that all responsible sources are permitted to compete.

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- p. Governmental Recipient means a State or local government or a Federally recognized Indian tribal government that must comply with the uniform administrative requirements, cost principles, and audit requirements for Federal awards outlined in 2 CFR Part 200.
 - q. Grant means an instrument by which FTA awards Federal assistance to a specific recipient to support a particular project in which FTA does not take an active role or retain substantial control, as described in 31 U.S.C. 6304.
 - r. Indian Tribal Government means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community, including any Native village as defined in Section 3 of the Alaska Native Claims Settlement Act, 43 U.S.C. 1602, certified by the Secretary of the Interior as eligible for the special programs and services provided by him or her through the Bureau of Indian Affairs.
 - s. Joint Procurement (sometimes called “cooperative procurement”) means a method of contracting in which two or more purchasers agree from the outset to use a single solicitation document and enter into a single contract with a vendor for delivery of property or services in a fixed quantity, even if expressed as a total minimum and total maximum. Unlike a State or local government purchasing schedule or contract, a joint procurement is not drafted for the purpose of accommodating the needs of other parties that may later choose to participate in the benefits of that contract.

This circular prefers the term joint procurement to avoid confusion with the U.S. General Services Administration’s (GSA) “Cooperative Purchasing Program” and with similar State or local government purchasing programs that the State or local government might refer to as “cooperative.”

- t. Local Government means a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937) school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under state law), any other regional or interstate government entity, or any agency or instrumentality of a local government. This term does not include a local public institution of higher education.
- u. Master Agreement means the FTA document incorporated by reference and made part of FTA’s standard grant agreements and cooperative agreements, that contains the standard terms and conditions governing the administration of a project supported with Federal assistance awarded by the FTA.
- v. Modification means any written change to the terms of a contract.
- w. Non-Governmental Recipient includes public and private institutions of higher education, public or private hospitals, and any other quasi-public or private non-profit organization such as community action agencies, research institutes, educational

associations, and health centers. FTA may extend the requirements of 2 CFR 200 to commercial organizations, for-profit organizations, foreign or international organizations (such as agencies of the United Nations), and individuals. See 2 CFR 200.101. This term does not encompass government-owned contractor-operated facilities or research centers that support large-scale, mission-oriented programs either owned or controlled by the government or designated as Federally funded research and development centers.

- x. Progressive Design-Build (PDB) is one of several Alternative Contracting Methods (ACMs) available for improving project delivery for use on Federal aid construction contracts. PDB uses a two-phased qualification-based selection process, requiring the owner agency and PDB Team to progress the design together, toward a final scope, schedule, and budget (guaranteed maximum price (GMP) or target maximum price (TMP)). The method is best used for complex construction projects.
- y. Project Labor Agreement (PLA) means an agreement between the contractor, subcontractors, and the union(s) representing workers. Under a PLA, the contractor, subcontractors, and union(s) working on a project agree on terms and conditions of employment for the project, establishing a framework for labor-management cooperation to advance the buyer's procurement interest in cost, efficiency, and quality.
- z. Property, as used in this circular, includes real property consisting of land and buildings, structures, or appurtenances on land, equipment, supplies, other expendable property, intellectual property, and intangible property.
- aa. Public Private Partnership (P3) means a contractual arrangement formed between public and private sector partners, which allows for greater private sector participation in the delivery and financing of transportation projects. This partnership often involves sharing resources, risks, and rewards to enhance the efficiency, effectiveness, and overall quality of service delivery. P3s are used to leverage private sector expertise and capital for the public good, ensuring that the project's goals align with public transportation policy objectives and regulations.
- bb. Public Transportation means regular, continuing shared-ride surface transportation services that are open to the general public or open to a segment of the general public defined by age, disability, or low income; and does not include intercity passenger rail transportation provided by the entity described in chapter 243 [of title 49, U.S.C.; i.e., Amtrak] (or a successor to such entity); intercity bus service; charter bus service; school bus service; sightseeing service; courtesy shuttle service for patrons of one or more specific establishments; or intra-terminal or intra-facility shuttle services.
- cc. Recipient means the public or private entity to which FTA awards Federal assistance, whether through a grant, cooperative agreement, or other form of agreement. The term recipient does not include third party contractors, third party subcontractors, or individuals that are beneficiaries of the award. Unless specifically distinguished, references to recipients in this circular usually include subrecipients.

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- dd. Revenue Contract means a contract in which the recipient or subrecipient provides access to public transportation assets for the primary purpose of either producing revenues in connection with a public transportation related activity or creating business opportunities involving the use of FTA assisted property.
- ee. State means: a State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands, 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.
- ff. State or Local Government Purchasing Schedule or Purchasing Contract means a procurement framework established by a State or local government with multiple vendors. Under this framework, vendors commit to providing an option for the State or local government, along with its subordinate entities and any other participants designated in its program, to procure specified goods or services in the future at pre-established prices. These frameworks bear resemblance to the GSA’s Cooperative Purchasing Program but are specifically designed for State and local government use. While ‘cooperative’ is sometimes used to describe these arrangements due to their similarities to the GSA’s Cooperative Purchasing Program, it is important to differentiate these from ‘Joint Procurement’ as delineated in this chapter.
- gg. Subrecipient means an entity, usually but not limited to non-Federal entities, that receives a subaward from a pass-through entity to carry out part of a Federal award; but does not include an individual that is a beneficiary of such award. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.
- hh. Third Party Contract refers to a recipient’s contract with a vendor or contractor, including procurement by purchase order or purchase by credit card, which is financed with Federal assistance awarded by FTA.
- ii. Unsolicited Proposal means a proposal that is:
- (1) Innovative and unique,
 - (2) Independently originated and developed by the offeror,
 - (3) Prepared without the recipient’s supervision, endorsement, direction, or direct involvement,
 - (4) Sufficiently detailed that its benefits in support of the recipient’s mission and responsibilities are apparent,
 - (5) Not an advance proposal for property or services that a recipient could acquire through competitive methods, and
 - (6) Not an offer responding to a recipient’s previously published expression of need or request for proposals.

jj. Value Engineering means the systematic application of recognized techniques that identify the function of a product or service, establish a value for that function, and provide the necessary function reliably at the lowest overall cost. In all instances, the required function should be achieved at the lowest possible life cycle cost consistent with requirements for performance, maintainability, safety, security, and aesthetics.

6. FTA'S ROLE. FTA Headquarters, Regional, and Metropolitan Offices are responsible for the day-to-day administration or oversight of awards. In line with the directives set forth in 2 CFR Part 200 and in adherence to Executive Order No. 13132, 'Federalism,' 5 U.S.C. 601 note, dated August 4, 1999, FTA will not override its recipients' judgments in matters of third-party contract decisions, unless the matter is primarily a Federal concern. This approach allows recipients autonomy and discretion in setting their own standards whenever possible, without imposing uniform national standards unnecessarily. Concurrently, FTA is committed to ensuring that all procurement activities associated with FTA financial assistance awards comply with the Federal procurement requirements stipulated under 2 CFR Part 200.

FTA provides guidance and technical support to its recipients, reinforcing its role in Federal oversight and ensuring compliance with procurement standards. FTA performs various kinds of oversight reviews and evaluations to assess recipients' compliance with Federal requirements and the conditions of their awards.

7. Third-Party Contract Reviews. Under 2 CFR 200.325, FTA may conduct pre-procurement reviews of a recipient's proposed procurement, before the recipient solicits bids or proposals. However, FTA typically does not perform pre-procurement reviews, and instead accepts the recipient's self-certification that its procurement system complies with Federal standards. Self-certification is permitted by 2 CFR 200.325(c). A recipient typically self-certifies its procurement system in the first quarter of each calendar year, as part of the recipient's annual Certifications and Assurances. Self-certification minimizes delays in recipient procurements by avoiding the need for FTA pre-procurement reviews of each recipient's proposed procurement.

However, at its own discretion, FTA may conduct a pre-procurement review at any time and may require a recipient to submit to a pre-procurement review notwithstanding the recipient's self-certification. For example, FTA may conduct a pre-procurement review when, routine oversight indicates the recipient's procurement system may not comply with Federal standards. If FTA requests a review of a specific procurement, the recipient must provide the necessary documentation for review.

8. Procurement System Reviews. FTA performs various kinds of oversight reviews and evaluations to assess recipients' compliance with Federal requirements and the conditions of their awards. FTA will perform a procurement system review to assess a recipient's compliance with Federal procurement standards. If FTA discovers non-compliance, FTA will investigate and take corrective action if necessary. To assist the recipient in improving its procurement practices, FTA may recommend certain best practices. In those situations, FTA will identify its recommendations as advisory.

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9. Audits. FTA may perform, contract for, or instruct the recipient to obtain specific audits of particular third-party contracts to determine whether payments were made in conformance with the terms of the contract, or for other purposes.
 10. Training and Technical Assistance. FTA provides procurement training and technical assistance at both regional and national levels by offering various instructional courses, conducting regional technical assistance conferences, and aiding via a contractor, as needed.
 11. Guidance. In addition to this circular, FTA publishes guidance to assist recipients perform procurements and comply with Federal requirements. Some sources of procurement-related guidance include:
 - (1) “Best Practices Procurement – Lessons Learned Manual” (BPPM). FTA’s “Best Practices Procurement – Lessons Learned Manual” better known as the (BPPM) provides suggested procedures, methods, and examples to advise a recipient how it might conduct its third-party procurements in compliance with Federal laws and regulations and FTA Circular 4220.1G guidance. These procedures, methods, and examples are based on the Federal acquisition process, U.S. Comptroller General Decisions, and “Best Practices” of recipients of FTA assistance and others in the industry, and FTA encourages recipients to adopt them as needed. Although the BPPM can be a good resource for the recipient to use in conducting FTA assisted procurements, it is not the source of any FTA or Federal requirements and, as such, is not binding on FTA recipients although the underlying Federal laws and regulations from which the BPPM’s advice and recommendations are derived will apply. As such, the text of the BPPM is not and should not be treated as an official description of any FTA or Federal requirement. Moreover, although FTA does revise and update the BPPM periodically, FTA cautions each recipient that relying solely on the BPPM may not ensure compliance with all applicable FTA and Federal requirements. You can obtain access to the BPPM at the FTA Web site: <https://www.transit.dot.gov/funding/procurement/third-party-procurement/best-practices-procurement-manual>
 - (2) “Frequently Asked Questions.” To review the Frequently Asked Questions pertaining to third party contracting, access the FTA Web site.
 - (3) FTA Offices. For assistance with procurement standards or any other Federal requirement, a recipient should contact the FTA regional office responsible for administering the recipient’s awards. A list of FTA’s regional offices with contact information is on FTA’s website.

CHAPTER II:

APPLICABILITY

1. LEGAL EFFECT OF THE CIRCULAR. The Federal Transit Administration (FTA) has developed this circular to assist its recipients and their subrecipients in complying with the various Federal laws and regulations that govern FTA-assisted procurements. The guidance in this circular does not possess the legal authority of Federal law or regulation. It clarifies compliance mandates stemming from those laws and regulations. This circular describes methods of complying with Federal requirements, sometimes specifying singular methods for compliance with specific Federal legal or regulatory mandates, and at other times, acknowledging the flexibility afforded by Federal laws and regulations. It also reflects FTA's recommendations for procurement practices supported by FTA funds. The circular does not possess the authority of federal law but is intended to clarify existing requirements under the law.

Although a guidance document, this circular sometimes restates mandatory Federal statutes and regulations applicable to third party contracts funded by FTA. This circular will use the terms "must" or "shall" or similarly mandatory terms when describing a requirement that is binding by law or by operation of a financial assistance agreement with FTA. Permissive terms like "may" or "should" should be interpreted only as non-binding guidance, recommendations, or best practices, and permit discretion. Recipients exploring alternative compliance strategies not outlined in this circular are encouraged to consult with FTA to verify alignment with Federal requirements. While FTA's prior approval is not required (except where stated otherwise), adherence to Federal laws, regulations, and the terms and conditions of the grant or cooperative agreement is essential for FTA participation in funding procurement costs.

2. APPLICABILITY OF THE CIRCULAR. This guidance, unless otherwise specified by FTA in writing, applies whenever a recipient uses FTA financial assistance for its procurement activities.
 - a. Participants in FTA-Assisted Procurements. The relevance of this circular to various parties engaged in an FTA-assisted project depends on their specific roles and responsibilities within the procurement process:
 - (1) Recipients of FTA Grants or Cooperative Agreements. This circular applies to all entities receiving FTA Federal financial assistance, which typically takes the form of a grant or cooperative agreement. The degree to which this circular's provisions apply may vary based on the recipient's status as a State or non-State entity, with all expected to align with the overarching principles set forth in Federal statutes and regulations, including 2 CFR Part 200.
 - (a) States, Tribes, and Subrecipients of States. In accordance with 2 CFR 200.317, when procuring property and services under a grant or cooperative

agreement, a State or Indian Tribe must use the same procurement policies and procedures that it uses for acquisitions not financed with Federal assistance. If such policies and procedures do not exist, States and Indian Tribes must follow the procurement standards in 2 CFR 200.318 through 200.327. The State or Indian Tribe must also comply with 2 CFR 200.323 (Procurement of Recovered Materials) and 2 CFR 200.327 (Contract Provisions) of the Procurement Standards. Pursuant to 2 CFR 1201.317, and notwithstanding 2 CFR 200.317, subrecipients of States shall follow such policies and procedures allowed by the State when procuring property and services under a Federal award.

(b) Recipients and Subrecipients that are not States, Tribes, or Subrecipients of States. This circular applies to all FTA recipients and their subrecipients that are not States, Indian Tribes, or subrecipients of States. The recipient or subrecipient must use its own documented procurement procedures that conform to applicable State, local, tribal, and Federal law and regulations, including 2 CFR 200.318 General Procurement Standards through 200.327 Contract Provisions.

(2) Recipients of Both Federal Assistance Awarded by FTA and Funds Provided by Another Federal Agency. An FTA recipient that also uses funding provided by another Federal agency or agencies for a third-party procurement also supported with FTA assistance must comply with the third-party contracting requirements of both FTA and each additional Federal agency providing Federal assistance. If compliance with all Federal requirements is impossible, the recipient should notify the FTA regional office responsible for administering its awards for resolution. If an FTA recipient finances an acquisition with funding provided by another Federal agency but not with FTA assistance, this circular would not apply to that procurement.

(3) Third-Party Contractors and Subcontractors.

(a) Status. Third party contractors and subcontractors are not ‘recipients’ or ‘subrecipients’ as defined in this circular. Therefore, they are not directly covered by this circular, 2 CFR Part 200, or FTA’s Master Agreement in awarding their subcontracts.

(b) Effect of Federal Requirements. Each third-party contractor and subcontractor must adhere to the terms and conditions of its contract, which may include flow-down of Federally required clauses to the contractor and in turn may require the contractor to flow terms down to its subcontractors at lower tiers. This circular, 2 CFR Part 200, and the BPPM offer insights into the Federal requirements governing recipient procurements financed with FTA assistance, and the flow-down terms that may affect a recipient’s contractors.

b. Project Types and Third-Party Contracts. FTA’s Certifications and Assurances and Master Agreement incorporate government-wide and FTA-specific requirements. Through these documents and the award with FTA, the recipient agrees to FTA’s third-

party contracting circular and will apply its requirements to third-party contracts as necessary based on the character of that contract and the project which it supports.

- (1) Procurement Contracts. This circular applies when a recipient or subrecipient performs an acquisition of property or services required under a Federal award or subaward.
- (2) Real Property Acquisition. Procurements of real property consisting of land and any existing buildings and structures on that land are generally beyond the scope of this circular. Real property acquisition is addressed in DOT regulations, “Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs,” 49 CFR Part 24, implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. 4601 et seq., which provide protections for owners and lessees of real property to be acquired as part of an FTA assisted project. For further guidance, refer to the latest version of FTA Circular 5010.1F Award Management Requirements, which provides comprehensive guidance on grant management. However, the third-party contracting provisions of this circular do apply to FTA assisted construction of buildings, structures, or appurtenances that were not on land to be used for the project when that land was acquired. The third-party contracting provisions of this circular also apply to any alterations or repairs to buildings or structures existing on that land when that land was acquired or made available for the FTA assisted project.
- (3) Revenue Contracts. A revenue contract is a contract in which the recipient or subrecipient provides access to public transportation assets for the primary purpose of either producing revenues in connection with an activity related to public transportation or creating business opportunities with the use of FTA assisted property. This circular does not apply to revenue contracts. The recipient has broad latitude in determining the extent and type of competition appropriate for a revenue contract. Nevertheless, to ensure fair and equal access to FTA assisted property and to maximize revenue derived from such property, the recipient should conduct its revenue contracting as follows:
 - (a) Limited Contract Opportunities. If there are several potential competitors for a limited opportunity (such as advertising space on the side of a bus), then the recipient should use a competitive process to permit interested parties an equal chance to obtain that limited opportunity.
 - (b) Open Contract Opportunities. If, however, one party seeks access to a public transportation asset (such as a utility that might seek cable access in a subway system), and the recipient is willing and able to provide contracts or licenses to other parties similarly situated (since there is room for a substantial number of such cables without interfering with transit operations), then competition would not be necessary because the opportunity to obtain contracts or licenses is open to all similar parties.

In the case of joint development, as explained below, FTA will work with the recipient to determine appropriate procedures, as necessary.

- (4) Joint Development. Public transportation agencies may form partnerships with the private sector to promote real estate development in and around transit facilities, commonly referred to as “joint development.” While FTA joint development projects primarily aim to bring private capital into transit projects, these projects blend aspects of Federally assisted construction and revenue contracting. FTA has issued comprehensive joint development guidance in the FTA Circular 7050.1C Guidance on Joint Development. This guidance consolidates FTA instructions on joint development and supersedes any previous FTA guidance on joint development contained in other sources, including the 2007 Notice of Final Agency Guidance and FTA Circulars 5010.1F, 4220.1G, among others. Section VI of the Joint Development guidance specifically addresses FTA’s third-party contracting requirements, outlining how joint development projects can qualify for FTA assistance and the legal requirements applicable to the use and disposition of real property acquired with FTA assistance for these projects.
1. Construction Contracts. This circular applies to the FTA-assisted construction aspects of a joint development project, in line with the principles outlined in FTA Circular 7050.1C “Guidance on Joint Development.”
 2. Revenue Contracts. FTA will work with the recipient on a case-by-case basis to craft approaches suitable for revenue contracts as defined in this circular. FTA’s concern is that procedures used achieve competition while preserving the benefits of joint development to the maximum possible extent.
 3. Other Contracts. Contracts between a recipient and a third party that do not fall into the construction or revenue contract categories as defined in this circular, and pertain to a joint development project, should be guided by the broader principles and requirements detailed in FTA Circular 7050.1C Guidance on Joint Development. This includes, for example, contracts to manage, operate, or maintain intercity bus or rail terminals, or tenancy agreements with third party intercity bus or rail operators. Even in cases not directly covered by the third-party contracting provisions, FTA encourages full and open competition, consistent with Federal guidelines.
- (5) Public-Private Partnerships. A Public-Private Partnership (P3) is a formal contractual arrangement between a public recipient and one or more private partners establishing a mechanism for procuring property and services under which the private sector assumes some of the public sector’s customary role in the planning, financing, design, construction, operation, and maintenance of a transportation facility compared to traditional procurement methods, many of which activities are generally controlled by the public sector partner. As part of FTA’s interest in fostering P3s, FTA is considering which procurement and other requirements may be modified to simplify project implementation, including

procurement requirements that are redundant with private sector safeguards, incentives, and obligations. While a recipient that has not formed a P3 may use some of the contract delivery arrangements or project delivery systems listed below, FTA is considering the implications for P3s that use the following types of contracting delivery arrangements or project delivery systems, including, but not limited to:

1. Design-Build,
2. Design-Build with a Warranty,
3. Construction Manager at Risk,
4. Construction Manager/General Contractor (CM/GC)
5. Design-Build-Operate-Maintain,
6. Design-Build-Finance-Operate,
7. Build-Operate-Transfer,
8. Build-Own-Operate,
9. Full Delivery or Program Management and
10. Progressive Design Build (PDB)

For a description of these types of P3s, see FTA “Notice of establishment of Public-Private Partnership Pilot Program; solicitation of applications,” 72 FR 2583, esp. 2584, 2585-2591, January 19, 2007.

As a starting point, the parties to the P3 should apply the requirements of this circular to FTA assisted projects they undertake. A P3 recipient seeking an exception from specific provisions of this circular should contact the FTA regional office responsible for administering its award. FTA will work with the recipient to craft processes as necessary to satisfy the statutory and regulatory requirements for competition when FTA assistance is used while preserving the benefits of the innovative contracting strategy proposed to the maximum possible extent.

- (6) Transactions Involving Complex Financial Arrangements. If a public transportation project involves the services of an “arranger” or similar facilitator, and those services will be financed with Federal assistance, the recipient must use competitive procedures to select the arranger. If, however, a public transportation project involves the services of an arranger or similar facilitator whose services will not be financed with Federal assistance, FTA encourages, but does not require, competition in the selection of that arranger.

