# Workshop Outline

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This course was developed by the National Transit Institute at Rutgers, The State University of New Jersey, in cooperation with the U.S. Department of Transportation, Federal Transit Administration. These materials are provided for informational and training purposes only and are solely intended for the use of the public transportation sector. Use of the materials in this program should first be reviewed for compliance with local procedures and applicable Federal, State, and local laws and regulations.
Instructor Biographies

Jeff Hiott

Jeff Hiott is a Senior Program Manager for the American Public Transportation Association, the 1,500 member national trade association that represents the public transit industry which is also known as APTA. Mr. Hiott has been with APTA over 4 years and manages APTA’s Bus Technical Services and APTA’s Standard Development Program in the development of transit industry standards. He also is the staff advisor to the Bus technical Maintenance Committee and the Clean Propulsion Technology Committee.

Prior joining APTA, Mr. Hiott worked with the Georgia Department of Transportation and Pond and Company doing site development and transportation design.

Mr. Hiott holds a Bachelor of Science degree in Civil Engineering from Georgia Tech.
Instructor Biographies

Frances Hooper

Fran Hooper serves as Staff Advisor for the American Public Transportation Association, the 1,500 member national trade association that represents the public transit industry which is also known as APTA. A member of APTA’s staff from 1997 to 2006, she now works as a consultant to the organization and is responsible for the programs and services APTA provides for its 750 private sector companies, as well as a number of other special activities including the Association’s Procurement Task Force and the development of procurement standards for the transit industry. In these positions she has worked with APTA’s public and private sector members to improve the way the transit industry does business and enhance the effectiveness of their operations.

Ms. Hooper, with 25 years of service at three transit agencies, has broad experience in public transit operations as well as with the policy and financial issues public transit agencies face. She served as Assistant Executive Director for External Affairs at New Jersey Transit Corporation. In this capacity, she directed the state-wide bus and rail transit agency’s relations with Federal, state and municipal elected officials; the agency’s outreach to transit advocacy groups and community organizations; and managed the operation of the Office of the Executive Director.

Fran’s career in the public transit industry also included serving as Assistant to the Deputy Executive Director at Dallas Area Rapid Transit in Texas and in a variety of positions at the Washington Metropolitan Area Transit Authority, including Assistant Superintendent of the agency’s Bladensburg bus garage. She started her career as a budget analyst for Fairfax County Virginia.

The Principal of Fran Hooper Consulting, LLC, Ms. Hooper is active in a number of transit industry and community organizations and holds a Bachelors degree from Hope College in Holland, Michigan and did graduate work in public administration at the Maxwell School at Syracuse University. Fran and her husband, Dennis Miller, live in Covesville, Virginia.
Instructor Biographies

Charlie Kalb

Charlie has bachelors and masters degrees in chemical engineering and a masters degree in business administration. He is a registered professional engineer in California. He served as an officer in the United States Army for 21 years with assignments in contracts management, materials, maintenance, transportation, manufacturing, and research and development. Following retirement, Charlie worked for the San Francisco Municipal Railway for seven years where he held the positions of materials superintendent, general superintendent of cable car system maintenance, and general superintendent of diesel bus maintenance. Until his retirement last year, Charlie served as Procurement and Materials Director at AC Transit for nearly twelve years.

Charlie has been active in APTA for the past twelve years. He has served as chair of APTA’s procurement subcommittee and as co-chair of the procurement standards subcommittee. He has been a member of the procurement standards terms and conditions working group since its inception nearly five years ago and is one of the drafters of the new Standard Bus Procurement Guidelines. Charlie has taught upper and lower division college courses and has a teaching credential from the California Community Colleges.
Instructor Biographies

Margaret E. Merhoff, C.P.M.

Margaret Merhoff has over thirty years of professional procurement experience in public transit. She was the Contract Administration Manager for one of the largest public transit agencies in the country. She managed and participated in diverse projects and activities from the procurement of rolling stock to the acquisition of services for agency departments. She conducted training on overseeing the procurement process at numerous national events to transit staff. She is involved with the American Public Transportation Association’s (APTA) development of new standardized procurement documents as a Working Group member. She has participated in numerous Federal Transit Administration (FTA) Procurement System and Triennial Reviews. She is experienced with numerous FTA program and requirements—Triennial Reviews, Procurement System Reviews, Buy America, FTA Program Circulars and other aspects of Federal and transit industry regulations.

RELEVANT EXPERIENCE:

National Transit Institute, Rutgers, the State University of New Jersey, Piscataway, NJ
December 2010 – present, Temporary Employee, Bus Procurement Workshops

Margaret E. Merhoff, Upland, CA
May 2010 – present, Independent Consultant

Los Angeles County Metropolitan Transportation Authority, Los Angeles, CA
August 1986 – May 2010, (Retired) Contract Administration Manager

City of Gary Indiana, Gary, IN
January 1980 – July 1986, Special Projects Administrator

Los Angeles County Metropolitan Transportation Authority (MTA) – As a Contract Administration Manager, was personally responsible for the acquisition of rolling stock (buses) and supervision of subordinate staff. Other areas of responsibility included procurement and contract administration activities for technical and professional service contracts for multiple MTA departments. Provided technical support for MTA legislative initiatives involving procurement streamlining and revision of the departmental solicitation templates. Conducted several sealed-bid and negotiated procurements for the purchase of over 2300 alternative fuel heavy-duty transit buses with a value of over $1 billion. Transitioned MTA from the sealed bid process to the negotiated procurement process for bus procurements. Developed the first negotiated procurement solicitation documents for bus procurements following passage of California legislative initiative permitting the use of negotiated procurements for the purchase of equipment. Responsible for all phases of procurement and contract administration activities. Provided procurement support for a majority of MTA departments over 23 year tenure at MTA. Interfaced with FTA consultants conducing Triennial and Procurement System Reviews. Agency representative on the Terms and Conditions and In-Plant Bus Inspection Working Groups of the APTA Standards Development Program.
City of Gary Indiana – Responsible for procurement and administrative actions for several large public works projects including construction of a multi-modal transportation center funded through an Urban Initiatives Grant of the Urban Mass Transportation Administration (predecessor to FTA). Coordinated and worked with FTA Regional staff at all levels for the successful implementation of federally funded capital projects. Prepared and submitted quarterly reports, project budgets, provided financial information and updated project schedules, tracked FTA draw-downs through closeout, and developed creative financing used for the local share match required for the project. Coordinated land acquisition and rezoning, relocation of residents, implemented bids for demolition of structures, selection of architects, issued bids for construction, provided oversight during construction phase, handled selection of artist for art works, and lease of tenant spaces to private sector.

EDUCATION:

Master of Science in Planning; University of Tennessee; 1980

Bachelor of Arts in History; King College; 1972

Professional Designation in Government Contract Management; University of California Los Angeles; 2004

Certified Purchasing Manager; Institute for Supply Management; 2000
NTI is part of the Alan M. Voorhees Transportation Center, housed at the Edward J. Bloustein School of Planning and Public Policy at Rutgers, The State University of New Jersey. It was established with the passage of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) and continued through the Transportation Efficiency Act for the 21st Century (TEA-21) in 1999 and the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) in 2005. It is funded through a grant from the U.S. Department of Transportation’s Federal Transit Administration.

NTI’s mission is to provide training and education in support of public transportation and quality of life in the United States. To that end, NTI promotes, develops, and delivers high quality training programs and educational resources to meet the needs of the industry through collaborations with transportation organizations, government, institutions, and associations.

Current Course Offering

NTI’s courses and materials support FTA initiatives and program areas, customized training efforts for U.S. and international transit systems, and other federal, state, and local agencies. The majority of courses are free to public transit agency employees and government employees involved in public transportation.

The trainings are delivered throughout the United States. Transit organizations can receive a guaranteed number of seats in a course and reduce employee travel costs by volunteering to host a session. Session hosts are required to provide a suitable training room and audio/visual equipment. For more information, visit our website at www.ntionline.com or contact Barbara Neumann at bneumann@rutgers.edu.

NTI offers a variety of courses in five critical areas:

- Advanced Technologies
- FTA Compliance
- Multimodal Transportation Planning
- Management and Professional Development
- Workplace Safety and Security

Advanced Technologies

This program area focuses on enhancing the understanding, knowledge, and technical skills of transit professionals as they explore, procure, implement, and manage innovative systems to improve service, operations, and safety. Courses include:

Characteristics and Planning of Bus Rapid Transit


Implementing Contactless Fare Collection Systems

Explores the complexities associated with implementing a new fare collection system for an individual agency or on a regional basis.

Implementing Rural Transit Technology

Presents a structured approach for planning, implementing, and evaluating rural transit projects to help ensure that agency needs and expectations are met.
Integrating Transit Applications: Defining Data Interfaces Using TCIP
Assists in systematically defining data interfaces between applications using the Transit Communication Interface Profiles standard (APTA TCIP-S-001 3.0.3). The TCIP model architecture and the associated building blocks are reviewed, and participants practice using the TCIP Implementation and Requirements Capabilities Editor (TiRCE) to create and respond to RFPs for applications that are TCIP compliant.

Narrowbanding
Provides an overview of the FCC requirement to narrow two-way VHF and UHF radio transmissions by 2013, helps determine if your agency’s current radio system is at risk, explains how to develop a timeline and budget for your implementation project and identify potential funding sources, and discusses the industry benefits to narrowbanding and the impacts of non-compliance.

Systems Engineering for Technology Projects
This introductory level course describes systems engineering and how it can be applied to technology projects and discusses the transit-specific challenges that can occur during the process.

Transit ITS Regional Workshop
Increases awareness of Intelligent Transportation Systems (ITS) and how the transit core suite of technologies can be deployed to deliver safer and more efficient transit services.

Using Regional ITS Architecture
Demonstrates how to use a regional ITS architecture to support transit planning and project development in order to enhance business decision-making, assist with long-range agency planning, and provide a more efficient implementation of ITS projects.

FTA Compliance
FTA Compliance offerings are designed to help grantees understand processes and learn tools to remain or become compliant with federal guidelines and regulations. Courses include:

Comprehensive ADA Paratransit Eligibility
Reviews ADA paratransit criteria and ADA paratransit eligibility requirements, including detailed information about alternative eligibility determination processes, with a focus on in-person interviews and assessment options.

Disadvantaged Business Enterprise
Provides a basic understanding and working knowledge of the US DOT DBE regulations and DOT guidance. Attendees will be provided with the tools necessary to design and implement a DBE program in their organizations.

FTA Real Estate Requirements
Addresses the issues around the acquisition of real estate and the displacement of persons for an FTA-assisted project as regulated by the Uniform Act.

Management of Transit Construction Projects
Reviews the basics of good project management techniques and approaches for organizations involved in all phases of FTA-funded projects, with specific emphasis on the preparation and execution of a Project Management Plan.

Managing Community Mobility
Examines creative approaches to resolving fragmented and/or duplicative transportation systems to create a more seamless and cost-efficient network with a customer-focused mindset.
National Transit Database
Explains the necessary skills for reporting data to the NTD internet reporting website, and discusses the benefits and impacts of annual reporting, what to report, the six standard NTD reporting modules, and the functionality and automation of the website.

Paratransit Management and Operations
Highlights the skills needed to effectively manage and operate paratransit services, including how to develop policies and procedures, the necessary management functions, and operating and scheduling techniques.

Procurement Series
Teaches grantees about FTA's procurement requirements. The four-course series reflects the requirements of FTA Circular 4220.1F that was issued on November 1, 2008.

Quality Assurance and Quality Control in Transit Projects
Provides an overview of the essential elements of quality assurance and quality control in transit projects.

Risk Assessment for Transit Capital Projects
Examines the purpose of a risk review, necessary preparations required to undertake a risk assessment, the methods used for a risk assessment, and how such assessments are applied to the project management process.

Transit Equity Considerations
Examines the importance of transit equity considerations during transit planning, management, and operations, including the historical background of Title VI of the Civil Rights Act of 1964. Additionally, environmental concerns including the environmental justice movement, Federal laws, and regulations and guidance of Title VI, environmental justice, NEPA, and LEP are reviewed.

Understanding ADA
Reviews the transit issues and legal requirements relative to the Americans with Disabilities Act of 1990 (ADA) and provides information on compliance, enforcement, and techniques to support nondiscriminatory transportation access for persons with disabilities.

Multimodal Transportation Planning
The goal of the Multimodal Transportation Planning program area is to enhance multimodal transportation planning processes and practices. Courses include:

Advanced Seminar on Managing the Environmental Review Process
Supports the efficient and effective management of environmental processes in the development and construction of transit and multimodal transportation projects by providing current information on federal requirements, identifying best practices, and facilitating the sharing of information and insight among advanced practitioners.

Environmental Impact Assessment (Online)
Part A: NEPA as a Decision-Making Tool in Planning
Introduces the environmental impact assessment process as required under the National Environmental Policy Act (NEPA).

Environmental Impact Assessment (Online)
Part B: The Environmental Impact Statement and Related Topics
Reviews the components of an Environmental Impact Statement, and examines issues relevant to SAFETEA-LU requirements in reference to NEPA implementation.

Financial Planning in Transportation
Assists participants in meeting federal transportation planning and programming requirements related to developing sound financial plans that identify funding sources for needed investments and demonstrate a reasonably reliable means to operate and maintain the existing federally funded transportation system.
Introduction to Metropolitan Transportation Planning
Provides a general introduction and overview of the metropolitan transportation planning process.

Introduction to Statewide Transportation Planning
Explains the state transportation planning process, including tools, methods, and best practices.

Introduction to Transportation Conformity
Presents basic information about conformity requirements and the relationship of the transportation and air quality planning processes in order to prepare agency staff (federal, state and local) to participate in interagency consultation and work effectively in resolving conformity issues.

