

FTA

FEDERAL TRANSIT ADMINISTRATION



U.S. Department of Transportation
Federal Transit Administration

WELCOME

- Opening Remarks / Introductions
- Housekeeping
- Hotel Emergency Procedures
- Workshop Format

Agenda

Day 1:

- 9:00am Welcome and Introductions
- 9:15am Presentation of FTA Requirements
 - Most Common Procurement Findings
 - System-Wide Procurement Elements
 - Contents of an Effective Policies and Procedures Manual
- 12:00pm Lunch
- 1:00pm Aspects of Micro Purchase, Small Purchase
- 4:30pm Adjourn

Day 2:

- 9:00am Sealed Bids
- 12:00pm Lunch
- 1:00pm Request for Proposal Requirements, Sole Sources, A&E, and Construction Methods Requirements
 - Joint Procurement and Piggybacking Requirements
 - Clauses
 - Rolling Stock Requirements
- 2:00pm Review Documentation Requirements
- 3:00pm Adjourn

FTA Workshop Objectives

- Explain the Procurement System Review Process
- Clarify FTA procurement requirements
- Provide guidance / technical assistance
- Improve ability to access resources
- Answer your questions (please ask them!)
- Reduce the number of findings
- Encourage interaction / networking with peers

Who is Here?

- Have you had/or are you scheduled for a Procurement System Review?
- What are your procurement responsibilities in your agency?
- How can we best assist you in the workshop?

Purpose of the Procurement System Review

The PSR is an assessment of recipient's:

- Procurement system:
 - policies & procedures
 - implementation of the policies and procedures
- Management of grant funds in compliance with FTA regulations and recipient's contractual agreement with the FTA

Your Greatest Resources

FTA Circulars and legal opinions define the requirements

Other helpful resources:

- FTA website www.fta.dot.gov
 - Procurement Online Tools and Resources
 - Third Party Procurement Frequently asked Questions
 - Best Practices Procurement Manual
- FTA Regional Office Staff
- Peer Grantees
- Co-Workers

FTA

Third Party Procurement FAQs

- FAQs can be found at:

<https://www.transit.dot.gov/funding/procurement/third-party-procurement/third-party-procurement-faqs>

The screenshot shows the Federal Transit Administration website. The header includes the FTA logo, the text "Federal Transit Administration", and a search bar labeled "Search FTA site". Below the header is a navigation menu with "About", "Funding", and "Regulations & Guidance". The main content area shows the breadcrumb "Home » Funding » Procurement » Third Party Procurement" and the title "Third Party Procurement FAQs". A sub-header reads: "Got a question? Need an answer fast? The following is a topical listing of questions frequently asked of the Federal Transit Administration's Office of Procurement. Follow the topical link to learn more about related questions and answers." Below this is a list of links organized by letter: A, J, L, and M. To the right of the list is a "Related Links" section with two items: "Sign Up for Updates" and "Ask Us a Question about Third-Party Procurement". Below that is a "Share" section with social media icons for Facebook, Twitter, Google+, and a plus sign for more options.

Federal Transit Administration

Search FTA site

About Funding Regulations & Guidance

Home » Funding » Procurement » Third Party Procurement

Funding

Grant Programs

Applying

Grantee Tools

Resources

Third Party Procurement FAQs

Got a question? Need an answer fast? The following is a topical listing of questions frequently asked of the Federal Transit Administration's Office of Procurement. Follow the topical link to learn more about related questions and answers.

A

- A&E Contracts
- Acquiring Real Estate
- ADA Requirements
- Advance Payments
- Airline Passenger Complaints
- Allowable Costs for Grants
- Alternate Bids
- Altoona Testing
- Applicability of FTA Circular 4220.1E to Grantee Contractors
- Applicability of FTA Circular 4220.1F
- ARRA
- ARRA Contract Clauses
- Artwork
- Asset Life
- Assignment of Grant Funds
- Associated Capital Maintenance Items
- Audits of Third Party Contracts
- Availability of FTA Grants for Private Business
- Availability of FTA Grants for Transit Safety Equipment

J

- JARC
- Joint Procurements
- Justifying Sole Source Procurements

L

- Late Proposals
- Leases
- Legal Services
- Letters of Credit
- Licensing of Contractors
- Light Rail Window Standards
- Limited Product Liability
- Limiting the Number of Bids
- Liquidated Damages
- Listing of Transit Agencies
- Local Matching Funds
- Local vs. Federal Funds
- Locating FTA Documents

M

Related Links

- [Sign Up for Updates](#)
- [Ask Us a Question about Third-Party Procurement](#)

Share

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FTA's Best Practice Procurement Manual (BPPM)

- Revised in October 2016
- Provides “suggested” procedures, methods, and examples to “advise” a recipient on procurement tasks
- Can be used to establish local procedures such as templates or checklists
- BPPM can be found at:
<https://www.transit.dot.gov/funding/procurement/third-party-procurement/best-practices-procurement-manual>



Best Practices Procurement &
Lessons Learned Manual

OCTOBER 2016

FTA Report No. 0105
Federal Transit Administration

PREPARED BY
Federal Transit Administration



 U.S. Department of Transportation
Federal Transit Administration

Key Regulations and Circulars

Regulations

- 2 CFR Part 200
- Master Agreement
- FAST Act

Circulars

- FTA C 4220.IF 
- FTA C 5100.I (Bus & Bus Facilities)
- FTA C 5300.I (State of Good Repair)
- FTA C 6100.IE (Technology)
- FTA C 9040.IG (Non-Urbanized)
- FTA C 9070.IG (Enhanced Mobility)
- FTA C 9050.I (JARC)
- FTA C 9045.I (New Freedom)
- FTA C 9300.IB (Capital Investment)
- FTA C 9030.IE (5307 Program)
- FTA C 5010.IE (Award Management Requirements)

FTA Circular 4220.1F

FTA's Third Party Contracting Requirements 4220.1F became effective Nov. 1, 2008

Updates:

- Revision 1 – April 14, 2009
- Revision 2 – July 1, 2010
- Revision 3 – February 15, 2011
- Revision 4 (current version) – March 18, 2013
- Revision 5 2018 - TBD

Note: FTA plans to update Circular 4220.1F in 2018 in order to incorporate the provisions of 2 CFR Part 200. Until that update is issued, when there is a conflict between FTA Circular 4220.1F and 2 CFR Part 200, 2 CFR Part 200 controls.

FTA Circular 4220.1F (cont'd)

Applies to:

- Transit authorities
- FTA recipients and sub-recipients that contract with outside sources

Does not apply to States:

- States follow their own procedures, BUT must comply with FTA C. 4220.1F:
 - Contract Term Limitations, Competition, Geographic Preference, A&E Services, and Awards to Responsible Contractors
 - Inclusion of Federally-required clauses

FTA Circular 4220.1F (cont'd)

Additional Applicability Information:

- Where FTA funds are used in procurements for services or supplies, or where FTA-funded facilities or assets are used in revenue contracts, FTA Circular 4220.1F applies.
- FTA funds, even operating assistance, can be segregated from local funds.
- FTA Circular 4220.1F does not apply to wholly locally-funded capital procurements.
- When FTA assistance for preventive maintenance is being applied as a percentage of total maintenance, all preventive maintenance contracts must comply with FTA Circular 4220.1F.
- Procurements of real property consisting of land and any existing buildings or structures on that land are generally beyond the scope of FTA Circular 4220.1F.

MAP-21 Changes to Procurement Requirements

- Excluded Parties List System (EPLS) is now located in System for Awards Management (SAM) at SAM.gov
- Requires recipients to ensure contractors working on a capital construction project give a hiring preference, to the extent practicable, to qualified veterans (except over equally qualified minorities or members of other protected classes)

FAST Act Procurement Changes

- Encourages capital leasing of rolling stock and related equipment including low or no emission assets & components
- Exempts capital leases from 49 CFR 639 (removed the cost effectiveness requirement)
- Explicitly states that leases of rolling stock and related equipment **MUST** comply with Buy America
- Increases (in phases) Buy America domestic content for rolling stock
- Modifies Altoona bus testing requirements

FAST Act Procurement Changes

- Section 3019 of the FAST Act allows for:
 - Purchase from another's States cooperative procurement contract.
 - Cooperative procurement contracts which are essentially purchasing schedules between a state or eligible nonprofit with one or more vendors for rolling stock.
 - Nonprofit cooperative procurement pilot program.
 - Requires the establishment of a Joint Procurement Clearinghouse to allow grantees to aggregate planned rolling stock purchases and identify joint procurement participants.

Joint Procurement Clearinghouse

- The Joint Procurement Clearinghouse is available to transit agency procurement staff through FTA's Transit Award Management System (TrAMS). More information can be found at: <https://www.transit.dot.gov/funding/grantee-resources/teamtrams/transit-award-management-system-trams>
- Enter the Clearinghouse site at: <https://faces.fta.dot.gov/suite/sites/fta-procurement-clearinghouse>

The screenshot shows the Federal Transit Administration (FTA) Joint Procurement Clearinghouse website. The header includes the FTA logo, the text "Federal Transit Administration", and a search bar labeled "Search FTA site". Below the header is a navigation menu with "About", "Funding", and "Regulations & Guidance". The main content area is titled "Joint Procurement Clearinghouse" and features a sidebar with navigation options: "Funding", "Grant Programs", "Applying", "Grantee Tools", and "Resources". The main content area has a sub-header "Joint Procurement Clearinghouse" and a navigation bar with "HOME", "MY REQUESTS", "CREATE REQUEST", and "SEARCH". The main content area contains a welcome message, a "My Requests" section, a "Create Request" section, a "Search" section, and a "Joint Procurement Definition" section. The "My Requests" section states: "On this site, you will find resources that allow you to view your submitted joint procurement requests, create a new request, or view requests from other agencies. Each tab is detailed below." The "Create Request" section states: "The 'Create Request' tab allows you to create a new joint procurement clearinghouse request." The "Search" section states: "The 'Search' tab allows you to search all joint procurement clearinghouse requests entered in the system using filter criteria." The "Joint Procurement Definition" section states: "Joint Procurement (sometimes informally referred to as '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." The right sidebar contains "Related Documents" with links to "Joint Procurement Clearinghouse Procurement Officer User Guide" and "Joint Procurement Clearinghouse Guide for User Managers", and "Contact Us" with the "Joint Procurement Clearinghouse Help Desk" information: "FTA Office of Administration, 1200 New Jersey Avenue, S.E., Washington, DE 20590, United States, FTA.jpc.help@dot.gov". The "Business Hours" are listed as "8:30am-5:00pm ET, M-F". There are also social media icons for Facebook, Twitter, Google+, and YouTube.

Home » Funding » Procurement

Funding

Grant Programs

Applying

Grantee Tools

Resources

Search FTA site

About Funding Regulations & Guidance

Home » Funding » Procurement

Joint Procurement Clearinghouse

HOME MY REQUESTS CREATE REQUEST SEARCH

Welcome to the FTA Joint Procurement Clearinghouse

On this site, you will find resources that allow you to view your submitted joint procurement requests, create a new request, or view requests from other agencies. Each tab is detailed below.

My Requests

The 'My Requests' tab displays a list of all joint procurement clearinghouse requests created by you. Use this tab to view and update your joint procurement requests.

Create Request

The 'Create Request' tab allows you to create a new joint procurement clearinghouse request.

NOTE: joint procurement requests that are in 'Open' status and have not been modified in 6 weeks will be automatically closed.

Search

The 'Search' tab allows you to search all joint procurement clearinghouse requests entered in the system using filter criteria.

Joint Procurement Definition

Joint Procurement (sometimes informally referred to as "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.

Related Documents

- Joint Procurement Clearinghouse Procurement Officer User Guide
- Joint Procurement Clearinghouse Guide for User Managers

Contact Us

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Washington, DE 20590
United States
FTA.jpc.help@dot.gov

Business Hours:
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To establish a mechanism to allow grantees to work together to purchase rolling stock, FTA has created an online tool for joint procurement. The Joint Procurement Clearinghouse, developed with input from the transit industry, is available to transit agency procurement staff through FTA's Transit Award Management System (TrAMS).

- Enter the Joint Procurement Clearinghouse (available only to FTA grantees designated access through TrAMS)

Transit procurement staff from throughout the country can use the site to

Nonprofit Cooperative Procurements

- Pilot program to demonstrate the effectiveness of cooperative procurement contracts for transit rolling stock and related equipment administered by nonprofit entities.
- Designed to address the high purchasing costs attributable to the relatively small size of these procurements for small grantees.



track frog guard check and face gage dimensions. In addition, AAR is requesting that FRA amend the waiver to include relief from 49 CFR 213.355—Frog guard mils and guard face gage to allow trains to operate at Class 6 speeds over HPF designs with guard-check gages conforming to the standards for Class 4 track frog guard check and face gage dimensions. A copy of the petition, as well as any written communications concerning the petition, is available for review online at www.regulations.gov and in person at the Department of Transportation's Docket Operations Facility, 1200 New Jersey Ave. SE, W12-140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request. All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- Web site: <http://www.regulations.gov>. Follow the online instructions for submitting comments.
 - Fax: 202-493-2251.
 - Mail: Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, W12-140, Washington, DC 20590.
 - Hand Delivery: 1200 New Jersey Avenue SE, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Communications received by October 6, 2017 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.
- Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual

described in the system of records notice (DOT/ALL-14 FPM), which can be reviewed at <https://www.transportation.gov/privacy>. See also <https://www.regulations.gov/privacyNotice> for the privacy notice of www.regulations.gov.

Issued in Washington, DC, on August 17, 2017.
John Karl Alexy,
Director, Office of Safety Analysis,
[FR Doc. 2017-17749 Filed 8-21-17; 8:45 am]
BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration Pilot Program for Nonprofit Cooperative Procurements

AGENCY: Federal Transit Administration.
DCT.

ACTION: Notice; request for expressions of interest to participate.

SUMMARY: The Federal Transit Administration (FTA) announces the establishment of the Pilot Program for Nonprofit Cooperative Procurements (Pilot Program) and solicits expressions of interest from eligible nonprofit entities to participate. The Pilot Program is aimed at increasing innovation, promoting efficiency, and demonstrating the effectiveness of cooperative procurement contracts for rolling stock and related equipment administered by eligible nonprofit entities.

DATES: Expressions of interest to become one of the selected nonprofit entities in the Pilot Program for Nonprofit Cooperative Procurements must be received by October 23, 2017.