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- (7) Force Account. FTA third-party contracting guidance does not apply to a recipient's use of its own forces to perform project work.
3. FEDERAL LAWS AND REGULATIONS. Each recipient and subrecipient must comply with applicable Federal laws and regulations including, but not limited to, Federal transit laws at 49 U.S.C. Chapter 53, FTA regulations, and other Federal laws and regulations that contain requirements applicable to FTA recipients and their FTA assisted procurements.
- a. Uniform Administrative Requirements. The government-wide regulations, 2 CFR Part 200 "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards", establish the comprehensive Federal requirements applicable to FTA's assistance programs.
- b. Federal Acquisition Regulation. The Federal Acquisition Regulation (FAR), 48 CFR Chapter 1, generally does not apply to recipients undertaking procurements with FTA financial assistance. There are specific instances where FAR principles, such as those outlined in FAR Part 31 Cost Principles, apply to audits of Architectural & Engineering (A&E) services as specified under 49 U.S.C. 5325. The Uniform Administrative Requirements (2 CFR Part 200) also incorporate the simplified acquisition threshold and micro-purchase threshold established in the FAR. This threshold may be updated at 48 CFR Part 2. Even if the FAR may not be applicable to recipients' procurements, FAR provisions and clauses provide useful references, guidance, or models, provided they are compatible with Federal assistance requirements and the recipient's circumstances.
- c. Other Federal Requirements. In addition to adhering to 2 CFR Part 200, FTA recipients must comply with other Federal transit laws and implementing regulations not covered by these uniform guidelines, as well as other cross-cutting Federal statutes and regulations. The most current edition of FTA's Master Agreement consolidates applicable Federal laws and regulations, serving as an essential resource for recipients in making informed procurement decisions.
- (1) Compilation in the Master Agreement. Citations to most Federal requirements are included in the latest edition of FTA's Master Agreement, which includes comprehensive information about Federal laws and regulations that may apply to an FTA assisted project. FTA strongly encourages participants in FTA assisted projects to review the Master Agreement when making its procurement decisions.
- (2) Conflicting Federal Requirements. Requirements of the various Federal agencies that may be involved in the project will sometimes differ or conflict. If compliance with all applicable Federal requirements is impossible, the recipient should notify the FTA regional office responsible for administering its award for resolution.
- d. Waivers. To help remediate issues regarding compliance, a recipient may request a waiver of a Federal requirement. However, FTA does not have authority to waive all requirements.

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4. STATE AND LOCAL LAWS AND REGULATIONS. 2 CFR Part 200 stipulates that recipients and subrecipients utilize their procurement procedures that are consistent with applicable state and local laws and regulations, while also ensuring compliance with applicable Federal laws and regulations as outlined in 2 CFR Part 200.

If Federal requirements conflict with State or local requirements, the recipient should promptly provide written notification to the FTA regional office responsible for administering its award. FTA will work with the recipient to make appropriate arrangements to proceed. If it is not possible to resolve the conflict, then FTA may decide to amend or terminate a component or the entire amount of Federal financial assistance.

CHAPTER III:

THE RECIPIENT'S RESPONSIBILITY

1. WRITTEN STANDARDS OF CONDUCT. This chapter emphasizes the requirements associated with administering and managing a grant or cooperative agreement (Award) made by FTA. Project management and asset management requirements are described in Chapter IV.
 - a. Personal Conflicts of Interest. As provided in 2 CFR 200.318(c) and FTA Master Agreement, no employee, officer, agent, or board member, or his or her immediate family member, partner, or organization that employs or is about to employ any of the foregoing individuals may participate in the selection, award, or administration of a contract supported with FTA assistance if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when any of those individuals previously listed has a financial or other interest in the firm selected for award.
 - b. Gifts. Officers, employees, agents, and board members of the recipient must not solicit or accept gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties involved in subcontracts, except for gifts of nominal value as defined by the recipient's established thresholds. Recipients may establish thresholds for when the financial interest is considered insubstantial, or the gift is of nominal value.
 - c. Violations. The standards of conduct must include provisions for penalties, sanctions (such as fines, suspension, or termination of contracts), or other disciplinary actions in case of violations by any of the recipient's personnel or by contractors, subcontractors, or their agents, in accordance with state or local laws and regulations.
 - d. Organizational Conflicts. If the recipient has a parent, affiliate, or subsidiary that is not a State or local government or Indian tribe, the recipient also must have standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest mean that because of relationships with a parent company, affiliate, or subsidiary organization, the recipient is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.
2. SELF-CERTIFICATION. Recipients are required to annually self-certify that their procurement systems are in compliance with Federal regulations, ensuring that all aspects of their third-party contracting process adhere to Federal standards. Certification is accomplished through each recipient's annual Certifications and Assurances.
3. THIRD-PARTY CONTRACTING CAPACITY. The Certifications and Assurances also include the recipient to certify that it has or will have the technical capacity to properly carryout and manage an FTA federal assistance award. As part of maintaining the necessary technical capacity to execute projects effectively, a recipient must ensure its procurement system complies with 2 CFR Part 200 and any applicable Federal, state, and local laws. If a

recipient lacks the internal expertise for specific procurement functions, it should obtain these services externally while taking measures to avoid organizational conflicts of interest (see 2 CFR 200.319(b)) that could compromise the procurement process and result in unfair competitive advantage.

- a. Written Procurement Procedures. 2 CFR 200.318(a) requires all non-Federal entities, including both governmental and non-governmental recipients of Federal assistance, to maintain written procurement procedures. These procedures must ensure that procurements are conducted in a manner providing full and open competition, reflect objective standards and criteria, and adhere to applicable Federal, state, and local laws and regulations. Additional information regarding competition is included under 2 CFR 200.319. The recipient's procurement procedures should address the following:

- (1) Solicitations. The following standards apply to solicitations (2 CFR 200.319(d)(2)):

- (a) Clear Descriptions. A clear and accurate description of the technical requirements for the material, product, or service to be procured is required (discussed further in Chapter VI of this circular).
- (b) Nonrestrictive Specifications. In competitive procurements, the description may not contain features that unduly restrict competition. Notably, FTA may not finance procurements that use "exclusionary or discriminatory" specifications (discussed further in Chapter VI of this circular). 49 U.S.C. 5323(h)(3).
- (c) Quality Requirements. A description may include a statement of the qualitative nature of the material, product, or service to be procured and, when necessary, describe minimum essential characteristics and standards to which the property or services must conform if it is to satisfy the recipient's intended use (discussed further in Chapter VI of this circular).
- (d) Preference for Performance Specifications. Recipients should focus on the functions to be performed, or the performance required, including acceptable characteristics or minimum standards. This approach is preferred over detailed product specifications to foster broader competition (additional details in Chapter VI of this circular). See also 2 CFR 200.319(c)(6).
- (e) Brand Name or Equal. When it is impractical or uneconomical to write a clear and accurate description of the technical requirements of the property or services to be acquired, a "brand name or equal" description may be used to define the performance or other salient characteristics of the property or services sought. The specific features or salient characteristics of the named brand which must be met by offerors of "an equal" proposal must be clearly stated (discussed further in Chapter VI of this circular). See also 2 CFR 200.319(c)(6).

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- (2) Necessity. The recipient's need for the property or services (discussed further in Chapter VI of this circular). 2 CFR 200.318(d).
 - (3) Lease versus Purchase. The use of lease or purchase alternatives to achieve an economical and practical procurement (discussed further in Chapter IV of this circular). 2 CFR 200.318(d).
 - (4) Environmental and Energy Efficiency Preferences. A preference, to the extent practicable and economically feasible, for products and services that conserve natural resources, protect the environment, and are energy efficient (discussed further in Chapter IV of this circular). 2 CFR 200.323(b).
 - (5) Procurement Methods. What procurement methods may be used (discussed further in Chapter VI of this circular). See 2 CFR 200.320.
 - (6) Legal Restrictions. Any Federal, State, or local restrictions on the recipient's acquisitions (discussed further in Chapter IV of this circular).
 - (7) Third-Party Contract Provisions. The specific third-party contract provisions required for such a contract, including which requirements must extend to subcontractors (discussed further in Chapter IV of this circular).
 - (8) Sources. The availability and use of various sources of property and services (discussed further in Chapter V of this circular).
 - (9) Resolution of Third-Party Contracting Issues. Procedures to resolve third party contracting issues (discussed further in Chapter VI of this circular). 2 CFR 200.318(k).
- b. Adequate Third-Party Contract Provisions. All third-party contracts should include provisions adequate to form a sound and complete agreement. Compliance with Federal laws and regulations will usually result in the addition of many other contract provisions to ensure compliance with those laws and regulations. See Chapter IV of this circular for requirements applicable to third party contractors and the property and services those third-party contractors agree to provide.
 - c. Industry Contracts. The recipient should take special care when using an industry developed contract or contract that may be provided by a bidder or offeror. Not only may that contract lack the required Federal provisions, but its terms may also be unfavorable to the recipient. FTA does not prohibit the use of industry forms, specifications, or contract terms when their use is consistent with Federal requirements. Instead, FTA reminds the recipient to use industry developed forms, specifications, or contract terms cautiously.
 - d. Record Keeping. Under 2 CFR 200.334 – 200.338 and the FTA Master Agreement § 9, recipients must prepare and maintain detailed and accessible project performance and financial records, including procurement transactions and other project implementation

aspects. Records must be retained for three years after final payment and closure of all pending matters.

- (1) Procurement History. Recipients must maintain records sufficient to detail the history of each procurement and, upon request, make them available to FTA. Under 2 CFR 200.318(i), these records must include at a minimum:
 - (a) Procurement Method. Recipients must document the rationale for the procurement method used for each contract. If the recipient awarded a contract without competition, its records must document the circumstances that justified the noncompetitive award. See 2 CFR 200.320(c) for specific information regarding noncompetitive procurements.
 - (b) Contract Type. The recipient's records must document its rationale for selecting the contract type it used (fixed price, cost reimbursement, and so forth).
 - (c) Contractor Selection. Justifications for contractor selection or rejection, especially for noncompetitive awards, are required. For procurements above the simplified acquisition threshold, a written responsibility determination for the chosen contractor should be included.
 - (d) Cost or Price. Each recipient must evaluate and state its justification for the contract cost or price.
- (2) Reasonable Documentation. FTA recognizes that these written records will vary greatly for different procurements. Documents included in a procurement history should be commensurate with the size and complexity of the procurement itself. Procurements that are more substantial should require extensive documentation. For example, a receipt or bill accompanying a \$100 credit card purchase might contain all the required information to support that procurement.
- (3) Constructive Changes. If constructive changes occur on a contract, the recipient should document these changes with the same level of detail and approval as formal change orders. In addition to supporting the recipient's own contract management, documentation of constructive changes will demonstrate that the changed work is eligible and within the scope of the Federal award.
- (4) Access to Records. Beyond the record retention and access provisions in 2 CFR 200.334 – 200.338, 49 U.S.C. 5325(g) grants FTA, DOT officials, the U.S. Comptroller General, and their representatives the right to access and inspect all project-related records, documents, and papers, including contracts, funded with Federal assistance under 49 U.S.C. Chapter 53.
- e. Use of Technology/Electronic Commerce. Along with other technology the recipient may choose to employ, the recipient may use a well-structured Electronic Commerce system to conduct third party procurements. If a recipient chooses to employ an

Electronic Commerce system, it must ensure its system allows the recipient to comply with Federal requirements.

- i. Sufficient System Capacity. The recipient's electronic system must have sufficient system capacity necessary to accommodate all Federal requirements, including applicable accessibility requirements, for full and open competition.
- ii. Written Procedures. The recipient must establish adequate written procedures before any solicitation takes place. Those procedures must be sufficient to ensure that all the information FTA requires for project administration is entered into the recipient's electronic system and can be made readily available to FTA as needed.
- iii. Uses. The recipient may undertake third party procurements through:
 - (a) Standard Bidding and Proposal Procedures. Standard procurement procedures may be implemented through an electronic medium or resource to the extent of the system's capacity.
 - (b) Electronic Bidding and Reverse Auctions. FTA recipients may use electronic bidding and reverse auctions.
 - 1 Value. Recipients may use reverse auctions only for procurements at or below the simplified acquisition threshold. For procurements above the simplified acquisition threshold, requirements for formal procurement methods are outlined under 2 CFR 200.320(b) which specify the use of sealed bids or requests for proposals.
 - 2 Procedures. Neither FTA nor government-wide requirements establish a formal definition of "reverse auction" or requires particular procedures for reverse auctions. A recipient may consider the following:
 - a Notification. The buyer "will notify potential participants of an upcoming auction, specifying the time that the auction will start and close."
 - b Bid or Quote Submission. Those who choose to participate will submit bids or quotations to the online auction Web site.
 - c Information Displayed During the Auction. During the auction, the Web site will display the property to be inspected, the current lowest quotation, and the time remaining in the auction.
 - d Information Not Displayed During the Auction. The Web site will not display the names of vendors, any other identifying information, or the time at which quotations were submitted.
 - e Information Displayed at the End of the Auction. At the close of the auction, competing vendors will be able to view all submitted

quotations, as well as the winning quotation, and a purchase order will be sent to the winning vendor.

- f Information Provided at the End of the Auction. The buyer will provide the name of the winning vendor and its quotation to unsuccessful vendors, but not the identity of the unsuccessful vendors.

4. DATA RIGHTS.

- a. Protection. When performance of a contract may include the collection of data from the recipient, either incidentally or as a primary purpose of the procurement, the recipient should include clear terms in its contract defining who owns the collected data (the recipient or its contractor), and what, if anything, the contractor may do with the collected data.
- b. Types of Data Rights. When negotiating data rights, recipients should ensure contracts secure adequate licenses for Federally funded data. Recipients should clearly define proprietary data and negotiate appropriate access rights to fulfill Federal objectives. Additionally, recipients should ensure data rights clauses are flowed down to subcontractors who may receive access to the data.

5. AUDIT. A third-party contract audit can be an important tool for managing procurements. In addition to special audits FTA may initiate, the recipient may find it desirable to perform an audit of one or more specific third-party contracts as part of its own management process. Recipients themselves must be audited annually if they expend a certain amount of Federal awards annually. 2 CFR Part 200 Subpart F (Audit Requirements).

- a. The Recipient's Auditors. In some cases, the recipient has sufficient qualified personnel to perform the third-party contract audits it needs. In the alternative, the recipient may engage a qualified independent accountant or accounting firm to perform its audit responsibilities.
- b. Independent Auditors: The recipient may need to engage qualified independent auditors for certain Federally required audits, notably those mandated by the Single Audit Act of 1984, as amended, and implemented under 2 CFR Part 200 Subpart F. If additional audits are required by the Federal Government, it may be necessary for the recipient to engage independent auditors who are not otherwise engaged in the recipient's activities. This ensures compliance with Federal audit requirements and maintains the integrity and independence of the audit process.
- c. Federal Audit Agencies. The Federal Government maintains a continuing Federal audit capability at certain contractor locations. On occasion, these auditors may be used to audit an FTA recipient's third-party contracts. In other circumstances, an audit by a Federal agency may best serve the interests of the Federal Government and the recipient. This can be true of audits to determine a contractor's provisional overhead (burden) and

General & Administrative (G&A) rates that need to be verified by audit for specific contract periods. Federal audit services, however, might not be available when needed; then the recipient will need to obtain the services of an independent private auditing firm that can perform the audit soon after an audit is requested.

6. FRAUD. As a reminder, 49 U.S.C. 5323(l) extends the criminal fraud provisions of 18 U.S.C. 1001 to all certificates, submissions, or statements made in connection with any program financed under the Federal transit program. In addition, the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. 3801 *et seq.*, and DOT regulations, “Program Fraud Civil Remedies,” 49 CFR Part 31, apply to any false or fraudulent statement or claim made under the Federal transit program.

7. RECIPIENT RESPONSIBILITIES AND FTA ROLE IN PROCUREMENT DISPUTES. FTA is not a party to its recipients’ third-party contracts and does not have any obligation to any participant in its recipients’ third-party contracts. 2 CFR 200.318(k) assigns responsibility to the recipient for resolving all contractual and administrative issues arising out of its third-party procurements, including source evaluation and selection, protests of awards, disputes, and claims. FTA will not substitute its judgment for that of the recipient unless the matter is primarily a Federal concern. FTA also encourages the recipient to consider alternative dispute resolution procedures. Neither FTA nor 2 CFR Part 200 relieves the recipient of any responsibilities under its contracts. FTA encourages the recipient to consider alternative dispute resolution procedures to the extent appropriate. FTA is not a party to its recipients’ third-party contracts and does not have any obligation to any participant in its recipients’ third-party contracts.

CHAPTER IV:

THE RECIPIENT'S PROPERTY AND SERVICES NEEDS AND FEDERAL REQUIREMENTS AFFECTING THOSE NEEDS

1. DETERMINING THE RECIPIENT'S NEEDS. To support a third-party contract with Federal assistance awarded by the Federal Transit Administration (FTA), recipients are required to adopt adequate procedures for determining the type and amount of property and services it needs to acquire under 2 CFR 200.318(d).
 - a. Eligibility. The property and services to be acquired must be eligible under the Federal law authorizing the FTA assistance award and any regulations thereunder. For example, FTA prohibits the use of capital assistance for the recipient's operations expenses. If FTA assistance will be used to finance the cost of property or services, the property or services must be within the scope of the specific award from which that FTA assistance will be derived.
 - b. Necessity. Recipients must establish procedures that avoid the acquisition of unnecessary or duplicative items under 2 CFR 200.318(d). FTA will review the recipient's procedures and determinations based on reasonable expectations at the time of the contract, with an emphasis on achieving the broad outcomes targeted by Federal investments.
 - (1) Unnecessary Reserves and Spare Ratios. Recipients must establish procedures to avoid the purchase of unnecessary property and services (including duplicative items and quantities or options it does not intend to use or whose use is unlikely under 2 CFR 200.318(d). Therefore, FTA seeks information about the recipient's fleet to ensure that the recipient does not acquire more vehicles than it needs for public transportation service in its service area. Further guidance on spare ratios is contained in the most recent versions of FTA Circular 5010.1F Award Management Requirements, FTA Circular 9050.1A Urbanized Areas Formula Grant Programs Guidance, and FTA Circular 9300.1B Capital Investment Program Guidance and Application Instructions.
 - (2) Acquisition for Assignment Purposes. The recipient must contract only for its current and reasonably expected public transportation needs and must not add quantities or options to contracts solely to permit assignment to another party at a later date. These limits on assignments, however, do not preclude:
 - (a) Changes in the Recipient's Needs. The quantity of property or services a recipient reasonably believes it may need at the time of contract award may be different from what it actually needs during contract performance. A recipient's later needs might decrease due to changed circumstances or honest mistakes. In those situations, the recipient may assign its unneeded contract authority to another entity that would like to acquire the property or

services. (Chapter V of this circular provides information of assignments for contract rights between FTA recipients.)

- (b) Joint Procurements. These are encouraged as a strategic approach to achieving cost-effective and efficient Federal procurements and standardization in requirements. Two or more recipients may enter into a single procurement at the same time to obtain advantages unavailable for smaller procurements, as discussed more fully in Chapter V, section 3 of this circular.
 - (c) State or Local Government Purchasing Schedules or Purchasing Contracts. These should be utilized in a manner that supports transparency, competition, and the achievement of broader Federal and local infrastructure goals. A State or local government may enter into contracts that support its purchasing schedules or purchasing contracts established as discussed more fully in Chapter V, section 4 of this circular.
- c. Procurement Size. The recipient should consider whether to consolidate or break out the procurement to obtain a more economical purchase.
- (1) Joint Procurements. It may be economically advantageous for a recipient to enter into a joint procurement with others that have similar needs. Participants in a joint procurement may assign administrative responsibilities among themselves and may assign a lead recipient to undertake primary responsibility for the procurement. The recipient responsible for undertaking the joint procurement may, upon contract award, assign to the other participants responsibilities for administering those parts of the contract affecting their property or services. Participation in a joint procurement, however, does not relieve any participating recipient from the requirements and responsibilities it would have if it were procuring the property or services by itself, and does not relieve any recipient of its responsibilities under Federal procurement rules (e.g., recordkeeping) because the primary administrative responsibility for a particular action resides in an entity other than in itself.
 - (2) Small Procurements. In other circumstances, breaking out procurements may provide greater opportunities for Disadvantaged Business Enterprises (DBEs), small and minority firms, women owned small business enterprises, veteran-owned businesses and businesses committed to environmental sustainability to participate. See 2 CFR 200.321(b)(3) (when possible, recipients should divide procurements into smaller purchases to maximize participation by these business entities) and U.S. DOT's DBE regulation 49 CFR Pt. 26, App. A (good faith efforts to achieve DBE participation may include "breaking out contract work items into economically feasible units (for example, smaller tasks or quantities)"). However, a recipient should not split a large procurement merely to take advantage of the informal procurement methods available for procurements below the simplified acquisition threshold or micro-purchase threshold.