Public Involvement in Transportation Decision Making
Demonstrates creative and interactive public involvement techniques for transportation system planning and programming, and how to factor civic concerns and ideas into the decision-making process.

State and Metropolitan Transportation Programming
Provides instruction on the basic concepts, components, and participants in the transportation programming process, including current and best practices.

Transit Noise and Vibration Impact Assessment
Discusses the environmental review process and how a noise and vibration assessment fits into FTA’s planning and project development processes.

Transit-Oriented Development
Explores how transportation and land use professionals can effectively participate in the planning, funding, and implementation of transit-oriented development projects that improve the environment, create a sense of community, and boost transit ridership.

Transportation and Land Use
Focuses on the relationships between transportation and land use and how these systems can be designed in a compatible, mutually supportive manner.

Management and Professional Development
This area provides a variety of management and professional development opportunities for new and experienced public transit supervisors, mid-level managers, and senior staff. Courses include:

Effective Supervision in Transit
Encourages supervisors to examine and analyze their own behaviors, and increase their skills in proactive communication, listening well, demonstrating sensitivity, and articulating clearly. This course was developed for supervisors with two or more years of experience.

Fundamentals of Transit Supervision
Strengthens the performance and productivity of transit supervisors through the examination of workplace behaviors and sound supervisory skills and practices. This course was developed for new supervisors with less than two years of experience.

Project Management for Transit Professionals
Explains the basic components and functionality of each phase of a well-defined project, including estimates, realistic project schedules, and the relationship between leadership and teamwork development.

Senior Leadership
Examines the skills upper level transit managers need for successful executive careers in public transit, including building managerial and leadership skills, working in a public environment, thinking strategically and conceptually, mastering external dynamics, confronting evolving issues, and implementing change successfully.
Transit Academy
Provides those new to transit with an in-depth understanding of the scope of responsibilities, variety of skills, and range of activities that work together in delivering safe and efficient transit service. The academy is presented using lectures, demonstrations, hands-on activities, and facility tours from key transit agency personnel willing to share their knowledge and experience.

Transit Asset Management - A Pilot Course
Examines key asset management principles and provides strategies in developing and implementing an asset management program based upon quality information and well-defined objectives.

Transit Trainers’ Workshop
Offers skills, strategies, and techniques to transit trainers that will build their professionalism, enable them to become proactive partners in their organizations, and facilitate the sharing of information and resources in the industry.

Workplace Safety and Security
The Workplace Safety and Security program area strives to improve the overall safety culture and system-wide security of transit organizations. Courses include:

Advanced Mobility Device Securement
Provides transit professionals with practice and problem-solving skills for securing a variety of powered mobility devices, including effective strap securement locations, and the proper use and placement of lap and shoulder belts.

Building Diversity Skills in the Transit Workplace
Demonstrates effective working relationships through recognizing and responding to the diverse needs of individuals and groups within the transit workplace.

Bus Control Center Response to Security Incidents
Provides dispatch/control center and other key supervisory and management personnel with the practical knowledge to recognize, evaluate, and respond to potential system security threats under evolving circumstances.

Harassment Prevention for Transit Employees and Supervisors
Provides participants with the knowledge and skills to maintain a safe and respectful work environment. Separate sessions are provided for employees and supervisors.

Infectious Disease Awareness and Prevention
Reviews the potential sources and risks of exposure to bloodborne and other communicable diseases, especially for employees who work directly with the public.

Musculoskeletal Disorders Awareness and Prevention
Addresses musculoskeletal disorders (MSDs)—the largest single work-related illness and injury problem in the United States—and their causes, including risk factors, and steps employees can take to reduce their risk of injury.

Pickpocket and Identity Theft
Explains the common "tricks of the trade" used by pickpockets, and reviews how transit employees can protect themselves and their customers from being victims of identity theft as a result of this crime.
Rail Operations Control Center Response to WMD Incidents
Provides control center and other key personnel with best practices for effective operational decisions and appropriate responses to explosive, chemical, biological, and radiological threats and incidents.

Securing Community Mobility
Discusses potential threats to community transportation systems and provides employees with techniques for improving security and preventing crime and acts of violence against the system, passengers, and themselves.

System Security Awareness
Presents skill sets for observing, determining, and reporting activities, packages, and substances that are suspicious or out of place.

Terrorist Activity Recognition and Reaction
Reinforces the concepts taught in System Security Awareness, and provides more in-depth information and techniques for observing and reporting suspicious activity and possible pre-attack terrorist activity.

Toolbox for Transit Operator Fatigue
Offers a variety of resources, methods and techniques to deal with operator fatigue, including specific tools for fatigue prevention, detection, and management.

Violence in the Transit Workplace
Provides participants with the knowledge and skills to prevent, respond to, and recover from workplace violence.

Webinar Series
NTI’s collaborative online learning events are free and are offered throughout the year on a variety of topics. Participants log into the webinar to access the graphic content and dial into an audio-teleconference. Each webinar lasts approximately 90 minutes and includes a question and answer session. Please visit the NTI website at www.ntionline.com for information on upcoming sessions.

Educational Resources
NTI produces a variety of educational resources including written materials such as handbooks, reports, fact sheets, and pocket guides; videos; interactive CD-ROM training; and audio teleconferences and webinars. Please visit our website at www.ntionline.com for a complete listing of the resources available.
Bus Procurement Workshop

Workshop Goal

The goal of this course is to assist FTA grantees to comply with FTA bus procurement requirements to optimize the procurement process.
Workshop Objectives

- Highlight FTA procurement requirements
- Examine bus procurement processes
- Review the 2011 APTA Standard Bus Procurement Guidelines document
- Provide opportunities for dialogue between manufacturers and agencies

Workshop Format

- Day 1
  - Overview of FTA 4220.1F requirements
  - Topics relevant to bus procurement
- Day 2
  - Overview of APTA Standard Bus Procurement Guidelines document
  - Vehicle Manufacturers' Perspective and Panel Discussions
Ground Rules

- Adjust cell phones and other electronic devices to "meeting" mode (silent or vibrate)
- Return from breaks and lunch on time
- Stay on task
- Ask questions and contribute to discussions

Participant Introductions

- Name
- Role
- Organization
- Experience with bus procurement
NTI Procurement-Related Courses

- NTI procurement course sequence
  - Orientation to Transit Procurement
  - Risk Assessment and Basic Cost or Price Analysis
  - RFPs and Competitive Cost Analysis
  - Contract Administration
- These courses provide more in-depth coverage of specific FTA procurement requirements
- Disadvantaged Business Enterprise (DBE)
Module 1
Overview of FTA 4220.1F
Requirements Related to Bus Procurement

Module Objectives

By the end of this module, you will be able to:

- Refer to applicable federal regulations pertaining to bus procurement
Federal Authorities – Bus Procurements

- FTA Circulars
  - 4220.1F, Third Party Contracting Guidance
- Master Agreement
  - Similar to general contract provisions and attached to all grants; procurement-related requirements are addressed
- Grant Agreement
  - Agreement between FTA and grantee
- Annual List of Certifications and Assurances

Federal Requirements

- FTA Circular 4220.1F requires that all contracts include provisions to define a sound and complete agreement
  - Leaves a lot of discretion to grantee
- Grantees are responsible for evaluating all statutory and regulatory requirements for relevance and applicability to each procurement
FTA Requirements

Methods of procurement a grantee may use are detailed in FTA Circular 4220.1F

- Sealed bids
- Competitive proposals (request for proposals)

FTA Requirements vs. State Requirements

- Common areas of difference
  - Ability to use competitive sealed proposal method
- Need to work to resolve areas of difference
- FTA rules give you flexibility to be more responsive to customers
FTA Requirements vs. Local Requirements

Board policies and procedures
- What procedures does the FTA require in writing?
- Does your agency have procurement regulations?
- Differences between Board policy and FTA regulations?

FTA Requirements

- Written protest procedures
- Written selection procedures
Federal Requirements

Competition

- Chapter VI: Procedural Guidance for Open Market Procurements
  - Page VI – 4: In-State or Local Geographic Restrictions

FTA Circular 4220.1F, Chapter IV, 2.a.(4)(g):

SOLICITATION REQUIREMENTS AND RESTRICTIONS. The Common Grant Rules require that each solicitation provide the following information:

(4) Prohibitions. The Common Grant Rules prohibit solicitation requirements that contain features that unduly restrict competition. FTA recipients are also prohibited by 49 U.S.C. Section 5325(h) from using FTA assistance to support an exclusionary or discriminatory specification. Some situations considered to be impermissibly restrictive of competition include, but are not limited to, the following, all of which are identified in one or both Common Grant Rules:

(g) In-State or Local Geographic Restrictions. Specifying in-State or local geographical preferences, or evaluating bids or proposals in light of in-State or local geographic preferences, even if those preferences are imposed by State or local laws or regulations. In particular, 49 U.S.C. Section 5325(i) prohibits an FTA recipient from limiting its bus purchases to in-State dealers. Exceptions expressly mandated or encouraged by Federal law include the following:

1 Architectural Engineering (A&E) Services. 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.
2. **Licensing.** A State may enforce its licensing requirements, provided that those State requirements do not conflict with Federal law.

3. **Major Disaster or Emergency Relief.** Federal assistance awarded under the Stafford Act, 42 U.S.C. Section 5150, to support contracts and agreements for debris clearance, distribution of supplies, reconstruction, and other major disaster or emergency assistance activities permits a preference, to the extent feasible and practicable, for organizations, firms, and individuals residing or doing business primarily in the area affected by a major disaster or emergency.
Selected Federal Requirements

- Cargo Preference Act
- Fly America provisions
- Buy America provisions
- Pre-Award and Post Delivery Audits
- Disadvantaged Business Enterprise
- Anti-Discrimination clauses
- Protection of environment
- Bus Testing Requirement

Selected Federal Requirements, cont.

- Termination of contracts
  - For convenience
  - For default (for cause)
- Liquidated Damages
- Progress Payments
- Advance Payments
- Contract Work Hours and Safety Standards
- ADA Accessibility Specifications for Transportation Vehicles
Federal Requirements

Cargo Preference Act

- Applies to all contracts involving equipment, materials, or commodities that may be transported by ocean vessels
- Requires contractor to use U.S. flag commercial vessels, if available at fair and reasonable rates

Federal Requirements

Fly America Provisions

- U.S. Federal Government will not participate in costs of air transportation of any person involved in or property acquired for the project, unless that transportation is provided by U.S. air carriers to the extent service by those carriers is available
Federal Requirements

Buy America Provisions

- 49 CFR Part 661
  - Applies to contracts for acquisition of rolling stock in excess of $100,000
  - Domestic content requirement (60%) and domestic final assembly requirement
  - Certification of compliance mandatory with receipt of bid/proposal

Federal Requirements

Pre-Award and Post-Delivery Audits

- Pre-Award Buy America Certification
- Pre-Award Purchaser's Requirement Certification
- Pre-Award Federal Motor Vehicle Safety Standards (FMVSS) Certification
- Post-Delivery Buy America Certification
- Post-Delivery Purchaser's Requirement Certification
- Post-Delivery FMVSS Certification
Federal Requirements

Disadvantaged Business Enterprise

- Applies to all DOT-assisted contracts
- Grantee and contractor agree it will take all necessary and reasonable steps required by DOT regulations to ensure eligible DBEs have the maximum feasible opportunity to participate in third party contracts

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Federal Requirements

Disadvantaged Business Enterprise

- Special Requirements for Rolling Stock
  - Transit Vehicle Manufacturers (TVM) submit an annual goal to the FTA for approval
  - TVMs certify to the agency in the bid package that the TVM is in compliance with 49 CFR 26.49
  - Agency may, with FTA approval, set a project specific goal
Federal Requirements

Anti-Discrimination Clauses

- Each third party contractor at any tier will comply with the requirements of the Title VII of the Civil Rights Act of 1964, as amended
  - Will not discriminate on the basis of race, color, creed, sex, disability, age, or national origin

Federal Requirements

Protection of Environment

- Obligated to meet any federal and state law imposing environmental and resource conservation requirements applicable to the project
- Contractor obligations primarily complying with Clean Air Act and Clean Water Act
Federal Requirements

Bus Testing Requirement

- Agency must certify, before expending Federal assistance on a new bus model or a model with a major change in configuration
  - The bus model will have been tested at the FTA's bus testing facility
  - The agency will have received a copy of the test report and reviewed it

FTA Circular 4220.1F (Page IV-19), Chapter IV, 2.e(7)

*Bus Testing.* Each third party contract to acquire a new bus model or a bus with significant alterations to an existing model must include provisions to assure compliance with applicable requirements of FTA regulations, "Bus Testing," 49 CFR Part 665.
Federal Requirements

Termination of Contracts

- FTA Circular 4220.1F provides requirements for contract clauses that allow for termination for cause and for convenience by the grantee, including the manner by which it will be effected and the basis for settlement
  - All contracts in excess of $10,000
Federal Requirements

Liquidated Damages

- Chapter IV: The Recipient’s Property and Services Needs and Federal Requirements Affecting Those Needs
  - Page IV – 12: Liquidated Damages

FTA Circular 4220.1F Chapter IV, 2.b.(6)(b):

Liquidated Damages. FTA has determined that a recipient may use liquidated damages if the recipient reasonably expects to suffer damages through delayed contract completion, or if weight requirements are exceeded, and the extent or amount of such damages are uncertain and would be difficult or impossible to determine. The rate and measurement standards must be calculated to reasonably reflect the recipient’s costs should the standards not be met, and must be specified in the solicitation and contract. The assessment for damages is often established at a specific rate per day for each day beyond the contract’s delivery date or performance period. A measurement other than a day or another period of time, however, may be established if that measurement is appropriate, such as weight requirements in a rolling stock purchase. The procurement file should include a record of the calculation and rationale for the amount of damages established. Any liquidated damages recovered must be credited to the project account involved unless FTA permits otherwise. We also refer you to Chapter V, paragraph 5(a)(1) for a discussion of how liquidated damages can be used to encourage settlements.
Federal Requirements

Liquidated Damages

- Language of your clause may be controlled by state law

- Document the basis of the liquidated damage amount (e.g., per day) included in the clause
  - If amount is determined to be a "penalty," it will not be enforced

- Be careful, the contractor will include some cost factor in its bid to cover the risk if paying liquidated damages
  - This is a reality of fixed price contracting

Circular 4220.1F, Chapter V, 4.b.(2) states:
If the third party contract includes a liquidated damages provision, FTA expects the recipient to credit any liquidated damages recovered to the project, unless FTA permits other uses of the liquidated damages. For example, in negotiating the terms of a claim or litigation settlement, it may be reasonable for the recipient to exchange some or all liquidated damages that may be due the recipient for additional property or services.
Federal Requirements

Progress Payments

- Chapter IV: The Recipient's Property and Services Needs and Federal Requirements Affecting Those Needs
  - Page IV - 11: Progress Payments
  - Need for milestones
  - Payment for spare parts

FTA Circular 4220.1F Chapter IV, 2.b.(5)(c):

**Progress Payments.** Progress payments are payments for contract work that has not been completed. The recipient 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.