ADDRESSES: Expressions of interest may be submitted via U.S. mail, electronic mail, or fax. Mail submissions must be addressed to the Office of Acquisition Management, Federal Transit Administration, 1200 New Jersey Avenue SE, Room E42-332, Washington, DC 20590. Email submissions must be sent to NonprofitPilotProgram@dot.gov. Facsimile submissions must be submitted to the attention of Nonprofit Pilot Program at 417-678-9275. If there is an insufficient number of eligible

James.Harper@dot.gov. For legal matters, Eldridge Onco, FTA Office of Chief Counsel, telephone (817) 978-0557 or email Eldridge.Onco@dot.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Background
- II. Pilot Program Description
- III. Eligibility Information
- IV. Expression of Interest Submission Process
- V. Application Review
- VI. Pilot Program Administration

I. Background

Section 3019 of the Fixing America's Surface Transportation (FAST) Act, Public Law 114-94, permits FTA grantees to purchase rolling stock and related equipment from cooperative procurement contracts entered into by either a State government or an eligible nonprofit entity and 1 or more vendors. Section 3019 was designed to address the high purchasing costs attributable to the relatively small size of the procurements for rolling stock and related equipment, particularly for small and rural public transportation providers. Many States currently have authority to enter into cooperative purchasing contracts, also known as "state schedules." However, such authority was not previously extended to nonprofit entities.

The statute creates a pilot program to demonstrate the effectiveness of cooperative procurement contracts administered by nonprofit entities. These contracts are intended to be separate from State cooperative purchasing contracts and provide another opportunity for public transportation systems of all sizes to enhance their purchasing options.

II. Pilot Program Description

Section 3019(b)(3) establishes a Pilot Program to demonstrate the effectiveness of cooperative procurement contracts administered by eligible nonprofit entities. The objective of this innovative procurement approach is to enhance the purchasing options for all public transportation systems. FTA plans to assess the benefits and effectiveness of the Pilot Program to assist grantees in developing more efficient and innovative approaches to acquiring rolling stock

Information at:
<https://www.gpo.gov/fdsys/pkg/FR-2017-08-22/pdf/2017-17606.pdf>

Other Notable FAST Act Changes

- **Art and Landscaping** – Prohibits federal transit funding from paying for art and/or non-functional landscaping elements of a transit project.
- **PMOC** – Limits federal project management oversight to quarterly, unless the project or sponsor is deemed at risk of schedule delays or cost overruns.
- **Low/No Component Testing** – Requires FTA to competitively select at least one facility to conduct testing, evaluation, and analysis for low or no emission vehicle components.
 - FTA will pay 50% of testing costs
 - This testing facility will be separate from 5318 bus testing (Altoona testing).

FTA Oversight Activities

Comprehensive Reviews

- Triennial Review
 - Conducted of recipients of 5307 funds
 - Mandated by law
 - Procurement and DBE areas relate to procurement
- State Management Review
 - Conducted of states and territories
 - Focuses primarily on 5310 and 5311 programs, but also incorporates questions from other funding programs
 - Procurement and DBE areas relate to procurement

FTA Oversight Activities (cont'd)

Program Specific

- Procurement System Reviews
- Financial Management Oversight Reviews
- Civil Rights Reviews
- Drug and Alcohol Audits

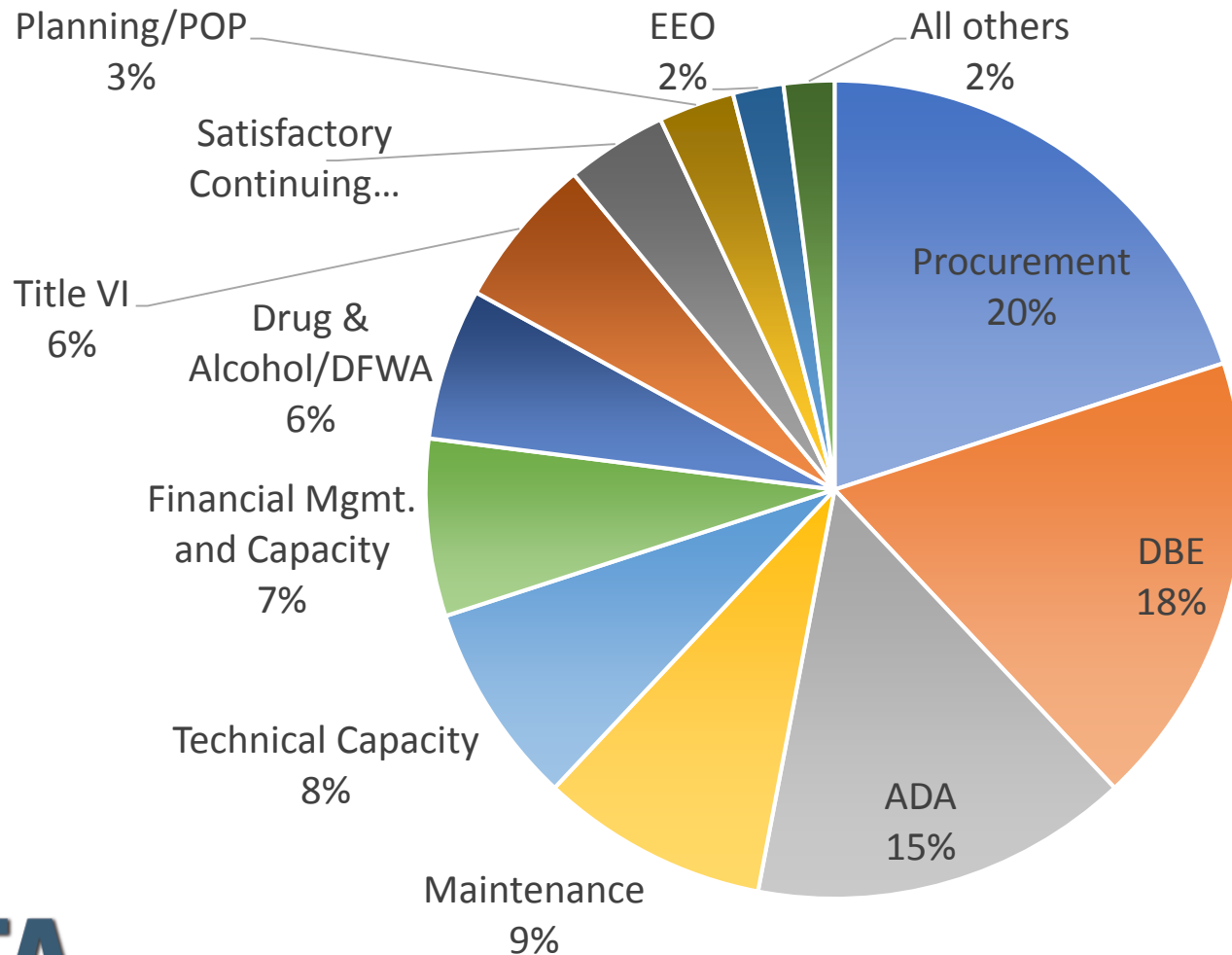
Project Level

- Project Management Oversight
- Financial Capacity Assessments
- Safety and Oversight Management Program

Review Process

- Desk review
- Notification letter
- Regional Work Plan meeting
- Site visit
 - Opening Conference
 - On Site Review
 - Exit Conference
- Draft Report
- Draft Final Report
- Final Report
- Resolution of findings / Technical Assistance
- Follow-up reviews

Top 10 Deficiency Areas for Comprehensive Reviews FY17



Top 10 Procurement System Review Deficiencies Nationally for FY15 – FY17

- Independent Cost Estimate (ICE)
- Lack of Required Federal Clauses
- Written Record of Procurement History
- Award to Responsible Contractors
- Procurement Policies and Procedures
- Sound and Complete Agreement
- Clear, Accurate, and Complete Specifications
- Cost or Price Analysis
- Price Quotations [Small Purchases]
- Cost Analysis Required [Sole Source]

Addressing Top 10 Procurement System Review Deficiencies

- Does each purchase order or contract file include documentation of an independent cost estimate (ICE)?
- Do you use a clause checklist?
- Do you use a procurement file checklist? Does it include information on what type of procurement was used and why?
- Who documents responsibility determinations?
- How often do you modify your procurement policy?

Addressing Top 10 Procurement System Review Deficiencies

- Do you ensure that each contract contains total contract amount, start and end dates, and termination provisions?
- Are you precise about what you are ordering, with minimal need for clarifications/addenda?
- How do you document cost or price analysis?
- What is your process for obtaining price quotations for small purchases?
- In addition to a sole source justification, do you conduct a cost analysis for each sole source procurement?

Procurement System Review Scope

57 Total Elements

Assess Recipients' System-Wide Elements (6)

AND

Test Individual Procurement Elements

A sample of procurements is tested for applicable elements, including Buy America

It is a review of the entire Procurement system, not just procurement files.

6 System-Wide Elements

Policies, procedures and organizational determinations necessary to guide the procurement function

1. Written Standards of Conduct
2. Contract Administration System
3. Written Protest Procedures
4. Prequalification System
5. System for Ensuring Most Efficient and Economic Purchase
6. Procurement Policies and Procedures

Written Standards of Conduct

Basic Requirement

([FTA C 4220.1F](#) Ch. III, I.)

Requires each recipient to maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts.

Element #1 of the PSR

Written Standard of Conduct (cont'd)

Standards Applicable to:

Employees, officers, agents, board members, or immediate family member, partner or organization participating in the selection, award, or administration of a contract if a conflict of interest, real or apparent, would be involved.

What is a conflict?

If any of the following have a financial or other interest in the firm selected for award:

- (1) Employee, officer, agent, board member, or their immediate family members or partners
- (2) An organization that employs or is about to employ any of the above.

Written Standard of Conduct (cont'd)

Standards must also address:

- Prohibition of solicitation and acceptance of gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements.
- Penalties, sanctions, or other disciplinary actions for violation of standards by the recipient's officers, employees, agents, board members, contractors, or sub-recipients. (To the extent permitted by state or local law or regulations)

Contract Administration System

Basic Requirement

([FTA C 4220.1F](#) Ch. III, 3)

Recipients shall maintain a contract administration system that ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders and applicable Federal, State and Local requirements.

Element #2 of the PSR

Contract Administration System (cont'd)

How does recipient define “contract administration”?

- a. Do you have written procedures describing the activities associated with contract administration?*
- b. How is contract administration provided within your organization? For example, once a contract is awarded (or purchase order issued), how do you ensure the terms and conditions of the contract are met; by the contractor and by your agency?*
- c. How does your agency inform staff of their contract administration responsibilities? What formal training is provided?*
- d. Which personnel are responsible for overseeing contract administration activities?*
- e. Do contract administration activities include evaluating contractor performance?*
- f. If yes, how is the evaluation completed and documented, what office or job position receives the evaluation, and how does your agency utilize the information?*
- g. How are contract changes managed and recorded? Are there written procedures?*

Contract Administration System (cont'd)

How does recipient demonstrate that it manages contract amendments and change orders, ensuring they are:

- Approved by the appropriate authorized official(s)?
- Determined to be fair and reasonable via use of independent cost estimate(s) and cost or price analyses?
- Consistent with the contracts base scope?

Elements of an Effective Contract Administration System

Assign responsibility for assuring:

- the supplier performs the work the contract calls for
- satisfactory quality
- timeliness of performance
- performance within available funds
- receipt, inspection, acceptance, and certification for payment
- the history of contracting activities are documented
- information is retained for use in future responsibility determinations

Written Protest Procedures

Basic Requirement

([FTA C 4220.1F](#) Ch.VII, I.)

- *Recipients are to have written protest procedures, as part of their requirement to maintain or acquire adequate technical capacity.*
- *Recipients must notify FTA when they receive a protest and keep FTA informed about its status.*
- *When a recipient denies a bid protest, they are to inform FTA.*

Element #3 of the PSR

Written Protest Procedures (cont'd)

Limits on FTA's protest review

FTA will only consider a protest if:

- a recipient fails to have protest procedures
- a recipient fails to follow its protest procedures
- there has been a violation of Federal law or regulation

Appeals to FTA must be received within 5 working days of the date when the protester received actual or constructive notice of the recipient's final decision

Written Protest Procedures (cont'd)

Items to consider:

- Procedural differences for pre-bid, pre-award, and post-award protests
- Deadlines for filing a protest
- Specific contents of a protest
- Location where protests are to be filed
- Statement that recipient will respond
- Identification of official responsible to make final determination
- Statement that decision is final
- Statement that FTA will only intervene when recipient fails to follow protest procedure
- Allowance for request for reconsideration

Prequalification

Basic Requirement

([FTA C 4220.1F](#) Ch.VI, I.c.)

Recipients can prequalify people, firms, and property for procurement purposes if:

- *All prequalification lists are current.*
- *All prequalification lists include enough qualified sources to ensure maximum full and open competition.*
- *The recipient permits potential bidders to qualify during the solicitation period (from the issuance of the solicitation to its closing date).*

Element #4 of the PSR

Prequalification (cont'd)

- Recipients are not required, or encouraged, to have a prequalification system.
- They can be difficult and costly to maintain if they are to not inhibit competition.
- Prospective contractors must be able to pre-qualify up to the due date of a specific solicitation.

System for Ensuring Most Efficient and Economic Purchase

Basic Requirement

([FTA C 4220.1F](#) Ch. IV, I. b., c., and e.)

- Recipients are required to establish procedures to avoid the purchase of unnecessary property and services they do not need (including duplicative items and quantities or options they do not intend to use or whose use is unlikely).*
- Recipients should consider whether to consolidate or break out the procurement to obtain a more economical purchase.*
- Recipients should review lease versus purchase alternatives for acquiring property and, if necessary, should obtain an analysis to determine the more economical alternative.*

Element #5 of the PSR

System for Ensuring Most Efficient and Economic Purchase (cont'd)

Organizational questions to ask in relation to actual analysis performed by recipient:

- Who has authority to initiate procurements within the agency?
- Who has authority to approve procurements?
- Does the agency have a requisitioning system?
- Does the agency endeavor to combine and leverage volumes?

Procurement Policies and Procedures

Basic Requirement

([FTA C 4220.1F](#) Ch. III, 3.a.)

Recipients must have written procurement procedures as a condition of self-certification.

Note: To insure implementation, training on the policies and procedures should be conducted. It also helps to conduct self assessments to ensure staff are in compliance.

**Element #6 of the PSR
TOP TEN FINDING**

Procurement Policies and Procedures (cont'd)

When were the procurement procedures last updated?

How do the policies or procedures address full and open competition for all transactions under the following methods of procurement?