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- d. Options. The recipient's contracts may include options to ensure the future availability of property or services, so long as the recipient is able to justify those options as needed for its public transportation or project purposes. An option is a unilateral right in a contract by which, for a specified time, a recipient may acquire additional equipment, supplies, or services than originally procured. An option may also extend the term of the contract. Chapter VI of this circular contains procedures for evaluating options.
- e. Lease versus Purchase. To secure the best value, recipients should evaluate both lease and purchase options for acquiring property under 2 CFR 200.318(d). Recipients should consider all relevant factors, including market conditions and the expected useful life of the asset in their decision-making process.
- (1) Leases of rolling stock and related equipment. Section 3019(c) of the Fixing America's Surface Transportation (FAST) Act introduced new leasing flexibilities specifically for rolling stock and related equipment. Under section 3019(c) of the FAST Act, FTA capital funds are available to pay for a lease of rolling stock or related equipment if (i) the rolling stock or related equipment covered under the lease is otherwise eligible for FTA capital assistance; and (ii) there is or will be no Federal interest in the rolling stock or related equipment covered under the lease as of the date on which the lease takes effect. This is irrespective of other FTA policies related to the eligibility of capital or operating leases. (See Circular 5010.1F, Chapter IV, regarding the eligibility of leases for other than rolling stock or related equipment.) Eligible lease costs include the cost of the rolling stock or related equipment; associated financing costs, including interest, legal fees, and financial advisor fees; ancillary costs such as delivery and installation charges; and maintenance costs. For purposes of section 3019(c) of the FAST Act, "related equipment" means equipment that is necessary for the operation of the vehicle (e.g., power sources, or external charging equipment) and not accessories like fareboxes.
 - (2) Leases of removable power sources. Under section 3019(c) of the FAST Act, a recipient may lease a removable power source of a zero emission vehicle separately from the acquisition of the rest of the vehicle. A removable power source may include a battery, fuel cell, ultra-capacitor, or other advanced power source used in a zero-emission vehicle.
 - (3) Maximizing Use of Funds. A recipient procuring rolling stock or related equipment using funds awarded under the Formula Grants for Buses and Bus Facilities Program (49 U.S.C. 5339(a)) or the Buses and Bus Facilities Competitive Grants Program (49 U.S.C. 5339(b)) should, to the extent practicable, seek to use the procurement tools authorized by section 3019 of the FAST Act. If a recipient under either of those programs purchases fewer than five buses through a standalone procurement, the recipient must provide FTA with an explanation regarding why it did not use a procurement tool authorized by section 3019 of the FAST Act.

(4) Reporting required. A recipient that enters into a lease using section 3019(c) of the FAST Act must report within three years of entering the lease an evaluation of the overall costs and benefits of leasing rolling stock or related equipment and a comparison of the expected short-term and long-term maintenance costs of leasing versus buying rolling stock.

f. Specifications. The recipient must not use any specification that is exclusionary or discriminatory. 49 U.S.C. 5325(h). Specifications should clearly describe the property or services to be procured and state how the bids or proposals will be evaluated. For additional guidance, see section 2 of this Chapter, and Chapter VI, section 3 of this circular.

2. FEDERAL REQUIREMENTS THAT MAY AFFECT A RECIPIENT'S ACQUISITIONS.

A recipient using FTA assistance to support the acquisition of property or services, must comply with all applicable Federal laws and regulations. Some of those laws and regulations will affect the third-party contractor providing the property or services, or even determine which offerors may qualify for an award. Other laws and regulations will affect the nature of the property or services to be acquired or the terms under which the property or services must be acquired. A recipient may not use FTA assistance to support acquisitions that do not comply with all applicable Federal requirements.

FTA's Master Agreement contains a current description of statutory and regulatory requirements that may affect a recipient's procurement (such as Disadvantaged Business Enterprise (DBE) and Clean Air requirements). Even if a requirement does not explicitly say it applies to the contractors of a recipient, the recipient is responsible for extending requirements to contractors to the lowest tier necessary to ensure compliance with the requirement. A recipient may also need to include applicable Federal requirements in each sub agreement, lease, third party contract, or other document as necessary. For specific guidance on cross-cutting requirements administered by other Federal agencies, FTA recommends that the recipient contact those agencies.

The recipient may also refer to the Model Clauses in FTA's "Best Practices Procurement & Lessons Learned Manual". The Model Clauses are offered as guidance and are not mandatory. Recipients should consult the most recent versions of FTA's Master Agreement and the applicable laws that the Model Clauses reflect to ensure their accuracy and relevance. Key requirements and restrictions that commonly impact the use of FTA funds for third-party contracts include the following:

a. Contractor Qualifications. The following Federal laws and regulations may affect contractor selection:

(1) "Responsibility" Requirements. Federal transit law at 49 U.S.C. 5325(j) restricts third-party contractor awards to those "responsible contractors possessing the ability to successfully perform under the terms and conditions of a proposed procurement". Before selecting a contractor for award, the recipient must evaluate the integrity of the contractor, the contractor's compliance with public policy, the contractor's proper classification of employees (see the Fair Labor

Standards Act, 29 U.S.C. 201, Chapter 8), the contractor's past performance, and the contractor's financial and technical resources. 49 U.S.C. 5325(j)(2); 2 CFR 200.318(h).

(2) Debarment and Suspension.

(a) DOT Debarment and Suspension Regulations. Department of Transportation (DOT) regulations, "Nonprocurement Suspension and Debarment," 2 CFR Part 1200, applies to each contract at any tier expected to be \$25,000 or more; to each contract at any tier for a Federally required audit (irrespective of the contract amount); and to each contract at any tier that must be approved by an FTA official (irrespective of the contract amount). The recipient must ensure that no such contract at any tier is awarded to any person that is excluded or disqualified under the Governmentwide suspension and debarment system.

(b) System for Award Management (SAM). While recipients may satisfy themselves of a prospective contractor's suspension or debarment status by requiring a certification from the prospective contractor, or including relevant clauses in contracts requiring disclosure (2 CFR 180.300), FTA strongly recommends recipients verify the status of entities directly through the System for Award Management (SAM) (www.sam.gov). This platform identifies parties excluded from receiving Federal contracts, certain subcontracts, and various types of Federal financial and non-financial assistance and benefits. SAM provides an up-to-date resource for checking administrative and statutory exclusions across the entire Federal Government. (Note that contractors not seeking business with the Federal Government may not be required to register in SAM, and may not appear in a search of SAM.)

(c) State and Local Debarment and Suspension Lists. A recipient may also treat any prospective contractor or subcontractor listed on a State or local government exclusion list as nonresponsible and ineligible for contract award.

(3) Conflict of Interest. Under 2 CFR 200.319, a recipient must be vigilant of potential conflicts of interest a prospective contractor might have, including lack of impartiality, impaired objectivity, or unfair competitive advantage. To ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids must be excluded from competing on those procurements.

Lobbying Certification and Disclosure. If the third-party contract will exceed \$100,000, the recipient must obtain a lobbying certification before awarding the contract, and if applicable, a lobbying disclosure from a prospective third-party contractor. See DOT regulations "New Restrictions on Lobbying" 49 CFR Part 20.

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- b. Administrative Requirements on the Acquisition of Property and Services. Federal laws and regulations impose administrative requirements, many of which will affect specific third-party procurements.
- (1) Legal Eligibility. The property or services acquired must be eligible for support under the restrictions accompanying the Federal statute authorizing the Federal assistance to be used.
 - (2) Scope of Work. The property or services acquired must be eligible for support within the scope of the underlying grant or cooperative agreement from which the Federal assistance to be used is derived.
 - (3) Period of Performance. The recipient should use sound business judgment and be judicious in establishing and extending a contract's period of performance.
 - (a) General Standards. The period of performance generally should not exceed the time necessary to accomplish the purpose of the contract. The recipient should also consider competition, pricing, fairness, and public perception. The recipient's procurement files should document its rationale for determining the performance period designated for each contract.
 - (b) Federal Restrictions. Except for rolling stock and replacement part contracts, which are limited by law to five or seven years as discussed in subsection 2.e of this Chapter, there are not Federal requirements specifically restricting the maximum period of performance of a contract. Nevertheless, the duration of the recipient's contracts should be reasonable and must not undermine the general requirement for full and open competition in FTA-funded procurements. 49 U.S.C. 5325(a).
 - (c) Time Extensions. Depending on the type of contract and the lengths of time involved, a change that extends the contract beyond its original period of performance and all option periods may effectively be a non-competitive and require justification in accordance with 2 CFR 200.320.
 - (4) Federal Cost Principles. Project costs must conform to applicable Federal cost principles. 2 CFR Part 200 Subpart E. In general, costs must be necessary and reasonable, allocable to the project, authorized or not prohibited by Federal law or regulation, and must comply with Federal cost principles applicable to the recipient.
 - (5) Payment Provisions. Under certain circumstances, a recipient may use advance payments or progress payments in its contracts. The conditions FTA applies to advance and progress payments vary depending on the timing of the payments and whether FTA has made an award for the project or the recipient is relying on pre-award authority. (5010.1F for a detailed discussion of pre-award authority.)
 - (a) Advance Payments. Advance payments (sometimes called mobilization payments) are payments made to a contractor before the contractor incurs

contract costs. The recipient may use non-Federal funds for advance payments before it receives a grant from FTA. However, if there is no automatic preaward authority for its project, then to maintain eligibility for FTA reimbursement after grant award, the recipient must obtain a letter of no prejudice or other pre-award authority from FTA prior to incurring costs.

After the award is made, a recipient may advance payments before the contractor has incurred costs with the following conditions:

- (a) Prior FTA Approval. The recipient must receive FTA's advance written concurrence before making advance payments to a contractor using FTA financial assistance.

In some industries, advance payments are more or less customary or required to secure service. FTA's prior concurrence is required only if advance payments will exceed \$100,000 in contracts for public utility connections and services, rent, tuition, insurance premiums, subscriptions to publications, software licenses, construction mobilization costs, transportation, hotel reservations, and conference or convention registrations. Even in cases where FTA's prior concurrence is not required, the recipient makes advance payments at its risk, and FTA strongly encourages the recipient to obtain security for any payment.

- a Sound Business Reasons. The recipient should have sound business reasons for making the advance payment, such as a reduction in the cost of the contract as a result of the advance payment.
 - b Adequate Security for Advance Payments. Adequate security for the advance payment is an essential pre-condition to FTA's concurrence in the use of advance payments. Adequate security may take different forms depending on the industry and the nature of the goods or services to be delivered under the contract. Adequate security may include, for example, performance bonds, letters of credit, liens, or insurance. FTA will require minimum security in the amount of the Federal share of the advance payment. A performance bond or letter of credit for the full contract is not a Federal requirement.
- (b) Progress Payments. Progress payments (sometimes called milestone payments) are payments made to the contractor prior to the completion of all contract work. The recipient may use FTA assistance to make progress payments provided the recipient obtains adequate security for those payments and has sufficient written documentation to substantiate the work for which payment is made.
 - a Adequate Security for Progress Payments. Adequate security for progress payments may include taking title or obtaining a letter of credit or performance bond or taking equivalent measures to protect

the recipient's financial interest in the progress payment. Adequate security should reflect the practical realities of different procurement scenarios and factual circumstances. Taking title to work in progress may not be desirable in some circumstances. The recipient should consider the costs associated with providing security and the impact of those costs on the contract price, as well as the consequences of incomplete performance.

- b Adequate Documentation. Sufficient documentation is required to demonstrate completion of the amount of work for which progress payments are made. A recipient should be as specific as possible in its contract when describing the activities or milestones for which progress payments will be made.
- (6) Sensitive Security Information. Each third party contractor must protect, and take measures to ensure that its subcontractors at each tier protect, "sensitive security information" made available during the administration of a third party contract or subcontract to ensure compliance with 49 U.S.C. 40119(b) and implementing DOT regulations, "Protection of Sensitive Security Information," 49 CFR Part 15, and with 49 U.S.C. 114(r) and implementing Department of Homeland Security regulations, "Protection of Sensitive Security Information," 49 CFR Part 1520.
- (7) Seat Belt Use. In compliance with Federal Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. Section 402 note, FTA encourages each third-party contractor to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company owned, rented, or personally operated vehicles, and to include this provision in each third-party subcontract involving the project.
- (8) Texting While Driving and Distracted Driving. Consistent with Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. 402 note, and DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009, FTA encourages each third party contractor to promote policies and initiatives for its employees and other personnel that adopt and promote safety policies that to decrease crashes by distracted drivers, including policies to ban text messaging while driving, and to include this provision in each third party subcontract involving the project.
- (9) Protections Against Performance Difficulties. In addition to such clauses as regulation or FTA's Master Agreement may require a recipient to include in its contracts, FTA recommends recipients consider such additional provisions that would reduce potential problems that might occur during contract performance.
 - (a) Remedies. Contracts for more than the simplified acquisition threshold (\$250,000, as of October 1, 2024) must address administrative, contractual,

or legal remedies in instances where contractors violate or breach contract and provide for such sanctions and penalties as appropriate. 2 CFR App. II to Part 200(A).

- (b) Termination. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be affected and the basis for settlement. 2 CFR App. II to Part 200(B).
 - (c) Changes. A recipient should include provisions describing how the parties will handle changes and changed conditions in most contracts, except for routine supply contracts.
 - (d) Liquidated Damages. A recipient may use liquidated damages if the recipient reasonably expects to suffer damages through delayed contract completion, or if weight requirements are exceeded, and the extent or amount of such damages are uncertain and would be difficult or impossible to determine. The rate and measurement standards should be calculated to reasonably reflect the recipient's costs should the standards not be met and should be specified in the solicitation and contract. The assessment for damages is often established at a specific rate per day for each day beyond the contract's delivery date or performance period. A measurement other than a day or another period of time, however, may be established if that measurement is appropriate, such as weight requirements in a rolling stock purchase. The procurement file should include a record of the calculation and rationale for the amount of damages established. Under FTA's Master Agreement the recipient may return all liquidated damages it receives to its award budget rather than return the Federal share of those liquidated damages to FTA, provided that the recipient receives FTA's prior written concurrence.
- c. Socio-Economic Requirements for the Acquisition of Property and Services. The following Federal laws and regulations imposing socio-economic requirements may affect a specific procurement:
- (1) Labor. The following Federal labor protection laws and regulations may affect the types of property and services that may be acquired with FTA assistance:
 - (a) Contract Work and Hours and Safety Standards Act. All contracts awarded by the recipient in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702, each contractor must be required to compute the wages of every mechanic and laborer based on a standard workweek of 40 hours. Work in excess of the standard workweek is permitted if the worker is compensated at a rate of not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in the workweek. The

requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

- (b) Fair Labor Standards. The Fair Labor Standards Act, 29 U.S.C. 201 *et seq.* applies to employees performing work in connection with Federally funded projects involving commerce.
- (2) Civil Rights. The following Federal civil rights laws and regulations may affect the types of property and services that may be acquired with FTA assistance. A recipient may not directly or through contractual or other arrangements discriminate in violation of these laws.
 - (a) Nondiscrimination in Federal Public Transportation Programs. A person may not be excluded from participating in, denied a benefit of, or discriminated against under, a project, program, or activity receiving FTA financial assistance because of race, color, religion, national origin, sex, disability, or age. 49 U.S.C. 5332(b). This anti-discrimination provision also applies to employment and business opportunities and is in addition to Title VI of the Civil Rights Act of 1964. 49 U.S.C. 5332(f).
 - (b) Title VI of the Civil Rights Act. No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity receiving Federal financial assistance in violation of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d *et seq.* and DOT regulations, “Nondiscrimination in Federally Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964,” 49 CFR Part 21. In addition, FTA Circular 4702.1B, “Title VI Requirements and Guidelines for Federal Transit Administration Recipients,” 10-01-12, provides FTA guidance and instructions for implementing DOT’s Title VI regulations.
 - (c) Nondiscrimination on the Basis of Sexual Orientation and Gender Identity. IIJA 60307(a) adds sexual orientation and gender identity as bases on which a person must not be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving FTA financial assistance.
 - (d) Nondiscrimination on the Basis of Sex in Education. Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 *et seq.* and implementing Federal regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 CFR Part 25, prohibit (with certain exceptions) discrimination on the basis

of sex in any education program or activity receiving Federal financial assistance, whether or not such program or activity is offered or sponsored by an educational institution.

- (e) Prohibition Against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, including subsequent amendments and related executive orders, prohibits discrimination in employment on the basis of race, color, religion, sex (including pregnancy, sexual orientation, and gender identity), or national origin. Through FTA's Master Agreement § 12(d) (May 2, 2024), the recipient agrees to ensure its contractors will comply with Title VII.
- (f) Nondiscrimination on the Basis of Age. The "Age Discrimination Act of 1974, as amended, 42 U.S.C. 6101 *et seq.*, and Department of Health and Human Services implementing regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance, 45 CFR Part 90, prohibit discrimination by participants in Federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. 621 *et seq.*, and Equal Employment Opportunity Commission (EEOC) implementing regulations, "Age Discrimination in Employment Act," 29 CFR Part 1625, also prohibit employment discrimination against individuals on the basis of age.
- (g) Environmental Justice. Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," February 11, 1994, 42 U.S.C. 4321 note, and DOT Order 5610.2C, "U.S. Department of Transportation Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," May 16, 2021, protect minority populations and low-income populations against disproportionately high and adverse effects of Federally assisted programs. FTA Circular 4702.1B, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," (October 01, 2012), and FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients" (August 15, 2012), also provide FTA guidance and instructions for implementing the DOT Order 5610.2C. Through the FTA Master Agreement § 26(c) (May 2, 2024), the recipient agrees to ensure its contractors comply with environmental justice requirements.
- (h) Limited English Proficiency (LEP). Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," August 11, 2000, 42 U.S.C. 2000d-1 note, and DOT, "Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficient (LEP) Persons," December 14, 2005, clarifies the responsibilities of recipients of Federal financial assistance from DOT and assists them in fulfilling their responsibilities to LEP persons, pursuant to Title VI of the Civil Rights Act

of 1964 and implementing regulations. FTA Circular 4702.1B, “Title VI Requirements and Guidelines for Federal Transit Administration Recipients,” also provides FTA guidance and instructions for implementing the DOT Policy Guidance.

- (i) Nondiscrimination on the Basis of Disability. The recipient agrees to comply and assures the compliance of each third-party contractor and each subrecipient at any tier of the project, with the applicable laws and regulations, discussed below, for nondiscrimination on the basis of disability.
 - a Section 504 of the Rehabilitation Act of 1973, as amended (Section 504). 29 U.S.C. 794, prohibits discrimination on the basis of disability under any program or activity receiving Federal financial assistance.
 - b The Americans with Disabilities Act of 1990, as amended (ADA). 42 U.S.C. 12101 *et seq.*, prohibits discrimination against qualified individuals with disabilities in all programs, activities, and services of public entities, as well as imposes specific requirements on public and private providers of transportation.
 - c DOT Public Transportation Regulations implementing Section 504 and the ADA. These regulations include DOT regulations, “Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 CFR Part 27, DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 CFR Part 37, and Joint Architectural and Transportation Barriers Compliance Board (U.S. Access Board)/DOT regulations, “Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 CFR Part 1192 and 49 CFR Part 38. Examples of requirements include, but are not limited to, the following:
 - 1 Design and Construction. Accessibility requirements for the design and construction of new transportation facilities;
 - 2 Accessibility and Usability. Requirements that vehicles acquired (with limited exceptions) be accessible to and usable by individuals with disabilities, including individuals using wheelchairs;
 - 3 Complementary Paratransit Service. Requirements that public entities providing fixed-route service, (including a private non-profit entity providing public transportation service on behalf of the State or designated recipient as a subrecipient providing fixed-route service), provide complementary paratransit service to individuals with disabilities who cannot use the fixed-route service;

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- 4 Equal Opportunity. Requirements for compliance with service requirements intended to ensure that individuals with disabilities are afforded equal opportunity to use transportation systems and services.
- (j) Electronic Reports and Information. Reports and other information prepared in electronic format developed in connection with a third-party contract that the recipient intends to provide to FTA, among others, whether as a contract end item or in compliance with contract administration provisions, must comply with Section 508 of the Rehabilitation Act of 1973, as amended, ensuring accessibility for individuals with disabilities. Compliance is governed by the U.S. Access Board's regulations, which align with the most current version of the Web Content Accessibility Guidelines (WCAG).
- (3) Targeted Contracting.
- (a) Disadvantaged Business Enterprises (DBEs). All FTA recipients receiving planning, capital, or operating assistance must comply with the Department of Transportation Disadvantaged Business Enterprise (DBE) program regulation (49 CFR Part 26). A recipient has different obligations depending on the amount and type of FTA funds it awards in a year. A recipient that awards more than \$670,000 of FTA funds in prime contracts in a Federal fiscal year (excluding transit vehicle purchases) is considered Tier I and must have a full DBE program meeting all requirements of Part 26. A recipient that awards up to \$670,000 in FTA funds is considered Tier II and must maintain an abbreviated program locally consistent with 49 CFR 26.21(a)(2). The FTA Office of Civil Rights reviews recipients of FTA assistance to determine their compliance with 49 CFR Part 26 based on their designated Tier, which may include reviewing the recipient's overall DBE program, reporting and recordkeeping, DBE goals, transit vehicle purchases, certification processes, and contract monitoring, as applicable.
- (b) Small and Disadvantaged Business Enterprises. Apart from U.S. DOT's DBE regulation, when possible, each recipient and subrecipient should ensure that small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms (the U.S. Department of Labor issues a Labor Surplus Area list on a fiscal year basis) are considered for awards. 2 CFR 200.321. Consideration means the following:
- a Including these business types on solicitation lists;
 - b Soliciting these business types whenever they are deemed eligible as potential sources;
 - c Dividing procurement transactions into separate procurements to permit maximum participation by these business types;

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- (c) Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites. DOT's enabling legislation has special requirements designed to protect publicly owned parks, recreation areas, wildlife and waterfowl refuges, and historic sites, at 49 U.S.C. 303(b) and 303(c) (often referred to as "Section 4(f)"), that may affect the timing and methods of recipient procurements. The Federal Highway Administration (FHWA) and FTA have published implementing regulations, "Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites," 23 CFR Part 771 and 774, and "Environmental Impact and Related Procedures," 49 CFR Part 622.
- (d) Clean Air Act and Federal Water Pollution Control Act. Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- (e) Recycled Products. Under 2 CFR 200.323 a recipient or subrecipient that is a State agency or agency of a political subdivision of a State and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 as amended, 42 U.S.C. 6962. The requirements of Section 6002 include procuring only items designated in the guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

The recipient or subrecipient should, to the greatest extent practicable and consistent with law, purchase, acquire, or use products and services that can be reused, refurbished, or recycled; contain recycled content, are biobased, or are energy and water efficient; and are sustainable. This may include purchasing compostable items and other products and services that reduce the use of single-use plastic products. See Executive Order 14057, section 101, Policy.