1 **Adequate Security for Progress Payments.** Adequate security for progress payments may include taking title or obtaining a letter of credit or taking equivalent measures to protect the recipient's financial interest in the progress payment. Adequate security should reflect the practical realities of different procurement scenarios and factual circumstances. FTA acknowledges the practical reality that taking title to work in progress may not be desirable in some circumstances. The recipient should always consider the costs associated with providing security (for example, the recipient may need to acquire bonds or letters of credit in the commercial marketplace) and the impact of those costs on the contract price, as well as the consequences of incomplete performance.

2 **Adequate Documentation.** Sufficient documentation is required to demonstrate completion of the amount of work for which progress payments are made.

3 **Percentage of Completion Method.** The Common Grant Rules require that any progress payments for construction contracts be made on a percentage of completion method described therein. The recipient, however, may not make progress payments for other than construction contracts based on this percentage method.
Federal Requirements

Advance Payments

- Chapter IV: The Recipient's Property and Services Needs and Federal Requirements Affecting Those Needs
  ➢ Page IV – 10: Advance Payments

FTA Circular 4220.1F Chapter IV, 2.b.(5)(b):

**Advance Payments.** Advance payments are payments made to a contractor before the contractor incurs contract costs. The recipient may use its local share funds for advance payments. However, if there is no automatic preaward authority for its project, then advance payments made with local share funds before FTA assistance has been awarded, or before a letter of no prejudice has been issued or other preaward authority has been provided, or before FTA approval for the specific advance payment has been obtained, are ineligible for reimbursement. The following principles and restrictions apply:

1 **Use of FTA Assistance Prohibited.** The recipient 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.

2 **Exceptions for Sound Business Reasons.** Apart from advance payments that are customary, as discussed further, FTA does occasionally make exceptions to its advance payment prohibitions, if the recipient can provide sound business reasons for doing so and has obtained FTA's advance written concurrence. A recipient that seeks to use FTA assistance to support advance payments should contact the regional office administering its project to obtain FTA concurrence.
a Adequate Security for Advance Payments. FTA recognizes that advance payments may be needed for certain costs supported by sound business judgment. Adequate security for the advance payment is an essential pre-condition to FTA's concurrence in the use of FTA or local share funds.

b Customary Advance Payments. FTA recognizes that advance payments are typically required for, but are not limited to, public utility connections and services, rent, tuition, insurance premiums, subscriptions to publications, software licenses, construction mobilization costs, transportation, hotel reservations, and conference and convention registrations. Accordingly, the recipient may use FTA assistance to support or reimburse the costs of such acquisitions. FTA concurrence is required only when such advance payment or payments customarily required in the marketplace exceed $100,000.

In summary, if there are sound business reasons justifying the advance payment and adequate security for the payment, FTA will generally concur in a written request for an exception.
Federal Requirements

Contract Work Hours and Safety Standards

- Chapter IV: The Recipient's Property and Services Needs and Federal Requirements Affecting Those Needs
  - Page IV - 13: Labor
  - Applies to rolling stock contracts over $100,000

FTA Circular 42201.1F, IV.2.c(1)

**Labor.** The following Federal labor protection laws and regulations may affect the types of property and services that may be acquired with FTA assistance:

(a) **Wage and Hour Requirements.** The Common Grant Rules direct the recipient to include provisions in its third party contracts requiring the contractor to compute the wages of every mechanic and laborer based on a standard workweek of 40 hours. Work in excess of the standard workweek is permitted if the worker is compensated at a rate of not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in the workweek. The Common Grant Rules require these provisions for compliance with Sections 102 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. Section 3702, and Department of Labor (DOL) regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 CFR Part 5. Section 4104(c) of the Federal Acquisition Streamlining Act of 1994, 40 U.S.C. Section 3701(b)(3)(A)(iii), increased the wage and hour thresholds of $2,000 for construction work and $2,500 for nonconstruction work set forth in the Common Grant Rules to $100,000. A federally assisted contract must exceed $100,000 before these wage and hour requirements apply to that contract.
Federal Requirements

ADA Accessibility Specifications for Transportation Vehicles

- Chapter IV: The Recipient's Property and Services Needs and Federal Requirements Affecting Those Needs
  - Page IV – 20: Accessibility

FTA Circular 42201.1F, IV.2.e.

Rolling Stock—Special Requirements. The following Federal laws and regulations impose requirements that may affect rolling stock procurements:

Federal Requirements

Additional Selected Clauses
- Changes
- Dispute resolution
- Performance/payment bonds
- Exercise of options

Federal Requirements

Changes
- Possibly the most important clause in the contract
- May have different changes clauses for different commodities or services being procured
- Craft these clauses carefully
Federal Requirements

Dispute Resolution

- FTA Circular 4220.1F addresses the responsibility of the grantee to settle all contractual and administrative issues arising out of procurements, including disputes and claims
- FTA will not substitute its judgment for that of the grantee unless the matter is primarily a federal concern

Federal Requirements

Dispute Resolution

- How and in what forum the dispute is resolved may be a matter of state or local law
- If possible, initially consider Alternative Dispute Resolution possibilities, rather than formal proceedings
- Very distracting but necessary
- Documentation is absolutely critical
Federal Requirements

Performance/Payment Bonds

- **Not required** by the FTA for rolling stock procurements
- If agency feels it has a material risk of loss because of failure of the prospective contractor, consider a Bank Letter of Credit or Corporate Guarantee
- There is a cost for performance sureties
- You, the purchaser, will pay for what you get
Federal Requirements

Options

- Unilateral right of the agency to purchase additional buses within a specific period of time
- Quantities must be stated in the original contract and may not exceed the agency’s realistic needs.
- Must be evaluation as part of contract award
- Contract term including options may not exceed five years
- Agencies may buy buses using options from another agency’s contract (Piggybacking)
- Must determine the option price is fair and reasonable using cost or price analysis

FTA Circular 4220.1F (Page V-5)

7.a (1) Exercise of Options. A recipient may use contract options held by another recipient with the following limitations:

(a) Consistency with the Underlying Contract. FTA expects the recipient to ensure that the terms and conditions of the option it seeks to exercise are substantially similar to the terms and conditions of the option as stated in the original contract at the time it was awarded.

(b) Price. The recipient may not exercise an option unless it has 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.

(c) Awards Treated as Sole Source Procurements. The following actions constitute sole source awards:

1 Failure to Evaluate Options Before Awarding the Underlying Contract. If a contract has one or more options and those options were not evaluated as part of the original contract award, exercising those options after contract award will result in a sole source award.
2 Negotiating a Lower Option Price. Exercising an option after the recipient has negotiated a lower or higher price will also result in a sole source award unless that price can be reasonably determined from the terms of the original contract, or that price results from Federal actions that can be reliably measured, such as changes in Federal prevailing labor rates, for example.

In the circumstances described in this paragraph, FTA assistance may be used to support a sole source award only if that award can be justified under FTA's third party contract standards for sole source awards.
Summary

- Your supplier partners understand that you have federal obligations, but you don’t need to burden them with unnecessary clauses or legal research.
- Use industry outreach because each clause may pose some risk on your supplier and they can help you assess the cost.
Module 2
Bus Procurement Process

Module Objectives

By the end of this module, you will be able to:

- Identify specific requirements related to bus procurements
- Put together a plan for conducting your procurement and for administering the resulting contract
Planning for Bus Procurements

Three considerations:

- Acquisition planning
- Annual planning
- Relationship to the Transportation Improvement Plan (TIP) process

Acquisition Planning

- Identifies major procurements occurring over the next 2 – 5 years
  - Depends upon your agency, its operating needs and capital projects
- Fleet planning for buses is a major element and needs to take place as part of the effort
Acquisition Planning

Market outreach

- Exchange plans with bus manufacturing market
  - Learn market background and status
  - Prepare market for upcoming requirements
- While plans are still forming, there is more knowledge to gain from the market and less of a chance for an unfair advantage than after the plan is set
- Formal and informal industry outreach

Annual Planning

- Enables better business decision-making
- Makes budget process work smoother
Annual Planning

- Joint procurements
- State and Local government purchasing schedules
- Assignment of Contract Rights
  - "Piggyback" contracting
  - Assignment of options
Annual Planning

Chapter IV: The Recipient's Property and Services Needs and Federal Requirements Affecting Those Needs

- Page IV-2: Joint Procurements

FTA Circular 4220.1F Chapter IV, 1.c.:

Procurement Size.

(1) Joint Procurements. It may be economically advantageous for a recipient to enter into a joint procurement with others that have similar needs. The recipient responsible for undertaking the joint procurement may, upon contract award, assign to the other participants responsibilities for administering those parts of the contract affecting their property or services. Participation in a joint procurement, however, does not relieve any participating recipient from the requirements and responsibilities it would have if it were procuring the property or services itself, and does not relinquish responsibility for the actions of other participants merely because the primary administrative responsibility for a particular action resides in an entity other than in itself.
Annual Planning

Chapter V: Sources

- Page V-2: State or Local Government Purchasing Schedules
  - Similar to the General Services Administration's (GSA) Cooperative Purchasing Program available for Federal Government use
  - Use is encouraged under the Common Grant Rule
  - All FTA and federal requirements apply

FTA Circular 4220.1F Chapter V, 4.:

**STATE OR LOCAL GOVERNMENT PURCHASING SCHEDULES OR PURCHASING CONTRACTS.**

FTA uses the term “state or local government purchasing schedule” to mean an arrangement that a State or local government has established with several or many vendors in which those vendors agree to provide essentially an option to the State or local government, and its subordinate government entities, to acquire specific property or services in the future at established prices. These arrangements are somewhat similar to the General Services Administration’s (GSA) Cooperative Purchasing Program available for Federal Government use. If the State or local government wishes to permit others to use its schedules, the State or local government might seek the agreement of the vendor to provide the listed property or services to others with access to the schedules, or it may permit the vendor to determine whether or not it wishes to do so.

a. **Use Encouraged.** The Common Grant Rule for governmental recipients encourages recipients and subrecipients to enter into State and local intergovernmental agreements for procurements of property or services. If so permitted by State or local authorities, a non-governmental recipient may also use State and local sources of property and services.

b. **All FTA and Federal Requirements Apply.** When obtaining property or services in this manner, the recipient must ensure all Federal requirements, required clauses,
and certifications (including Buy America) are properly followed and included, whether in the master intergovernmental contract or in the recipient's purchase document. One way of achieving compliance with FTA requirements is for all parties to agree to append the required Federal clauses in the purchase order or other document that effects the recipient's procurement. When buying from these schedules, the recipient should obtain Buy America certification before entering into the purchase order. If the product to be purchased is Buy America compliant, there is no problem. If the product is not Buy America compliant, the recipient will need to obtain a waiver from FTA before proceeding.
Annual Planning

Chapter V: Sources

- Page V-5: Exercise of Options
  - Options within an existing Agency contract
  - Options obtained from another Agency

FTA Circular 4220.1F, Chapter V, 7.a.(1) states:

**Exercise of Options.** A recipient may use contract options held by another recipient with the following limitations:

(a) **Consistency with the Underlying Contract.** FTA expects the recipient to ensure that the terms and conditions of the option it seeks to exercise are substantially similar to the terms and conditions of the option as stated in the original contract at the time it was awarded.

(b) **Price.** The recipient may not exercise an option unless it has 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.

(c) **Awards Treated as Sole Source Procurements.** The following actions constitute sole source awards:

1. **Failure to Evaluate Options Before Awarding the Underlying Contract.** If a contract has one or more options and those options were not evaluated as part of the original contract award, exercising those options after contract award will result in a sole source award.

2. **Negotiating a Lower Option Price.** Exercising an option after the recipient has negotiated a lower or higher price will also result in a sole source award unless that price can be reasonably determined from the terms of the original contract, or that
price results from Federal actions that can be reliably measured, such as changes in Federal prevailing labor rates, for example.