- a. Micro-Purchases - \$3,500 or less (prior to October 1, 2015, threshold was \$3,000)
- b. Small Purchases - over \$3,500 but not more than \$150,000 (\$100,000 if executed prior to 2 CFR Part 200, Dec. 26, 2014)
- c. Sealed Bids/Invitation for Bid (IFB)
- d. Competitive Proposals/Request for Proposals (RFP)
- e. Revenue Contracts

Procurement Policies and Procedures (cont'd)

Policies and Procedures are expected to address:

- A. Responsibility Determination
- B. Written Record of Procurement History
- C. “Time and Materials” Type Contracts
- D. Contract Term Limitation for Rolling Stock
- E. Tag-Ons
- F. Full and Open Competition
- G. Unreasonable Requirements and Excessive Bonding
- H. Organizational Conflict of Interest
- I. Prohibition on Arbitrary Action
- J. Geographic Preference
- K. Contractor Selection Procedures
- L. Clear and Accurate Contract Specifications
- M. “Brand Name or Equal” Requirements
- N. Requirements Applicable to Micro-Purchases
- O. Requirements Applicable to Small Purchases
- P. Requirements Applicable to Sealed Bid
- Q. Requirements Applicable to Competitive Proposals

Procurement Policies and Procedures (cont'd)

- R. A&E, Brooks Act Procedures
- S. Procurement of Design-Bid-Build
- T. Procurement of Design-Build
- U. Sole Source Documentation Requirements
- V. Requirements for the use of Options
- W. Cost and Price Analysis
- X. Independent Cost Estimates
- Y. Cost and Profit Analysis for Sole Source
- Z. Cost Principles consistent with Federal Guidelines
- AA. Prohibition on Cost-plus-Percentage of Cost
- BB. Bonding Requirements
- CC. Prohibition on Advance Payments
- DD. Progress Payments
- EE. Liquidated Damages
- FF. Notification of FTA Participation
- GG. Remedies for Breach of Contract
- HH. Termination Clauses
- II. Address Federal Statutory and Regulatory Requirements
- JJ. Revenue Contracts

Procurement Methods

- Five major methods (see threshold)
 - Micro-Purchase - \$3,500 (\$3,000 prior to Oct. 1, 2015)
 - Small Purchase - Less than \$150,000 (\$100,000 if executed prior to 2 CFR Part 200, Dec. 26, 2014)
 - Invitation for Bids (IFB)
 - Request for Proposals (RFP)
 - Other than Full and Open (Sole Source)
- Specific Methods
 - A&E
 - Construction
 - Bus and Rail Purchases (Buy America)

Micro-Purchase Requirements

- No splitting
- Fair and Reasonable Price Determination
- Micro-Purchase Davis Bacon
 - Construction contracts exceeding \$2,000

Micro-Purchase: No Splitting

Basic Requirement

([FTA C 4220.1F](#) Ch.VI, 3.a (2)(b))

Recipients may not divide or reduce the size of procurements merely to come within the micro-purchase limit.

Key Question: How much does the agency review micro-purchases at or near the threshold as a way to thwart splitting?

Examples of Splitting:

- A requisition each week for the same item in the same quantity.
- Multiple requisitions for the same service right at the micro-purchase threshold.

Element #20 of the PSR

Micro-Purchase: Fair and Reasonable Price Determination

Basic Requirement

([FTA C 4220.1F](#) Ch.VI, 3.a (1) and (2)(a) and (c))

- Micro-Purchases may be made without obtaining competitive quotations.*
- Recipients should distribute micro-purchases equitably among qualified suppliers.*
- Only documentation requirement for micro-purchases is a determination that the price is fair and reasonable and a description of how determination was made.*

Element #21 of the PSR

Micro-Purchase: Fair and Reasonable Price Sample Determination Form

I hereby determine the price to be fair and reasonable based on at least one of the following:

Check one or more:

- | | |
|---|---|
| <input type="checkbox"/> Found reasonable on recent purchase. | <input type="checkbox"/> Similar in related industry. |
| <input type="checkbox"/> Obtained from current price list. | <input type="checkbox"/> Personal knowledge of item procured. |
| <input type="checkbox"/> Obtained from current catalog. | <input type="checkbox"/> Regulated rate (utility). |
| <input type="checkbox"/> Commercial market sales price from advertisements. | <input type="checkbox"/> Other. |

Comments:

Copy of purchase order, quotes, catalog page, price list, etc. is attached.

Purchasing Agent

Date

Micro-Purchase: Davis Bacon

Basic Requirement

([FTA C 4220.1F](#) Ch.VI, 3.a (1))

Davis-Bacon prevailing wage requirements, apply to construction contracts exceeding \$2,000, even though micro-purchase procurement procedures are used.

These requirements apply to publicly funded construction contracts and require certified payrolls and audits.


<https://www.wdol.gov/dba.aspx>

Element #22 of the PSR

Davis-Bacon Prevailing Wages

- Laborers and mechanics must be paid:
 - not less than once a week and
 - not less than the minimum wage specified in the current DOL prevailing wage determination
- Recipients must include a copy of the current DOL prevailing wage determination in each contract solicitation and must condition award upon acceptance of that wage determination

Davis-Bacon Prevailing Wages



Wage Determinations OnLine.gov
 Providing public access to federal wage determinations and related information.

WDOL.gov is part of the Integrated Acquisition Environment, one of the E-Government initiatives in the President's Management Agenda. It is a collaborative effort of the Office of Management and Budget, Department of Labor, Department of Defense, General Services Administration, Department of Energy, and Department of Commerce.

HOME [FAQs](#) | [User Guide](#) | [Help](#)

Service Contract Act	Davis-Bacon Act	Related Information
<ul style="list-style-type: none"> Selecting SCA WDs e98 Archived WDs WDs due to be revised PACT (Price Adjustment Calculation Tool) NEW! 	<ul style="list-style-type: none"> Selecting DBA WDs Archived WDs WDs due to be revised Rollover Crosswalk NEW! 	<ul style="list-style-type: none"> Agency Labor Advisors Library DOL Wage and Hour Website

Archived Davis-Bacon Act Wage Determinations

When DBA WDs are revised, the current revision is available on **WDOL.gov** ([Selecting DBA WDs](#)). The old WD is archived on this page. (Archived WDs are for Information Purposes Only: [WDOL User's Guide: Sec. C.4.e](#))

Search: (Select "2003" for DBA WDs issued between June 13, 2003 and February 2, 2007).

Enter a DBA WD Number: (Enter DBA WD numbers in the following format: two-letter abbreviation for the state, and the number of the WD. For example, DBA WD "VA030003" is entered "VA3"; DBA WD "MD030150" is entered "MD150")

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Small Purchase Elements

- Unreasonable Qualifications
- Arbitrary Actions
- Brand Name Restrictions
- Geographic Preference
- Contract Term Limitation
- Price Quotation
- Clear, Accurate, and Complete Specification
- Written Record of Procurement History

Unreasonable Qualification Requirements

Basic Requirement

([FTA C 4220.1F](#) Ch.VI, 2.a. (4)(a))

Imposing unreasonable business requirements on firms in order for them to qualify to do business is considered to be restrictive of competition.

Examples:

- Requiring a local office
- Requiring a certain number of staff with advanced degrees

Element #9 of the PSR

Arbitrary Actions

Basic Requirement

([FTA C 4220.1F](#) Ch.VI, 2.a(4)(j))

Any arbitrary action in the procurement process is considered to be restrictive of competition.

Examples:

- Did not follow the procurement process
- Documentation shows one vendor should receive award but another vendor is awarded the business

Element #12 of the PSR

Brand Name Restrictions

Basic Requirement

[\(FTA C 4220.1F Ch. III, 3.a. \(1\)\(e\)\)](#)

When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equal” description may be used as a means to define the performance or other salient characteristics of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated.

Brand Name Restrictions (cont'd)

Basic Requirement

([FTA C 4220.1F](#) Ch.VI, 2.a. (4)(f))

Specifying only a “brand name” product without allowing offers of “an equal” product or without listing item’s salient characteristics for the “equal” is considered to be restrictive of competition.

Element #13 of the PSR

Brand Name Restriction - Examples

- The specification called for a specific model engine for a new bus procurement.
- Brand name included in the specification without listing the salient features.

Geographic Preferences

Basic Requirement

[\(FTA C 4220.1F Ch.VI, 2.a. \(4\)\(g\)\)](#)

Grantees shall conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference.

- Notes:
- FY15 and 16 Appropriations Acts prohibited the enforcement of geographic preferences for construction labor workforce hiring purposes.
 - For grantees accepted into a FY15 DOT Pilot Program, geographic preferences for hiring may be used for non-construction projects.

Contract Term Limitation

Basic Requirement

([FTA C 4220.1F](#) Ch. IV, 2.e(10))

A grantee may enter into a multi-year contract to buy rolling stock with an option not exceeding five (5) years to buy additional bus rolling stock or replacement parts. The grantee may not exercise that option later than five (5) years after the date of its original contract. The time frame for railcars or replacement parts has been extended to seven (7) years.

Note: The limitation applies to the ordering period.

Element #15 of the PSR

Contract Term Limitation (cont'd)

- Be judicious in establishing and extending contract terms on any contract.
- Procurement file should contain evidence that the contract term is based upon sound business judgment.
- Consider competition, pricing, fairness, and public perception.
- An extension of the contract term length that amounts to an “out of scope” change will require a sole source justification.

Price Quotation

Basic Requirement

([FTA C 4220.1F](#) Ch.VI, 3.b. (2)(a))

Grantees must obtain price or rate quotations from an adequate number of qualified sources.

**Element #23 of the PSR
TOP TEN FINDING**

Price Quotation Must Be Documented

- Two or more qualified bidders must be obtained.
- Bids must be “responsive” and be received from “responsible” bidders.
- Verbal quotes can be received, but must be documented.

Clear, Accurate, and Complete Specification

Basic Requirement

([FTA C 4220.1F](#) Ch.VI, 2.a.)

The solicitation and the contract awarded thereunder 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.

Key Questions:

- How do you know specifications are complete?
- How do you establish specs that maximize competition?
- How many bids/proposals are being received?

Element #24 of the PSR

TOP TEN FINDING

66

Written Record of Procurement History

Basic Requirement

([FTA C 4220.1F](#) Ch. III, 3.d(1))

Grantees are required to maintain and make available records detailing the history of each procurement.

**Element #42 of the PSR
TOP TEN FINDING**

Written Record of Procurement History

Items Reviewed

At a minimum, records are to include:

Planning Document

- (1) The rationale for the method of procurement
- (2) The reason for the selection of the contract type

Procurement Specific Information

- (3) The reason for contractor selection or rejection
- (4) The basis for the contract price

Extent of documentation commensurate with size and complexity of procurement

Method of Procurement Decision Matrix

Determine suitable procurement method by checking appropriate boxes. All elements must apply to use that method. The planned type of contract can be added to this checklist.

Micro Purchase

- Amount ≤\$3,500
- Multiple Sources

Small Purchase Amount <\$150,000 (<\$100,00 if executed prior to 2 CFR Part 200)

- Complete and Adequate Specification or Description
- Two or More Quotes Available

Sole Source

- Approved by FTA
- OEM, Custom Item OR
- Only One Source OR
- Competition Inadequate after Solicitation OR
- Emergency / Public Exigency

Competitive Procurement

- Amount >\$3,500
- Multiple Sources
- Not an Emergency

Sealed Bid (IFB) Amount >\$150,000

(>\$100,000 if executed prior to 2 CFR Part 200)

- Complete and Adequate Specification or Description
- Two or More Responsible Bidders willing to Compete
- Selection can be Made on Basis of Price Alone
- Firm Fixed Price Contract is used
- No Discussion with Bidders Required After Receipt of Bids

Competitive Proposals (RFP) >\$150,000

(>\$100,000 if executed prior to 2 CFR Part 200)

- Complete Specifications Not Feasible
- Proposer input Needed
- Two or More Responsible Proposers willing to Compete
- Discussion Needed with Proposers After Proposals Received
- Fixed Price can be Set After Discussions OR a Cost Reimbursement Contract is Determined

Method of Procurement Decision Matrix

(cont'd)

Selection of Contract Type

- Fixed Price
- Firm Fixed Unit Prices
- Cost Plus Fixed Fee
- Time and Materials (T&M) – Must Provide Justification for T&M Contract if Selected.
- Blanket Purchase Order
- Indefinite Delivery Indefinite Quantity (IDIQ)

Written Record Exercise

1. Read the statement of work on the following page.
2. Complete the method of procurement decision matrix on the previous slide.
3. Determine:
 - What type of contract you would award for this work?
 - What basis will you use for awarding this work?
 - What will be the basis for the contract price?

Written Record Exercise

SCOPE: OF WORK: The Supplier shall perform services as described below:

GROUNDS:

Leaf Removal: Excepting where build-up of leaves on roads, sidewalks, or in drainage structures poses a threat to system functionality or personnel safety, leaf raking and removal will be conducted a maximum of four times annually.

Fertilization: Fertilize to encourage erosion control.

ROADS:

Maintenance and Repair of Pavements: Keep surfaces free of potholes and depressions deeper than 3/4" that pond water. Work shall include, but not be limited to, repairing concrete, asphalt, and stone surfaces.

Maintenance of Gutters, Storm Sewers, and Subsurface Drains: Ensure that gutters, storm sewers, and subsurface drains function at full capacity. Schedule and perform storm drainage and sewer system maintenance and repair throughout the year as needed.

Other Snow and Ice Removal Services: Provide snow and ice removal services for designated areas and roads in order to maintain uninterrupted logistical and maintenance services. Provide, store, and load Salt & Sand into vehicles involved with snow removal operations.

Invitation For Bid (IFB) Elements

- Independent Cost Estimate
 - Cost or Price Analysis
 - Unreasonable Qualifications *
 - Unnecessary Experience and Excessive Bonding
 - Organizational Conflict of Interest
 - Arbitrary Actions *
 - Brand Name Restrictions *
 - Geographic Preference *
 - Contract Term Limitation *
 - Written Selection Procedures
 - Prequalification
 - Award to Responsible Bidders
 - Sound and Complete Agreement
 - Clear, Accurate, and Complete Specification *
 - Adequate Competition (2 or more)
 - Firm Fixed Price
 - Selection on Price
 - Discussions Unnecessary
- *previously discussed