- (f) Other Federal Environmental Protection Requirements. Additional third-party contract provisions may be needed for compliance with other Federal laws and regulations. FTA's Master Agreement includes environmental laws and regulations that may affect the acquisition of property or services with FTA assistance such as provisions to protect wild and scenic rivers, manage coastal

zones, protect wetlands, conserve endangered species, and protect fisheries, archeological sites, and Indian sacred sites.

- (5) Energy Conservation. In accordance with the Master Agreement, the recipient must ensure its contractors comply with the mandatory energy standards and policies of its state energy conservation plans under the Energy Policy and Conservation Act, as amended, 42 U.S.C. 6321, et seq. Performance of an energy assessment is required for any building constructed, reconstructed, or modified with Federal assistance required under FTA regulations, “Requirements for Energy Assessments,” 49 CFR Part 622, Subpart C.
- (6) Preference for U.S. Property—Buy America. FTA may obligate an amount for a project only if the steel, iron, manufactured goods, and construction materials used in the project are produced in the United States under the Build America, Buy America Act (BABA), Pub. L. 117-58, §§ 70901–27 incorporated under 49 U.S.C. 5323(j). If FTA funds are used for the project, Buy America requirements apply to all procurement contracts under the project and components may not be singled out as a discrete part of the project “without” FTA funds to avoid the requirements.

Under FTA’s implementing regulation, 49 CFR Part 661, a recipient must require bidders or offerors to certify affirmatively to their compliance or non-compliance with Buy America.

FTA or the U.S. Department of Transportation have limited authority to waive Buy America in certain situations and have issued several standing waivers that may apply based on the size of a grant or procurement or the type of goods to be procured. Waivers may not be granted for costs already incurred, and a recipient should not proceed with a procurement assuming a waiver will be granted.

Property that a contractor acquires to fabricate a deliverable for the recipient, such as tools, machinery, and other equipment or facilities, is not subject to FTA’s Buy America requirements unless the recipient will take possession of that property upon completion of the project. FTA’s implementation of Buy America does not pre-empt State laws with stricter requirements on the use of foreign articles, materials, and supplies.

FTA cautions that its Buy America regulations that apply to FTA assisted third party procurements, published at 49 CFR Part 661 (for iron, steel, and manufactured products) and 2 CFR Part 184 (for construction materials), differ from Federal Buy American Act regulations that apply to direct Federal procurements, published in the FAR at 48 CFR Part 25. FTA strongly recommends that the recipient review FTA’s Buy America regulations and guidance on FTA’s Buy America webpage before undertaking any FTA assisted procurement. Refer to Chapter II of Circular 5010.1F for a more detailed description of Buy America’s requirements and current standing waivers.

- (7) Shipments of Property—U.S. Flag Requirements.

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- (a) Shipments by Ocean Vessel. The Master Agreement requires third party contract provisions to ensure compliance with 46 U.S.C. 55303 and Maritime Administration regulations, “Cargo Preference-U.S. Flag Vessels,” 46 CFR Part 381, implementing the codified Cargo Preference Act. With few exceptions, the regulations require that U.S. Flag vessels be used to transport at least 50 percent of any Federally assisted property.
- (b) Shipments by Air Carrier. Third party contracts involving shipments of Federally assisted property by air carrier will require provisions to ensure compliance with Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended (“Fly America” Act), 49 U.S.C. 40118, and GSA regulations, “Use of United States Flag Air Carriers,” 41 CFR 301-10.131 through 301-10.143. The regulations require shipment by U.S. flag air carriers unless such carriers are not reasonably available within the standards of GSA’s implementing regulations.
- (8) Project Travel—Use of U.S. Flag Air Carriers. Third party contracts to acquire transportation by air carrier needed by people participating in a Federally assisted project require provisions to ensure compliance with Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended (“Fly America” Act), 49 U.S.C. 40118, and GSA regulations, “Use of United States Flag Air Carriers,” 41 CFR 301-10.131 through 301-10.143. The regulations require transportation by U.S. flag air carriers unless U.S. flag air carriers are not reasonably available within the standards of the GSA’s implementing regulations.
- d. Technical Restrictions on the Acquisition of Property and Services. The following Federal laws and regulations imposing technical requirements may affect a specific procurement:
- (1) Intelligent Transportation Systems. An Intelligent transportation system (ITS) includes electronics, communications, or information processing used singly or in combination to improve the efficiency or safety of a surface transportation system. Property and services must comply with the National ITS Architecture and Standards to the extent required by 23 U.S.C. 517(d) and FTA Notice, “FTA National ITS Architecture Policy on Transit Projects,” 66 FR 1455 *et seq.*, January 8, 2001, and later published policies or implementing directives FTA may issue. Consequently, third party contracts involving ITS are likely to require provisions to ensure compliance with Federal requirements. Additional information regarding ITS is included in Circular 5010.1F.
- (2) Use of \$1 Coins. To comply with Section 104 of the Presidential \$1 Coin Act of 2005, 31 U.S.C. 5112(p), FTA assisted property that requires the use of coins or currency in public transportation service or supporting service must be fully capable of accepting and dispensing \$1 coins.
- e. Rolling Stock—Special Requirements. The following Federal laws and regulations impose requirements that may affect rolling stock procurements:

- (1) Accessibility. Rolling stock must comply with the accessibility requirements of DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 CFR Part 37, and U.S. Access Board/DOT regulations, “Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 CFR Part 1192 and 49 CFR Part 38.
- (2) Transit Vehicle Manufacturer Compliance with DBE Requirements. Before a transit vehicle manufacturer (TVM) may submit a bid or proposal to provide vehicles to be financed with FTA assistance, 49 CFR 26.49 requires the TVM to submit a certification that it has complied with FTA’s DBE requirements. With FTA’s prior approval, a recipient may establish a project-specific goal for DBE participation in the procurement of transit vehicles (e.g., ferry vessels) from specialized manufacturers when a TVM cannot be identified.
- (3) Minimum Useful Life. For buses, railcars, and other revenue rolling stock, FTA has established minimum useful life policies that may affect the quantity of vehicles that the recipient may acquire or how soon a recipient may replace a vehicle. Additional requirements and guidance are included in Circular 5010.1F, “Award Management Requirements,” and FTA Circular 9050.1A, “Urbanized Areas Formula Grant Programs Guidance.
- (4) Spare Ratios. A recipient must not acquire unnecessary or duplicative items. 2 CFR 200.318(d). To ensure a recipient does not acquire an excessive number of spare vehicles not regularly used in public transportation service, FTA has a spare-ratio policy that determines the maximum number of vehicles a recipient may acquire as a ratio of the number of vehicles it operates during peak service. Additional requirements and guidance are included in Circular 5010.1F Award Management Requirements, and FTA Circular 9050.1A, Urbanized Areas Formula Grant Programs Guidance.
- (5) Preaward Review and Post Delivery Review. Each third-party contract to acquire rolling stock must include provisions for compliance with applicable requirements of 49 U.S.C. 5323(m) and those provisions of FTA regulations, “Pre-Award and Post-Delivery Audits of Rolling Stock Purchases,” 49 CFR Part 663.
- (6) Bus Testing. Under 49 U.S.C. 5318, a recipient may acquire a bus only if a bus of that model has been tested in accordance with FTA’s bus testing regulation, 49 CFR Part 665, and met performance standards for maintainability, reliability, performance (including braking performance), structural integrity, fuel economy, emissions, and noise.
- (7) In-State Dealers. Irrespective of any State law, the recipient may not limit its bus procurements to its in-State dealers under 49 U.S.C. 5325(i).
- (8) Basis for Contract Award. As permitted by 49 U.S.C. 5325(f), the recipient may award a third-party contract for rolling stock based on initial capital costs, or

based on performance, standardization, life cycle costs, and other factors, or by selection through a competitive procurement process.

- (9) Time Limits for Options on Rolling Stock Contracts. Under 49 U.S.C. 5325(e), a recipient procuring rolling stock may make a multiyear contract to buy the rolling stock and replacement parts under which the recipient has an option to buy additional rolling stock or replacement parts for (A) not more than 5 years after the date of the original contract for bus procurements; and (B) not more than 7 years after the date of the original contract for rail procurements, provided that such option does not allow for significant changes or alterations to the rolling stock.

FTA interprets these five- and seven-year periods as covering the recipient's material requirements for rolling stock and replacement parts from the first day when the contract becomes effective to the end of the fifth or seventh year, as applicable. In the case of rolling stock, which frequently requires significant lead time, a recipient's material requirements for rolling stock will necessarily precede its actual need to put that rolling stock to use in public transportation service. The contract may not have options for more rolling stock and replacement parts than a recipient's anticipated material requirements for the applicable five- or seven-year period. The five- or seven-year limit means a recipient may not place orders for rolling stock or replacement parts after the maximum time limit. The recipient need not obtain delivery, acceptance, or fabrication during the five- or seven-year contract period.

- f. Public Transportation Services—Special Requirements. The recipient must include provisions in its third-party contract ensuring compliance with the following requirements, or the recipient must obtain the third-party contractor's agreement in another form, as a matter of contractor responsibility, to ensure compliance with the following:
 - (1) Protections for Public Transportation Employees. When the recipient acquires public transportation services from a third-party contractor, the terms of the recipient's DOL certification of public transportation employee protective arrangements will apply to work under the contract provided by those employees covered by the certification. That certification is required by 49 U.S.C. 5333(b) (often referred to as "13(c)") and implementing DOL guidelines, "Section 5333(b), Federal Transit Law," 29 CFR Part 215. Consequently, the third-party contractor must comply with the terms of that DOL certification.

The Fair Labor Standards Act, 29 U.S.C. 201 *et seq.*, also applies to public transportation employees performing work involving commerce.

- (2) Drug Use and Testing and Alcohol Misuse and Testing. A third-party contractor providing services involving the performance of safety sensitive activities must comply with 49 CFR Part 40, 49 U.S.C. 5331 and FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations" under 49 CFR

Part 655. Additional requirements and guidance are included in Circular 5010.1F, Award Management Requirements.

- (3) Accessibility. A third-party contractor providing public transportation services must operate its services in compliance with 42 U.S.C. 12101 *et seq.*; DOT regulations, “Transportation Services for Individuals with Disabilities (ADA)” using facilities and equipment that comply with 49 CFR Part 37; and Joint United States Access Board/DOT regulations, “Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 CFR Part 1192 and 49 CFR Part 38. Private entities must comply with the requirements of 49 CFR Part 37 applicable to public entities with which they contract to provide public transportation services. The recipient should advise its third-party contractors operating public transportation services to review the requirements for public entities in this context.
 - (4) Protection of Animals. A third-party contractor providing services involving the use of animals must comply with the Animal Welfare Act, 7 U.S.C. 2131 *et seq.* and Department of Agriculture regulations, “Animal Welfare,” 9 CFR Parts 1, 2, 3, and 4.
 - (5) Charter Service Restrictions. A third-party contractor performing services using FTA assisted facilities or equipment may not use those facilities or that equipment to support any charter service operations except as permitted by 49 U.S.C. 5323(d) and FTA regulations, “Charter Service,” 49 CFR Part 604.
 - (6) School Bus Restrictions. A third-party contractor performing services using FTA assisted facilities or equipment may not use those facilities or that equipment to support exclusive school bus operations except as permitted by 49 U.S.C. 5323(f) or (g) and FTA regulations, “School Bus Operations,” 49 CFR Part 605, to the extent consistent with 49 U.S.C. 5323(f) or (g).
- g. Art. Recipients must not use FTA assistance to pay incremental costs of incorporating art or non-functional landscaping into facilities, including the costs of an artist on the design team under 49 U.S.C. 5323(h)(2).
- h. Architectural Engineering (A&E) and Related Services—Special Requirements. Federal laws and regulations impose the following requirements on A&E and related procurements:
- (1) Qualifications-Based Selection. For projects related to or leading to construction, an FTA recipient must use the qualifications-based procurement procedures of 40 U.S.C. Chapter 11 (“Brooks Act” procedures) when contracting for A&E services and other services described in 49 U.S.C. 5325(b), which include program management, architectural engineering, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, or related services.

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- (2) Relation to Construction. The nature of the services to be performed and its relationship to construction, not the nature of the prospective contractor, determines whether qualifications-based procurement procedures may be used.
- (a) Purpose of Services. The use of qualifications-based procurement procedures is authorized only for those services that directly support or are directly connected or related to construction, alteration, or repair of real property. Thus, if services, such as program management, feasibility studies, or mapping, are not directly in support of, directly connected to, or directly related to, or lead to construction, alteration, or repair of real property, then the recipient must not use qualifications-based procurement procedures to select the contractor that will perform those services.
- (b) Requirements in the Context of a Construction Project. A project involving construction (including an ITS project) does not always require the use of qualifications-based procurement procedures. Whether qualifications-based procurement procedures may be used depends on the actual services to be performed in connection with the construction project. For example:
- a. End Products Used in Construction. The design or fabrication of message signs, signals, and movable barriers that will become off-the-shelf items or will be fabricated and delivered as final, end products for installation in an FTA assisted construction project, including an (ITS) construction project, are not services for which qualifications-based procurement procedures may be used.
- b. Services Related to Design of Construction Projects. In contrast, services of a program manager, project designer, construction manager, or engineer in which the contractor would select the finished products to be acquired for an FTA assisted construction project are services for which qualifications-based procurement procedures must be used.
- c. Actual Construction. The actual construction or improvement to the real property to be used in an FTA assisted construction project are not services for which qualifications-based procurement procedures may be used. (However, see this Circular's discussion of alternative contracting methods that combine design and construction work, in Chapter VI.)
- (c) Type of Contractor Not Determinative. The nature of the firm performing the services does not determine whether it may be selected through the use of qualifications-based procurement procedures. For example, if an A&E firm offers to provide mapping services not related to construction, alteration, or repair of real property, the recipient may not use qualifications-based procurement procedures to evaluate that contractor's offer. In contrast, if a firm that does not generally provide A&E services offers to provide mapping services that are directly in support of, directly connected to, or directly

related to or lead to construction, alteration, or repair of real property, the recipient must evaluate that offer using qualifications-based procurement procedures.

- (3) Equivalent State Law. Instead of using the Brooks Act procedures of 40 U.S.C. Chapter 11, a recipient may use an equivalent qualifications-based requirement adopted by a State before August 10, 2005.
 - (4) Special Requirements for Indirect Cost Rates. 49 U.S.C. 5325 requires the acceptance of FAR indirect cost rates for applicable one-year accounting periods if those rates are not currently in dispute. After the indirect cost rates are accepted as required, the recipient must use those indirect cost rates for contract estimates, negotiation, administration, reporting, and payments, with administrative or de facto ceiling limitations.
- i. Construction—Special Requirements. The following Federal laws and regulations impose requirements that may affect FTA assisted construction projects:
- (1) Bonding. FTA requires bonds for All construction contracts exceeding the simplified acquisition threshold must use bonds for financing unless FTA determines that other arrangements adequately protect the Federal interest under 2 CFR 200.326. Otherwise, the minimum bonding requirements include:
 - (a) Bid Guarantee. A bid guarantee equivalent to five percent of the bid price. The bid guarantee must 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 the bid, execute any required contractual documents within the specified timeframe.
 - (b) Performance Bond. A performance bond on the contractor's part for 100 percent of the contract price. A performance bond is a bond executed in connection with a contract to secure the fulfillment of all the contractor's requirements under a contract.
 - (c) Payment Bond. A payment bond on the contractor's part for 100 percent of the contract price. A payment bond is a bond executed in connection with a contract to assure payment as required by the law of all persons supplying labor and material in the execution of the work provided for under a contract. FTA, however, has determined that payment bonds in the following amounts are adequate to protect FTA's interest and will accept a local bonding policy that meets the following minimums:
 - 1 Less Than \$1 Million. Fifty percent of the contract price if the contract price is not more than \$1 million.
 - 2 \$1 Million or More but Less Than \$5 Million. Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or

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- 3 \$5 Million or More. Two and one-half million dollars if the contract price is more than \$5 million.
- (d) Acceptable Sureties. Consistent with 2 CFR 200.304, where construction bonds must be obtained to protect the Federal interest, bonds must be obtained from companies holding certificates of authority as acceptable sureties under Department of the Treasury regulations, “Surety Companies Doing Business with the United States,” 31 CFR Part 223. For a current list of approved sureties, see Department of the Treasury’s Listing of Approved Sureties (Department Circular 570), <https://fiscal.treasury.gov/surety-bonds/list-certified-companies.html> <https://fiscal.treasury.gov/surety-bonds/circular-570.html>.
- (e) Reduced Bonding. FTA will accept a local bonding policy that conforms to the minimums described in this section. FTA may approve bonding amounts that do not conform to these minimums if the local bonding policy adequately protects the Federal interest. A recipient that wishes to adopt less stringent bonding requirements for a specific class of projects, or for a particular project, must submit its policy and rationale to the Regional Administrator for the FTA region administering the project. The decision to approve a less stringent bonding policy is in FTA’s discretion.
- (f) Excessive Bonding. Compliance with State and local bonding policies that are greater than FTA’s bonding requirements do not require FTA approval. In some situations, bond requirements can be useful if the recipient has a material risk of loss because of a failure of the prospective contractor. This is particularly so if the risk results from the likelihood of the contractor’s bankruptcy or financial failure when the work is partially completed. However, requiring excessive bonding may be restrictive of competition and inconsistent with 2 CFR 200.319, and make the recipient’s procurement ineligible for FTA assistance. Consequently, if the recipient’s bonding policy far exceeds those described in this subsection, the recipient should document the rationale for its bonding requirements in its procurement file and may find it useful to confer with the FTA regional office for the region administering the project before undertaking its procurement.
- (2) Seismic Safety. The recipient must include seismic safety provisions in its contracts for the construction of new buildings or additions to existing buildings as required by DOT regulations, “Seismic Safety,” 49 CFR Part 41, implementing the Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. 7701 *et seq.*
- (3) Value Engineering. Value Engineering (VE) is the systematic, multidisciplined approach designed to optimize the value of each dollar spent. To accomplish this goal, a team of architects/engineers identifies, analyzes, and establishes a value for a function of an item or system. Under 2 CFR 200.318, recipients should use value

- engineering provisions in contracts for construction projects and cautions that value engineering can be a pre-requisite for some Federal assistance awards. FTA generally will not approve a grant for a Major Capital Project until value engineering is complete. Some contractual arrangements (for example, design-build contracts) may inherently include value engineering. The concept of value engineering is more important than the particular form it may take in the contracting process.
- (4) Equal Employment Opportunity. Construction contracts must include the equal opportunity clause provided under 41 CFR 60-1.4(b). The clause commits the contractor to take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin, and to pass similar terms through to subcontractors.
- (5) Davis-Bacon Prevailing Wages. Under 49 U.S.C. 5333(a), Davis-Bacon Act prevailing wage protections apply to laborers and mechanics employed on all FTA assisted construction work. (Note that this is more expansive than the requirements at 2 CFR App. II to Part 200, which applies Davis-Bacon only to construction contracts in excess of \$2,000.) All prime construction contracts must include a provision for compliance with the Davis-Bacon Act, 40 U.S.C. 3141 et seq., and implementing DOL regulations “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction,” 29 CFR Part 5. The Davis-Bacon Act requires that contractors pay wages to laborers and mechanics at a rate not less than the minimum wages specified in the wage determination made by the Secretary of Labor. The Davis-Bacon Act also requires contractors to pay wages not less than once a week. The recipient must include a copy of the current prevailing wage determination issued by DOL in each contract solicitation and must condition contract award upon the acceptance of that wage determination. These requirements are in addition to the separate Wage and Hour Requirements addressed in paragraph 2.c(1) of this Chapter IV.
- (6) Veterans Employment. Under 5 U.S.C. 5325(k), a recipient must ensure that contractors working on a capital project funded with FTA assistance give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed, or enforced in any manner that would require an employer to give preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or former employee.
- (7) Anti-Kickback. Construction contracts must include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the

- construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The recipient must report all suspected or reported violations to FTA.
- (8) Contract Work Hours and Safety Standards. All contracts awarded by the recipient in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- (9) Labor Neutrality. A recipient may require the use of a project labor agreement (PLA) in its contract, and its contractor or subcontractor may continue to use a PLA should it choose to do so.
- j. Research, Development, Demonstration, Deployment, and Special Studies—Special Requirements. Procurements of research-type services can involve circumstances that bring special Federal requirements into effect. Among these are:
- (1) Patent Rights. The FTA Master Agreement incorporates 2 CFR 200.315 and requires, unless FTA determines otherwise in writing, that the Federal Government will acquire rights when the recipient, directly or through a contractor, produces a patented or patentable invention, improvement, or discovery using FTA financial assistance. 2 CFR 200.315; FTA Master Agreement § 17. Irrespective of the status of the recipient, subrecipient, or third party contractor (for example, a large business, small business, State government, State instrumentality, local government, Indian tribe, non-profit organization, institution of higher education, individual, and so forth) the recipient or subrecipient is subject to applicable regulations governing patents and inventions, Department of Commerce regulations, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms,” 37 CFR Part 401 (implementing the Bayh-Dole Act, 35 U.S.C. 200 *et seq.*), unless the Federal Government requires otherwise. Except in the case of an “other agreement” in which the Federal Government has agreed to take more limited rights, the Federal Government is entitled to a non-exclusive, royalty free license to use the resulting invention, or patent to the invention, for Federal Government purposes.