In the circumstances described in this paragraph, FTA assistance may be used to support a sole source award only if that award can be justified under FTA's third party contract standards for sole source awards.
Annual Planning

Chapter V: Sources

- Impermissible Actions:
  - Page V-7: Improper Contract Expansion
  - Page V-7: Cardinal Changes – "Tag-ons"

FTA Circular 4220.1F, Chapter V, 7.b.(1)

Existing Contracts

b. Impermissible Actions. A recipient may not use Federal assistance to finance:

(1) Improper Contract Expansion. A contract has been improperly expanded when it includes a larger scope, greater quantities, or options beyond the original recipient’s reasonably anticipated needs. A contract has also been improperly expanded when excess capacity has been added primarily to permit assignment of those contract rights to another entity. The Common Grant Rules require the recipient to have procurement procedures that preclude the recipient from acquiring property or services it does not need.

(2) Cardinal Changes. A significant change in contract work (property or services) that causes a major deviation from the original purpose of the work or the intended method of achievement, or causes a revision of contract work so extensive, significant, or cumulative that, in effect, the contractor is required to perform very different work from that described in the original contract, is a cardinal change. Such practices are sometimes informally referred to as "tag-ons." A change within the scope of the contract (sometimes referred to as an "in-scope" change) is not a "tag-on" or cardinal change.
(a) **Identifying Cardinal Changes.** Although FTA has provided additional guidance in its Best Practices Procurement Manual, FTA has not developed a finite list of acceptable contract changes. Recognizing a cardinal change to a third party contract can be difficult. A cardinal change cannot be identified easily by assigning a specific percentage, dollar value, number of changes, or other objective measure that would apply to all cases.

(b) **Changes in Quantity.** To categorize virtually any change in quantity as a prohibited cardinal change (sometimes referred to as an "out-of-scope" change) fails to account for the realities of the marketplace and unnecessarily restricts a recipient from exercising reasonable freedom to make minor adjustments contemplated fairly and reasonably by the parties when they entered into the contract. The U.S. Supreme Court decision in *Freund v. United States*, 260 U.S. 60 (1922) supports FTA's policy.

(c) **Tests.** Among other things, customary marketing practices can influence the determination of which changes will be "cardinal." Other tests involve the nature and extent of the work to be performed, the amount of effort involved, whether the change was originally contemplated at the time the original contract was entered into, or the cumulative impact on the contract's quantity, quality, costs, and delivery terms.

(d) **Rolling Stock.** In the case of rolling stock, a major change in quantity or a substitution of major end items not contemplated when competition for the original award took place would generally be a cardinal change. Another cardinal change would, at this time, include a change from a high-floor to a low-floor vehicle. Changing an engine might result in a cardinal change depending on the circumstances surrounding the project and whether a compatible replacement could be obtained through competition. FTA, however, considers changes to seating, fabrics, and colors, exterior paint schemes, signage, and floor covering, and other similar changes to be permissible changes.

(e) **Federal Procurement Standards.** The broader standards applied in Federal contracting practice reflected in Federal court decisions, Federal Boards of Contract Appeals decisions, and U.S. Comptroller General decisions provide guidance in determining whether a change would be treated as a cardinal change. FTA does not imply that these Federal procurement decisions are controlling. FTA intends to consider the collective wisdom within these decisions in determining the nature of third party contract changes along the broad spectrum between permissible changes and impermissible cardinal changes. Other guidance can be found in FTA's Best Practices Procurement Manual and "Frequently Asked Questions" at the FTA Web site: http://www.fta.dot.gov/funding/thirdpartyprocurement/grants_financing_6039.html.

FTA intends to monitor its recipients and oversight contractors to ensure that this concept is well understood and uniformly applied. This approach permits greater latitude but, because it requires analysis, it can sometimes require a greater knowledge of Federal contracting practices. In any event, before attempting to change the terms of its contract, the recipient should review the contract's provisions to ensure that the contract permits the change sought.
FTA Circular 4220.1F, Chapter IV, 2.b.(3)

**Period of Performance.** FTA expects the recipient to use sound business judgment and be judicious in establishing and extending a contract's period of performance.

(a) **General Standards.** The period of performance generally should not exceed the time necessary to accomplish the purpose of the contract. The recipient should also consider competition, pricing, fairness, and public perception. The recipient's procurement files should document its rationale for determining the performance period designated for each contract.

(b) **Federal Restrictions.** Except for procurements of rolling stock and replacement part contracts, which are limited by law to five (5) years as discussed in subsection 2.e of this Chapter, the recipient's other third party contracts (such as property, services, leases, construction, revenue, and so forth) are not encumbered by Federal requirements restricting the maximum periods of performance. Nevertheless, the duration of the recipient's other contracts must be reasonable.

(c) **Time Extensions.** Consistent with the general tone of the circular, contract time extensions will be considered in light of whether they are permissible changes or impermissible cardinal changes. Once the recipient awards the third party contract, an extension of the contract term length that amounts to a cardinal change will require a sole source justification.
Procurement/Contracting Concepts

...the fundamental principles upon which durable procurement systems rest...

1. Competition
2. Ethics
3. Predictability (stability, advanced publication, accountability)
4. Clear Statement of Procurement Needs
5. Equal Treatment of Bidders/Offerors...

FTA Circular 4220.1F, Chapter VI – PROCEDURAL GUIDANCE FOR OPEN MARKET PROCUREMENTS

1. COMPETITION REQUIRED. Except as permitted by Federal law or regulations, the Common Grant Rules require a recipient of Federal assistance to use third party procurement procedures that provide full and open competition. The Federal Transit Administration's (FTA) enabling legislation at 49 U.S.C. Section 5325(a), also requires an FTA recipient to conduct all third party procurements financed under 49 U.S.C. Chapter 53 in a manner that provides full and open competition as determined by FTA. The recipient may make third party contract awards on the basis of:

a. Solicitation by the Recipient. Compliance with the solicitation procedures described in this Chapter will fulfill FTA requirements for “full and open competition.”

b. Unsolicited Proposals. A recipient may also enter into contracts based on an unsolicited proposal, as defined in Chapter I of this circular, when authorized by applicable State or local law or regulation. Receipt of an unsolicited proposal does not, by itself, justify contract award without providing for full and open competition. Unless the unsolicited proposal offers a proprietary concept that is essential to contract performance, FTA expects the recipient to seek competition. (NOTE: continuing language is not included)
Competition

Chapter VI: Procedural Guidance for Open Market Procurements

- Page VI – 5: Organizational Conflicts of Interest

FTA Circular 4220.1F, Chapter VI, 2.a.(4)(h)

Organizational Conflicts of Interest. Engaging in practices that result in organizational conflicts of interest as prohibited by the Common Grant Rules:

1 Occurrence. An organizational conflict of interest occurs when any of the following circumstances arise:

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

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

   c Biased Ground Rules. During the conduct of an earlier procurement, the contractor has established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents.

2 Remedies. FTA expects the recipient to analyze each planned acquisition in order to identify and evaluate potential organizational conflicts of interest as early in the acquisition process as possible, and avoid, neutralize, or mitigate potential conflicts before contract award.
FTA Circular 4220.1F, Chapter III, 1.

WRITTEN STANDARDS OF CONDUCT. The Common Grant Rules require each recipient to maintain written standards of conduct governing the performance of its employees that are engaged in or otherwise involved in the award or administration of third party contracts.

a. Personal Conflicts of Interest. As provided in the Common Grant Rules and in the Federal Transit Administration (FTA) Master Agreement, no employee, officer, agent, or board member, or his or her immediate family member, partner, or organization that employs or is about to employ any of the foregoing individuals may participate in the selection, award, or administration of a contract supported with FTA assistance if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when any of those individuals previously listed has a financial or other interest in the firm selected for award.
Develop Specifications

Chapter III: The Recipient's Responsibilities
  • Page III–2: Solicitations

FTA Circular 4220.1F, Chapter III, 3.a.(1)

Solicitations. The following standards apply to solicitations:

(a) Clear Descriptions. A clear and accurate description of the technical requirements for the material, product, or service to be procured is required (discussed further in Chapter VI of this circular).

(b) Nonrestrictive Specifications. In competitive procurements, the description may not contain features that unduly restrict competition. Notably, FTA may not finance procurements that use exclusionary or discriminatory specifications (discussed further in Chapter VI of this circular).
Section A

Formal Competitive Methods

Formal Competitive Methods

- Sealed bids (Invitation For Bids)
- Competitive Proposals (Requests For Proposals)
Principles of Full and Open Competition

Primary goal
- Obtain the best quality product and service at minimum cost

Secondary goal
- Guard against favoritism and profiteering at public expense
- Provide equal opportunities to participate in public business to every potential offeror

Principles of Full and Open Competition

- Partner relationship applies during solicitation
- You have an affirmative obligation to treat offerors fairly, as well as an interest
  - In the health of the supply industry and
  - In assuring that all have an open opportunity to compete so you get best value
Sealed Bids vs. Competitive Proposals

Class survey:

- How many of you have not issued a formal solicitation (IFB or RFP)?
- How many of you have processed a sealed bid (IFB) from solicitation through award?
- How many of you have processed a competitive sealed proposal (RFP) from solicitation through award?
- How many of you have completed a bus procurement from solicitation through award?

Sealed Bids vs. Competitive Proposals

Discussion

- What are some factors that you would consider when deciding which method of procurement to choose?
Sealed Bids vs. Competitive Proposals

State restrictions on methods of competition:

- How important is price?
- Status of specifications
- Need for discussions with offerors
- How soon needed?

Common Elements of Solicitation Process

- Bids and proposals must be **responsive** – meeting terms and conditions of specification
- Bidders and proposers must be **responsible** – actually execute and perform the work
Common Elements of Solicitation Process

Advertising and publicizing solicitation:
- FTA Circular 4220.1F, requires that procurements are to be "publicly advertised" or "publicized"
- State law frequently addresses manner of advertisement
  - Check your state requirements

Common Elements of Solicitation Process

Development of a Source Selection Plan
- Procurement History:
  - Procurement Method
  - Contract Type
  - Contractor Selection
  - Cost or Price
  - Reasonable Documentation
FTA Circular 4220.1F, Chapter VI, 3.c.

Sealed Bids (Formal Advertising). The Common Grant Rule for governmental recipients acknowledges sealed bidding to be a generally accepted procurement method in which bids are publicly solicited, and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is lowest in price.

(1) When Appropriate. The Common Grant Rule for government recipients states a preference for the sealed bids procurement method for acquiring property, construction, and other services. Sealed bid procurements should be used when the following circumstances are present:

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

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

(c) Fixed Price Contract. The procurement generally lends itself to a firm fixed price contract.
(d) **Price Determinative.** The successful bidder can be selected on the basis of price and those price related factors listed in the solicitation including, but not limited to, transportation costs, life cycle costs, and discounts expected to be taken. Apart from responsibility determinations discussed in later sections of this Chapter, contractor selection may not be determined on the basis of other factors whose costs cannot be measured at the time of award.

(e) **Discussions Unnecessary.** Discussions with one or more bidders after bids have been submitted are expected to be unnecessary as award of the contract will be made based on price and price-related factors alone. This contrasts with Competitive Proposal procedures in which discussions with individual offerors are expected to be necessary and may take place at any time after receipt of proposals. However, a pre-bid conference with prospective bidders before bids have been received can be useful.

(2) **Procurement Procedures.** The following procedures apply to sealed bid procurements:

(a) **Publicity.** The invitation for bids is publicly advertised.

(b) **Adequate Sources.** Bids are solicited from an adequate number of known suppliers.

(c) **Adequate Specifications.** The invitation for bids, including any specifications and pertinent attachments, describes the property or services sought in sufficient detail that a prospective bidder will be able to submit a proper bid.

(d) **Sufficient Time.** Bidders are allowed sufficient time to prepare bids before the date of bid opening.

(e) **Public Opening.** All bids are publicly opened at the time and place prescribed in the invitation for bids.

(f) **Fixed Price Contract.** A firm fixed price contract is usually awarded in writing to the lowest responsive and responsible bidder, but a fixed price incentive contract or inclusion of an economic price adjustment provision can sometimes be appropriate. When specified in the 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.

(g) **Rejection of Bids.** Any or all bids may be rejected if there is a sound, documented business reason.

FTA strongly encourages non-governmental recipients to use similar procedures.
Sealed Bids (Invitation for Bids)

Circular contains five (5) requirements that should be present in order for sealed bidding to be appropriate:

1. Precise specifications
2. Adequate sources
3. Fixed price contract
4. Price determinative
5. Discussions unnecessary

Sealed Bids (Invitation for Bids)

Circular lists seven (7) procedures if this method is used:

1. Publicity
2. Adequate sources
3. Adequate specifications
4. Sufficient time
5. Public opening
6. Fixed price contracts
7. Rejection of bids
Sealed Bids (Invitation for Bids)

Solicitation

- Clearly anticipate procedural questions that might arise
- Instructions are clear as to time and date of receipt of bids
- Instructions are clear as to what must be submitted with bids
- Addendums have been issued timely
- Specifications support a firm fixed-price contract

FTA
Sealed Bids (Invitation for Bids)

Solicitation Process for Buses:

- Request for Pre-Offer Change or Approved Equals (RFA)
- Responses to RFAs
- Optional Step:
  - Request for Reconsideration
  - Responses to Request for Reconsideration

FTA Circular 4220.1F, Chapter IV,3.a.(1)(e)

Brand Name or Equal. When it is impractical or uneconomical to provide a clear and accurate description of the technical requirements of the property to be acquired, a "brand name or equal" description may be used to define the performance or other salient characteristics of a specific type of property or services sought. The specific features or salient characteristics of the named brand which must be met by offerors of "an equal" proposal must be clearly stated (discussed further in Chapter VI of this circular).
Sealed Bids (Invitation for Bids)

Bid opening

- Bids are publicly opened at time and place prescribed in the IFB
- Bid opening is a public event – cannot exclude anyone and the bids must be available for review by anyone present
- Does your solicitation address consequences of the late bid?
- What happens at your agency if you only get a single bid when the bids are opened?