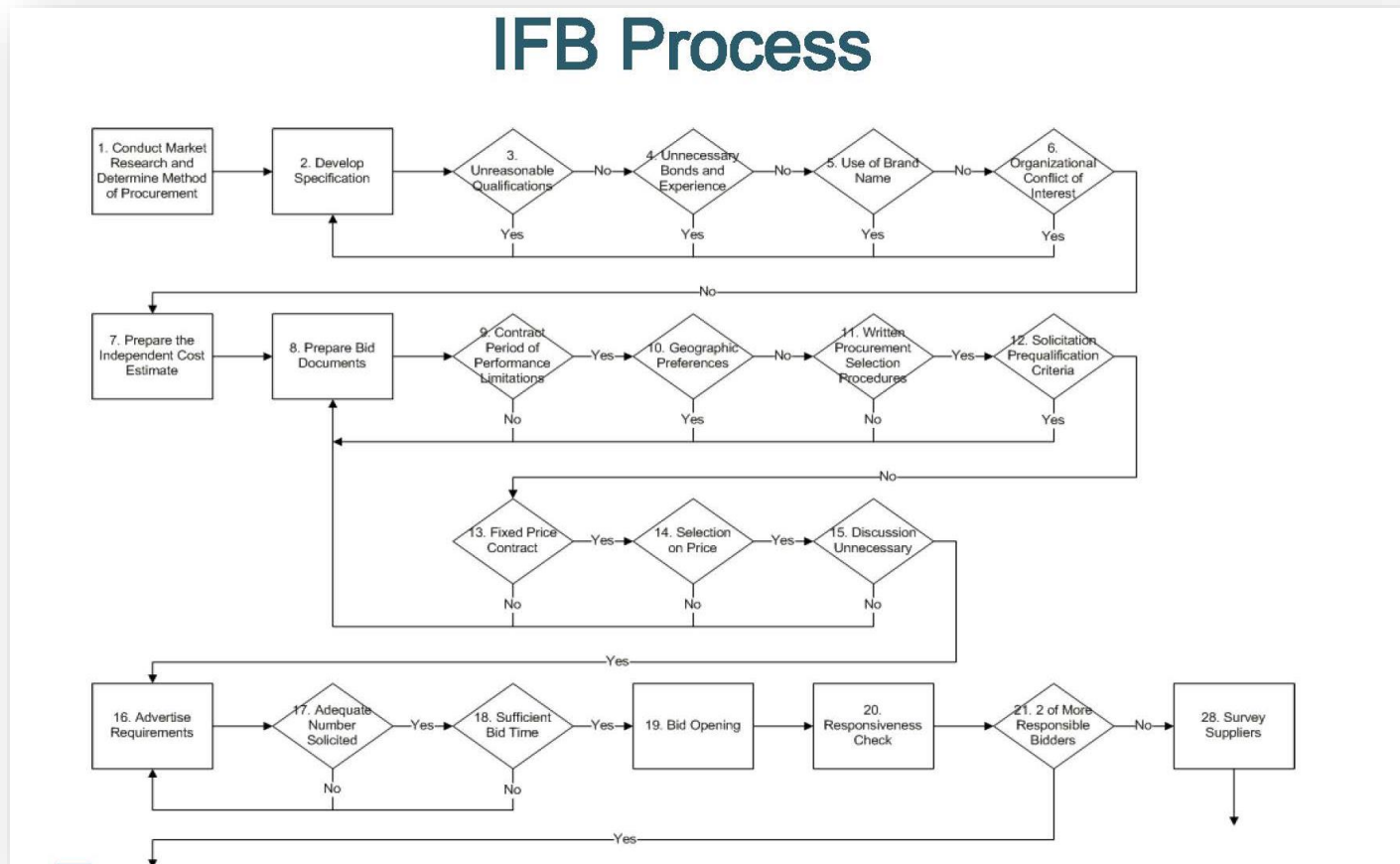
Invitation For Bid (IFB) Elements (cont'd)

- Advertised/Publicized
- Adequate Number of Sources Solicited
- Sufficient Time
- Bid Opening
- Responsiveness
- Lowest Price
- Rejecting Bids
- Evaluation of Options
- Written Record of Procurement History*
- Exercise of Options
- Out of Scope Changes
- Advance Payments
- Progress Payments
- Time and Materials Contracts
- Cost Plus Percentage of Cost
- Liquidated Damages Provisions
- Joint or Piggyback Procurement
- Clauses

*previously discussed

Invitation For Bid (IFB) Steps

See Appendix



Independent Cost Estimate

Basic Requirement

([FTA C 4220.1F](#) Ch.VI, 6.)

*...in connection with every procurement action ...
grantees must make independent estimates **before**
receiving bids or proposals.*

**Element #7 of the PSR
TOP TEN FINDING**

***** Per 2 CFR 200 this is now only for purchases above the
simplified acquisition threshold**

Independent Cost Estimate (cont'd)

How do you ensure that an independent cost estimate (ICE) is performed before receiving bids or proposals?

Independent doesn't mean independent of your agency, it means independent of (and prior to) bids and proposals being received.

Document the ICE – date and source.

Sample Independent Cost Estimate Form

(cont'd)

Sample: INDEPENDENT COST ESTIMATE SUMMARY FORM

Requisition Number: _____ Date of Estimate: _____

Description of Goods/Services:

___ New Procurement ___ Contract Modification (Change Order)
___ Exercise of Option

Method of Obtaining Estimate:

Attach additional documentation such as previous pricing documentation, emails, internet screen shots, estimates on letterhead, etc.

___ Published Price List (attach source and date)

___ Historical Pricing (attach copy of documentation from previous PO/Contract)

___ Comparable Purchases by Other Agencies (attach email correspondence)

___ Engineering or Technical Estimate (attach)

___ Independent Third-Party Estimate (attach)

___ Other (specify) _____ (attach

documentation) _____ Pre-established pricing resulting from competition
(Contract Modification only)

Through the method(s) stated above, it has been determined the estimated total cost of the goods/services is \$_____.

The preceding independent cost estimate was prepared by:

Name

Signature

Date

Independent Cost Estimate Exercise

True or False:	T	F
1. The ICE is developed by the supplier.		
2. The ICE is completed after bids or proposals are received.		
4. A budget number is acceptable as an ICE.		
5. The ICE is the foundation for later cost analysis.		
6. The ICE can be prepared by either procurement or the end user.		

Cost or Price Analysis

Basic Requirement

[\(FTA C 4220.1F Ch.VI, 6\)](#)

*Grantees must perform a cost or price analysis in connection with every procurement action, including contract modifications.**

*except for micro-purchases, where a fair and reasonableness determination suffices

**Element #41 of the PSR
TOP TEN FINDING**

***** Per 2 CFR 200 this is now only for purchases above the simplified acquisition threshold**

Cost or Price Analysis (cont'd)

As part of its evaluation of bids and proposals prior to award, does the recipient perform a cost or price analysis?

What is the Difference?

Supplier Price		Supplier costs										
\$51,250	One unit	<table> <tr> <td>Direct Labor</td> <td>\$20,000</td> </tr> <tr> <td>Direct Material</td> <td>5,000</td> </tr> <tr> <td>Overhead</td> <td><u>22,500</u></td> </tr> <tr> <td>+ Profit</td> <td>\$3,750</td> </tr> <tr> <td>Total cost</td> <td>\$51,250</td> </tr> </table>	Direct Labor	\$20,000	Direct Material	5,000	Overhead	<u>22,500</u>	+ Profit	\$3,750	Total cost	\$51,250
Direct Labor	\$20,000											
Direct Material	5,000											
Overhead	<u>22,500</u>											
+ Profit	\$3,750											
Total cost	\$51,250											
<p>Price Analysis looks at the supplier's price in comparison to other market prices.</p>		<p>Cost Analysis breaks down the total price into its components, looking at the supplier's costs to determine the profit margin contained in that price.</p>										

Questions and Answers

Question ...

What if we can't determine that the price per unit is fair and reasonable by analyzing the price?

Answer ...

Then we have to form an opinion as to the reasonableness of the per-unit price by reviewing and evaluating the individual cost elements and the profit that make up the price. In other words, we have to use cost analysis to analyze the per-unit price.

Questions and Answers (cont'd)

How?

- By requiring the vendor (who may be reluctant) to supply specific dollar information concerning the elements of cost (e.g., direct, indirect, and profit) that comprise the overall per-unit price
- By independently analyzing the elements of cost in light of what we know are costs for like items, what industry standards may indicate, or what past experience has indicated
- By applying the standards or guidelines of reasonable accounting practices to determine that the supplier's costing practices are representative of others in the field

Which One Should I Use?

- **Price Analysis** is used if it is determined that competition was adequate and price was within the expected range established by the ICE.
- **Cost Analysis** is used if it is determined that competition is inadequate or price is inconsistent with the expected range established by ICE.

Procurement Type	Analysis Type
Small Purchase	Price and/or Cost
IFB	Price and/or Cost
RFP	Price and/or Cost
Single Source	Cost
Sole Source	Cost
Contract Modifications	Cost

Price Analysis

Price Analysis is a direct comparison of a supplier's price with benchmark prices for the same good or service:

- Bids Received from Competitors*

AND

- Comparison with Independent Cost Estimate

Set guidelines as to when you will review submitted bids or proposals relative to the ICE. Will vary based on dollar value, market conditions. Some agencies confirm final prices on IFBs with selected suppliers.

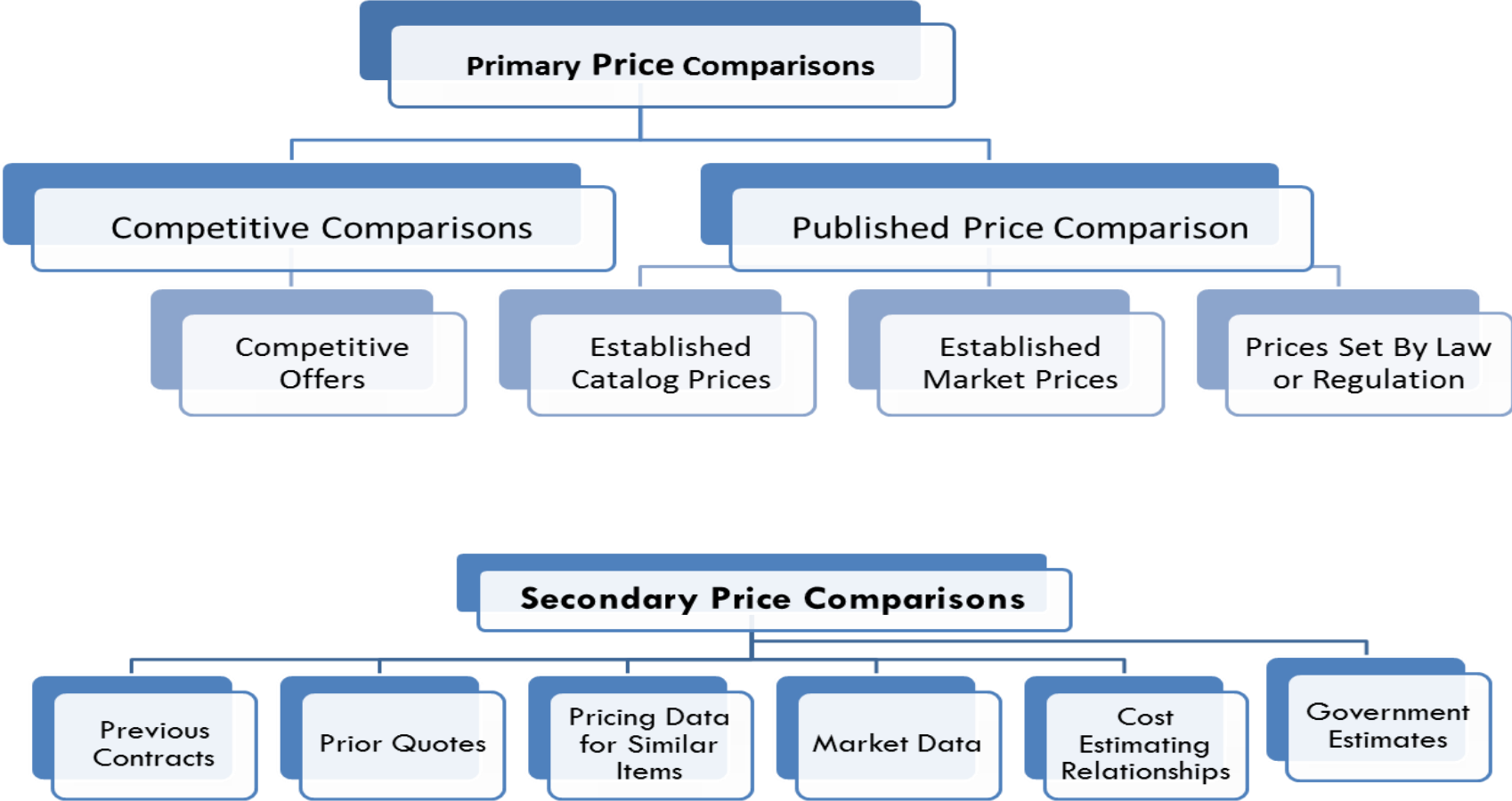
Other sources are provided on the following slide.

**Catalog or market prices offered in substantial quantities to the public may be used for small purchases.*

Price Analysis Techniques

- Purchaser must be familiar with market conditions
- Compare bids
- Compare price / quantity relationships
- Comparing prices of similar products
- Published information
 - Supplier price lists
 - Trade journals
 - Government publications

Price Analysis Comparisons



Checklist for Establishing Comparability

Step	Considerations
1. Select items or prices for comparison	<p>Is this comparison valid?</p> <p>Are better comparisons available?</p>
2. Identify product and price-related differences	<p>Are the items or services compared the same?</p> <p>Are there discrepancies in terms and conditions that affect price?</p> <p>How do the environments shaping the respective prices differ?</p>
3. Determine the precise effects of the differences	<p>How do the noted differences affect prices? (Recall earlier discussion concerning variations in quantity)</p> <p>How substantial might the differences be?</p>
4. Select and apply method for adjustment	<p>Can resources such as the producer price index be used to establish comparability?</p> <p>Must more sophisticated manipulative techniques be applied?</p>
5. Make comparison	<p>Have all price-related differences been accounted for? Have you developed common base for comparison?</p> <p>If no, to what extent is the comparison still valid?</p> <p>Should it be discounted?</p>

Price Analysis Exercise

The following information is provided for a Sealed Bid for a Garage Roof Replacement:

Independent Cost Estimate	\$1,770,000
Bidder #1	\$1,141,796
Bidder #2	\$1,326,015
Bidder #3	\$1,494,900
Bidder #4	\$1,498,500
Bidder #5	\$1,524,375
Bidder #6	\$1,590,250
Bidder #7	\$1,769,598

Price Analysis Exercise

- Step 1:** Compare low bid to other offers received
- Step 2:** Compare to ICE
- Step 3:** Make determination on fair and reasonableness of price
- Step 4:** Document the analysis

Sample Documentation:

Based on two or more responsive bids received as identified, I hereby determine that adequate price competition was obtained and after comparison to the independent cost estimate, I hereby determine that the low bid is fair and reasonable.

(Signature) _____

(Date) _____

Cost Analysis Required

Basic Requirement

[\(FTA C 4220.1F Ch.VI, 6.a.\)](#)

The recipient must obtain a cost analysis when price competition is inadequate, when only a sole source is available, or in the event of a change order.

Note: Cost analysis must include analysis of profit or fee

**Element #39 of the PSR
TOP TEN FINDING**

Use of Cost Analysis

Cost Analysis is used when:

- Price analysis will not provide sufficient information
- Adequate price competition is lacking
- Using sole source method, including contract modifications
- The offeror is required to submit the elements (i.e. labor hours, overhead, materials) of the proposed cost

Preparation for Cost Analysis

- Is the item the same as or similar to items made by the supplier in the past?
- The more “mature” the supplier’s product, the more the proposal should be based on actuals and the less on judgment factors / contingencies
- Did supplier furnish same or similar item before?
- If so, review previous cost/pricing data and analysis
- Understand supplier’s competitive position
- To what extent did supplier price the proposal competitively?
- What is the past experience with this supplier?

Analyzing Cost and Pricing Data

- Perform a complete and detailed analysis of the supplier's proposal. Understand the basis and logic for cost estimates.
- In reviewing the supplier's proposal, understand which elements of cost are based on judgment and which are based on fact.
- Evaluate each element of cost.