- (2) Rights in Data. when an award recipient, directly or through a contractor, produces any work that is subject to copyright and was developed, or for which ownership was acquired, FTA reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes and to authorize others to do so. This includes the right to require recipients and subrecipients to make such works available through agency-designated public access repositories. 2 CFR 200.315; FTA Master Agreement § 18.

Where FTA provides Federal assistance to support the costs of a research, development, demonstration, or a special studies project, FTA generally seeks sufficient rights in the data developed so that the resulting data can be made available to any FTA recipient, subrecipient, third party contractor, or third-party subcontractor. FTA's general purpose in providing Federal assistance for a research, development, demonstration, or special studies project is to increase transportation knowledge, rather than limit the benefits of the project-to-project participants. Therefore, unless FTA determines otherwise in writing, the following conditions to apply to the release of data produced for FTA assisted research, development, demonstration, or special studies projects.

- (a) Publication Restrictions. Except for its own internal use, the FTA Master Agreement § 18(b) provides that neither the recipient nor the third-party contractor may publish or reproduce subject data in whole or in part, or in any manner or form, without the advance written consent of the Federal Government, unless the Federal Government has released or approved the release of that data to the public. These restrictions do not apply to an institution of higher education.
- (b) Distribution of Data. Except for contracts for adaptation of automatic data processing equipment or data provided in support of an FTA capital project, each recipient agrees that, in addition to the rights in data and copyrights that it must provide to FTA, FTA may make available to any FTA recipient, subrecipient, third party contractor, or third party subcontractor, either FTA's license in the copyright to the subject data or a copy of the subject data. If, for any reason, the project is not completed, all data developed under the project is expected to be delivered as FTA may direct.

Refer to FTA's Master Agreement § 18 for additional information about the conditions on data and copyrights developed with FTA assistance.

- (3) Export Control. If data developed in the course of a third-party contract is subject directly or indirectly to U.S. Export Control regulations, that data may not be exported to any countries or any foreign persons, without first obtaining the necessary Federal license or licenses and complying with any applicable Department of Commerce, Export Administration Regulations, 15 CFR Part 730. FTA Master Agreement § 44(f).

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- (4) Protection of Human Subjects. A third-party contractor providing services involving the use of human subjects must comply with the National Research Act at 42 U.S.C. 289 *et seq.*, and DOT regulations, “Protection of Human Subjects,” 49 CFR Part 11, as included in the FTA Master Agreement § 44(d).
- (5) Protection of Animals. A third-party contractor providing services involving the use of animals must comply with the Animal Welfare Act, 7 U.S.C. 2131 *et seq.*, and Department of Agriculture regulations, “Animal Welfare,” 9 CFR Subchapter A, Parts 1, 2, 3, and 4, as included in the FTA Master Agreement § 44(e).
- k. Audit Services. When procuring audit services, general procurement procedures apply to the acquisition of audit services financed with FTA assistance. 2 CFR 200.509(a). The following special considerations also apply in procurements of audit services:
- (1) Single Audit Act. Each recipient that spends \$1,000,000 (as of October 1, 2024) or more in Federal awards in a single year must have a single audit conducted in accordance with 2 CFR 200.514.
- (a) Organizational Conflicts of Interest. As included under 2 CFR 200.509, the auditor selected must be independent of the recipient. The auditor must not be the same auditor that prepared an indirect cost proposal or cost allocation plan for the recipient when the indirect costs recovered by the recipient during the prior year exceed \$1,000,000.
- (b) Eligibility of Costs. The recipient may charge a reasonably proportionate share of the costs for audits required by the Single Audit Act to its project as direct or indirect costs as permitted by applicable Federal Cost Principles. 2 CFR 200.425. A recipient that spends less than \$1,000,000 in Federal awards in a single year is not required to obtain this audit. Nor may a recipient spending less than \$1,000,000 in Federal awards in a single year finance the costs of such an audit with Federal assistance.
- (2) Other Project Audits. Before procuring audit services for a specific contract or project, the recipient should consider the following:
- (a) Organizational Conflicts of Interest. In general, the recipient should select an auditor that is independent of the third-party contractor to be audited.
- (b) Duplication of Services. To prevent duplication, a recipient seeking a third-party contract audit should contact FTA before undertaking or contracting for the audit. This is particularly important in connection with the procurement of A&E services, because 49 U.S.C. 5325(b)(2) requires that FAR at 48 CFR Part 31, “Contract Cost Principles and Procedures” be used to audit A&E contracts. In addition, 49 U.S.C. 5325(b)(2) requires the recipient and its A&E contractors and subcontractors to accept indirect cost rates established under FAR cost principles if those rates are not under dispute. Thus, the recipient should not obtain duplicative audits because they are likely to produce disparate indirect cost rates and the costs of those audits may be

ineligible for Federal assistance. Accordingly, FTA recommends that the recipient seek guidance from the cognizant Federal auditor or agency that approved the third-party contractor's indirect cost rates before entering into contracts for audits.

- (c) Obtaining Indirect Cost Rates. 2 CFR Part 200 has instructions for preparation of indirect cost rates and cognizant Federal agencies assigned for recipients that are states, local governments, or Indian tribes (Appendix VII); nonprofit organizations (Appendix IV); and institutions of higher education (Appendix III). Private for-profit entities may obtain indirect cost rates from the Defense Contract Audit Agency (<https://www.dcaa.mil>).
- (3) Eligibility of Costs. Costs of third-party contract audits and proposal evaluations are eligible for reimbursement by FTA as a direct or indirect charge as permitted by applicable Federal cost principles. FTA reserves the right to disallow payments for duplicative audit charges.

CHAPTER V:

SOURCES

A recipient will often have several sources from which to acquire the property and services it needs as described below:

8. FORCE ACCOUNT. As used in this circular, “force account” means the recipient’s own labor forces and equipment. The use of force account labor is a project management function, rather than a procurement and contract administration function, except in the general sense of the recipient’s ability to perform work with its own forces rather than contracting with another entity to acquire the property or services it needs, and the cost implications of the recipient’s decision. To ensure the recipient will have adequate technical capacity to perform the work it undertakes reasonably economically and prudently, a recipient must justify, and possibly obtain FTA’s preapproval, to use more than \$1,000,000 (as of 2024) of force account on an FTA-funded project. Refer to Chapter III of Circular 5010.1F for a discussion of FTA’s force account policy. The third-party contracting guidance of this circular does not apply to a recipient’s use of its own forces to perform project work.
1. SHARED USE. FTA encourages recipients and subrecipients to enter into agreements for shared use of property and services. FTA encourages non-governmental recipients to consider shared use if economical and feasible. Circular 5010.1F provides information on FTA’s shared-use policy.
2. JOINT PROCUREMENTS. FTA uses the term “joint procurement” to mean a method of contracting in which two or more purchasers agree from the outset to use a single solicitation document and enter into a single contract with a vendor for delivery of property or services in a fixed quantity, even if expressed as a total minimum and total maximum. Unlike a State or local government purchasing schedule, a joint procurement is not drafted for the purpose of accommodating the needs of other parties that may later want to participate in the benefits of that contract.
 - a. Use Encouraged. FTA encourages recipients to procure goods and services jointly with other recipients to obtain better pricing through larger purchases.
 - b. All FTA and Federal Requirements Apply. When obtaining goods or services in this manner, recipients participating in the joint procurement must ensure compliance with all applicable FTA and Federal requirements and include all required clauses and certifications in the joint solicitation and contract documents.
3. STATE OR LOCAL GOVERNMENT PURCHASING SCHEDULES OR PURCHASING CONTRACTS. FTA uses the term “state or local government purchasing schedule” to mean an arrangement that a State or local government has established with one or more vendors in which those vendors agree to provide essentially an option to the State or local government, and its subordinate government entities, to acquire specific property or services in the future at established prices. These arrangements are similar to the General Services

Administration's (GSA) Cooperative Purchasing Program available for Federal Government use. If the State or local government wishes to permit others to use its schedules, the State or local government might seek the agreement of the vendor to provide the listed property or services to others with access to the schedules, or it may permit the vendor to determine whether or not it wishes to do so.

- a. State or Local Government Permission Required. If permitted by State or local authorities, a non-governmental recipient may also use State and local sources of property and services.
- b. Interstate Purchasing of Rolling Stock and Related Equipment. Under section 3019(b) of the FAST Act, a recipient is permitted to purchase rolling stock and related equipment from any state's cooperative or schedule contract, without regard to whether the grantee is located in the same state. The purchase must otherwise be permitted by the recipient's local rules and the state holding the contract. A recipient procuring rolling stock or related equipment using funds awarded under the Formula Grants for Buses and Bus Facilities Program (49 U.S.C. 5339(a)) or the Buses and Bus Facilities Competitive Grants Program (49 U.S.C. 5339(b)) should, to the extent practicable, seek to use the procurement tools authorized by section 3019 of the FAST Act. If a recipient under either of those programs purchases fewer than five buses through a standalone procurement, the recipient must provide FTA with an explanation regarding why it did not use a procurement tool authorized by section 3019 of the FAST Act.
- c. All FTA and Federal Requirements Apply. When obtaining property or services in this manner, the recipient must ensure all Federal requirements, required clauses, and certifications (including Buy America) are properly followed and included, whether in the master contract or in the recipient's purchase document. One way of achieving compliance with FTA requirements is for all parties to agree to append the required Federal clauses in the purchase order or other document that effects the recipient's procurement. When buying from these schedules, the recipient should obtain a Buy America certification before entering into the purchase order.
- d. Interstate Purchasing Schedules Restricted. A single State or local government's purchasing schedule is not considered an intergovernmental agreement where multiple governments cooperate on purchasing, even if other government entities are permitted to order from the purchasing schedule. Notwithstanding the endorsement of purchasing schedules and intergovernmental agreements, FTA does not authorize recipients to use interstate purchasing schedules (where multiple States together create a schedule of contracts for ordering), because this practice curtails opportunities for competitive procurements. An exception to this general restriction on interstate schedule ordering exists for cooperative procurements of rolling stock and related equipment authorized by section 3019(b) of the FAST Act. The FAST Act authorizes interstate ordering from cooperative procurements only for rolling stock and related equipment.

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4. INTERGOVERNMENTAL AGREEMENTS. 2 CFR 200.318 encourages governmental recipients to enter into State and local intergovernmental agreements for procurements or use of common or shared goods and services.
 - a. Permitted. Intergovernmental agreements where multiple entities (e.g., governments or agencies) collaborate to procure goods or services under a single contract—without each entity having to negotiate terms individually—are acceptable and encouraged. These agreements must follow FTA’s procurement standards and ensure competition and compliance with applicable regulations.
 - b. Interstate Purchasing Schedules Restricted. Interstate purchasing schedules (where multiple States together create a schedule of contracts for ordering), except in the case of a cooperative procurement of rolling stock and related equipment authorized by section 3019(b) of the FAST Act.
 5. COOPERATIVE PROCUREMENT OF ROLLING STOCK AND RELATED EQUIPMENT. Section 3019(b) of the FAST Act authorizes a State government or eligible nonprofit entity to enter into a contract with one or more vendors under which the vendors agree to provide an option to purchase rolling stock and related equipment to multiple participants. Under section 3019(b) of the FAST Act, an eligible nonprofit is a nonprofit cooperative purchasing organization that is not a grantee of FTA, or a consortium of such entities. For purposes of section 3019(b) of the FAST Act, “related equipment” means equipment that is necessary for the operation of the vehicle (e.g., power sources, or external charging equipment) and not accessories like fareboxes.

A recipient may purchase from such a cooperative procurement contract without regard to whether the recipient is located in the same State as the parties to the contract. Section 3019(b) of the FAST Act authorizes such cooperative procurement contracts only for rolling stock and related equipment.

A recipient procuring rolling stock or related equipment using funds awarded under the Formula Grants for Buses and Bus Facilities Program (49 U.S.C. 5339(a)) or the Buses and Bus Facilities Competitive Grants Program (49 U.S.C. 5339(b)) should, to the extent practicable, seek to use the procurement tools authorized by section 3019 of the FAST Act. If a recipient under either of those programs purchases fewer than five buses through a standalone procurement, the recipient must provide FTA with an explanation regarding why it did not use a procurement tool authorized by section 3019 of the FAST Act. A recipient procuring rolling stock or related equipment using funds awarded under the Formula Grants for Buses and Bus Facilities Program (49 U.S.C. 5339(a)) or the Buses and Bus Facilities Competitive Grants Program (49 U.S.C. 5339(b)) should, to the extent practicable, seek to use the procurement tools authorized by section 3019 of the FAST Act. If a recipient under either of those programs purchases fewer than five buses through a standalone procurement, the recipient must provide FTA with an explanation regarding why it did not use a procurement tool authorized by section 3019 of the FAST Act. A recipient procuring rolling stock or related equipment using funds awarded under the Formula Grants for Buses and Bus

Facilities Program (49 U.S.C. 5339(a)) or the Buses and Bus Facilities Competitive Grants Program (49 U.S.C. 5339(b)) should, to the extent practicable, seek to use the procurement tools authorized by section 3019 of the FAST Act. If a recipient under either of those programs purchases fewer than five buses through a standalone procurement, the recipient must provide FTA with an explanation regarding why it did not use a procurement tool authorized by section 3019 of the FAST Act.

6. FEDERAL EXCESS AND SURPLUS PROPERTY. 2 CFR 200.318(f) encourages recipients to use Federal excess and surplus property when feasible and economical rather than procuring new property. The GSA Federal Property Management Regulations, 41 CFR Parts 101-42 through 101-46, 101-48, and 101-49 govern the eligibility of recipients and subrecipients, as well as others, to acquire supplies and services through GSA's personal property utilization and disposal programs.
7. FEDERAL SUPPLY SCHEDULES. A recipient must be specifically authorized by Federal law before it may use a GSA Federal Supply Schedule.
 - a. Full Use of Federal Supply Schedules. Appendix B of GSA Order OGP 4800.2I (July 19, 2016), "Eligibility to Use GSA Sources of Supply and Services," explains that FTA recipients eligible for full use of GSA Schedules are limited by the Federal Property and Administrative Services Act of 1949, as amended, at 40 U.S.C. 502(a)(3) to the Washington Metropolitan Area Transit Authority and the District of Columbia Department of Mass Transportation. The Government of American Samoa, the Government of Guam, Virgin Islands Department of Public Works, and the Commonwealth of the Northern Marianas are similarly authorized access to GSA schedules by 48 U.S.C. 1469e.
 - b. Limited Use of Federal Supply Schedules. Federal laws authorize State and Local Governments (including institutions of higher education) to use Federal Supply Schedules to acquire information technology (IT) and to purchase products and services to facilitate recovery from a major disaster. In both circumstances, GSA defines the term "State and Local Government" broadly to include many FTA governmental recipients and others as follows:

The States of the United States, counties, municipalities, cities, towns, townships, tribal governments, public authorities (including public or Indian housing agencies under the United States Housing Act of 1937), school districts, colleges, and other institutions of higher education, council of governments (incorporated or not), regional or interstate government entities, or any agency or instrumentality of the preceding entities (including any local educational agency or institution of higher education), and including legislative and judicial departments.

GSA has determined that the term "State and Local Government" does not include "contractors, or grantees, of State or local governments." Nevertheless, under the GSA Cooperative Purchasing Program, State, and local governmental entities (including

institutions of higher education) receiving Federal assistance, either as an FTA recipient or subrecipient, are eligible users by virtue of conforming to the definition of State or local government entities; the source of funding for these entities is irrelevant.

- c. Information Technology. 40 U.S.C. 502(c)(1), authorizes State and local governments to acquire IT of various types through GSA's Cooperative Purchasing Program, Federal Supply Schedule 70 and 2 CFR 200.216.
 - (1) Major Disaster or Emergency Recovery. 40 U.S.C. 502(d) authorizes State and local government entities to use any GSA Federal Supply Schedule to acquire property and services in advance of a major disaster declared by the President of the United States, as well as in the aftermath of an emergency event. The State or local government is then responsible for ensuring that the property or services acquired will be used for recovery. More information about major disaster and emergency recovery acquisition is available at GSA's Web site at www.gsa.gov.
 - (2) Preparedness and Response. 40 U.S.C. 502(c) authorizes State and local governments to acquire alarm and signal systems, facility management systems, firefighting and rescue equipment, law enforcement and security equipment, marine craft and related equipment, special purpose clothing, and related services contained on GSA's Cooperative Purchasing Program Federal Supply Schedule 84 or any amended or later version of that Federal supply classification group. Information about cooperative purchasing is available at GSA's Web site <https://www.gsa.gov/buy-through-us/purchasing-programs/multiple-award-schedule/help-with-mas-buying/mas-help-for-state-local-and-tribal-governments?gsaredirect=cooperativepurchasing>.
- d. All FTA and Federal Requirements Apply. When using GSA schedules to acquire property or services in this manner, the recipient must ensure all Federal requirements, required clauses, and certifications (including FTA's Buy America requirements) are properly followed and included, whether in the master intergovernmental contract or in the recipient's purchase document. One way of achieving compliance with FTA requirements is for all parties to agree to append the required Federal clauses in the purchase order or other document that effects the recipient's procurement. When buying from these schedules, the recipient should obtain an FTA Buy America certification before entering into the purchase order.
- e. Competition and Price Reasonableness. When using GSA schedules to acquire property or services, a recipient will have fulfilled the competition requirements under 2 CFR Part 200 if they abide by GSA ordering procedures. A recipient using a price published on a GSA schedule must nonetheless perform a cost or price analysis before undertaking any procurement in excess of the simplified acquisition threshold established under 2 CFR 200.324 and must consider whether the GSA price is reasonable. The recipient may also seek a lower price than that published on the GSA schedules.

8. EXISTING CONTRACTS (ASSIGNMENTS). A recipient may receive an assignment of contract rights from another recipient if the assignor-recipient unintentionally acquired more than was needed for its own needs.

- a. Excessive Acquisitions Prohibited. Under 2 CFR 200.318(d) a recipient must limit its procurements to the amount of property and services required to meet its reasonably expected needs. Because a recipient should be able to justify the quantities it procures, having written statements of its anticipated material requirements in the recipient's contract files may prove helpful.

If the supplies or services were solicited, competed, and awarded through the use of an indefinite-quantity contract, the solicitation and also the contract award should contain both a minimum and maximum quantity that represent the recipient's reasonably foreseeable needs. When a contract is structured with a base order and options for some additional quantity (common in rolling stock acquisitions), the number of options acquired must not exceed the recipient's reasonably foreseeable needs during the period options may be exercised.

A recipient intentionally acquiring more contract rights than its own reasonably foreseeable needs, with the intention of assigning those rights to another recipient later, is inconsistent with the procurement standards of Part 200 and undermines competition in the Federal transit program. If FTA determines a recipient has intentionally acquired excessive quantities, FTA may disallow the excessive quantities for the original recipient and any assignees who may have acquired the excessive quantities from the original recipient.

- b. Assignment Permitted. When a recipient finds it has unintentionally acquired contract rights, including unexercised options, in excess of its needs, other recipients may make use of the unneeded contract rights via assignment. This practice is sometimes referred to as the assignee-recipient "piggybacking" on the assignor-recipient's contract. See FTA's "Best Practices Procurement & Lessons Learned Manual" for further information about procurements through assignment of another's contract rights.
- c. Assignee-Recipient's Responsibilities. The assignee-recipient should assure itself that the assignment is permitted under its local rules and the terms of the underlying contract and will not be resisted by the contractor. The assignee-recipient should look for terms in the underlying contract explicitly permitting for assignment. The assignee-recipient may reduce its risk in this regard by obtaining the contractor's consent on the assignment.
- (1) Reasonableness. The assignee-recipient need not perform a second price analysis if a price analysis was performed for the original contract. However, the assignee-recipient should determine whether the contract prices originally established are still fair and reasonable before using those rights. See FTA's "Best Practices Procurement & Lessons Learned Manual" for further information about procurements through assignment of another's contract rights.

The assignee-recipient should not exercise an option unless it has determined that the option price is better than prices available in the market or is otherwise more advantageous.