Sealed Bids (Invitation for Bids)

Single bid

- State law may dictate result for you, such as canceling and re-advertising
- Single bidder may be non-responsive or non-responsible in which case, cannot award
- If bidder is responsive and responsible and you can determine competition was adequate and price is fair and reasonable, you may be able to award the contract
Sealed Bids (Invitation for Bids)

Single bid – Why only one?
- You should attempt to ascertain why only one bid and document that reason
- May have been multiple bidders, but all but one were determined to be non-responsive – problem with specifications?
- Were the specifications restrictive? Minimum needs still okay?
- Have you talked with offerors you expected to bid but did not?

Sealed Bids (Invitation for Bids)

Single bid – Is price bid reasonable?
- You must perform a price or cost analysis on this bid
- If you cannot determine price is fair and reasonable, you cannot award
- If you determine that the price is fair and reasonable based on the price or cost analysis and there was full and open competition even though no other bidders submitted – you may accept the bid
Sealed Bids (Invitation for Bids)

Single bid – Is price bid reasonable?

- You may also be able to negotiate with bidder if it is otherwise responsive and responsible – may be issue of state law which may not allow negotiations under these circumstances
  - Allowed as an “Other than Full & Open Competition” under the provisions of FTA Circular 4220.1F
  - No need to establish sole source justification if fair and reasonable bid was accepted after full and open competition
- If you cannot determine price is fair and reasonable, you cannot award

Sealed Bids (Invitation for Bids)

Responsive bidder

- Conforms in all material aspects to the requirements of the solicitation at the scheduled time of submission and does not require further discussions with the bidder
  - Definition may vary from jurisdiction to jurisdiction
- Concept of PDQ Price
  - Product, Delivery, Quality, Price
Sealed Bids (Invitation for Bids)

Responsive bidder

- Rigid rule that may be difficult to explain
  - Requiring strict responsiveness enables bidders to stand on equal footing and maintains the integrity of the sealed bidding system

Sealed Bids (Invitation for Bids)

Bid mistakes – How are they discovered?

- Review by procurement official
- Low bid reviewed by any other bidder who finds mistake
- Low bidder left “too much money on the table” and wants out
Sealed Bids (Invitation for Bids)

Bid mistakes – What are the categories of bid mistakes?

- Minor informalities or irregularities discovered in bids prior to award
- Obvious or apparent clerical mistakes discovered prior to award
- Mistakes other than the above discovered prior to award
- Mistakes discovered after award

Sealed Bids (Invitation for Bids)

Bid mistakes – What do we do?

- Generally, if either minor informalities or irregularities or apparent clerical mistakes are alleged before award and proven, the bidder will be allowed to correct the mistake
- Generally, mistakes other than those above or mistakes discovered after award, even if proven, will not be allowed to be corrected
  - In some situations, the bidder might be allowed to withdraw its bid
- If in doubt, consult legal counsel regarding bid mistakes
Competitive Proposals

Second formal method of procurement. Also known as:

- Competitive negotiation
- Requests for Proposals
Competitive Proposals

Chapter VI: Procedural Guidance for Open Market Procurements

- Page VI – 10: Competitive Proposals Definition and Requirements

FTA Circular 4220.1F, Chapter VI, 3.d

Competitive Proposals (Request for Proposals). The Common Grant Rule for governmental recipients acknowledges the use of competitive proposals to be a generally accepted procurement method when the nature of the procurement does not lend itself to sealed bidding and the recipient expects that more than one source will be willing and able to submit an offer or proposal.

(1) When Appropriate. Competitive proposals should be used when any of the following circumstances are present:

(a) Type of Specifications. The property or services to be acquired are described in a performance or functional specification; or if described in detailed technical specifications, other circumstances such as the need for discussions or the importance of basing the contract award on factors other than price alone are present.

(b) Uncertain Number of Sources. Uncertainty about whether more than one bid will be submitted in response to an invitation for bids and the recipient lacks the authority or flexibility under State or local law to negotiate the contract price if it receives only a single bid.
(c) **Price Alone Not Determinative.** Due to the nature of the procurement, contract award need not be based exclusively on price or price-related factors. In different types of negotiated acquisitions, the relative importance of cost or price may vary. When the recipient's material requirements are clearly definable and the risk of unsuccessful contract performance is minimal, cost or price may play a dominant role in source selection. The less definitive the requirements, the more development work required, or the greater the performance risk, the more technical or past performance considerations may play a dominant role in source selection and supersede low price.

(d) **Discussions Expected.** Separate discussions with individual offeror(s) are expected to be necessary after they have submitted their proposals. This contrasts with Sealed Bids (Formal Advertising) procedures in which discussions with individual bidders are not likely to be necessary, as award of the contract will be made based on price and price-related factors alone.

(2) **Procurement Procedures.** The following procedures apply to procurements by competitive proposals:

(a) **Publicity.** The request for proposals is publicly advertised.

(b) **Evaluation Factors.** All evaluation factors and their relative importance are specified in the solicitation; but numerical or percentage ratings or weights need not be disclosed.

(c) **Adequate Sources.** Proposals are solicited from an adequate number of qualified sources.

(d) **Evaluation Method.** A specific method is established and used to conduct technical evaluations of the proposals received and to determine the most qualified offeror.

(e) **Price and Other Factors.** An award is made to the responsible offeror whose proposal is most advantageous to the recipient's program with price and other factors considered.

(f) **Best Value.** If permitted under its State or local law, the recipient may award the contract to the offeror whose proposal provides the greatest value to the recipient. To do so, the recipient's solicitation must inform potential offerors that the award will be made on a "best value" basis and identify what factors will form the basis for award. The evaluation factors for a specific procurement should reflect the subject matter and the elements that are most important to the recipient. Those evaluation factors may include, but need not be limited to, technical design, technical approach, length of delivery schedules, quality of proposed personnel, past performance, and management plan. The recipient should base its determination of which proposal represents the "best value" on an analysis of the tradeoff of qualitative technical factors and price or cost factors. Apart from the
statutory requirement that the contract must support the recipient's public transportation project consistent with applicable Federal laws and regulations, FTA does not require any specific factors or analytic process.

FTA strongly encourages non-governmental recipients to use similar procedures.
Competitive Proposals

Basic elements

- Circular lists 4 requirements that apply if this procurement method is appropriate
  1. Type of specifications
  2. Uncertain number of sources
  3. Price alone not determinative
  4. Discussions expected

Competitive Proposals

Basic elements

- Procurement procedures
  - Circular lists 6 procedures that are used
    1. Publicity
    2. Evaluation factors
    3. Adequate sources
    4. Evaluation method
    5. Price and other factors
    6. Best value
Competitive Proposals

Evaluation Methods – “Best Value” (I-2; VI-11)

- Selection of the most advantageous offer to obtain technical superiority even if the Agency must pay a premium price
- A "premium" is the difference between the price of the lowest priced proposal and the one being recommended
- The agency must disclose those factors in its solicitation. Evaluation factors may include, but are not limited to, technical design, technical approach, length of delivery schedules, quality of proposed personnel, past performance, and management plan

FTA Circular 4220.1F, Chapter 1, 5.b defines Best Value as:

Best Value describes a competitive, negotiated procurement process in which the recipient reserves the right to select the most advantageous offer by evaluating and comparing factors in addition to cost or price such that a recipient may acquire technical superiority even if it must pay a premium price. A “premium” is the difference between the price of the lowest priced proposal and the one that the recipient believes offers the best value. The term “best value” also means the expected outcome of an acquisition that, in the recipient’s estimation, provides the greatest overall benefit in response to its material requirements. To achieve best value in the context of acquisitions for public transportation purposes, the evaluation factors for a specific procurement should reflect the subject matter and the elements that are most important to the recipient. While FTA does not mandate any specific evaluation factors, the recipient must disclose those factors in its solicitation. Evaluation factors may include, but are not limited to, technical design, technical approach, length of delivery schedules, quality of proposed personnel, past performance, and management plan. This definition is intended neither to limit nor to dictate qualitative measures a recipient may employ, except that those qualitative measures must support the purposes of the Federal public transportation program.

FTA Circular 4220.1F, VI-11 states:

(f) Best Value. If permitted under its State or local law, the recipient may award the contract to the offeror whose proposal provides the greatest value to the recipient. To do so, the recipient's solicitation must inform potential offerors that the award will be made
on a “best value” basis and identify what factors will form the basis for award. The evaluation factors for a specific procurement should reflect the subject matter and the elements that are most important to the recipient. Those evaluation factors may include, but need not be limited to, technical design, technical approach, length of delivery schedules, quality of proposed personnel, past performance, and management plan. The recipient should base its determination of which proposal represents the “best value” on an analysis of the tradeoff of qualitative technical factors and price or cost factors. Apart from the statutory requirement that the contract must support the recipient's public transportation project consistent with applicable Federal laws and regulations, FTA does not require any specific factors or analytic process.
**Competitive Proposals – Basic Elements**

- Solicitation and receipt of proposals
- Evaluation of proposals
- Competitive range
- Oral interview/discussions and clarifications
- Solicitation of revised offers
- Evaluation of proposals
- Competitive range
- Discussions and Clarifications
- Solicitation of revised (best and final) offers

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**Competitive Proposals**

*Importance of Source Selection Plan (SSP)*

- SSP elements
  - Evaluation criteria – technical, cost, and relative importance of criteria
- Best practice is moving away from numerical quantitative scoring towards documenting the perceived benefits of the winner vis-à-vis the other proposals
Competitive Proposals

Preparation of SSP – lead time considerations

- Issue pre-solicitation notice
- Preparation of solicitation
- Prepare Independent Cost Estimate (ICE)
- Review solicitation
- Assemble solicitation
- Issue solicitation
- Pre-proposal conference
- Request for Pre-Offer Changes or Approved Equal
- Receipt of proposals

FTA Circular 4220.1 F, Chapter III, 3.a.(1)(e):
Brand Name or Equal. When it is impractical or uneconomical to provide a clear and accurate description of the technical requirements of the property to be acquired, a “brand name or equal” description may be used to define the performance or other salient characteristics of a specific type of property. The recipient must identify the salient characteristics of the named brand that offerors must provide.
Competitive Proposals

Preparation of SSP – lead time considerations, continued

- Evaluation of proposals
- Discussions with offerors
- Request for revised proposals
- Request for best and final offers
- Final evaluation of proposals
- Pre-Award Audits
- Review of recommendation
- Approval of recommendation
- Notice of Award

Competitive Proposals

Importance of SSP

- Evaluation team
  - How many teams do you have on an RFP procurement?
  - Who is typically on your teams?
  - Conflict of interest
  - Who needs to recuse?
- Composition
- Voting members
- Advisors
Competitive Proposals

Solicitation

- Evaluation criteria and relative importance
- Award criteria – technical vs. cost
- Award may be made on basis of original proposals

Receipt of proposals

- Does your solicitation address consequences of a late proposal?
- There is no “public opening” of proposals unless it is required by law
- A list of proposers shall be prepared in accordance with regulations, and shall be open for public inspection after contract award
Competitive Proposals

Confidentiality concerns
- Maintain integrity of procurement process
- Do not discuss outside of meetings of evaluation teams
- Form for team members to execute acknowledging confidentiality issues

Competitive Proposals

Evaluation of proposals
- Follow criteria
- Evaluate against criteria, not other offers
- Discussions among members
- Forms
  - Insist on narrative support for scores
Competitive Proposals

Competitive range

- Determined on the basis of cost and technical factors stated in the RFP
- Include all proposals that have a reasonable chance of being selected for award – if in doubt, include

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Competitive Proposals

Competitive range

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</tbody>
</table>
Competitive Proposals

Negotiations – discussions and clarifications

- If you hold negotiation sessions with one offeror, you must hold a session with all in the competitive range – do not give a competitive advantage
Competitive Proposals

Additional submissions

• Can be requested

• Request for revised proposals
  ➢ Technical and/or cost/price

• Request for best and final offer
  ➢ Technical and/or cost/price
  ➢ Avoid multiple requests for best and final offer

Competitive Proposals

Debriefing unsuccessful offerors

• Consider this "Protest Avoidance"

• Debrief offeror's proposal against evaluation criteria, not other offerors
Section B
Awarding the Contract

Awarding the Contract

- Determination of responsibility
- Suspension and debarment
- Price or cost analysis
- Pre-Award Audits
- Notification to unsuccessful bidders/proposers
- Resolution of protests
- Manner of award
- Post-award submissions by contractor
- Documentation of procurement action
Determination of Responsibility

Chapter IV: The Recipient's Property and Services Needs and Federal Requirements Affecting Those Needs

- Page IV – 4: "Responsibility" Requirements

FTA Circular 4220.1F, Chapter IV, 2:
a. Contractor Qualifications. The following Federal laws and regulations may affect contractor selection:

(1) "Responsibility" Requirements. In addition to the Common Grant Rules that require contract awards be made only to responsible contractors, Federal transit law at 49 U.S.C. Section 5325(j) limits third party contractor awards to those contractors capable of successfully performing under the terms and conditions of the proposed contract. Before selecting a contractor for award, the recipient must consider such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. Moreover, SAFETEA-LU now requires a recipient entering into a fixed guideway project contract to consider the contractor's past performance, including information reported in FTA's required Contractor Performance Assessment Reports, 49 U.S.C. Section 5325(j)(2)(C).
Determination of Responsibility