Cost Buildup

Total Price of Contract					
Total Cost of Contract					
Costs to Meet Contract Requirements					
Product Costs		Other Direct Costs		G&A Expenses	Profit / Fee
(Direct Labor and Direct Material)	(Allocation of Overhead to Labor and Material)	(Other Allocatable Costs Plus Overhead)			

How Much Profit is Reasonable?

The amount of profit depends on:

- **Complexity**

and

- **Risk**

Example: In a Firm Fixed Price Contract, the supplier bears the risk, and therefore is entitled to more profit.

Resources for Determining Costs

Supplier Costs	
Direct Labor	\$20,000
Direct Material	5,000
Overhead	<u>22,500</u>
Total Cost	\$47,500
+ <i>Profit</i>	\$3,750
Price	<u>\$51,250</u>

Bureau of Labor Statistics – www.bls.gov
GSA Federal Supply Service Schedules

Commodity Prices for Key Materials
Prices of Component Parts

Price – Costs = Profit

Cost Analysis Exercise

A cost proposal was received from the most qualified A&E firm for design of a new transfer station.

Description	ICE	Proposal	Variance
Labor	\$75,000 (1,500 hours at \$50/hr)	\$72,000 (1,200 hours at \$60/hr.)	(\$3,000)
Overhead	\$99,600 (120% of labor and materials)	\$123,000 (150% of labor and materials)	\$23,400
Profit	\$18,260 (10%)	\$30,000 (fixed fee)	\$11,740
Materials	\$8,000	\$10,000	\$2,000
Total	\$200,860	\$235,000	\$34,140

Cost Analysis Exercise, (cont'd)

- Do you think the proposed cost is fair and reasonable?
- Which cost elements would you question and how?

Cost Analysis – Special Circumstances

- Equipment Purchase
 - May be difficult to get cost breakdown
 - Get profit margins at a minimum
- Vendor may refuse to provide
 - Find information on base price plus additional features

Case Study – Cost Analysis

- Examine the offer on the following page.
- Identify issues to question.
- Are there benchmark data you can use?
- Determine a plan for negotiating to better fulfill your needs.

Case Study – Cost Analysis

You have been asked to evaluate & negotiate the following proposal for Direct Labor pertaining to professional services associated with a network systems development project.

System Administrator	460	\$60	\$27,600.00
Data Analyst	240	\$50	\$12,000.00
Communication Analyst	120	\$40	\$4,800.00
Total Direct Labor			\$96,900.00
Employee Benefits		33%	\$31,977.00
Escalation		10%	\$12,887.70
Total Labor			\$141,764.70

Assumptions:

- Benefits estimated based on average rate over last three years.
- All rates are fully burdened (include margin).
- Escalation based on CPI for next year and average salary increase of 7%.
 - What information do you need to validate?
 - What assumptions might be challenged?

Unnecessary Experience and Excessive Bonding

Basic Requirement

([FTA C 4220.1F](#) Ch.VI, 2.a. (4) (b) and (e))

Unnecessary business requirements and excessive bonding requirements are considered to be restrictive of competition

Note: FTA does have minimum bonding requirements for construction projects.

Considerations:

- Be careful with bonding for services and for requirements for capital and expenditures
- Ensure insurance and bonding requirements are reasonable for the delegated procurement

Organizational Conflict of Interest

Basic Requirement

([FTA C 4220.1F](#) Ch.VI, 2.a. (4)(h))

An organizational conflict of interest is considered to be restrictive of competition

Note: Ensure that you have an OCI clause in the contract terms.

Organizational Conflict of Interest (cont'd)

An organizational conflict of interest exists when:

- A contractor is unable, or potentially unable, to provide impartial and objective assistance or advice due to other activities, relationships, contracts, or circumstances.
- A contractor has an unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier contract.
- During the conduct of an earlier procurement, a contractor has established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents.

Organizational Conflict of Interest

ORGANIZATIONAL CONFLICT OF INTEREST (SPECIFICATION PREPARATION)

- (a) This contract, in whole or in part, provides for the Contractor to draft and/or furnish specifications in support of _____ [*Contracting officer identify system or program*]. Further, this contract may task the Contractor to prepare or assist in preparing work statements that directly, predictably and without delay are used in future competitive acquisitions in support of _____ [*Contracting officer identify program*]. The parties recognize that by the Contractor providing this support a potential conflict of interest arises as defined by FAR 9.505-2.
- (b) During the term of this contract and for a period of _____ [*Contracting officer insert period of time after contract completion that contractor will not be allowed to supply time*] after completion of this contract, the Contractor agrees that it will not supply as a prime contractor, subcontractor at any tier, or consultant to a supplier to the Department of Commerce, any product, item or major component of an item or product, which was the subject of the specifications and/or work statements furnished under this contract. The contractor shall, within 15 days after the effective date of this contract, provide, in writing, to the Contracting Officer, a representation that all employees, agents and subcontractors involved in the performance of this contract have been informed of the provisions of this clause. Any subcontractor that performs any work relative to this contract shall be subject to this clause. The Contractor agrees to place in each subcontract affected by these provisions the necessary language contained in this clause.
- (c) For the purposes of this clause, the term “contractor” means the contractor, its subsidiaries and affiliates, joint ventures involving the contractor, any entity with which the contractor may hereafter merge or affiliate and any other successor or assignee of the contractor.
- (d) The Contractor acknowledges the full force and effect of this clause. It agrees to be bound by its terms and conditions and understands that violation of this clause may, in the judgment of the Contracting Officer, be cause for Termination for Default under FAR 52.249-6. The Contractor also acknowledges that this does not represent the sole and exclusive remedy available to the Government in the event the Contractor breaches this or any other Organizational Conflict of Interest clause.

Written Procurement Selection Procedures

Basic Requirement

[\(FTA C 4220.1F. Ch. III .d. \(I\)\(c\)](#)

All recipients must state its reasons for contractor selection

- *Government recipients must also state reasons for contractor rejection*
- *Non-government recipients need not state reasons for rejection.*

All solicitations shall:

- Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured.
- Identify all requirements that offerors must fulfill and all other factors to be used in evaluating bids or proposals.

Element #16 of the PSR

Written Procurement Selection Procedures (cont'd)

IFB

- Typically lowest offer submitted by a responsive and responsible bidder.

RFP

- Typically based on evaluation factors or best value.

Two-Step

- Mix of IFB and RFP components

A&E

- Qualifications Based

Your solicitation should “tell the story” of how bids/offers/proposals will be reviewed.

Solicitation Prequalification Criteria

Basic Requirement

([FTA C 4220.1F](#) Ch.VI, I.c.)

- *Prequalification lists must be current*
- *Lists must include enough qualified sources to ensure maximum full and open competition.*
- *Process shall not preclude potential bidders from qualifying during the solicitation period (up to the due date of bid or proposal submission).*

Element #17 of the PSR

Award to Responsible Contractor

Basic Requirement

([FTA C 4220.1F](#) Ch.VI, 8.(b))

Grantees shall make awards only to responsible contractors possessing the ability, willingness, and integrity to perform successfully under the terms and conditions of a proposed procurement.

Responsibility is a procurement issue that is determined after receiving bids or proposals and before making contract award.

Be sure to document responsibility determinations.

**Element #18 of the PSR
TOP TEN FINDING**

<https://www.sam.gov>

Award to Responsible Contractor (cont'd)

- As part of its evaluation of bids and proposals prior to award, how does the recipient ensure award to responsive and responsible contractors possessing the ability, willingness, and integrity to perform successfully under the terms and conditions of the contract?
- As part of its evaluation of bids and proposals prior to award, does the recipient either include a clause regarding suspension and debarment, search the System for Award Management (www.sam.gov) to identify debarred or suspended bidders, or require the bidders to sign suspension/debarment certification?
- Subsequent to awarding a contract, has the recipient discovered that a contractor was listed in SAM as an excluded party? If yes, when did the recipient inform FTA in writing of this information?

Award to Responsible Contractor

4220.1F lists areas for responsibility determinations:

<ul style="list-style-type: none">• Integrity and Ethics	<ul style="list-style-type: none">• Licensing and Taxes
<ul style="list-style-type: none">• Debarment and Suspension	<ul style="list-style-type: none">• Financial Resources
<ul style="list-style-type: none">• Affirmative Action and DBE	<ul style="list-style-type: none">• Production Capability
<ul style="list-style-type: none">• Administrative and Technical Capacity	<ul style="list-style-type: none">• Performance Record
<ul style="list-style-type: none">• Timeliness	<ul style="list-style-type: none">• Public Policy

Responsibility Determination Checklist

Bid/RFP No:		
Supplier:		
Date:		
For each of the areas described below, check that the appropriate research has been accomplished and provide a short description of the research and the results.		
	Acceptable	Comment
1. Appropriate financial, equipment, facility, and personnel	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____ _____
2. Ability to meet the delivery schedule	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____ _____
3. Satisfactory period of performance	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____ _____
4. Satisfactory record of integrity, not on debarred or suspended listings	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____ _____
5. Receipt of all necessary data from supplier	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____ _____

Responsibility Determination *Exercise*

Read the following responsibility determination and indicate whether it is adequate:

ABC Company has been a reliable supplier of material to Transit in the past. There have been no reported complaints about the vendor. The latest Dun and Bradstreet has been reviewed to verify that they are responsible and are not debarred from performing public work.

Sound and Complete Agreement

Basic Requirement

([FTA C 4220.1F](#) Ch. III, 3.(b))

- *All contracts must include provisions adequate to define a sound and complete agreement.*
- *Compliance with Federal laws and regulations will necessarily result in the addition of many other provisions to ensure compliance with those laws and regulations.*

Element #19 of the PSR

Sound and Complete Agreement (cont'd)

Must Include:

- Termination for convenience and default clauses
- Payment Provisions
- Period of Performance
- Disputes Clause

Ensure:

- Purchase Orders have adequate information
- Review standard terms and conditions
- Contracts and POs are documented and in procurement files

Adequate Competition

([FTA C 4220.1F](#) Ch.VI, 3.c(1)(b))

Procurement using sealed bids is appropriate if two or more responsible bidders are willing and able to compete effectively for the business.

Element #25 of the PSR

Areas for Consideration

- Special circumstances for single bids
- Show due diligence on procurements with few or one bidder
 - Conduct market research
- In the final analysis, a procurement may be “sole sourced” due to investment, size of project, or unique capability requirements.

Adequate Competition Exercise

True or False:	T	F
1. Adequate competition exists if I receive multiple bids even if only one is responsive.		
2. I must exercise due diligence in the event I receive only one bid to find out why other suppliers did not bid.		
3. It is possible that a specification requirement may unnecessarily limit competition.		
4. It is acceptable to cancel a bid and re-solicit in the event only one bid is received.		
5. If one bid is received, I should consider completing a sole source justification.		

Firm Fixed Price/Selection on Price

Sealed Bids

([FTA C 4220.1F](#) Ch.VI, 3.c)

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

Areas to Consider:

- Price and price-related factors are the only criteria
- Can't do major evaluation of technical capability

Elements #26 and 27 of the PSR

Discussions Unnecessary

([FTA C 4220.1F](#) Ch.VI, 3.c(1)(e))

No discussion with bidders is needed as award of the contract will be made based on price and price-related factors alone.

Except for clarifications

Element #28 of the PSR

Advertised and Publicized/Adequate Number of Sources Solicited/Sufficient Bid Time

([FTA C 4220.1F](#) Ch.VI, 3.c(2))

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

Key Questions:

- What is an adequate number?
- Does the solicitation result in submitted offers?
- Have you provided sufficient bid time? (greater than 14 days)

Elements #29, 30, and 31 of the PSR

Bid Opening

([FTA C 4220.1F](#) Ch.VI, 3.c(2)(e))

All bids will be publicly opened at the time and place prescribed in the invitation for bids.

Best Practice: Include it in the solicitation, hold the meeting; have a sign-in form and sign it!

Element #32 of the PSR

Public Bid Opening Summary Form

IFB #: _____

BID OPENING DATE: _____

LOCATION OF OPENING: _____

BID OPENING ATTENDEES:

GENERAL DESCRIPTION OF PROCUREMENT:

NAME OF BIDDER

TIME BID RECEIVED

BID AMOUNT

Signature: _____ Date: _____

Title: _____

Responsiveness/Lowest Bid

([FTA C 4220.1F](#) Ch.VI, 3.c(2)(f))

- *A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder.*
- *When specified in the bidding documents, factors such as transportation costs and life cycle costs affect the determination of the lowest bid; payment discounts are used to determine the low bid only when prior experience indicates that such discounts are typically taken.*

Do a Responsiveness check and document it!

Element #33 and 34 of the PSR

Responsiveness Checklist

SOLICITATION No. _____ Opening Date: _____

DESCRIPTION: _____

CONTRACT ADMINISTRATOR: _____

CONTRACTOR / NAME OF BIDDER: _____

SOLICITATION REQUIREMENTS:

REQUIREMENT	YES	NO	COMMENTS
Bid received on time, in sealed envelope			
All items (A to F) priced clearly in unit measures specified			
Drawings submitted for products proposed as 'equal' to specified brand			
Bid Security Received (\$___)			
Signature of Company Officer to the bid / offer			
Lobbying Certification signed and attached			
Financial information submitted per Section V			
DBE Documentation included and complete			
Insurance documentation included			
No exceptions to terms or other solicitation language			
Other _____			

Rejecting Bids

([FTA C 4220.1F](#) Ch.VI, 3.c(2)(g))

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

Has to be documented:

- Late proposals/bids
- Non-responsive
- Doesn't meet mandatory requirements

Element #35 of the PSR

Evaluation of Options

Basic Requirement

([FTA C 4220.1F](#) Ch.VI, 7.b.)

Recipients must evaluate bids or offers for any option quantities or periods contained in a solicitation if it intends to exercise those options after the contract is awarded.

- Key word is intention
- Always evaluate if you think you might exercise
- If you don't review/evaluate, exercise at a later point is a sole source procurement.
- Run numbers for the entire option period

Element #40 of the PSR

Exercise of Options

Basic Requirement

([FTA C 4220.1F](#) Ch.V, 7.a(1))

An option may not be exercised unless it has been determined that the option price is better than prices available in the market, or that when it intends to exercise the option, the option is more advantageous.

Element #43 of the PSR

Options – Areas for Review

The PSR checks the following elements related to options:

1. Were the option periods and quantities contained in the original bid or proposal?
2. Were the option periods and quantities evaluated as part of the original contract award?
3. When exercised, was a market analysis conducted to ensure that the option pricing is still in the best interest of the agency?

Out of Scope Changes

Basic Requirement

([FTA C 4220.1F](#) Ch.VI, 3.i(1)(b))

When the recipient requires an existing contractor to make a change to its contract that is beyond the scope of that contract, the recipient has made a sole source award that must be justified.

Element #44 of the PSR

Out of Scope Changes (cont'd)

- Added work not envisioned by the parties at the outset of the contract
- Work effort is not covered or mentioned in stage of work or specification
- Funding added without basis (IDIQ contract) or adequate scope added

Advance Payments

Basic Requirement

([FTA C 4220.1F](#) Ch. IV, 2.b(5)(b))

Recipients may not use FTA assistance to make payments to a third party contractor before the contractor has incurred the costs for which the payments would be attributable.