- (2) Federal Requirements Apply. The assignee-recipient is responsible for determining the underlying contract complies with all Federal requirements.

In particular, before accepting or exercising assigned contract rights for steel, iron, manufactured products, or construction materials, the assignee-recipient should assure itself of the contractor's compliance with Buy America, and the appropriate Buy America certifications were completed and submitted to the assignor-recipient. If the contract is for rolling stock, the assignee-recipient should review the preaward and all post-delivery reviews to confirm the contractor's Buy America compliance. Additional information is included in FTA's guide to Conducting Pre-Award and Post-Delivery Audits for Rolling Stock Procurements.

d. Impermissible Actions.

- (1) Improper Contract Expansion. A contract has been improperly expanded when it includes a larger scope, greater quantities, or options beyond what was provided for in the original contract. If such an expansion occurs in the course of an assignment, the assignee-recipient effectively has awarded a new, noncompetitive contract to the contractor, which it may not do absent one of the circumstances described under 2 CFR 200.320(c).

Before proceeding with the assignment, the assignee-recipient should review the original contract and the assignor-recipient's order history to be sure that the quantities to be assigned do not exceed the amounts still available under the contract.

- (2) Improper Cardinal Changes. A significant change in contract work that causes a major deviation from the original purpose of the work or the intended method of achievement, or causes a revision of contract work so extensive, significant, or cumulative that, in effect, the contractor is required to perform very different work from that described in the original contract, may be described as a cardinal change. Such practices are sometimes informally referred to as "tag-ons." A change within the scope of the contract (sometimes referred to as an "in-scope" change) is not a "tag-on" or cardinal change.

When a cardinal change occurs in the course of an assignment, the assignee-recipient effectively has awarded a new, noncompetitive contract to the contractor, which it may not do absent one of the circumstances described under 2 CFR 200.320(c).

In-scope changes as part of a contract assignment may be entirely proper and necessary. For example, the assignee-recipient likely will require changes to the place of performance or delivery. In the case of rolling stock, changes to seating, fabrics, colors, livery, signage, floor coverings, and other similar changes are permissible and necessary to adapt a vehicle to the assignee-recipient's operations. In contrast, a change from a high-floor to a low-floor bus probably would be an impermissible cardinal change.

Before attempting to change the terms of its assigned contract, the assignee-recipient should review the contract's provisions to ensure that the contract permits the change sought. It also may consult with the FTA regional office responsible for administering its award before undertaking any potentially unallowed contract action.

9. THE OPEN MARKET. The recipient will probably acquire most of the property and services it needs through procurements in the open market. Chapters VI of this circular will address proper procedures for conducting and administering such procurements.

CHAPTER VI:

PROCEDURAL GUIDANCE FOR OPEN MARKET PROCUREMENTS

1. COMPETITION REQUIRED. The recipient shall conduct all procurement transactions under an FTA award in a manner that provides full and open competition. 49 U.S.C. 5325(a). Except as modified by special terms in FTA's authorizing statute, regulations, or Master Agreement, 2 CFR 200.319 and 200.320 contain the standard for competitive procurement. The recipient may make third party contract awards on the basis of:
 - a. Solicitation by the Recipient. Compliance with the solicitation procedures described in this Chapter will fulfill FTA requirements for full and open competition.
 - b. Unsolicited Proposals. A recipient may enter into a third-party contract based on an unsolicited proposal, as defined in Chapter I of this circular, when authorized by applicable State or local law or regulation. Receipt of an unsolicited proposal does not, by itself, justify contract award without providing for full and open competition. Unless the unsolicited proposal offers a proprietary concept that is essential to contract performance (i.e., the transaction can only be fulfilled by a single source), the recipient must seek competition. To satisfy the requirement for full and open competition, the recipient should take the following actions before entering into a contract resulting from an unsolicited proposal:
 - (1) Receipt. Publicize its receipt of the unsolicited proposal;
 - (2) Adequate Description. Publicize an adequate description of the property or services offered without improperly disclosing proprietary information or disclosing the originality of thought or innovativeness of the offeror's product or method of delivery;
 - (3) Interest in the Property or Services. Publicize its interest in acquiring the property or services described in the proposal;
 - (4) Adequate Opportunity to Compete. Provide an adequate opportunity for interested parties to comment or submit competing proposals. The recipient needn't conduct a full request for proposals. The purpose should be to receive sufficient information to determine whether the offeror's capability is in fact unique, and whether other firms may be able to deliver the same benefits through other means; and
 - (5) Contract Award Based on Proposals Received. Publicize its intention to award a contract based on the unsolicited proposal or another proposal submitted in response to the publication. A sole source award may not be based solely on the unique capability of the offeror to provide the specific property, or services proposed, as other offerors may be able to achieve the same benefits through other means.

- c. Prequalification. Prequalification lists are most commonly used in procurements of property involving lengthy evaluations needed to determine whether it satisfies the recipient's standards. Under 2 CFR 200.319(e) a recipient may prequalify people, firms, and property for procurement purposes under the following standards:
- (1) Currentness. The recipient must ensure that all prequalification lists it uses are current.
 - (2) Sources. The recipient must ensure that all prequalification lists it uses include enough qualified sources to provide maximum full and open competition.
 - (3) Objective Factors. When establishing or amending prequalified lists, the recipient must consider objective factors that evaluate price and cost to maximize competition.
 - (4) Qualification Periods. The recipient must not preclude potential bidders or offerors from qualifying during the solicitation period (from the issuance of the solicitation to its closing date). However, the recipient need not hold a solicitation open to accommodate a potential supplier that attempts to qualify during that solicitation. Nor must a recipient expedite or shorten prequalification evaluations of bidders, offerors, or property presented for review during the solicitation period.

Prequalification should not be confused with reviews of technical qualifications that are an essential process in two-step procurements and qualifications-based procurements, as discussed further in subsections 3.e and 3.f of this Chapter, respectively.

2. SOLICITATION REQUIREMENTS AND RESTRICTIONS. Under 2 CFR 200.319(d), recipients must provide the following information in each solicitation:
- a. Description of the Property or Services. The solicitation and the contract awarded must include a clear and accurate description of the recipient's technical requirements for the property or services to be acquired in a manner that provides for full and open competition.
 - b. What to Include. The description may include a statement of the qualitative nature of the property or services to be acquired. Whenever practicable, the recipient should describe its requirements in terms of functions to be performed or level of performance required, including the range of acceptable characteristics or minimum acceptable standards. When necessary, the description must provide minimum essential characteristics and standards to which the property, equipment, or service must conform. Detailed product specifications should be avoided if at all possible.
 - c. Brand Name or Equal. When it is impractical or uneconomical to provide a clear and accurate description of the technical requirements, a "brand name or equal" description may be used to define the performance or other salient characteristics of a specific type of property. The recipient must identify the salient characteristics of the named brand that

offerors must provide. When using a “brand name” specification, the recipient does not need to reverse-engineer a complicated part to identify precise measurements or specifications in order to describe its salient characteristics. FTA’s “Best Practices Procurement and Lessons Learned Manual” (BPPM) contains additional information on preparation of specifications including examples with specific language.

- d. Quantities Limited to the Recipient’s Actual Needs. FTA limits Federal assistance to the amount necessary to support the quantity of property or extent of services the recipient actually needs at the time of acquisition. The recipient may not add quantities or options to contracts solely to allow assignments at a later date. FTA will not knowingly support the additional cost of contract rights to property or services excess to the recipient’s immediate needs, even though the recipient may assign its excess contract rights to others.
- e. Prohibitions. The recipient is prohibited by 49 U.S.C. 5325(h) from using an exclusionary or discriminatory specification in its procurement. Under 2 CFR 200.319 solicitation requirements are prohibited from containing features that unduly restrict competition. Some situations considered to be impermissibly restrictive of competition include, but are not limited to, the following, all of which are identified in 2 CFR 200.319 and 200.320:
 - (1) Excessive Qualifications. Placing unreasonable requirements on firms for them to qualify to do business.
 - (2) Unnecessary Experience. Requiring unnecessary experience.
 - (3) Self-Dealing and Bid Rigging. Noncompetitive pricing practices between firms or between affiliated companies.
 - (4) Improper Prequalification. Using prequalification procedures that conflict with the prequalification standards described in 2 CFR 200.319(e).
 - (5) Retainer Contracts. Making a noncompetitive award to any person or firm on a retainer contract with the recipient if that award is not for the property or services specified for delivery under the retainer contract.
 - (6) Excessive Bonding. FTA does not require the recipient to impose bonding requirements on its third-party contractors other than construction bonding specified by 2 CFR 200.326 and this circular for construction, and to secure advance or progress payments made to a contractor. Requiring unnecessary bonding increases the cost of doing business with the recipient and restricts competition accordingly, particularly among new, small, or disadvantaged business enterprises.

Nevertheless, a recipient might find bid, performance, or payment bonds to be desirable. Because bonding requirements can limit contractor participation, the recipient’s bonding requirements should be reasonable and not unduly restrictive. FTA generally will not challenge State or local bonding requirements as unreasonably restrictive of competition, even where they exceed Federal

requirements. However, if the recipient's bonding policy results in such "excessive bonding" that it would violate 2 CFR 200.319 as restrictive of competition, FTA may withhold Federal assistance from those procurements. If a recipient's bonding policies far exceed those described in this circular, the recipient should confer with the FTA regional office responsible for administering its award to ensure the availability of Federal assistance for the project.

- (7) Brand Name Only. Specifying only a "brand name" product without allowing offers of "an equal" product or allowing "an equal" product without listing the salient characteristics that the product must meet to be acceptable for award.
- (8) Geographic Restrictions. Geographical restrictions may or may not be permitted based on the type of procurement.
 - i Bus Procurements. No state law requiring buses to be purchased through in-State dealers shall apply to vehicles purchased with a grant from FTA under 49 U.S.C. 5325(i).
 - ii Construction Projects. Section 25019 of the Infrastructure Investment and Jobs Act (IIJA), Pub. L. 117-58, authorizes recipients to implement a local or other geographical or economic hiring preference relating to the use of labor for construction of a project, including prehire agreements, subject to any applicable State and local laws, policies, and procedures. IIJA Section 25019 supersedes any Federal agency regulation to the extent such regulation is inconsistent with the statute. This includes, for example, 23 CFR 635.117(b) or 636.107.
 - iii Architectural Engineering (A&E) Services. Geographic location may be used as a selection criterion if it complies with state law and an adequate number of qualified firms are eligible to compete for the contract, considering the nature and size of the project.
 - iv Licensing. States may enforce licensing requirements, provided they do not conflict with Federal law or regulations.
 - v Major Disaster or Emergency Relief. Federal assistance awarded under the Stafford Act, to support contracts and agreements for debris clearance, distribution of supplies, reconstruction, and other major disaster or emergency assistance activities requires a preference, to the extent feasible and practicable, for organizations, firms, and individuals residing or doing business primarily in the area affected by a major disaster or emergency as included under 42 U.S.C. 5150.
- (9) Organizational Conflicts of Interest. Engaging in practices that result in organizational conflicts of interest.
 - (a) The Recipient's Conflicts. The recipient may have an organizational conflict if it has a parent, affiliate, or subsidiary organization that is not a State, local

government, or Indian Tribe, and the recipient is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization. The recipient must maintain written standards of conduct covering its organizational conflicts as required under 2 CFR 200.318(c)(2).

(b) Contractor's Conflicts. A contractor or offeror may have an organizational conflict of interest when any of the following circumstances arise:

1 Lack of Impartiality or Impaired Objectivity. When the contractor is unable, or potentially unable, to provide impartial and objective assistance or advice to the recipient due to other activities, relationships, contracts, or circumstances.

2 Unequal Access to Information. The contractor has an unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier contract.

3 Biased Ground Rules. During the conduct of an earlier procurement, the contractor has established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents. To ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids must be excluded from competing on those procurements. 2 CFR 200.319(b).

(c) Remedies. The recipient should analyze each planned acquisition in order to identify and evaluate potential organizational conflicts of interest as early in the acquisition process as possible, and avoid, neutralize, or mitigate potential conflicts before contract award.

(10) Restraint of Trade. Supporting or acquiescing in noncompetitive pricing practices between firms or between affiliated companies. Questionable practices would include, but not be limited to submissions of identical bid prices for the same products by the same group of firms, or an unnatural pattern of awards that had the cumulative effect of apportioning work among a fixed group of bidders or offerors.

(11) Arbitrary Action. Taking any arbitrary action in the procurement process.

f. Evaluation Factors. The solicitation must identify all factors to be used in evaluating bids or proposals.

g. Contract Type Specified. The recipient's specifications should state the type of contract that will be awarded.

(1) Typical Contract Types. Contract types may include, but are not limited to, the following:

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- (a) Firm Fixed Price. A firm fixed price contract includes a price that remains fixed irrespective of the contractor's cost experience in performing the contract. A firm fixed price contract may include an economic price adjustment provision, incentives, or both.
- (b) Cost Reimbursement. A cost-reimbursement contract provides for payment of the contractor's allowable incurred costs, to the extent prescribed in the contract. Allowable costs may include incentives if the recipient believes they can prove helpful. Cost-reimbursement contracts are suitable for use only when the uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed price contract.
- (2) Prohibited or Restricted Contract Types. The following contract types are restricted or prohibited:
1. Cost Plus a Percentage of Cost—Prohibited. 2 CFR 200.324(c) expressly prohibits the use of the cost plus a percentage of cost method of contracting.
 2. Percentage of Construction Cost—Prohibited. 2 CFR 200.324(c) expressly prohibits the use of the percentage of construction cost method of contracting.
 3. Time and Materials—Restricted. 2 CFR 200.318(j) permits the use of time-and-materials type contracts only after a determination that no other contract is suitable. If used, the contract must specify a ceiling price that the contractor may not exceed except at its own risk.
- h. Other Federal Requirements Affecting the Property or Services to be Acquired. The solicitation and resulting contract must identify those Federal requirements that will affect contract scope and performance. See Chapter IV of this circular, and FTA's latest Master Agreement for references to Federal requirements established following publication of this circular.
- i. Other Federal Requirements Affecting the Bidder or Offeror and the Contractor. The solicitation and resulting contract must identify all Federal requirements that a bidder or offeror must fulfill before and during contract performance. See Chapter IV of this circular and FTA's latest Master Agreement that may reference more Federal requirements.
- j. Award to Other Than the Low Bidder. If the recipient intends to reserve its right to award to other than the low bidder or offeror, that information should be stated in the solicitation document.
- k. Rejection of All Bids or Offers. If the recipient intends to reserve its right to reject all bids or offers, that information should be stated in the solicitation document.

3. METHODS OF PROCUREMENT. The recipient must use competitive procedures appropriate for the acquisition undertaken. The procedures used must comply with State and local law as well as with Federal requirements. Federal restrictions vary with the type of procurement method used. The following guidance is based on the requirements of 2 CFR 200.320 “Methods of procurement to be followed”, supplemented by FTA policies that address the needs of FTA recipients.

a. Micro-Purchases.

- (1) When Appropriate. If permitted by State and local law, the recipient may acquire property and services valued at or below the current micro-purchase threshold without obtaining competitive quotations if the recipient considers the price reasonable based on research, experience, purchase history, or other information, and maintains documents to support its conclusion.
- (2) Self-Certified Micro-Purchase Threshold. The Federal micro-purchase threshold is established in 2 CFR 200.1; 48 CFR 2.101. The recipient may set for itself a lower or higher micro-purchase threshold.

Pursuant to 2 CFR 200.320(a)(1), the recipient may self-certify a micro-purchase threshold up to \$50,000. The recipient must on an annual basis and must maintain documentation to be made available to FTA and auditors in accordance with 2 CFR 200.334. The self-certification must include a justification, clear identification of the threshold, and supporting documentation of any of the following: a qualification as a low-risk auditee, in accordance with the criteria in 2 CFR 200.520 for the most recent audit; an annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or, for public institutions, a higher threshold is consistent with State law.

A micro-purchase threshold higher than \$50,000 must be approved by the recipient’s cognizant agency for indirect costs.

- (3) Procedures. The following procedures apply to micro-purchases:
 - a) Distribution. Under 2 CFR 200.320(a)(1), to the extent practicable, the recipient should distribute micro-purchases equitably among qualified suppliers.
 - b) Prohibited Divisions. The recipient may not divide or reduce the size of its procurement merely to come within the micro-purchase limit.
 - c) Documentation. The recipient must maintain documents to support its consideration that the micro-purchase price is reasonable based on research, experience, purchase history, or other information, as required under 2 CFR 200.320(a)(1)(ii). The recipient need not justify the procurement method used, selection of contract type, or reasons for contractor selection or rejection.

b. Simplified Acquisitions.

(1) When Appropriate. 2 CFR 200.320(a)(2) authorizes simplified acquisition procedures when the aggregate dollar amount of the procurement transaction is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold as defined in 2 CFR 200.1; 48 CFR 2.101. The recipient may set a lower threshold for simplified acquisition procedures. Unlike the micro-purchase threshold, 2 CFR 200.320 does not permit a recipient to set a simplified acquisition threshold higher than the Federal threshold.

(2) Procedures. When using simplified acquisition procedures:

(a) Competition. The recipient must obtain price or rate quotations from an adequate number of qualified sources. The recipient may exercise judgment in determining what number is adequate.

(b) Prohibited Divisions. The recipient may not divide or reduce the size of its procurement to avoid the additional procurement requirements applicable to larger acquisitions.

(c) Documentation. The recipient must maintain records to support its decision to use the simplified acquisition procedure, the selection of contract type, the sources solicited, and the reasons for contractor selection or rejection.

c. Sealed Bids (Formal Advertising). 2 CFR 200.320(b)(1). This is a procurement method in which 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 lowest in price.

(1) When Appropriate. 2 CFR 200.320(b)(1) states that the sealed bids are the procurement method is preferred for procuring construction services. In addition, sealed bidding is the appropriate method for acquiring property, construction, and other services when the following circumstances are present:

(a) Precise Specifications. A complete, adequate, precise, and realistic specification or purchase description is available.

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

(c) Fixed Price Contract. The procurement lends itself to a firm fixed price contract, and the selection of the successful bidder can be made principally on price.

(d) Discussions Unnecessary. Discussions with one or more bidders after bids have been submitted are expected to be unnecessary as award of the contract will be made principally based on price. This contrasts with Competitive Proposal procedures in which discussions with individual offerors are expected to be necessary and may take place at any time after receipt of proposals. However, a

pre-bid conference with prospective bidders before bids have been received can be useful.

- (2) Procurement Procedures. The following procedures apply to sealed bid procurements:
 - (a) Solicitation. Bids must be solicited from an adequate number of qualified sources, providing them with sufficient response time prior to the date set for opening the bids. The recipient may exercise judgment in determining what number is adequate. For local governments, the invitation for bids must be publicly advertised.
 - (b) Adequate Specifications. The invitation for bids, including any specifications and pertinent attachments, describes the property or services sought in sufficient detail that a prospective bidder will be able to submit a proper bid.
 - (c) Opening. All bids will be opened at the time and place prescribed in the invitation for bids. For local governments, the bids must be opened publicly. Bid opening may include virtual platforms or electronic bid submission systems to accommodate broader participation and transparency. The method of opening should ensure that all bids are treated equitably and that the process is transparent to all participants. Recipients may authorize use of electronic commerce for submission of bids. If electronic bids are authorized, the solicitation shall specify the electronic commerce methods that bidders may use.
 - (d) Fixed Price Contract Award. A firm fixed price contract is awarded in writing to the lowest responsive and responsible bidder, but a fixed price incentive contract or inclusion of an economic price adjustment provision can sometimes be appropriate. When specified in the invitation for bids, factors such as transportation costs and life cycle costs must be considered in determining which bid is the lowest. Payment discounts must only be used to determine the low bid when the recipient determines they are a valid factor based on prior experience.
 - (e) Rejection of Bids. The recipient or subrecipient must document and provide a justification for all bids it rejects.
- d. Competitive Proposals (Request for Proposals). 2 CFR 200.320(b)(2). This is a procurement method used when conditions are not appropriate for using sealed bids. This procurement method may result in either a fixed-price or cost-reimbursement contract.
 - (1) When Appropriate. Competitive proposals should be used any time conditions are not appropriate for using sealed bids, for example, when any of the following circumstances are present:
 - (a) Type of Specifications. The property or services to be acquired are described in a performance or functional specification; or if described in detailed technical

specifications, other circumstances such as the need for discussions or the importance of basing the contract award on factors other than price alone are present.

- (b) Uncertain Number of Sources. Uncertainty about whether more than one bid will be submitted in response to an invitation for bids and the recipient lacks the authority or flexibility under State or local law to negotiate the contract price if it receives only a single bid.
 - (c) Price Alone Not Determinative. Due to the nature of the procurement, contract award need not be based exclusively on price or price-related factors. In different types of negotiated acquisitions, the relative importance of cost or price may vary. When the recipient's material requirements are clearly definable and the risk of unsuccessful contract performance is minimal, cost or price may play a dominant role in source selection. The less definitive the requirements, the more development work required, or the greater the performance risk, the more technical or past performance considerations may play a dominant role in source selection and supersede low price.
 - (d) Discussions Expected. Separate discussions with individual offerors are expected to be necessary after they have submitted their proposals. This contrasts with sealed bidding procedures in which discussions with individual bidders are not likely to be necessary, as award of the contract will be made principally based on price.
- (2) Procurement Procedures. The following procedures apply to procurements by competitive proposals:
- (a) Notice. Requests for proposals require public notice. All evaluation factors and their relative importance must be specified in the solicitation, but numerical or percentage ratings or weights need not be specified. Proposals must be solicited from multiple qualified entities. To the maximum extent practicable, any proposals submitted in response to the public notice must be considered.
 - (b) Written Procedures. The recipient must have written procedures for conducting technical evaluations and making selections.
 - (c) Price and Other Factors. Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the recipient or subrecipient considering price and other factors.