- Physical and technical capacity to perform work
- Financial responsibility – audits, D&B, financial statements
- Ability to get sureties and insurance as required
- Past performance – references
- Check Excluded Parties List System (EPLS)
COST ANALYSIS AND PRICE ANALYSIS. The Common Grant Rules require the recipient to perform a cost analysis or price analysis in connection with every procurement action, including contract modifications. The method and degree of analysis depends on the facts and circumstances surrounding each procurement, but as a starting point, the recipient must make independent estimates before receiving bids or proposals.
Price Analysis

Chapter VI: Procedural Guidance for Open Market Procurements

- Page VI – 21: Cost Analysis and Price Analysis

FTA Circular 4220.1F, Chapter VI, 6.b:

**Price Analysis.** If the recipient determines that competition was adequate, a price analysis, rather than a cost analysis, is required to determine the reasonableness of the proposed contract price. As discussed previously in subsection 3.a of this Chapter, the price analysis for micro-purchases may be limited. Similarly, the recipient may use an abbreviated price analysis for small purchases in most cases. One method to record this price analysis is through the use of a preprinted form on which a contracting officer (or other responsible person) can annotate a finding of fair and reasonable pricing and check off the most common reasons why this would be so, such as catalog or market prices offered in substantial quantities to the general public, regulated prices (for example, for many utilities purchases), or a comparison with recent prices for similar goods and services.
Price Analysis

- Negotiation Memorandum
- Assistance
  - See the "Pricing Guide for FTA Grantees"
  - Walks the procurement person through cost and price analysis

Price Analysis

- Must have effective price competition
- Is price reasonable in comparison to:
  - Prices in APTA's annual Public Transportation Vehicle Database and other market prices?
  - Past prices?
  - An Independent Cost Estimate (ICE)?
Price Analysis

Independent Cost Estimate

- Establishment of a cost estimate using a method independent from the prospective offers in advance of the offers (bids or proposals)
- One of the factors used to determine fair and reasonable pricing, but not the only factor

Price Analysis

Sealed Bids

- By the very nature of this procurement method, you are required to make an award to the lowest responsive and responsible bidder
- By comparing bids to see which is lowest, you are accomplishing a form of price analysis
Price Analysis

Competitive Proposals

- Whenever possible, negotiated contracts should also be based on adequate price competition
- If price is a "substantial factor" in the award decision, and weighted about the same as or more than the technical evaluation of what is being bought, price competition will exist
Cost Analysis

Analysis of direct and indirect costs to determine if profit and total price are reasonable and realistic

- Applicability
  - When there is inadequate price data to justify price
  - When cost and profit data have been obtained
- Instances
  - Some competitive negotiations
  - Most change orders
  - Most sole source contracts

FTA Circular 4220.1F, Chapter VI, 6:

COST ANALYSIS AND PRICE ANALYSIS. The Common Grant Rules require the recipient to perform a cost analysis or price analysis in connection with every procurement action, including contract modifications. The method and degree of analysis depends on the facts and circumstances surrounding each procurement, but as a starting point, the recipient must make independent estimates before receiving bids or proposals.

a. Cost Analysis. The recipient must obtain a cost analysis when a price analysis will not provide sufficient information to determine the reasonableness of the contract cost. The recipient must obtain a cost analysis when the offeror submits elements (that is, labor hours, overhead, materials, and so forth) of the estimated cost, (such as professional consulting and A&E contracts, and so forth). The recipient is also expected to obtain a cost analysis when price competition is inadequate, when only a sole source is available, even if the procurement is a contract modification, or in the event of a change order. The recipient, however, need not obtain a cost analysis if it can justify price reasonableness of the proposed contract based on a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation.

(1) Federal Cost Principles. Federal cost principles contain many requirements about the allowability and allocability of costs.
(2) **Profit.** FTA expects the recipient to negotiate profit as a separate element of the cost for each contract in which there has been no price competition, and in all acquisitions in which the recipient performs or acquires a cost analysis. To establish a fair and reasonable profit, the recipient needs to consider the complexity of the work to be performed, the risk undertaken by the contractor, the contractor's investment, the amount of subcontracting, the quality of the contractor's record of past performance, and industry profit rates in the surrounding geographical area for similar work.
Pre-Award Audits

- Pre-Award Buy America Certification
- Pre-Award Purchaser's Requirement Certification
- Pre-Award FMVSS Certification
- Performed prior to award of the contract

Pre-Award Buy America Certification

- Applies to contracts for rolling stock with a value greater than $100,000
- Agency must obtain a certification of compliance or non-compliance with the Buy America requirements with each bid or offer
- Cost of components and subcomponents produced in the U.S. must be more than 60 percent of the cost of all components
- Final assembly must take place in the U.S.
Pre-Award Audits

Pre-Award Buy America Certification

- Agency conducts a pre-award audit of proposed buses after having reviewed documentation provided by the manufacturer which lists:
  
  ➢ Component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs
  
  ➢ The location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly

Pre-Award Audits

Pre-Award Buy America Certification

- Calculations of domestic content:
  
  ➢ Final assembly costs and component manufacturing costs are NOT to be used when calculating percent domestic content
  
  ➢ Review the component and subcomponent listings to verify 60% domestic content
  
  ➢ Review the final assembly cost
Pre-Award Audits

Pre-Award Buy America Certification

- Calculations of domestic content:
  - Subtract the final assembly cost from the bus price to approximate total component cost and the percentage base the manufacturer used to compute domestic contribution
  - Check that the manufacturer has identified a final assembly location that is within the U.S.
  - Review the list of final assembly activities to ensure that activities at the final assembly location qualify as final assembly

Pre-Award Audits

Pre-Award Buy America Certification

- Agency prepares a certification that it:
  - Reviewed and verified 60% domestic content, AND
  - Reviewed and verified proposed U.S. final assembly location, operations and total cost, OR
  - Requested and received a Buy America waiver

- The certification, with any supporting documentation, will become part of the procurement file
Pre-Award Audits

Pre-Award Purchaser's Requirement Certification

- Agency prepares a certification that it has:
  - Checked bid specification compliance with solicitation specifications, AND
  - Completed a manufacturer's capability study
- The certification, with any supporting documentation, will become part of the procurement file

Pre-Award Audits

Pre-Award FMVSS Certification

- Agency prepares a certification that it has requested and received the manufacturer's letter stating:
  - The information to be included on the FMVSS stickers, OR
  - The buses are not subject to FMVSS
- The certification, with any supporting documentation, will become part of the procurement file
Notification to Unsuccessful Bidders/Proposers

- Usually done immediately after award of the contract
- Let them know the procurement process is over
- May be the first notification in the case of competitive sealed proposals
  - Be prepared to debrief
  - Be prepared for possible protest

Resolution of Protests

Basic principles

- Purpose – a protest is a potential or actual offeror's remedy for correcting a perceived wrong in the procurement process relating to the solicitation or award of a contract
- Remedies provided to address protests are intended to foster public confidence in the integrity of the procurement system
Resolution of Protests

Chapter VII: Protests, Changes and Modifications, Disputes, Claims, Litigation, and Settlements

- Page VII – 1: Introduction
- Page VII – 1: Protest Procedures

- Must have protest procedures
- Document the file

FTA Circular 4220.1F, Chapter VII, Introduction:

The Common Grant Rules assign responsibility to the recipient for resolving all contractual and administrative issues arising out of their third party procurements, including source evaluation and selection, including protests of awards, disputes, and claims using good administrative practices and sound business judgment. The Federal Transit Administration (FTA) also encourages the recipient to use appropriate alternative dispute resolution procedures. Neither FTA nor the Common Grant Rules relieve the recipient of any responsibility under its contracts to resolve disagreements that may arise in the course of contract formation or contract administration.

FTA is not a party to its recipients' third party contracts, and does not have any obligation to any participant in its recipients' third party contracts. In general, FTA will not substitute its judgment for that of the recipient or subrecipient unless the matter is primarily a Federal concern. Examples of "Federal concerns" include, but are not limited to, situations "where a special Federal interest is declared because of program management concerns, possible mismanagement, impropriety, waste, or fraud." Nevertheless, FTA can become involved in the recipient's administrative decisions when a recipient's protest decision is appealed to FTA, or when the recipient seeks to use FTA assistance to support the costs of settlements or other resolutions of protests, disputes, claims, or litigation.
FTA Circular 4220.1F, Chapter VII, 1.a.(1):

PROTESTS.

(1) Protest Procedures. Apart from other methods the recipient may have to resolve third party contract issues, such as mediation or arbitration, the Common Grant Rule for governmental recipients requires the recipient to have protest procedures. While the Common Grant Rule for non-governmental recipients does not impose a similar requirement on a non-governmental recipient, FTA expects each recipient to have appropriate written protest procedures, as part of its requirement to maintain or acquire adequate technical capacity to implement the project.
Resolution of Protests

Protests to FTA

- Basic principle
  - FTA allows protests under very limited circumstances

Resolution of Protests

Protests to FTA

- Issues subject to review
  - Grantee's failure to have a protest procedure
  - Grantee's failure to follow its protest procedure
  - Grantee's failure to review a complaint or protest
  - Violations of federal law or regulation
Resolution of Protests

Protests to FTA

- Issues not subject to review
  - Violations of state or local law or regulations will be under the jurisdiction of state or local authorities
- Time limits
  - Protests must be received by the appropriate FTA Regional Administrator office within 5 working days of the date the protestor has received active or constructive notice of the decision

Resolution of Protests

Protests to FTA

- Grantee obligations
  - Notify FTA upon receipt of protest related to federally funded contract
  - Forward documentation
    - Protest file and dated receipt
  - Keep FTA apprised of status of protest
Manner of Award

- For rolling stock procurements, the head of the Agency will generally recommend award to the governing board for approval.
- Once authorized, the individual to whom the authority has been granted executes the contract.
- Notification of award may be by formal letter or furnishing a copy of the executed contract.

Documentation of Procurement Action

Close out this part of the procurement process by documenting all actions relating to award:

- Determination of responsibility
- Protests all covered?
- Award authorization document
- Contract execution
- All required submissions received and complete
Section C
The Contract

What is a Contract?

- A mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them

- An agreement, enforceable by law, between two or more competent parties, to do or not do something not prohibited by law, for a legal consideration
**Type of Contract – Basis of Pricing**

Fixed price contracts

- Firm fixed price
  - Fixed figure for defined quantity of buses
  - Includes fixed rate (price per bus)
  - Imposes maximum risk on contractor
  - Imposes minimum administrative burden on owner

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**Contract Formation**

Forming the contract document

- Award and Notices of Award (Offer and Acceptance Form)
- Bilaterally executed contract
  - May be a "conformed" document that incorporates all changes, approved deviations and addendum
  - May be based on the proposer's Best and Final Offer
Special Considerations

- Create a complete and accurate document
- Avoid ambiguity –
  - Construed against the drafter (Agency)
Section D
Administering the Contract
Contract Monitoring/Administration

- Chapter III: The Recipient's Responsibilities
  > Page III – 1: Third Party Contracting Capacity
- Respond to requests for contract interpretation
- Ensure compliance with terms of contract

FTA Circular 4220.1F, Chapter III, 3.:

THIRD PARTY CONTRACTING CAPACITY. As part of an FTA recipient's obligation to maintain adequate technical capacity to carry out its project and comply with the Common Grant Rules, the recipient's third party contracting capability must be adequate to undertake its procurements effectively and efficiently in compliance with applicable Federal, State, and local requirements. The Common Grant Rules require the recipient to maintain a contract administration system to ensure that it and its third party contractors comply with the terms, conditions, and specifications of their contracts or purchase orders and applicable Federal, State and local requirements. Many FTA recipients assign contracting duties to technical, financial or management personnel. If the recipient lacks qualified personnel within its organization to undertake the various procurement tasks, such as drafting specifications, evaluating contracts, or performing internal audits for the recipient, FTA expects the recipient to acquire the necessary services from sources outside the recipient's organization. When using outside sources, the recipient should take appropriate steps to prevent or mitigate organizational conflicts of interest that would result in conflicting roles that might bias a contractor's judgment or would result in unfair competitive advantage.
Contract Monitoring/Administration

- Contract administration documentation necessity
- Post-award submissions and notice to proceed
- Pre-production meeting
- Modifying the contract
- Prototype or pilot bus, if needed
- Post-delivery audits
- Inspection and acceptance
- Contract disputes
- Terminating the contract

Contract Monitoring/Administration

Documentation necessity
- Documentation that should be kept in a centralized contract administration file
Contract Monitoring/Administration

Post-award submission by Contractor
- Performance and/or payment sureties, if required
- Insurance policies or certificates
Notice to Proceed

Contract Monitoring/Administration

Pre-production meeting
- Review conformed contract and technical specifications and bus configuration
- Set up the resident inspection program
- Establish lines of communication
- Review and clarify required documentation
- Clarify bus acceptance and delivery matters
- Identify prototype or pilot bus requirements
Contract Monitoring/Administration

Modifying the contract

- Amendments treated as sole source contracts
  - Must be within the scope of work of the contract
  - Cost or price analysis required
- Authority within agency to modify contracts
  - Constructive changes
  - In-plant inspector

FTA Circular 4220.1F, Chapter VII, 2:

CHANGES AND MODIFICATIONS.

a. The Recipient's Role and Responsibilities. The recipient is responsible for issuing, evaluating and making necessary decisions involving any change to its third party contracts, and any change orders, or modifications it may issue. The recipient is also responsible for evaluating and making the necessary decisions involving any claim of a constructive change. In general, FTA expects each recipient to comply with the following procedures:

(1) Approval Requirements. FTA expects the recipient to have cost justifications supporting each change order it may issue. FTA also expects the recipient's authorized official to approve any proposed change order before it is issued.