Require prior FTA approval.

Element #45 of the PSR

Advance Payments (cont'd)

- Exceptions are permitted for sound business reasons including:
 - Public utility connections and services
 - Rent
 - Tuition
 - Insurance premiums
 - Subscriptions to publications
 - Software licenses
 - Construction mobilization costs
 - Transportation
 - Hotel reservations
 - Conference and convention registrations
- Adequate security must be obtained when using advance payments
- FTA must provide written concurrence before the advance payment is made

Progress Payments

Basic Requirement

([FTA C 4220.1F](#) Ch. IV, 2.b(5)(c))

Recipients may use FTA assistance to support progress payments provided the recipient obtains adequate security for those payments and has sufficient written documentation to substantiate the work for which payment is requested.

Element #46 of the PSR

Time and Materials Contracts

([FTA C 4220.1F](#) Ch.VI, 2.c(2)(c))

Used only:

- *After a determination that no other type of contract is suitable*
 - *If the contract specifies a ceiling price that the contractor shall not exceed except at its own risk.*
-
- Ensure that you have an approval in file.
 - Include in the procurement plan

Element #47 of the PSR

Cost Plus Percentage of Cost

([FTA C 4220.1F](#) Ch.VI, 2.c(2)(a))

Cost plus a percentage of cost and cost plus percentage of construction cost methods of contracting are prohibited.

Areas to Watch For:

- Automatic add-ons above costs
- Fixed incentive rates
- No upper limit on costs

Element #48 of the PSR

Liquidated Damages Provisions

Basic Requirement

([FTA C 4220.1F](#) Ch. IV, 2.b(6)(b) I)

A recipient may use liquidated damages if it may reasonably expect to suffer damages due to:

- Delayed contract completion, or*
 - Weight requirements exceeded*
- AND**
- the extent or amount of such damages are uncertain and would be difficult or impossible to determine.*

Element #49 of the PSR

Liquidated Damages Provisions (cont'd)

Basic Requirement

The assessment for damages is often a specific rate per day for each day of overrun in contract time.

- The rate and measurement must be documented in procurement files and specified in solicitation and contract.*
- Any liquidated damages recovered shall be credited to the project account involved unless the FTA permits otherwise.*

Acceptable Uses of State and Local Purchasing Schedules

- State or Local Government Purchasing Schedules
- Prior to October 1, 2015, grantees were not permitted to purchase vehicles from another state's schedule. Effective October 1, 2015, section 3019 of the FAST Act now permits grantees to purchase rolling stock and related equipment from another state's schedule.
- Joint purchase agreements / contracts.

Piggybacking

Basic Requirement

([FTA C 4220.1F](#) Ch.V, 7.a(2))

An assignment of existing contract rights to purchase supplies, equipment, or services.

Special Considerations

- Assignability Clause
- Minimum/Maximum Quantities

Identify any FTA funded equipment obtained since the past triennial review through a piggyback, state-led, or joint procurement method.

Element #50 of the PSR

Joint & Piggyback Procurement (cont'd)

- *Permissible when the solicitation contract contains an assignability clause that provides for the assignment of all or a portion of the specified deliverables as originally advertised, competed, evaluated, and awarded.*
- *Solicitation and contract must contain a minimum and maximum quantity that represent the reasonably foreseeable needs of the parties.*
- Before entering into a joint or piggyback arrangement:
 - Determine that price remains fair and reasonable.
 - Determine that contract complies with all Federal requirements (don't forget Buy America).
 - Be sure that the quantities already used by others, coupled with the quantities you will use do not exceed the amounts available under the original contract.

Joint & Piggyback Procurement (cont'd)

- In accordance with FTA's 9/1/2016 Buy America Policy Guidance:
 - Recipients who are not direct parties to a contract executed before October 1, 2015, may not exercise assigned options (a/k/a "piggybacking") on such contracts.

Clauses

Basic Requirement

([FTA C 4220.1F](#) Appendix D)

- *A current but not all inclusive and comprehensive list of statutory and regulatory requirements applicable to recipient procurements (such as Davis-Bacon Act, Disadvantaged Business Enterprise, Clean Air, and Buy America) is contained in the FTA Master Agreement.*
- *Recipients are responsible for evaluating these requirements for relevance and applicability to each procurement.*

**Element #56 of the PSR
TOP TEN FINDING**

Clauses (cont'd)

How does the recipient ensure that applicable clauses and certifications are included in FTA funded procurements exceeding the micro-purchase limit and construction contracts over \$2,000? In intergovernmental agreements and subrecipient agreements, if applicable?

Overall Guidelines

- Check Purchase Threshold
 - If Micro-Purchase ($\leq \$3,500^*$), only Davis-Bacon clauses required for purchases above \$2,000
 - If Small Purchases ($\leq \$150,000^{**}$), some clauses apply
 - If $\$150,000^*$, most clauses apply
 - *\$3,000 prior to Oct. 1, 2015*
 - **\$100,000 prior to Dec. 26, 2014*
- Type of Procurement informs which clauses are needed
- See Circular 4220.1F (Matrices) for details
- Do not incorporate clauses by reference
- Do not simply list the clause title and Master Agreement or C 4220.1F reference

Procurement Actions

- Include clauses in standard boilerplate of contract in the solicitation
 - This will allow the suppliers to bid based on complying with the requirements
 - Some clauses implement the certifications provided by the contractor
- Sign a contract with the supplier incorporating boilerplate contract included in solicitation
- For construction work, the IFB/Sealed Bid is the contract, once accepted by the Agency
- Don't allow suppliers to take exceptions to required FTA clauses

Types of Clauses

- Legal / FTA Required / Statute
- Business-Related, such as:
 - Payment
 - Schedule
 - Liquidated Damages
 - Acceptance
 - Warranty



You can NOT negotiate the legal/FTA clauses.



You can negotiate the business related clauses

Information on Contract Language and Clauses

- Include contract terms and conditions
- State whether changes are allowed and how offerors should address them in proposals
- Ensure all FTA clauses are included and protest process is covered

Other Aspects

- You can provide the specific clauses on your website and reference them in your Purchase Order or contract.
- You must have all the required clauses to be determined to be compliant.
- Evidence of standard and compliant boilerplates is recommended.

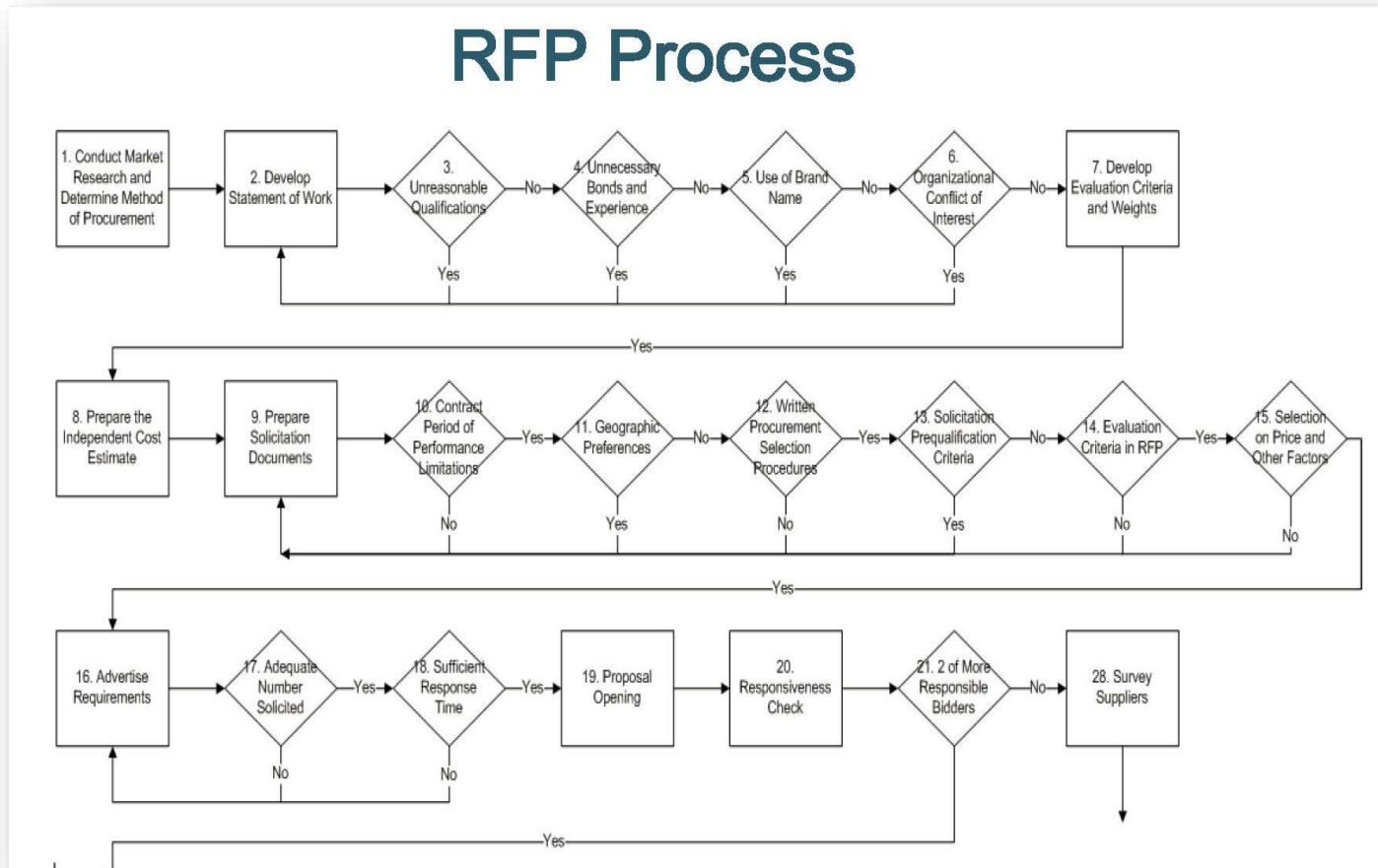
Request for Proposals (RFP) Elements

- Independent Cost Estimate *
- Unreasonable Qualifications *
- Unnecessary Experience and Excessive Bonding *
- Organizational Conflict of Interest *
- Arbitrary Actions *
- Brand Name Restrictions *
- Geographic Preference *
- Contract Term Limitation *
- Written Selection Procedures *
- Prequalification *
- Award to Responsible Bidders *
- Sound and Complete Agreement *
- Clear, Accurate, and Complete Specification *
- Adequate Competition (2 or more) *
- Advertised/Publicized *
- Adequate Number of Sources Solicited *
- Evaluation
- Price and Other Factors
 - Evaluation of Options *
 - Cost or Price Analysis *
 - Written Record of Procurement History*
 - Exercise of Options *
 - Out of Scope Changes *
 - Advance Payments *
 - Progress Payments *
 - Time and Materials Contracts *
 - Cost Plus Percentage of Cost *
 - Liquidated Damages Provisions *
 - Joint and Piggyback Procurement *
 - Clauses *

*previously covered

Request for Proposals (RFP) Steps

See Appendix



When to use the RFP Process

- Proposer input needed to define work
- Two or more responsible proposers willing to compete
- Price is only one factor in source selection
- Discussion needed with proposers after proposal submission
- Fixed price can be set after discussions **OR**
- Time and Materials Contract:
 - Fixed price cannot be set
 - Complete extent of work unknown

Elements of an Effective RFP

- Clear instructions to offerors
- Unambiguous scope of work
- Defined deliverables and delivery dates
- Evaluation criteria
- Concise summary of award process including competitive range coverage
- Information on contract language and clauses
 - Allows for prospective contractor input and questions (pre-proposal conferences, Q&A)

Clear Instructions to Offerors

- Explanation of how proposals should be submitted
 - Timeline
 - References
 - Cost/Price Proposal
- Note how many copies and in what format
- Describes what is to be included in each volume, with page limitations as necessary
- Includes references to forms to be completed
- Includes “mandatory” submission requirements

Unambiguous Scope of Work

- Describes design or performance requirements
- Indicates desired tasks to be completed
- Includes specific, tangible, and measurable work
- Is defined by the overall goal of the procurements, with no chance of out-of-scope modification

Defined Deliverables and Delivery Dates

- Tie deliverables to key tasks
- Indicate what is expected for end deliverables
- Note number of copies, drafts, services, and location for delivery
- Specify actual dates or dates from contract award

Identifying Reporting Requirements

- What do you need to know?
- Which task produces that information?
- What should the contractor investigate, observe, or record?
- What analysis of data is required?
- What information should be reported?
- How often / when is the report required?
- In what format is the information desired?
- To whom is this report submitted?

Working with the User to Develop Evaluation Criteria

- Evaluation criteria are used to assess:
 - Contractor's understanding of the requirements
 - Each element of the WBS is addressed
 - Approach to be taken
 - Evaluate suitability of approach to results desired
 - Resources to be committed
 - Estimated cost of the work
 - Experience / past performance

Examples of Evaluation Criteria

- Technical approach
- Personnel and company qualifications
- Past performance
- Installed systems performance
- Price
- Logistics

Ensure that the contents of the proposals will yield information that can be tied to the evaluation criteria developed.

Concise Summary of Award Process

- Discuss “Competitive Range”
- Indicate how scoring will occur and when and how offerors will receive feedback
- Note whether presentations will be required and if proposals will be rescored; Include option for negotiations
- Discuss whether “Best and Final” offers may be requested, and if the proposals will be rescored
- Describe how final decisions will be reached

Best Value Determination (if used)

Best Value

- Best value is a process used in competitive, negotiated contracting to select the most advantageous offer by evaluating and comparing factors in addition to cost or price. It allows offerors flexibility in selection of their best proposal strategy through tradeoffs which may be made between the cost and non-cost evaluation factors.

Evaluation

Basic Requirement

([FTA C 4220.1F](#) Ch.VI, 3.d(2)(b) and (d))

- *All evaluation factors will be identified along with their relative importance.*
- *Recipients will have a method in place for conducting technical evaluations of the proposals received and for selecting awardees.*
- *Recipients may request additional information before making an award.*

Note: The solicitation does not have to include the weighting factors; however, the evaluation criteria should be listed in order of importance.