The recipient may award the contract to the offeror whose proposal provides the greatest value to the recipient. To do so, the recipient's solicitation must inform potential offerors that the award will be made on a "best value" basis and identify what factors will form the basis for award. The evaluation factors for a specific procurement should reflect the subject matter and the elements that are most important to the recipient. Those evaluation factors may include,

but need not be limited to, technical design, technical approach, length of delivery schedules, quality of proposed personnel, past performance, and management plan. The recipient should base its determination of which proposal represents the “best value” on an analysis of the tradeoff of qualitative technical factors and price or cost factors. FTA does not require any specific factors or analytic process.

- e. Two-Step Procurement Procedures. If permitted by State and local law, the recipient may use two-step procurement procedures. A typical two-step procurement combines elements of sealed bidding and competitive proposals, through having offerors participate in a technical phase followed by a price phase. It may be beneficial when the recipient does not have adequate specifications to prepare a detailed invitation for bids. The following is a summary of a typical two-step procedure.
- (1) Review of Technical Qualifications and Approach. The first step is a review of the prospective contractors’ technical approach to the recipient’s request and technical qualifications to carry out that approach, without pricing. The recipient may conduct discussions with the proposers and ask for clarifying or supplementing information. The recipient then may narrow the competitive range to prospective contractors that demonstrate a technically satisfactory approach and have satisfactory qualifications.
 - (2) Review of Bids and Proposals Submitted by Qualified Prospective Contractors. The second step consists of soliciting pricing from the offerors whose technical approaches were deemed acceptable in the first phase and reviewing complete bids or proposals including price. The recipient should attempt to solicit bids or proposals from at least three qualified prospective contractors. Unlike qualifications-based procurement procedures required for A&E services, the recipient conducting a two-step procurement considers all bid or proposal prices submitted as well as other technical factors, rather than limiting reviews to the most qualified bidder or offeror.
- f. Architectural and Engineering (A&E) Services and Other Services. 49 U.S.C. 5325(b) includes special requirements for procuring any contract for program management, architectural engineering, construction management, a feasibility study, and preliminary engineering, design, architectural, engineering, surveying, mapping, or related services (together, “A&E” services).
- (1) Qualifications-Based Selection Procedures Required. A recipient must procure contracts for A&E services using the qualifications-based selection procedures contained in 40 U.S.C. Chapter 11 (the Brooks Act). 49 U.S.C. 5325(b)(1). The recipient must use qualifications-based selection procedures only when procuring A&E services that directly support, relate to, or lead to construction, alteration, or repair of real property. It is the nature of the work, not the type of firm performing the work, that determines whether qualifications-based procedures may be used. The recipient must not procure non-A&E services, or any services unrelated to real property, through qualifications-based procedures, even if the firms competing for

the work are A&E firms.

A project involving construction does not always require that qualifications-based procurement procedures be used. Whether qualifications-based procurement procedures may be used depends on the actual services to be performed in connection with the construction project. For example, the design or fabrication of message signs, signals, movable barriers, and similar property that will become off-the-shelf items or will be fabricated and delivered as final end products for installation in the construction project are not services for which qualifications-based procurement procedures may be used.

- (2) Qualifications-Based Selections. Under a qualifications-based selection process, the recipient identifies the one offeror that is most qualified to perform the work, and then negotiates a price with that offeror. The following is a general outline of this process:
 - (a) Qualifications. The recipient solicits statements of qualifications and performance information from potential offerors. The solicitation describes the selection criteria the recipient will use to select an A&E firm, which shall not include price.
 - (b) Evaluation. The recipient determines the most highly qualified firm to provide the services required, according to the recipient's published criteria. The recipient may hold discussions with the firms to evaluate their qualifications.
 - (c) Most Qualified. Negotiations are first conducted only with the most qualified firm. The recipient negotiates a contract at compensation which the recipient determines is fair and reasonable, considering the scope, complexity, professional nature, and estimated value of the services to be rendered.
 - (d) Next Most Qualified. If the recipient is unable to negotiate a satisfactory contract with the most qualified firm, the recipient terminates negotiations and then undertakes negotiations with the next most qualified firm, continuing the process with successive offerors in descending order of their qualifications until contract award can be made to the offeror whose price the recipient believes is fair and reasonable.
- (3) Effect of State Laws. To the extent that a State has, before August 10, 2005, adopted by law, an equivalent State qualifications-based procurement requirement for acquiring architectural, engineering, and design services, State procedures, rather than Federal "Brooks Act" procedures (40 U.S.C. 1101 through 1104), may be used.
- (4) Multiple Award Indefinite-Delivery A&E Contracts. Recipients are not precluded from making multiple award indefinite-delivery contracts for A&E services, provided the selection of A&E firms and placement of orders is consistent with the requirement for qualifications-based selection.

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- (5) Audits and Indirect Costs. 49 U.S.C. 5325(b)(2) applies the following requirements to a contract for A&E services:
- (a) Performance of Audits. The A&E services contract or subcontract must be performed and audited in compliance with FAR Part 31 cost principles.
 - (b) Indirect Cost Rates. The recipient and the third-party contractor, its subcontractors and subrecipients, if any, must accept indirect cost rates established in accordance with the FAR for one-year applicable accounting periods established by a cognizant Federal or State government agency if those rates are not currently under dispute.
 - (c) Application of Rates. After a firm's indirect cost rates are accepted, those rates will apply for purposes of contract estimation, negotiation, administration, reporting, and payments, not limited by administrative or de facto ceilings.
 - (d) Prenotification; Confidentiality of Data. Before requesting or using cost or rate data described in subparagraph 3.f(4)(c) above, a recipient must notify any affected firm before such request or use. That data must be kept confidential and must not be accessible by or provided by the agency or group of agencies that share cost data under this subparagraph, except by written permission of the audited firm. If prohibited by law, that cost, and rate data may not be disclosed under any circumstances. Many States have "Open Records" laws that may make it difficult to maintain confidential cost or rate data. As a result, before requesting or using a firm's cost or rate data, a recipient should also obtain permission to provide that data in response to a valid request under applicable State law. The confidentiality requirements of 49 U.S.C. 5325(b)(2)(D) cannot be waived, even if those confidentiality requirements conflict with State law or regulations.

g. Mixed A&E-Construction Contracts.

- (1) Alternative Contracting Methods. In a traditional design-bid-build delivery method, the recipient procures design services and construction services through separate procurements. Alternative contracting methods (ACM) can combine these services in different ways. Design-build, construction manager/general contractor, and progressive design-build are three examples.
- (2) Procurement Method. Generally, an ACM contract that combines design and construction services should be procured using the method that aligns with the predominant costs of the contract. The recipient should separate the various contract activities to be undertaken and classify them as design or construction, and then estimate the total value of each. If the project's construction costs will predominate over its design costs, the recipient should procure the contract by sealed bidding or competitive proposals. If the costs of design and other A&E services are expected to exceed the construction costs, the recipient should use qualifications-based selection procedures.

Depending on the ACM, the above guidance may not always be appropriate. For example, in a progressive design-build contract, even though construction costs may eventually exceed design costs, the recipient and contractor have opportunities to negotiate construction price later in the project. Therefore, it may be appropriate for the recipient to select a progressive design-build contractor using qualifications-based selection procedures.

The recipient should use its judgement selecting and procuring an ACM. If the recipient will use an innovative procurement method not already addressed in FTA's guidance, the recipient should coordinate with FTA early in the process to ensure eligibility.

h. Other Than Full and Open Competition.

- (1) When Authorized. A recipient may conduct procurements without providing for full and open competition only if one of the following circumstances applies. 2 CFR 200.320(c).
 - (a) Micro-Purchase. When the aggregate amount of the procurement transaction does not exceed the micro-purchase threshold, the recipient may use micro-purchase procedures that do not require competition. A recipient must not divide a known requirement into smaller purchases for the purpose of avoiding competition requirements.
 - (b) Sole Source. When the recipient's requirement can only be fulfilled from one source, the recipient may make a noncompetitive award. The following examples may give rise to sole-source procurements.
 - 1 Unsolicited Proposal. A recipient may negotiate a sole-source award with an offeror that presents an unsolicited proposal that makes available a unique and innovative idea or approach. Commercial products or commercial services cannot be the basis of an unsolicited proposal. The offeror should demonstrate a unique or innovative concept or capability not available from another source. Unique or innovative concept means a new, novel, or changed concept, approach, or method that is the product of original thinking, the details of which are kept confidential or are patented or copyrighted and is available to the recipient only from one source and has not in the past been available to the recipient from another source.
 - 2 Patents or Restricted Data Rights. Patent or data rights restrictions may preclude competition. However, the mere existence of such rights does not by itself justify a noncompetitive award.
 - 3 Substantial Duplication Costs. In the case of a follow-on contract for the continued development or production of highly specialized equipment or major components thereof, when it is likely that award to another

contractor would result in substantial duplication of costs that are not expected to be recovered through competition.

- 4 Unacceptable Delay. In the case of a follow-on contract for the continued development or production of a highly specialized equipment or major components thereof, when it is likely that award to another contractor would result in unacceptable delays in fulfilling the recipient's needs.
- (c) Exigency or Emergency. When a public exigency or emergency for the requirement will not permit a delay resulting from providing public notice of a competitive solicitation, or where an unusual and compelling urgency means the recipient would be seriously injured unless it were permitted to limit the solicitation, the recipient may make a noncompetitive award. When a recipient is procuring goods or services to respond to an emergency, it should limit its contract only to the quantities or period of performance necessary to see it through the emergency.
- (d) Adequate Competition. If after soliciting several sources, competition is determined inadequate, a recipient may make a noncompetitive award. If a recipient receives inadequate competition in response to its solicitation, it should review its specifications to determine if they are unduly restrictive or if changes can be made to encourage submission of more bids or proposals. After the recipient determines that the specifications are not unduly restrictive and changes cannot be made to encourage greater competition, the recipient may make a noncompetitive award.
- (e) As Authorized by FTA. 2 CFR 200.320(c)(4) permits a recipient to request FTA's approval to use a noncompetitive procurement method. Under this authority, FTA has made the following determinations:

 - 1 Team, Consortium, Joint Venture, or Partnership. When FTA awards a grant agreement or enters into a cooperative agreement with a team, consortium, joint venture, or partnership, or provides FTA assistance for a research project in which FTA has approved the participation of a particular firm or combination of firms in the project work, the grant agreement or cooperative agreement constitutes approval of those arrangements. Typically, this occurs in FTA's discretionary funding programs. In such cases, the recipient must adhere to competition requirements to select other contractors. The recipient should be explicit in its application whether it is applying as part of a team, the members of the team, their commitment to the project, and each member's role. Because FTA awards funding to such applications based on the strength of the team, the withdrawal of a team member may be cause for FTA to terminate the award.
 - 2 Federal Standards. To ensure that the recipient has flexibility equal to that of Federal contracting officers, FTA authorizes procurement by

noncompetitive proposals in all of the circumstances authorized by FAR Part 6.3. In addition to circumstances discussed in 2 CFR 200.320(c), the FAR authorizes less than full and open competitive procurements in the following circumstances:

- a Statutory Authorization or Requirement. To comply with Department of Transportation (DOT) appropriations laws that include specific statutory requirements, with the result that only a single contractor can perform certain project work.
 - b National Emergency. To maintain a facility, producer, manufacturer, or other supplier available to provide supplies or services in the event of a national emergency or to achieve industrial mobilization.
 - c Research. To establish or maintain an educational or other non-profit institution or a Federally funded research and development center that has or will have an essential engineering, research, or development capability.
 - d Protests, Disputes, Claims, Litigation. To acquire the services of an expert or neutral person for any current or anticipated protest, dispute, claim, or litigation.
 - e International Arrangements. When precluded by the terms of an international agreement or a treaty between the United States and a foreign government or international organization, or when prohibited by the written directions of a foreign government reimbursing the recipient for the cost of the acquisition of the supplies or services for that government.
 - f National Security. When the disclosure of the recipient's needs would compromise the national security.
 - g Public Interest. When the recipient determines that full and open competition in connection with a particular acquisition is not in the public interest.
- (2) When Prohibited. Less than full and open competition is not justified based on:
- (a) Failure to Plan. The recipient's lack of advance planning, or
 - (b) Limited Availability of Federal Assistance. Concerns about the amount of Federal assistance available to support the procurement (for example, due to expiration of Federal assistance available for award).
- (3) Procurement Procedures. When less than full and open competition is available to the recipient, the following procedures apply:

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- (a) Potential Sources. In all situations, the recipient should solicit offers from as many potential sources as is practicable under the circumstances.
 - (b) Justification. If the recipient decides to make a noncompetitive award, the recipient must justify its decision in its records for the procurement as included under 2 CFR 200.318(i).
 - (c) Cost or Price Analysis. If the procurement will exceed the simplified acquisition threshold, the recipient must perform a cost or price analysis consistent with 2 CFR 200.324.
- i. Cardinal Changes. A significant change in contract work that causes a major deviation from the original purpose of the work or the intended method of achievement, or causes a revision of contract work so extensive, significant, or cumulative that, in effect, the contractor is required to perform very different work from that contemplated in the original competition, is a cardinal change. Such practices are sometimes informally referred to as “tag-ons”.
- (1) Cardinal Changes Restricted. A cardinal change that is beyond the scope of the competition conducted to achieve the original contract is, effectively, a new contract. Accordingly, a recipient must not allow a cardinal change to a contract without a justification for making a noncompetitive award.
 - (2) Identifying Cardinal Changes. Recognizing a cardinal change can be nuanced and fact specific. The recipient should consider the circumstances of the contract and the change at issue considering the original competition. It may require the recipient to consider whether the change was reasonably foreseeable to the contractor and the other offerors at the time. The recipient also should be guided by its local procurement rules and contract law. Although FTA has provided additional guidance in its Best Practices Procurement & Lessons Learned Manual, FTA has not developed a definite list of acceptable contract changes. There is no specific percentage, dollar value, number of changes, or other objective measure that would apply to all cases.
 - (3) Tests. The recipient may consider whether a contemplated change is so drastic that it exceeds the scope of the contract’s changes clause. This is not the same as the ultimate question, which is whether the change is outside the scope of the competition that procured the contract, but in practice these questions overlap. Other tests involve the nature and extent of the work to be performed, the amount of effort involved, whether the change was contemplated during discussions with offerors or at the time the original contract was entered into, or the cumulative impact on the contract’s quantity, quality, costs, and delivery terms.
 - (4) Changes in Quantity. Very large changes to quantities may be cardinal changes. However, to categorize any change in quantity as a prohibited cardinal change would be impractical and would unnecessarily restrict a recipient’s discretion to

adjust contemplated fairly and reasonably by the parties when they entered into the contract.

- (5) Rolling Stock. In the case of rolling stock, a substitution of major end items not contemplated when competition for the original award took place generally would be a cardinal change. For example, a change from a high-floor to a low-floor vehicle, or a change from a single-deck to a double-deck vehicle, could be cardinal changes. Changing an engine or fuel type might result in a cardinal change depending on the circumstances surrounding the project and the terms of the solicitation. Changes to seating, fabrics, colors, exterior paint schemes, signage, and floor covering, and other similar changes usually will not be cardinal changes.
 - (6) Federal Procurement Standards. The standards applied in Federal Government contracting related to cardinal changes and the Federal Competition in Contracting Act (CICA) are well developed through Federal court decisions, Federal Boards of Contract Appeals decisions, and U.S. Comptroller General Decisions. These may provide guidance for analyzing whether a change would be a cardinal change. These Federal authorities are not controlling on recipients. Other guidance can be found in FTA's Best Practices Procurement & Lessons Learned Manual.
4. ELIGIBLE COSTS. Contract costs must be eligible for FTA participation under the eligibilities of the FTA funding program the recipient's award is made under, and according to the Uniform Cost Principles of 2 CFR Part 200 Subpart E. Unless FTA specifies otherwise in writing, all recipients must adhere to the cost principles in 2 CFR Part 200 Subpart E, including for-profit entities. FTA Master Agreement § 3(f) (May 2, 2024). A recipient may reference its own cost principles, provided they are consistent with the Federal cost principles outlined in 2 CFR Part 200 Subpart E.

COST ANALYSIS AND PRICE ANALYSIS. 2 CFR 200.324 requires the recipient to perform a cost analysis or price analysis in connection with every procurement action, including contract modifications and options exercises, in excess of the simplified acquisition threshold. The method and degree of analysis depend on the facts and circumstances surrounding each procurement. For example, the recipient or subrecipient should consider potential workforce impacts in their analysis if the procurement transaction will displace public sector employees. However, as a starting point, the recipient must make independent estimates before receiving bids or proposals.

The objective of the cost or price analysis should be to ensure the final contract price is fair and reasonable. A cost analysis examines the reasonableness of the contractor's proposed costs to deliver the contract. A price analysis considers the overall price of the contract to the recipient. One or the other may be more appropriate in different circumstances.

- a. Cost Analysis. The recipient should perform a cost analysis when a price analysis will not provide sufficient information to determine the reasonableness of the contract price. The recipient should perform a cost analysis when the offeror submits cost elements (e.g., labor hours, overhead, materials) in its proposal. The recipient also should perform a cost

analysis when price competition is inadequate, e.g., when only a single source is available, or when performing a contract modification. The recipient may not need to perform a cost analysis if it can analyze the price reasonableness of the proposed contract based on a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation.

- b. Price Analysis. If the recipient determines that competition was adequate, it may perform a price analysis instead of a cost analysis. One method to record this price analysis is through the use of a preprinted form on which a contracting officer (or other responsible person) can annotate a finding of fair and reasonable pricing and check off the most common reasons why this would be so, such as catalog or market prices offered in substantial quantities to the general public, regulated prices (for example, for many utilities purchases), or a comparison with recent prices for similar goods and services.
- c. Guidance on Cost and Price Analysis. The recipient may use the following resources as guidance in preparing cost or price analyses:

2. FTA's "Best Practices Procurement Manual," Chapter V;

- (1) The National Transit Institute Course, "Cost or Price Analysis and Risk Assessment".

- (2) Pricing Guide for FTA Grantees on FTA's website;

- (3) FAR Part 31, Contract Cost Principles and Procedures; or

- (4) Defense Contract Audit Agency Audit Manual. See, the DCAA Web site:
<https://www.dcaa.mil/>

Note, however, that FAR Part 31 and the Defense Contract Audit Agency Audit Manual apply to Federal Government contracts and may not be applicable to the recipient's procurement.

5. EVALUATIONS. The following standards apply:

- a. General. When evaluating bids or proposals submitted, the recipient should consider all evaluation factors specified in its solicitation documents and evaluate the bids or offers only on the evaluation factors included in those solicitation documents. The recipient should not modify its evaluation factors after bids or proposals have been submitted without re-opening the solicitation.
- b. Options. When the recipient determines there is a reasonable likelihood that it will exercise options included in a bid or proposal, the recipient should evaluate the total price of exercising the options together with the price of the basic contract requirement.

The recipient may not need to evaluate bids or offers for options when the recipient

determines that evaluation would not be in its best interests. An example of a circumstance that may support a recipient's determination not to evaluate bids or offers for options is when the recipient is reasonably certain that funds will not be available to permit it to exercise the option.

- c. Evaluators. In addition to evaluators with experience in technical or public policy matters related to the procurement, other evaluators may also include auditors and financial experts to the extent that the recipient determines would be necessary or helpful. A recipient lacking qualified personnel within its organization may contract for the evaluation services it needs. If the recipient does contract for evaluation services, the procurement standards described in this circular will apply to those contracts and to those contractors selected to perform procurement evaluation functions on behalf of the recipient. The recipient should especially guard against a contracted evaluator's potential conflicts of interest.

6. CONTRACT AWARD. The following provisions apply to third party contract awards:

- a. Award to Other Than the Lowest Bidder or Offeror. Federal transit law at 49 U.S.C. 5325(c) authorizes the recipient to award a contract to other than the lowest bidder if the award furthers an objective consistent with the purposes of 49 U.S.C. Chapter 53, including improved long-term operating efficiency and lower long-term costs. The recipient may also award a contract to other than the offeror whose proposal is lowest, when based on the evaluation factors of the solicitation. In both cases, the recipient should include a statement in its solicitation document reserving the right to award the contract to other than the low bidder or offeror.
- b. Award Only to a Responsible Bidder or Offeror. Under 49 U.S.C. 5324(j) and 2 CFR 200.318(h), the recipient must award contracts only to "responsible" contractors possessing the ability to successfully perform under the terms and conditions of the contract.