(2) Cost Restrictions. To be eligible for FTA assistance under the recipient's grant or cooperative agreement, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope.

b. FTA's Role and Responsibilities. FTA does not participate in the recipient's decisions involving change orders, constructive changes, or modifications, but reserves the right to review the recipient's supporting documentation as necessary to determine the extent of FTA assistance that may be used to support those costs.
Contract Monitoring/Administration

Purpose of a prototype or pilot bus

- Establishes the design and configuration of a vehicle that best meets the technical requirements of the agency
- A configuration audit should be conducted following the completion of the prototype
- Final design of the bus is complete after the configuration audit
- Post-delivery Buy America audit done at this time

Contract Monitoring/Administration

Post-delivery audits

- Post-Delivery Buy America Certification
- Post-Delivery Purchaser's Requirement Certification
- Post-Delivery FMVSS Certification

Performed after configuration of the prototype/pilot bus has been established or after production of the first serial production bus, if no prototype/pilot bus, but before title is transferred
Contract Monitoring/Administration

Post-Delivery Buy America Certification

- The post-delivery audit is similar to the pre-award audit except that it is conducted on the actual buses instead of the proposed buses
- The agency prepares a certification as in the case of the pre-award audit
- The certification, with any supporting documentation, will become part of the procurement file

Contract Monitoring/Administration

Post-Delivery Purchaser's Requirement Certification

- Ensures that buses are built to the contract specifications
  - Accurate record of a bus construction activities
  - Description of how the construction and operation of the buses fulfills the contract specifications
- In-plant inspector completes a manufacturing report
Contract Monitoring/Administration

Post-Delivery Purchaser’s Requirement Certification

- Agency prepares a certification that it has:
  - Completed in-plant inspector’s report, AND
  - Completed visual inspections and road tests, OR
  - For procurements of ten or fewer buses or modified vans, completed visual inspections and road tests

- The certification, with any supporting documentation, will become part of the procurement file

Contract Monitoring/Administration

Post-Delivery FMVSS Certification

- Agency prepares a certification that it has:
  - Verified the FMVSS sticker is affixed to each bus, OR
  - Requested and received manufacturer’s letter stating that the buses are not subject to FMVSS

- The certification, with any supporting documentation, will become part of the procurement file
Contract Monitoring/Administration

- Inspection – act of examining and testing supplies or services to determine if they conform to contract requirements
- Acceptance – act of an authorized representative approves services rendered

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Contract Monitoring/Administration

Inspection and acceptance

- Include inspection program and acceptance procedures in your contract
  - Success is measured by completeness and adequacy of program
- Consequences of acceptance
  - Acceptance of any article or service is normally conclusive except for latent defects, fraud, or such gross mistakes as amount to fraud
Contract Monitoring/Administration

In-plant inspection

- Basis for the requirement is found in FTA requirements contained in 49 CFR Part 663
- For rolling stock contracts over $100,000, must certify to the FTA that pre-award and post-delivery audits verifying compliance with Buy America provisions will be conducted
- Required for all bus orders that are more than 10 buses or modified vans
- Recommend full time inspector to oversee production

Contract Monitoring/Administration

In-plant inspection – tasks of the in-plant inspector:

- Monitor the final assembly process to ensure Buy America compliance
- Complete a final report describing the construction activities and explaining how the construction and operation of the buses fulfill the contract specifications
- Witness contractor pre-delivery/acceptance tests
- Conduct acceptance inspections and tests, including and road tests
- Release vehicles for shipment to the agency
Contract Monitoring/Administration

Contract Disputes

- Dispute resolution is a part of the contract modification process.
- Should be filed documentation including history, negotiations, evaluations, any audits, and the modification containing the settlement agreement.
- FTA is to be notified regarding disputes over $100,000.

FTA Circular 4220.1F, Chapter VII:

3. DISPUTES.

a. The Recipient’s Role and Responsibilities. The Common Grant Rules charge the recipient with responsibility for evaluating and resolving third party contract disputes. If the recipient intends to request FTA’s permission to use Federal assistance to support payments to a third party contractor to settle a dispute, or even intends to request increased Federal assistance for that purpose, the recipient’s responsibilities are as follows:

(1) Notify FTA. FTA expects the recipient to provide the following information in connection with third party contract disputes in which it is involved:

(a) Subjects. A list of disputes involving third party contracts and potential third party contracts that:

1. Have a value exceeding $100,000,
2. Involve a controversial matter, irrespective of amount, or
3. Involve a highly publicized matter, irrespective of amount.
(b) **Details.** The following information about each dispute:

1. A brief description of the dispute,
2. The basis of disagreement, and
3. If open, how far the dispute has proceeded, or
4. If resolved, the agreement or decision reached, and
5. Whether an appeal has been taken or is likely to be taken.

(c) **When and Where.** The recipient should provide this information:

1. In its next quarterly Milestone Progress Report, and
2. At its next Project Management Oversight review, if any. Small recipients may report less frequently if no disputes are outstanding.

(d) **FTA Officials to Notify.** FTA also encourages the recipient to keep its FTA project manager informed about disputes with which it is involved. In particular, the recipient should contact its project manager about any unusual activity.

(2) **Adequate Documentation.** FTA expects the recipient to include adequate documentation in its project files of the facts, events, negotiations, applicable laws, and a legal evaluation of the likelihood of success in any potential litigation involving the dispute as may be needed to justify FTA’s concurrence in any compromise or settlement of the dispute, should FTA concurrence become necessary.

(3) **Audit.** An audit can help the recipient demonstrate that any settlement costs, if incurred, are necessary, reasonable, adequately documented, and appropriate for FTA support. The recipient should consider conducting or obtaining a formal audit to substantiate each part of a large contract dispute before entering into a settlement. The audit should be conducted in accordance with “Generally Accepted Auditing Standards” as defined by the American Institute of Certified Public Accountants. FTA also encourages the recipient to undertake an audit or similar analysis before settlement of a smaller dispute.

Reference: FTA C 4220.1F Page VII – 5-6
Contract Monitoring/Administration

Terminating the contract

- Termination for convenience
- Clause controls
  - Concept of partial and complete terminations
  - Terminations for convenience and partial terminations

Contract Monitoring/Administration

Terminating the contract

- Termination for default/cause
  - Can have a partial termination for default (rare)
- Requires a lot of paperwork and is procedure intensive

FTA
Contract Closeout

- Final payment
- Procedures should be in place indicating what is required in order to close a contract
- Document retention
  - Three years after projects are completed
  - May be longer after completion of individual contracts
  - Check for state requirements for record retention

FTA
Warranty Administration

- FTA grantees must have a system for recording warranty claims
- Grantees must have a process for identifying and enforcing warranty claims
- Contract Administration has a role in this process:
  - Interprets the contract provisions
  - Issues any official notices such as Notice of Fleet Defect
  - Negotiates settlements with the manufacturer
  - Document the contract files

FTA Circular 5010.1D, Grant Management Requirements Chapter IV, 3.k.(8) states:

(8) Warranty standards, when part of rolling stock and equipment contracts, should provide for correction of defective or unacceptable materials or workmanship. These should specify coverage and duration and meet currently available industry standards. General warranty incorporating industry standards and extended warranty are eligible capital costs. FTA’s Best Practices Procurement Manual encourages grantees to evaluate the cost of an extended warranty in an analysis separate from the equipment’s acquisition cost, in order to make a good business decision. Grantees are responsible for:
(a) Establishing and maintaining a system for recording warranty claims. This system should provide information needed by the grantee on the extent and provisions of coverage and on claims processing procedures;
(b) Identifying and diligently enforcing warranty system for recording warranty claims;
Summary

- The procurement process for buying buses is complex. There are many steps:
  - Planning the solicitation
  - Conducting the solicitation and awarding the contact
  - Administering the contract to closeout and warranty administration
- It takes teamwork to successfully execute all of these steps and Contact Administration has a role in each step
- There are tools to help improve the process

FTA
Module 3

APTA Standard Bus Procurement Guidelines

Module Objectives

By the end of this module, you will be able to:

- Explain what are the APTA Standard Bus Procurement Guidelines (SBPG)
- Provide the rationale for using the document
- Locate updated and new sections within the SBPG
Why A New SBPG?

- Updated Terms and Conditions
- Addition of Technical Specifications
- Standardize the organization of industry contracts
- Move towards standard industry terms and conditions
- Flexibility for local requirements and agency-specific provisions

Benefits of New SBPG

- Reduced costs
- Uniformity of bid documents
- Streamlined procurement process
- Better RFPs and better proposals
- A healthier industry
- Highlight industry best practices
A Consensus Document

- Original white book
- Circular updates
- Market development relative to bus choices
- Manufacturers, agencies, FTA, industry joined forces to prepare new guidelines
- Over 200 people were involved in the development of the document

Document Layout

Section 1 – Notice of Request for Proposals
Section 2 – Instructions to Proposers
Section 3 – General Conditions
Section 4 – Special Provisions
Section 5 – Federal Requirements

Section 6 – Technical Specifications
Section 7 – Warranty Requirements
Section 8 – Quality Assurance
Section 9 – Forms and Certifications
Section 10 – Contract
Section 11 – Appendixes
Notice of Request for Proposals (NR)

Section One (1) covers:

- Description of the work to be done
- Proposal due date and submittal requirements
- Validity of proposals
- Pre-Proposal meeting information [Optional]
Agency Customization

SECTION 1: NOTICE OF REQUEST FOR PROPOSALS

NR 1. Description of the Work to be Done
The Agency requests Proposals for the manufacture and delivery of [transit buses/spare parts/options if any] in accordance with the terms and conditions set forth in RFP [insert Agency’s number for this solicitation]. The Contract shall be a firm-fixed price Contract.

Specifically, the Agency is requesting the following types of buses: [insert title for the procurement, usually the number and type of buses being purchased]

NR 2. Proposal Due Date and Submittal Requirements
Proposals must be received by [insert local time, day and date].

1. Sealed Proposals shall be submitted to either of the following addresses:
   a. For courier delivery or hand delivery: [insert Agency contact, room and address]

Proposals shall be sealed and clearly labeled with the Agency’s contract number: [insert number / insert title]

2. To the Agency one hard copy marked “Original,” two CD’s, each containing an electronic PDF copy of the Proposals. The hard copy will be considered by the Agency in the event an electronic version is provided for the Agency’s administrative purposes. Proposals received after the deadline stated above. Proposals received after the submission deadline may be rejected.

NR 3. Validity of Proposals
Proposals and subsequent offers shall be valid for a period of [specify time period, typically not less than 90 and not more than 180 days].

NR 4. Pre-Proposal Meeting Information [Optional]
A Pre-Proposal Meeting will be held on [insert day and date]. The meeting will convene at [insert time] in the Agency’s [insert room name], located at [insert address]. Proposers may also participate via conference call. The call-in number and instructions are as follows: [insert information]

Prospective Proposers are requested to submit written questions to the Contract administrator, identified below, in advance of the Pre-Proposal Meeting. In addition, questions may be submitted up to the date specified in “Proposed Schedule for the Procurement.” Responses will be shared with all prospective proposers. Prospective Proposers are reminded that any changes to the RFP will be by written addenda only, and nothing stated at the Pre-Proposal Meeting shall change or qualify in any way any of the provisions in the RFP and shall not be binding on the Agency.

APTA Standard Bus Procurement Guidelines RFP, Section 1: Notice of Request for Proposals

121
Instructions to Proposers (IP)

Section Two (2) covers:

- Quantities
- Proposed schedule for the procurement
- Obtaining proposal documents
- Proposal security requirements (reserved)
- Pre-proposal meeting/information for proposers
- Questions, clarifications and omissions
- Addenda to RFP
- DBE Requirements for Transit Vehicle Manufacturers
- Conditions, exceptions, reservations or understandings
- Protest procedures
- Preparation of proposals
- Proposal evaluation, negotiation and selection
- Response to proposals
- Conflicts of interest and gratuities
- Agency-specific provisions

RFP Package Requirements

Four Standard Packages:

- Technology package
- Price package
- Qualifications package
- Proprietary/Confidential documents package
Proposal Evaluation and Selection

Selection Process:
- Qualification requirements
- Proposal evaluation criteria

Evaluation Procedures:
- Responsibility
- Competitive range
- Discussion with Proposers
- Site visits
- Best and Final Offers (BAFOs)
- Debriefing

Agency-Specific Provisions

At the end of:
- Instructions to Proposers
- General Conditions
- Special Provisions
General Conditions (GC)

Section Three (3) covers:

- Definitions
- Materials and workmanship
- Conformance with specifications and drawings
- Inspection, testing and acceptance
- Legal clauses
Force Majeure

GC 9.3 Excusable Delays/Force Majeure

GC 9.3.1 If the Contractor is delayed at any time during the progress of the Work by the neglect or failure of the Agency or by a cause as described below, then the time for completion and/or affected delivery date(s) shall be extended by the Agency subject to the following cumulative conditions:

a. The cause of the delay arises after the Notice of Award and neither was nor could have been anticipated by the Contractor by reasonable investigation before such award. Such cause may also include force majeure events such as any event or circumstance beyond the reasonable control of the Contractor, including but not limited to acts of God; earthquake, flood and any other natural disaster; civil disturbance, strikes and labor disputes; fires and explosions; war and other hostilities; embargo; or failure of third parties, including Suppliers or Subcontractors, to perform their obligations to the Contractor;

b. The Contractor demonstrates that the completion of the Work and/or any affected deliveries will be actually and necessarily delayed;

c. The Contractor has taken measures to avoid and/or mitigate the delay by the exercise of all reasonable precautions, efforts and measures, whether before or after the occurrence of the cause of delay; and

d. The Contractor makes written request and provides other information to the Agency as described in GC 9.3.4 below.