Evaluation (cont'd)

Determine evaluation team members



Assign responsibilities for reference checks



Provide instructions on scoring the RFP



Oversee the scoring process



Summarize the results

Sample Evaluation Form

<i>Evaluation Criteria</i>	<i>Definition</i>	<i>Weight</i>	<i>Score</i>	<i>Weighted Score</i>
Technical Approach	<ol style="list-style-type: none"> 1. Description of mechanisms to collect data 2. Plan for responding to missing data 3. Methods to analyze data 4. Expertise in statistical analysis 	40%		
Past Performance	<ol style="list-style-type: none"> 1. Number of similar studies conducted in the past 2. Reference checks 	25%		
Staffing	<ol style="list-style-type: none"> 1. Sufficient resources to conduct the study 2. Qualifications of study team members 3. Roles and responsibilities with respect to other studies 	20%		
Price	Total price compared to other proposals. (4 points is given to lowest price and others receive points in ratio to lowest price)	15%		
Total		100%		

Scoring Methodology

Score	Definition	Scoring Methodology
4	Exceeds Standards - The proposal strengths demonstrate an <i>excellent understanding of the requirements</i> and the new or proven approach significantly exceeds performance or capability standards.	
3	Acceptable - The proposal demonstrates an acceptable <i>understanding of the requirements</i> and the approach meets performance or capability standards.	
2	Inconsistent - The proposal demonstrates a <i>limited understanding of the requirements</i> and the approach only marginally meets performance or capability standards necessary for minimal contract performance.	
1	Unacceptable - The proposal demonstrates a <i>misunderstanding of the requirements</i> and the approach fails to meet performance or capability standards.	

Evaluation Criteria Exercise

- You have a solicitation to purchase new buses for your agency.
 - There is a local mandate that all new buses have some kind of alternative fuel propulsion system.
 - The total provider pool is limited due to the technical requirements of the buses.
1. Develop four criteria by which RFP responses will be judged
 2. Assign a value range for all responses and weight each in relation to its importance
 3. Present results using the format on the next slide.

Evaluation Format

Criteria	Definition	Weight
1.		
2.		
3.		
4.		
Total		100%

Price and Other Factors

Basic Requirement

([FTA C 4220.1F](#) Ch.VI, 3.d(2)(e) and (f))

- Awards made to firm whose proposal is most advantageous to the recipient's program with price and other factors considered.*
- Recipients may award to the proposer that offers the greatest business value to the Agency based upon an analysis of a tradeoff of qualitative technical factors and price/cost to derive which proposal represents the “best value.” “Best value” language must be in the solicitation.*

Take extra care when using the “Best Value” evaluation process.

Element #37 of the PSR

Other Than Full and Open Competition Elements

- Independent Cost Estimate *
- Unnecessary Experience and Excessive Bonding *
- Organizational Conflict of Interest *
- Arbitrary Actions *
- Brand Name Restrictions *
- Geographic Preference *
- Contract Term Limitation *
- Award to Responsible Bidders *
- Sound and Complete Agreement *
- Clear, Accurate, and Complete Specification *
- Other Award is Infeasible
- Cost Analysis Required
- Evaluation of Options *
- Written Record of Procurement History *
- Exercise of Options *
- Out of Scope Changes *
- Advance Payments *
- Progress Payments *
- Time and Materials Contracts *
- Cost Plus Percentage of Cost *
- Liquidated Damages Provisions *
- Joint and Piggyback Procurement *
- Clauses *

*previously covered

Sole Source if Other Award is Infeasible

Basic Requirement

([FTA C 4220.1F](#) Ch.VI, 3.i)

- *When supplies or services are available from only one responsible source, and no other supplies or services will satisfy its requirements, the recipient may make a sole source award.*
- *When the recipient requires an existing contractor to make an out of scope change, the recipient has made a sole source award that must be justified.*

Element #38 of PSR

Sole Source if Other Award is Infeasible (cont'd)

How does the recipient ensure that it conducts solicitations in a manner that ensures

- a. proper use of vendor pre-qualification practices,*
- b. proper use of specifications and “brand names”,
and*
- c. proper justification for sole source and single bid procurements?*

Other Award is Infeasible

Property or services are available from one source if one of the following conditions is present:

- Unique or Innovative Concept
- Patents or Restricted Data Rights
- Substantial Duplication Costs
- Unacceptable Delay
- Only one bid is received

FTA expects recipient to use competition, as feasible, to select teaming or consortium partners.

Sole Source Justification Exercise

Read the following sole source justification:

Due to the new buses that went into service in 2009 and 2010, our lubricant usage has dropped by more than fifty percent. We did not meet our terms of agreement with Company Q because of that drop.

Company Q has offered to extend the agreement for another five years with the same terms and conditions. I recommend we go with this agreement as it would be in the best interest of our Agency to stay with this product and equipment.

- What changes would you make to this justification?
- Would you approve this as a sole source?
- Does this justification meet the FTA requirements for other than full and open competition?

4220.1F Guidance on Single Bids

Upon receiving a single bid or proposal in response to a solicitation, the recipient should determine if competition was adequate. This should include a review of the specifications for undue restrictiveness and might include a survey of potential sources that chose not to submit a bid or proposal.

- Adequate Competition. FTA recognizes competition to be adequate when the reasons for few responses were caused by conditions beyond the recipient's control. Many unrelated factors beyond the recipient's control might cause potential sources not to submit a bid or proposal. If the competition can be determined adequate, FTA's competition requirements will be fulfilled, and the procurement will qualify as a valid sole source.
- Inadequate Competition. FTA recognizes competition to be inadequate when, caused by conditions within the recipient's control. For example, if the specifications used were within the recipient's control and those specifications were unduly restrictive, competition will be inadequate.

Single Source Analysis

Solicitation: _____

Product/ Services to be Procured:

Bid or Proposal Due Date: _____

Number of Solicitations Requested: _____

Number of Bids Received: _____

Reasons for lack of Competition

(based on Supplier Contacts)

- Lack competency
- Lack available resources
- Poor timing
- Short response due date
- Other: _____

Action to Plan

Award Contract Basis:

Extend Deadline (modify solicitation)

New Due Date: _____

Re-procure:

New Solicitation Due to be

Completed: _____

Projected Due Date: _____

Signed: _____

Title: _____

Date: _____

Architectural and Engineering

Special Considerations

- Geographic Preference
- Qualifications Exclude Price
- Serial Price Negotiations

Note: A&E services must be related to a construction project

A&E Geographic Preference

Basic Requirement

([FTA C 4220.1F](#) Ch.VI, 2.a. (4)(g) I.)

For A&E Procurements, geographic location may be a selection criterion if an appropriate number of qualified firms are eligible to compete for the contract in view of the nature and size of the project.

Element #8 of the PSR

Qualifications Exclude Price

Basic Requirement

([FTA C 4220.1F](#) Ch.VI, 3.f. (3))

Qualifications-based competitive proposal procedures require that:

- (1) An offeror's qualifications be evaluated for contract award*
- (2) Price be excluded as an evaluation factor*

Element #5 I of the PSR

Serial Price Negotiations

Basic Requirement

([FTA C 4220.1F](#) Ch.VI, 3.f(3)(d))

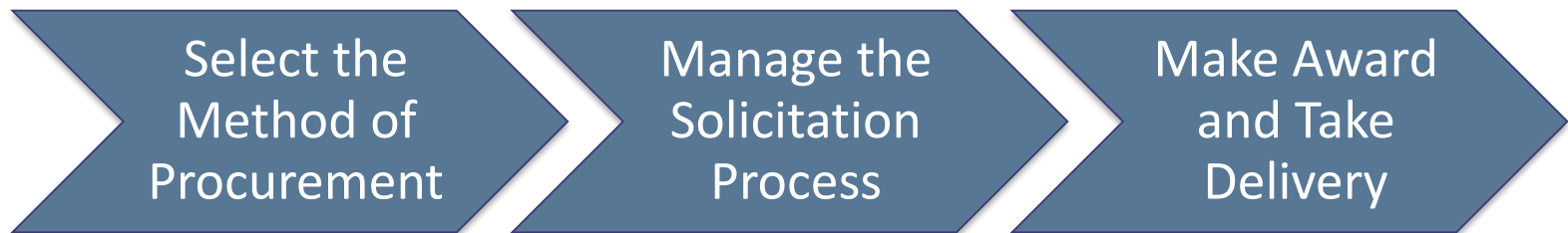
- *Negotiations are conducted with only the most qualified offeror*
- *Failing agreement on price, negotiations with the next most qualified offeror may be conducted until a contract award can be made to the most qualified offeror whose price is fair and reasonable to the recipient.*
- *Show results of the negotiation*

Element #52 of the PSR

Rolling Stock Procurement Process

The entire process for procuring rolling stock can be broken into three phases

1. Select the method of procurement
2. Manage the solicitation process
3. Make award and take delivery



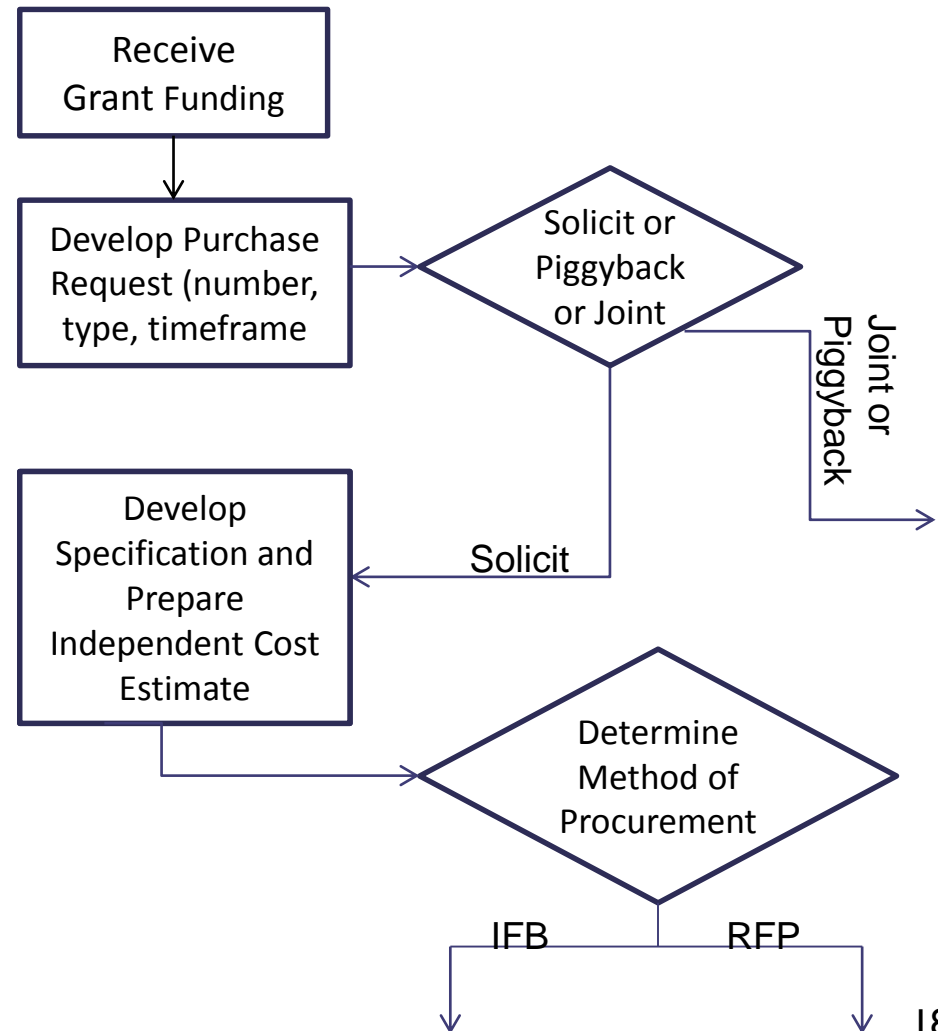
Difference Between Joint Procurements & Piggybacking

Joint procurement is a method of contracting in which two or more purchasers agree from the outset to use a single solicitation and enter into a single contract with a vendor.

Piggybacking is the post-award use of a contractual document/process that allows someone who was not contemplated in the original procurement to purchase the same supply /equipment through that original document / process. The recipient may assign those contract rights to others if the original contract contains an assignability provision.

Select the Method of Procurement

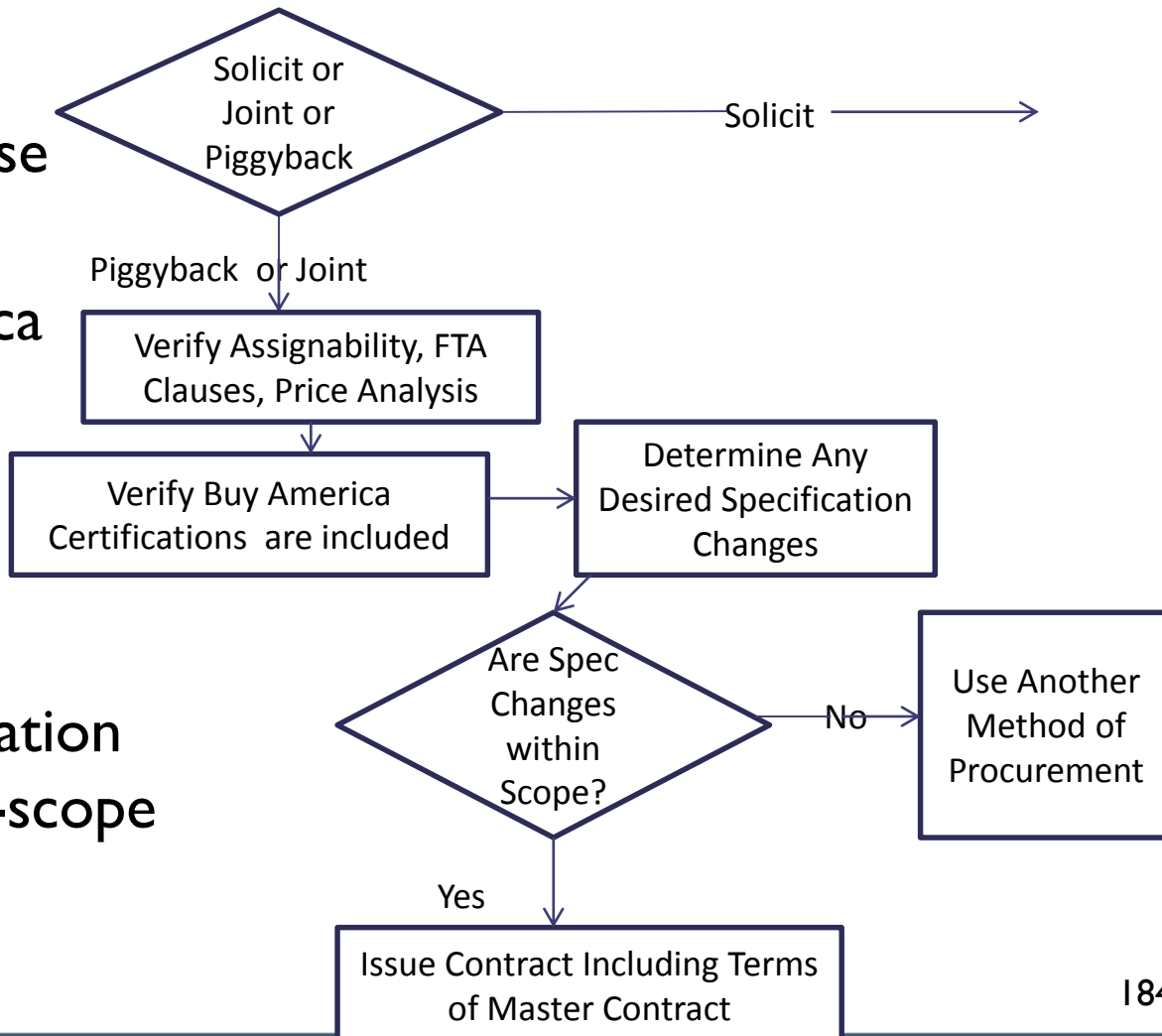
- There are three methods of procurement that can be used when buying rolling stock
 - Invitation for Bid (IFB)
 - Request for Proposal (RFP)
 - Joint Procurement or Piggybacking
- The decision to piggyback or manage a new solicitation is made once funding has been received and the purchase request has been developed