Responsibility is a procurement issue that is determined by the recipient after receiving bids or proposals and before making contract award. If an offeror identifies subcontractors it will use to perform the contract should it receive an award, the recipient should consider the responsibility of the proposed subcontractors. The formality of a responsibility determination should vary according to the size, complexity, and nature of a potential contract. For orders over the simplified acquisition threshold, the recipient's documentation for the procurement should demonstrate clearly that the recipient considered the contractor's responsibility before making an award. Before making an award, the recipient must at a minimum consider the following:

- (1) Integrity and Ethics. The contractor should have a satisfactory record of integrity and business ethics.

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- (2) Debarment and Suspension. The recipient must not allow the award of any contract or subcontract at any tier exceeding \$25,000 to a person excluded under DOT regulations, “Nonprocurement Suspension and Debarment,” 2 CFR Parts 180 and 1200, or under the FAR at 48 CFR Part 9, subpart 9.4.
- (3) Public Policy. The contractor should have a satisfactory history of compliance with the public policies of the Federal Government or State or local governments. This may include, for example, compliance with policies related to Buy America or U.S. DOT’s disadvantaged business enterprise (DBE) program, or local licensing requirements.
- c. Fair Labor Standards Act. The contractor should have a satisfactory history of proper classification of employees under the FLSA.
- d. Financial and Technical Resources. The contractor should have the necessary organization, experience, accounting and operational controls, technical skills, and sufficient financial resources, or the ability to obtain them, to successfully perform the contract according to all terms and conditions. This may require the contractor to have personnel with adequate experience, a parent firm with adequate resources, or subcontractors.
- e. Past Performance. The contractor should have a satisfactory performance history. Past performance may include work performed as a predecessor entity, if relevant to the present contractor. The contractor’s past performance should demonstrate experience that would enable it successfully to perform the present contract, with particular attention to management approach, staffing, timeliness, technical success, budgetary controls, and other specialized considerations.
- f. Tax Liability and Felony Conviction. Under the FTA Master Agreement, the contractor must certify to the recipient that it does not have any unpaid Federal tax liability and it has not been convicted of any Federal felony within the preceding 24 months. FTA Master Agreement § 4(g) (May 2, 2024).
- g. Deficiencies. Assessing an offeror’s responsibility may require judgement on the part of the recipient (except for clear disqualifications like suspension and debarment). The recipient may determine an offeror is not responsible if the offeror has deficiencies in one or more of the above considerations. The recipient should consider the seriousness of the deficiency, the circumstances of the deficiency and the degree to which the deficiency was under the offeror’s control, the number of the offeror’s past contracts involved, and whether the contractor has taken corrective, remedial actions to mitigate the deficiency or prevent recurrence.
- h. Extent and Limits of Contract Award. A selection of a contractor to participate in one aspect of a project does not, by itself, constitute a noncompetitive selection of the

contractor's wholly owned affiliates to perform other work in connection with the project.

APPENDIX A

REFERENCES

1. American Institute of Certified Public Accountants (AICPA) - “Generally Accepted Auditing Standards”.
2. Age Discrimination Act of 1975, as amended, (Nondiscrimination on the Basis of Age in Federal or Federal Assistance Programs), November 29, 1975, 42 U.S.C. § 6101 *et seq.*
3. Age Discrimination in Employment Act of 1967 (ADEA) (Prohibitions), June 12, 1968, 29 U.S.C. §§ 621 through 634.
4. Alcohol and controlled substances testing, 49 U.S.C. § 5331.
5. Americans with Disabilities Act of 1990, as amended (Accessibility for Persons with Disabilities), July 26, 1990, 42 U.S.C. § 12101 *et seq.*
6. Animal Welfare Act, as amended, 7 U.S.C. § 2131 *et seq.*, August 24, 1966.
7. Architectural Engineering Procurement Requirements (“Brooks Act”), October 27, 1972, 40 U.S.C. Chapter 11.
8. Arms Export Control Act, as amended, September 21, 1976, 22 U.S.C. § 2751 *et seq.*
9. Bayh-Dole Act (Patent Rights), December 12, 1980, 35 U.S.C. § 200 *et seq.*
10. Bus Testing Facility, 49 U.S.C. § 5318.
11. Cargo Preference Act (codified), October 13, 1954, 46 U.S.C. § 55305.
12. Clean Air Act, December 17, 1963, 42 U.S.C. §§ 7401 through 7671q.
13. Clean Water Act as amended “Federal Water Pollution Control Act.” October 18, 1972, 33 U.S.C. §§ 1251 through 1387.
14. Contract Requirements, 49 U.S.C. § 5325.
15. Contract Work Hours and Safety Standards Act (Construction Safety), June 24, 1936, 40 U.S.C. § 3704 § 107.
16. Contract Work Hours and Safety Standards Act (Wage and Hour Restrictions), June 24, 1936, 40 U.S.C. § 3702 § 102.
17. Copeland Anti-Kickback Act, as amended, August 21, 2002, 40 U.S.C. § 3145 § 2.
18. Copeland Anti-Kickback Act, as amended, September 13, 1994, 18 U.S.C. § 874 Section 1.
19. Council on Environmental Quality regulations, “Other Requirements of NEPA,” 40 CFR § 1506 and 1506.5(c).
20. Criminal Fraud, 18 U.S.C. § 1001.

21. Davis-Bacon Act (Prevailing Wages), March 3, 1931, 40 U.S.C. § 3141 *et seq.*
22. Defense Contract Audit Agency Audit Manual.
23. Department of Agriculture regulations, “Animal Welfare,” 9 CFR Parts 1, 2, 3, and 4.
24. Department of Commerce regulations, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms,” 37 CFR Part 401.
25. Department of Commerce, “Export Administration Regulations,” 15 C.F.R. Part 703 *et seq.*
26. Department of Commerce, “Export Administration Regulations,” 15 CFR Part 730 *et seq.*
27. Department of Health and Human Services regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 CFR Part 90.
28. Department of Homeland Security regulations, “Protection of Sensitive Security Information,” 49 CFR Part 1520.
29. Department of Labor (DOL) regulations, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States,” 29 CFR Part 3.
30. Department of State, “International Traffic in Arms Regulations,” (ITAR), 22 CFR Subchapter M.
31. DOL regulations “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 CFR Part 5.
32. DOL regulations “Safety and Health Regulations for Construction,” 29 CFR Part 1926.
33. DOL regulations, “Office of Federal Contract Compliance, Equal Employment Opportunity, Department of Labor,” 41 CFR Chapter 60.
34. DOL regulations, “Section 5333(b), Federal Transit Law,” 29 CFR Part 215.
35. Earthquake Hazards Reduction Act of 1977, as amended, (Seismic Safety), October 6, 1990, 42 U.S.C. § 7701 *et seq.*
36. E-Government Act of 2002 (GSA Schedule Use for Information Technology), December 17, 2002, 40 U.S.C. § 502(c)(1)(A) § 211.
37. Energy Policy and Conservation Act (State Energy Conservation Plans), December 22, 1975, 42 U.S.C. § 6321 *et seq.* Subchapter III, Part B.
38. Environmental Protection Agency (EPA) regulations, “Comprehensive Procurement Guideline for Products Containing Recovered Materials,” 40 CFR Part 247.
39. EPA regulations, “Control of Air Pollution from Mobile Sources,” 40 CFR Part 85.

40. EPA regulations, "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines," 40 CFR Part 86.
41. EPA regulations, "Fuel Economy of Motor Vehicles," 40 CFR Part 600.
42. Equal Employment Opportunity Commission regulations, "Age Discrimination in Employment Act," 29 CFR Part 1625.
43. Executive Order No. 11246, "Equal Employment Opportunity," September 24, 1965, as amended by Executive Order No. 11375, "Amending Executive Order No. 11246 Relating to Equal Employment Opportunity," October 13, 1967.
44. Executive Order No. 12770, "Metric Usage in Federal Government Programs," July 25, 1991, 15 U.S.C. § 205a note.
45. Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," February 11, 1994, 42 U.S.C. § 4321 - 4335 note.
46. Executive Order No. 13043, "Increasing Seat Belt Use in the United States," August 16, 1997, 23 U.S.C. § 402 note.
47. Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," August 11, 2000, 42 U.S.C. § 2000d-1 note.
48. Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. § 402 note.
49. Executive Order No. 14063 "Use of Project Labor Agreements for Federal Construction Projects," February 4, 2022, which rescinds Executive Order No. 13502, "Use of Project Labor Agreements for Federal Construction Projects," February 6, 2009. 40 U.S.C. § 101 *et seq.*
50. Executive Order No. 13132, "Federalism," August 4, 1999, 5 U.S.C. § 601 note.
51. Export Administration Act of 1979, as amended, August 13, 2018, 50 U.S.C. app. § 2401 *et seq.*
52. Fair Labor Standards Act of 1938, as amended (Wage and Hour Restrictions), June 25, 1938, 29 U.S.C. § 201 *et seq.*
53. FAR 48 CFR Part 14, § 14.202-8 "Electronic bids".
54. FAR 48 CFR Part 25, Subparts 25.1 and 25.2 (Federal Buy American Regulations).
55. FAR 48 CFR Part 31 (Contract Cost Principles and Procedures).
56. FAR 48 CFR Part 31, Subpart 31.2 (Contracts with Commercial Organizations).
57. FAR 48 CFR Part 6, Subpart 6.3, § 6.302-1, (Only one responsible source and no other supplies or services will satisfy agency requirements).
58. Federal Acquisition Regulation (FAR) 48 CFR Part 2, Subpart 2.1 (Definitions).

59. Federal Acquisition Streamlining Act of 1994 (Definition of the [Federal] Simplified Acquisition Threshold), October 13, 1994, 41 U.S.C. § 403(11).
60. Federal Acquisition Streamlining Act of 1994 (Increased Wage and Hour Thresholds for Contract Work Hours and Safety Standards Act), October 13, 1994, 40 U.S.C. § 3701(b)(3)(A)(iii) § 4104(c).
61. Federal Acquisition Streamlining Act of 1994 (Repeal of Labor Surplus Area Programs), October 13, 1994, 15 U.S.C. § 644 note §7101(a).
62. Federal Property and Administrative Services Act of 1949, as amended (General Services Administration (GSA) Schedule Use by the District of Columbia), January 4, 2011, 40 U.S.C. § 502(a)(3).
63. Federal Transit Administration (FTA) regulations, “Charter Service,” 49 CFR Part 604.
64. Federal Transit Laws, Title 49, United States Code, Chapter 53; also, public transportation provisions of Title 23, United States Code.
65. Fixed Guideway Capital Investment Grants, 49 U.S.C. § 5309 (1).
66. Fixing America’s Surface Transportation (FAST) Act, § 3019(c), § 1101 (b) Pub. L. No. 114-94, December 04, 2015.
67. FTA “Guidance for FTA Tier II Recipients on Implementing the Disadvantaged Business Enterprise (DBE) Program Final Rule”, published April 9, 2024.
68. FTA Circular C 4702.1B, “Title VI Requirements and Guidelines for Federal Transit Administration Recipients,” October 1, 2012.
69. FTA Circular C 5010.1F, “Award Management Requirements,” November 1, 2024.
70. FTA Circular C 7050.1C “Guidance on Joint Development” January 25, 2024.
71. FTA Circular C 9050.1A, “Urbanized Areas Formula Grant Programs Guidance” September 27, 2024.
72. FTA Circular C 9300.1B, “Capital Investment Program Guidance and Application Instructions” November 1, 2008.
73. FTA Notice, “FTA National ITS Architecture Policy on Transit Projects” 66 FR 1455, January 8, 2001.
74. FTA regulations, “Bus Testing,” 49 CFR Part 665.
75. FTA regulations, “Buy America,” 49 CFR Part 661.
76. FTA regulations, “Pre-Award and Post-Delivery Audits of Rolling Stock Purchases,” 49 CFR Part 663.
77. FTA regulations, “Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations,” 49 CFR Part 655.
78. FTA regulations, “Requirements for Energy Assessments,” 49 CFR Part 622, subpart C.

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79. FTA regulations, “School Bus Operations,” 49 CFR Part 605.
 80. FTA, “[Best Practices Procurement & Lessons Learned Manual](#)” October 2016.
 81. FTA, “Conducting Pre-Award and Post Audits for Rolling Stock Procurements” FTA Report No. 0106., January 2017.
 82. FTA, “Notice of establishment of Public-Private Partnership Pilot Program; solicitation of applications,” 72 FR 2583, esp. 2584, 2585-2591, January 19, 2007.
 83. FTA, “Pricing Guide for FTA Grantees.”.
 84. FTA, “[Master Agreement](#)” (PDF) May 2, 2024.
 85. General Provisions, 49 U.S.C. § 5323.
 86. General Services Administration (GSA), “Federal Property Management Regulations,” 41 CFR §§ 101-42 through 101-46, and 101-48, 101-49.
 87. Grants and loans for special needs of elderly individuals and individuals with disabilities, 49 U.S.C. § 5310.
 88. GSA Order OGP 4800.2I, “Eligibility to Use GSA Sources of Supply and Services.” July 19, 2016.
 89. GSA regulations, “Use of United States Flag Air Carriers,” 41 CFR §§ 301-10.131 through 301-10.143.
 90. Hiring Incentives to Restore Employment Act (HIRE Act), Pub. L. 111-147, Title IV, March 18, 2010, 23 U.S.C. § 101 note § 451.
 91. Infrastructure Investment and Jobs Act (IIJA), § 11305, §25019(a), § 60307(a) Pub. L. 117-58, November 15, 2021.
 92. International Air Transportation Fair Competitive Practices Act of 1974, as amended (“Fly America” Act – Persons and Property), March 14, 1979, 49 U.S.C. § 40118 § 5.
 93. International Emergency Economic Powers Act, as amended, December 28, 1977, 50 U.S.C. § 1701 *et seq.*
 94. John Warner National Defense Authorization Act for Fiscal Year 2007 (GSA Schedule Use for Major Disaster or Emergency Relief), October 17, 2006, 40 U.S.C. § 502(d) § 833.
 95. Joint Access Board /DOT regulations, “Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 CFR Part 1192 and 49 CFR Part 38.
 96. Joint Federal Highway Administration (FHWA)/FTA regulations, “Environmental Impact and Related Procedures,” 23 CFR Part 771 and 49 CFR Part 622, subpart A.
 97. Labor Standards – Prevailing Wages Requirements, 49 U.S.C.-§ 5333(a).

98. Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions (Byrd “Anti-Lobbying” Amendment), 31 U.S.C. § 1352.
99. Local Preparedness Acquisition Act (GSA Schedule Use for Safety or Security Emergency Preparedness), June 5, 2008, 40 U.S.C. § 502(c)(1)(B) § 2.
100. Maritime Administration regulations, “Cargo Preference U.S. Flag Vessels,” 46 CFR Part 381.
101. National architecture and standards - Conformity with National Architecture, 23 U.S.C. § 517 (d).
102. National Research Act, as amended (Protection of Humans), 42 U.S.C. § 289 *et seq.* July 12, 1974.
103. Nondiscrimination, 49 U.S.C. § 5332.
104. Office of Management and Budget (OMB) “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 CFR Part 180.
105. OMB “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” 2 CFR Part 200.
106. OMB Guidance for Grants and Agreements “Cost Principles for Non-Profit Organizations,” former 2 CFR Part 230.
107. OMB Guidance for Grants and Agreements, “Cost Principles for Educational Institutions”, former 2 CFR Part 220.
108. OMB Guidance for Grants and Agreements, “Cost Principles for State, Local, and Indian Tribal Governments,” former 2 CFR Part 225.
109. OMB regulation, “Audit Requirements” 2 CFR Part 200, subpart F.
110. Omnibus Trade and Competitiveness Act of 1988 (Amendments to the Metric Conversion Act), August 23, 1988, 15 U.S.C. §§ 205a *et seq.*
111. Presidential \$1 Coin Act of 2005 (Use of Coins in Transit Facilities and Equipment), December 22, 2005, 31 U.S.C § 5112(p) § 104.
112. Program Fraud Civil Remedies Act of 1986, as amended, December 21, 1995, 31 U.S.C. § 3801 *et seq.*
113. Public Lands -Definitions, 43 U.S.C. § 1602.
114. Public Transportation – Definitions, 49 U.S.C. § 5302.
115. Public Transportation Innovation, 49 U.S.C. § 5312.
116. Rehabilitation Act of 1973, as amended (Electronic and Information Technology acquired with Federal funding to be Accessible), August 7, 1998, 29 U.S.C. § 794d § 508.

117. Rehabilitation Act of 1973, as amended (Nondiscrimination under Federal Grants on the Basis of Disability), September 26, 1973, 29 U.S.C. § 794 § 504.
118. Resource Conservation and Recovery Act of 1976, as amended (Recycled Materials), October 6, 1990, 42 U.S.C. § 6962—Section 4002.
119. Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, (SAFETEA-LU), Pub. L. 109-59, August 10, 2005, as amended by the SAFETEA-LU Technical Corrections Act, 2008, Pub. L. 110-244, June 6, 2008.
120. SAFETEA-LU (Intelligent Transportation Systems), 23 U.S.C. § 512 note— § 5307(c).
121. Sensitive Security Information, 49 U.S.C. § 40119.
122. Simplified Acquisition Threshold, 41 U.S.C. § 134.
123. Single Audit Act of 1984, as amended (Audits of Federally Funded Programs), December 16, 2016, 31 U.S.C. § 7501 *et seq.*
124. Stafford Act (Major Disaster or Emergency Relief), November 23, 1988, 42 U.S.C. § 5150.
125. Title IX of the Education Amendments of 1972, as amended (Nondiscrimination on the Basis of Sex), June 23, 1972, 20 U.S.C. § 1681 *et seq.*
126. Title VI of the Civil Rights Act of 1964, as amended (Nondiscrimination), July 2, 1964, 42 U.S.C. § 2000d *et seq.*
127. Title VII of the Civil Rights Act of 1964, as amended (Equal Employment Opportunity), July 2, 1964, 42 U.S.C. § 2000e *et seq.*
128. Trading with the Enemy Act, October 6, 1917, 50 U.S.C. app. § 1 *et seq.*
129. Transportation – Amtrak, 49 U.S.C. Chapter 243.
130. Transportation Equity Act for the 21st Century 1998 (TEA-21), Pub. L. 105-178, June 9, 1998, as amended by TEA-21 Restoration Act 1998, Pub. L. 105-206, July 22, 1998.
131. Two-Step Selection Procedures Process for Federal Procurements, 41 U.S.C. § 253m.
132. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, January 2, 1971, 42 U.S.C. § 4601 *et seq.*
133. United States Access Board regulations, “Electronic and Information Technology Accessibility Standards,” 36 CFR Part 1194.
134. Urbanized Area Formula Grants, 49 U.S.C. § 5307.
135. USDOT Order 3902.10, “Text Messaging While Driving,” December 30, 2009.

136. USDOT Order 5610.2C, “U.S. Department of Transportation (DOT) Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” May 14, 2021.
137. USDOT Regulations - “Procedures for Transportation Workplace Drug and Alcohol Testing Programs” 49 CFR Part 40.
138. USDOT regulations “Debarment and Suspension of Contractors by Agencies” 48 CFR Part 9, subpart 9.4.
139. USDOT regulations, “Labor and Employment” 23 CFR §§ 635.117(b) or 636.107.
140. USDOT regulations, “New Restrictions on Lobbying,” 49 CFR Part 20.
141. USDOT regulations, “Nondiscrimination in Federally Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act,” 49 CFR Part 21.
142. USDOT regulations, “Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 CFR Part 27.
143. USDOT regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 CFR Part 25.
144. USDOT regulations, “Nonprocurement Suspension and Debarment,” 2 CFR Part 1200.
145. USDOT regulations, “Program Fraud Civil Remedies,” 49CFR Part 31.
146. USDOT regulations, “Protection of Human Subjects,” 49 CFR Part 11.
147. USDOT regulations, “Protection of Sensitive Security Information,” 49 CFR Part 15.
148. USDOT regulations, “Seismic Safety,” 49 CFR Part 41.
149. USDOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 CFR Part 37, including Appendix A, “DOT Modifications to Standards for Accessible Transportation Facilities.”
150. USDOT regulations, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.” 2 CFR Part 1201 (adopting, with some variations, the Office of Management and Budget “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards” (2 CFR Part 200).
151. USDOT regulations, “Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs,” 49 CFR Part 24.
152. USDOT regulations, “Participation by Disadvantaged Business Enterprises in U.S. Department of Transportation Financial Assistance Programs,” 49 CFR Part 26.

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153. USDOT, “Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficient (LEP) Persons,” December 14, 2005.
 154. USDOT, Statutory protections for Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites, 49 U.S.C. § 303(b) and 303(c).
 155. USDOT, Transportation Security Administration (Protection of Sensitive Security Information), 49 U.S.C. § 114(r).
 156. Use of electronic commerce in Federal procurement, 41 U.S.C. § 2301.
 157. Use of GSA Supply Schedules by Insular Areas, 48 U.S.C. § 1469e.
 158. Use of noncompetitive procedures, 41 U.S.C. § 3304 (a) (1).
 159. Use of procedures other than competitive procedures, 10 U.S.C. §3204(a)(1).
 160. Using Grant Agreements, 31 U.S.C. § 6304.
 161. Using Procurement Contracts and Grant and Cooperative Agreements (Purposes), 31 U.S.C. § 6301.
 162. Using Procurement Contracts and Grant and Cooperative Agreements (Using Cooperative Agreements), 31 U.S.C. § 6305.