Manage the Solicitation- Joint or Piggybacking

Key steps to follow:

- Verify assignability clause
- Verify inclusion of FTA clauses and Buy America Certifications (or Buy America Waivers)
- Conduct price analysis
- Determine any desired changes to the specification and ensure they are in-scope changes

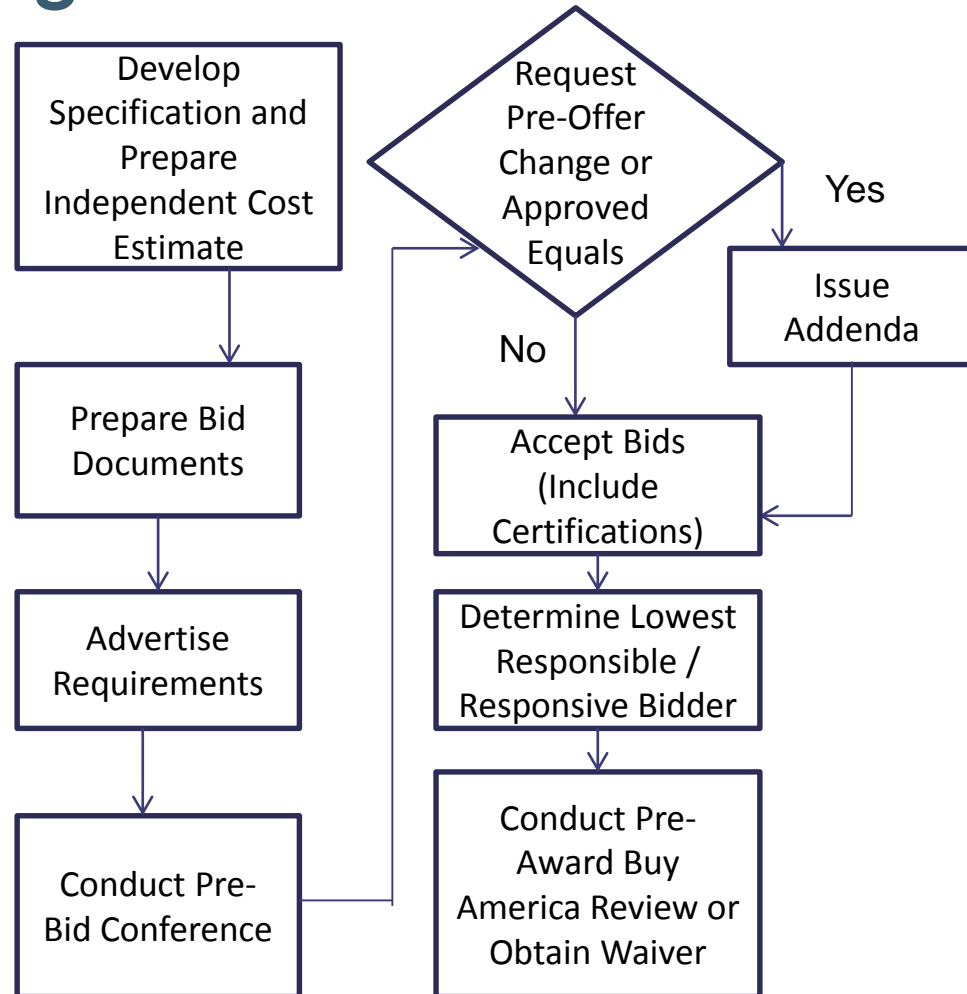


Phase 2:

Manage the Solicitation- IFB

Key steps to follow:

- Contract must be awarded to the lowest price responsive / responsible bidder
- Bidders have the opportunity to submit requests for approved equals (RFA)
- Buy America pre-award review must be conducted for procurements above threshold or a waiver must be obtained

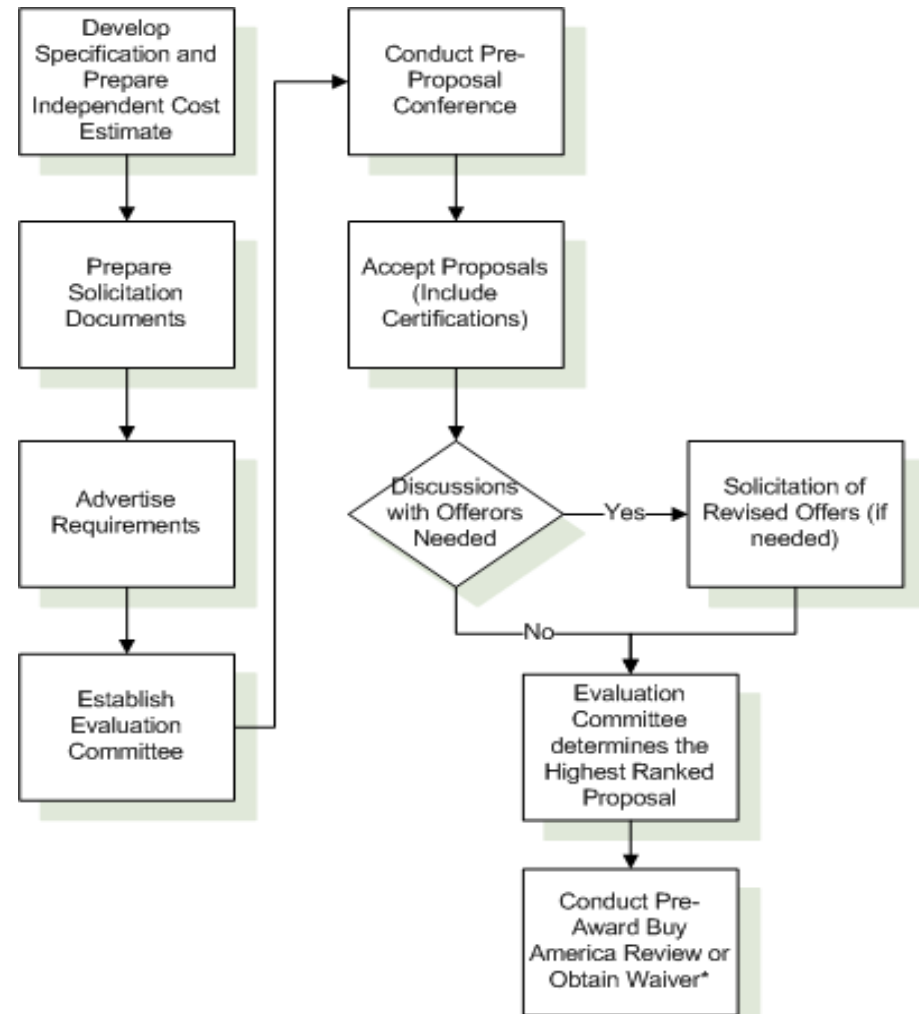


Phase 2:

Manage the Solicitation - RFP

Key steps to follow:

- Evaluation criteria must be developed and listed in order of importance
- Award is made to the highest rated (best value) offeror
- Buy America pre-award review must be conducted for procurements above \$150K (\$100K if executed prior to 2 CFR Part 200) or a waiver must be obtained

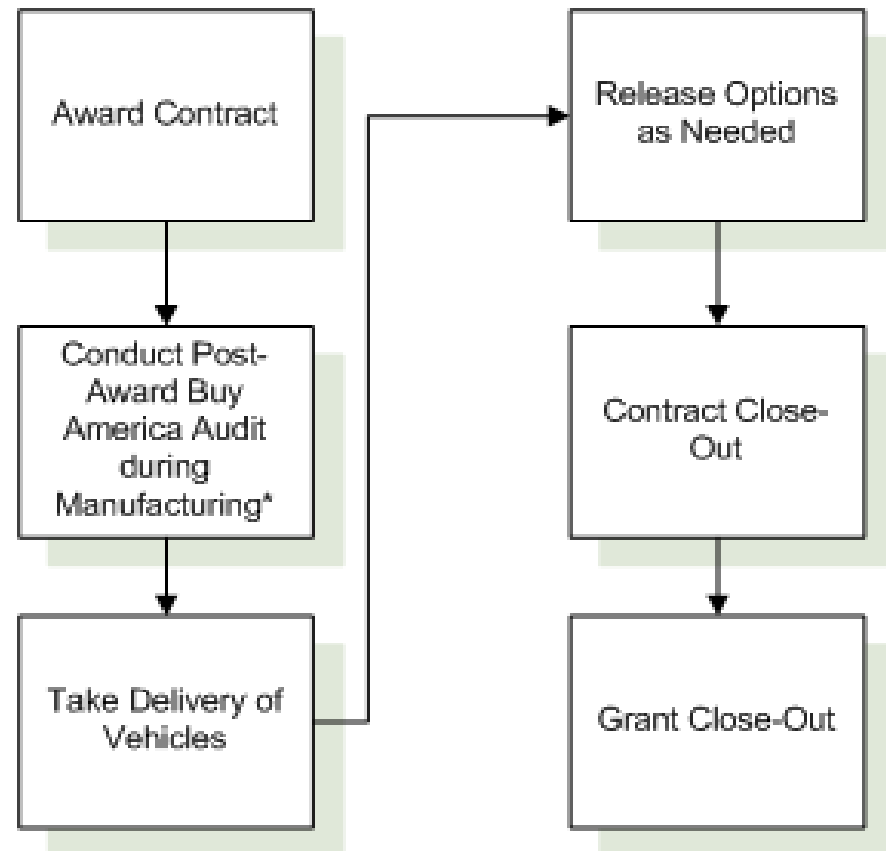


Phase 3:

Make the Award and Take Delivery

Key steps to follow:

- A Buy America post-delivery audit must be conducted for all procurements above \$150K (\$100K if executed prior to 2 CFR Part 200) during manufacturing
- After the initial order quantity has been fulfilled, options may be released as needed



Bus Testing Requirements

- On August 1, 2016, FTA announced a final rule for bus testing.
- Bus models that fail to meet one or more minimum performance standards will “fail” their test and thus be ineligible for purchase with FTA funds until the failures are resolved. FTA will use this authority to make sure defects are fixed before vehicles are allowed to go into service.
- New bus models tested subsequent to October 31, 2016, must receive a passing score.

Buy America Certification

- Pre-Award and Post-Delivery audits must be conducted for all rolling stock procurements.
 - Verify 60% domestic product
 - Review and verify proposed final assembly
 - Contractor may request a Buy America waiver

In January 2017, FTA issued a new Buy America Handbook for conducting rolling stock pre-award and post-delivery audits.

FAST Act – Buy America

- Introduced an increased domestic content percentage requirement:
 - FY 16/17 – 60%
 - FY 18/19 – 65%
 - FY 20 and beyond – 70%
- Permits a transit body shell composed of domestically produced steel and/or iron to be counted towards the domestic content percentage.
- For denied Buy America waivers, FTA is required to certify availability and quality of the domestically produced item for which the waiver was denied.

***** See also information in FTA's 9/1/2016 Buy America Policy Guidance**

Buy America Certification (cont'd)

How does the recipient conduct pre-award and post-delivery audits to ensure the manufacturer(s) complied with contract specifications and Buy America?

How does the recipient verify domestic content, final assembly activities, and location of final assembly at the pre-award and post-delivery stages?

Buy America Requirements

Pre-Award Requirements

1. Review and verify domestic content **AND** U.S. final assembly location, operations and total cost

or
Request and receive a Buy America Waiver
2. Check bid specification compliance with solicitation specifications **AND** complete a manufacturer capability study

Post-Delivery Requirements

1. Review and verify domestic content **AND** U.S. final assembly location, operations and total cost

or
Request and receive a Buy America Waiver
2. Complete resident inspector's report **AND** complete visual inspections and performance tests

or
Complete visual inspection and road tests for procurements of 10 or more buses
3. Verified FMVSS sticker affixed to each bus

Documentation Requirements by Procurement Type

Standard Inclusions	Micropurchase	Small Purchase	IFB	RFP	Sole Source
Fair and Reasonable Price Determination	X				
Method of Procurement Decision Matrix		X	X	X	X
Independent Cost Estimate			X	X	X
Clear, Accurate, Complete Specifications		X	X	X	X
Price Quotations		X			
Cost/Price Analysis			X	X	X (Cost)
Written Selection Procedures (Included in Solicitation)			X	X	
Emails to Potential Vendors, Proof of Publication			X	X	
Bid Opening Sheet/Record of Proposals Submitted			X	X	
Responsiveness Determination			X	X	
Bid/Proposal Rejection Explanation (if any)			X	X	
Responsibility Determination (Copy of EPLS search)			X	X	X
Bid Tabulation / Selection of Lowest Price			X		
Evaluation Rating Sheets and Summary				X	
Sole Source Justification					X
Sound and Complete Agreement (Signed Contract)			X	X	X
Clauses (In Solicitation and Contract)		X	X	X	X
Written Record of Procurement History		X (2 sections)	X	X	X
Awarded Supplier's Proposal		X	X	X	X

Documentation Requirements by Procurement Type (cont'd)

Special Circumstances	Micropurchase	Small Purchase	IFB	RFP	Sole Source
Contract Mods (in scope)		X	X	X	X
Progress Payments		X	X	X	X
Approval for Advance Payments From FTA	X	X	X	X	X
Documentation of Board Approval			X	X	X
Notice of Protests and Resolution		X	X	X	X
Notice of Contract Claims and Resolutions		X	X	X	X
Piggybacking			X	X	X
Davis-Bacon (Construction)	X >\$2000	X	X	X	
Copies of Bonds (Construction)			X	X	X
Buy America (Bus and Rolling Stock)			X	X	X
Evidence of Negotiations with Highest Ranked Suppliers and Ranking Based on Technical Capability Only (A&E)				X	

FTA

FEDERAL TRANSIT ADMINISTRATION

Wrapping It Up



U.S. Department of Transportation
Federal Transit Administration

After a PSR

- Use the review as a tool for improvement in all procurements
- Maintain proficiency with FTA resources/requirements
- Work with your Regional Office and the reviewer to address deficiencies and get additional information
- Focus first on resolving repeat findings
- ARRA has heightened transparency and accountability for all procurements
- Don't just “paper over” a finding. Make sure you can demonstrate implemented corrective actions
- Technical Assistance Provided by FTA

Points of Contacts

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Thank you!



Federal Transit
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FTA

FEDERAL TRANSIT ADMINISTRATION