A delay in meeting all of the conditions of this section shall be deemed an excusable delay. Any concurrent delay that does not constitute an excusable delay shall not be the sole basis for denying a request hereunder.
Dispute Resolutions

GC 9.8 Disputes

NOTE: The following section deals with disputes arising after Contract award and not during the procurement process. The latter are “protests” that should be dealt with under the Agency's procurement procedures as outlined in “Protest Procedures.”
Outlined below are example provisions and recommendations for drafting a disputes resolution clause to be included in the Contract. Included are stepped negotiations, submission for Agency executive decision and alternatives dispute resolution. However, by mutual agreement the matter may be taken immediately to any higher step in the resolution process, or a mutually agreed-to alternative dispute resolution process (which may include structured negotiations, mediation or arbitration) or litigation.

Except as otherwise provided in this Contract, any dispute concerning a question of fact arising under or related to this Contract that is not disposed of by agreement shall be decided in accordance with the following steps. However, by mutual agreement the matter may be taken immediately to any higher step in the dispute resolution process, or mutually agreed to alternative dispute resolution process (which may include structured negotiations, mediation or arbitration) or litigation. Pending final resolution of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract and in accordance with the Contracting Officer's or Chief Executive Officer's decision, as the case may be.
Special Provisions (SP)

Section Four (4) covers:
- Inspection, tests and repairs
- Deliveries
- Options and option pricing
- Assignability of options
- Payment
- Performance guarantee
- Liquidated damages for late delivery of the bus

- Service and parts
- Federal Motor Vehicle Safety Standards (FMVSS)
- Insurance
- Software escrow account
- Sustainability
- Agency-specific provisions
**Notes**

**NOTE:** See Appendix A. “Guidelines for Calculating Liquidated Damages.” If the Agency does not accept buses seven days per week, then it may consider basing damage calculations on “business days.”

The Contractor hereby agrees to pay the aforementioned amounts as fixed, agreed and liquidated damages, and not by way of penalty, to the Agency and further authorizes the Agency to deduct the amount of the damages from money due the Contractor under the Contract, computed as aforesaid. If the money due the Contractor is insufficient or no money is due the Contractor, then the Contractor shall pay the Agency the difference or the entire amount, whichever may be the case, within thirty (30) days after receipt of a written demand by the Contracting Officer.

The payment of aforesaid fixed, agreed and liquidated damages shall be in lieu of any damages for any loss of profit, loss of revenue, loss of use, or for any other direct, indirect, special or consequential losses or damages of any kind whatsoever that may be suffered by the Agency arising at any time from the failure of the Contractor to fulfill the obligations referenced in this clause in a timely manner.

**NOTE:** In order to balance the risk in the Contract, which adds to the cost of the bus, the Agency may want to consider capping liquidated damages at an amount between 10 and 20 percent of the total Contract amount or to negotiate an amount with the Contractor. In that case, the following language should be inserted: “The total amount of such liquidated damages shall not exceed [insert number] percent of the Contract amount.”

The following may be considered for inclusion if early delivery will create a savings to the Agency or if the Agency may wish to modify “Excusable Delays” to determine delivery date for purposes of the option:

“In the event that the Contractor completes the Work earlier than required in “Delivery Schedule,” the Contractor shall be paid an incentive of [insert amount] per calendar day per bus that is delivered and accepted early. The total amount of such incentive payments shall not exceed [insert number] percent of the total Contract amount. See Appendix B. “Guidelines for Calculating Early Delivery Incentives.”

---

**SP 7. Service and Parts**

**SP 7.1 Contractor Service and Parts Support**

The Contractor shall state on the form Contractor Service and Parts Support Data the representatives responsible for assisting the Agency, as well as the location of the nearest distribution center, which shall furnish a complete supply of parts and components for the repair and maintenance of the buses to be supplied. The Contractor also shall state below, or by separate attachment, its policy on transportation charges for parts other than those covered by warranty.

**SP 7.2 Documentation**

The Contractor shall provide [insert number and specify any additional documentation requirements] current maintenance manual(s) to include preventative maintenance procedures, diagnostic procedures or trouble-shooting guides and major component service manuals, [insert number and format (print or electronic)] current parts manual(s), and [insert number and format] standard operator’s manual(s) as part of this Contract.

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From APTA Standard Bus Procurement Guidelines RFP, Section 4: Special Provisions
How to Use it – Sample Forms

SP 2.2 Delivery Schedule
The buses shall be delivered at a rate not to exceed [insert number] buses per week. Delivery shall be completed within [insert number] weeks after delivery of the executed Contract documents. Hours of delivery shall be [insert time range] on the following days of the week: [insert days].

SP 2.3 Contract Deliverables
Contract deliverables associated with this Contract are set forth in the table below, along with other pertinent information. Contract deliverables shall be submitted in accordance with Section 6: Technical Specifications. Due dates shown note the last acceptable date for receipt of Contract deliverables. The Agency will consider early receipt of Contract deliverables on a case-by-case basis. The reference section designates the appropriate specification section(s) where the requirement is referenced.

**NOTE:** Table 1 below provides a sample list of Contract deliverables. This list should be adapted by the Agency to reflect the Contract deliverables required by the Contract specifications.

<table>
<thead>
<tr>
<th>Deliverable</th>
<th>Agency Action</th>
<th>Reference Section</th>
<th>Due Date</th>
<th>Format</th>
<th>Quantity Due</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Bus Testing — Altoona Test Report</td>
<td>Review</td>
<td>Prior to pilot bus delivery</td>
<td>Hardcopy</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>2. List of serialized units installed on each bus</td>
<td>Review</td>
<td>With each delivered bus</td>
<td>Electronic Media</td>
<td>1 per bus</td>
<td></td>
</tr>
<tr>
<td>3. Copy of Manufacturers formal Quality Assurance Program</td>
<td>Review</td>
<td>Pre-award site visit</td>
<td>Hardcopy</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>4. QA manufacturing certificate</td>
<td>Review</td>
<td>With each delivered bus</td>
<td>Hardcopy</td>
<td>1 per bus</td>
<td></td>
</tr>
</tbody>
</table>

**TABLE 1**
Contract Deliverables

APTA Standard Bus Procurement Guidelines RFP, Section 4, Special Provisions
Federal Requirements

Section Five (5) covers:
- Access to Records
- Federal Funding, Incorporation of FTA Terms and Federal Changes
- Federal Energy Conservation Requirements
- Civil Rights Requirements
- No Government Obligation to Third Parties
- Program Fraud and False or Fraudulent Statements or Related Acts
- Suspension and Debarment
- Disadvantaged Business Enterprise (DBE)
- Clean Water Requirements
- Clean Air Requirements
- Compliance with Federal Lobbying Policy
- Buy America
- Testing of New Bus Models
- Pre-Award and Post-Delivery Audits
- Cargo Preference
- Fly America
- Contract Hours and Safety Standards

Technical Section - Document Layout

Section Six (6) covers:
- General technical
- Dimensions
- Vehicle performance
- Drivetrain/power plant
- Structure
- Chassis
- Electrical
- Driver provisions
- Windows
- HVAC
- Exterior panels and finishes
- Interior panels and finishes
- Passenger accommodations
- Signage and communications
Technical Section

- Performance-based specifications
  - Performance based vs. Design Specification
- Designed for multiple bus lengths and propulsion types
  - 30-foot to 60+ foot articulated buses
  - Diesel, Compressed Natural Gas (CNG), Hybrids
Technical – Multiple Propulsion Types

DEFAULT

Automatic Engine Protection/Shutdown Override Feature
A control shall be available to the operator/driver that when constantly depressed and released will delay the engine shutdown or allow the bus to be moved. Override action shall be recorded. This data shall be retrievable by the Agency.

ALTERNATIVE
No requirement for an automatic engine protection/shutdown override feature.

TS 9.1 Engine (CNG)
The engine shall meet all regulatory requirements when operating on fuel equal to CARB Specifications for Compressed Natural Gas #2292.5. The four predominant characteristics that must be met are Methane, Ethane, Butane, and Propane.

TS 9.2 Propulsion System (Hybrid)
Propulsion System Description
The bus shall be powered by a hybrid propulsion system. Function and operation of the bus shall be transparent to the Bus Operator and passengers. The OEM shall assure that the bus structure can successfully accept the installation of the propulsion system and be operated on the stated duty cycle a period of 12 years without a structural failure. At a minimum, propulsion system shall comply with applicable local, state, and/or federal emissions and useful life requirements. The propulsion system shall comply with local, state, and federal (maintenance) and other applicable sections.

The Hybrid Drive System shall be rated for the GVWR or greater of the bus.

Propulsion System Service
The propulsion system shall be arranged so that accessibility for all routine maintenance is assured. No special tools, other than dollies and hoists, shall be required to remove the propulsion system or any subsystems. However, the Agency shall recognize that properly rated test equipment and safe electrical work practices are essential when servicing high voltage hybrid components. The exhaust system, air cleaner, air compressor, starter (if used), alternator, radiator, all engine accessories, and any other component requiring service or replacement shall be easily removable. Contractor shall provide all specialty tools and diagnostic equipment required for maintaining the Propulsion System in accordance with Special Tools List.

Primary Propulsion Unit and Traction Motor
The PPU and traction motor may be configured in a variety of methods dependent upon type of drive, series and/or parallel. The definition of motor in the context of this specification assumes the device can provide or consume energy as well as provide or retard mechanical motion.

APTA Standard Bus Procurement Guidelines RFP, Section 7: Technical Specifications
Technical Section - How to Use it

- By selecting the "Default," a basic Bus Technical Specification will be developed.
- In areas where there are alternatives to the "Default," the "Alternative" may be selected instead of the "Default."
How to Use it

TS 25. Jacking

It shall be possible to safely jack up the bus, at curb weight, with a common 10-ton floor jack with or without special adapter, when a tire or dual set is completely flat and the bus is on a level, hard, non-porous surface, under any portion of the bus. Jacking from a single point shall permit raising the bus off the tire and reinstall a wheel and tire assembly. Jacking pads located on the axle or suspension will permit easy and safe jacking with the flat tire or dual set on a 6 in. high run-up block. The bus shall withstand such jacking at any one or any combination of wheel locations without deformation or damage.

**DEFAULT**

Yellow Pads
Jacking pads shall be painted safety yellow.

**ALTERNATIVE**

Decals
Apply decals to identify location of jacking pads.

**ALTERNATIVE**

Alternate Color Pads
(Jacking pad color to be specified by Agency.)

Choosing the "Default" will ensure you are getting the latest industry standard for a new bus.

Choosing the "Alternative" will ensure you have the opportunity to select what your Agency specifically needs.
Warranty Requirements

Section Seven (7) covers:

- Basic provisions
- Fleet defects
- Pass-through warranties
- Repair procedures

Warranty

- Complete Bus
  - One year or 50,000 miles, whichever comes first

- Body and Chassis
  - Body, body structure, structural elements of the suspension and engine cradle - three years or 150,000 miles, whichever comes first
  - Primary load-carrying members of the bus structure are warranted against corrosion failure and/or fatigue failure sufficient to cause a Class 1 or Class 2 Failure - 12 years or 500,000 miles, whichever comes first
Warranty Requirements

WR 1.1.1 Complete Bus
The complete bus, propulsion system, components, major subsystems and body and chassis structure are warranted to be free from Defects and Related Defects for one year or 50,000 miles, whichever comes first, beginning on the date of revenue service but not longer than 15 days after acceptance under "Inspection, Testing and Acceptance." The warranty is based on regular operation of the bus under the operating conditions prevailing in the Agency’s locale.

WR 1.1.2 Body and Chassis Structure
Body, body structure, structural elements of the suspension and engine cradle are warranted to be free from Defects and Related Defects for three years or 150,000 miles, whichever comes first.

Primary load-carrying members of the bus structure, including structural elements of the suspension, are warranted against corrosion failure and/or Fatigue Failure sufficient to cause a Class 1 or Class 2 Failure for a period of 12 years or 500,000 miles, whichever comes first.

WR 1.1.3 Propulsion System
Propulsion system components, specifically the engine, transmission or drive motors, and related components (for hybrid technology) and drive and non-drive axles shall be warranted to be free from Defects and Related Defects for the standard two years or 100,000 miles, whichever comes first. An Extended Warranty to a maximum of five years or 300,000 miles, whichever comes first, may be purchased at an additional cost. The propulsion system manufacturer’s standard warranty, delineating items excluded, shall be extended from the Extended Warranty, submitted in accordance with the Request for Pre-Offer Checklist, Approved Equal or with the Form for Proposal Deviation.

WR 1.1.4 Emission Control System (ECS)
The Contractor warrants the emission control system for five years or 100,000 miles, whichever comes first. The ECS shall include, but is not limited to, the following components:

- complete exhaust system, including catalytic converter (if required)
- after-treatment device
- components identified as emission control devices

APTA Standard Bus Procurement Guidelines RFP, Section 7: Warranty Requirements
Warranty

- Propulsion System
  - Two years or 100,000 miles, whichever comes first
- Emission Control System
  - Five years or 100,000 miles, whichever comes first
- Subsystems
  - Two years or 100,000 miles, whichever comes first
- Extended warranties may be purchased at additional cost
Pricing Schedule

CER 6. Pricing Schedule

**NOTE:** The following is an example of what a pricing schedule might look like and should be customized by the Agency to reflect the costs for its procurement.

[Insert Agency name]
[Insert RFP number and title]

<table>
<thead>
<tr>
<th></th>
<th>Unit Price</th>
<th>Extension</th>
</tr>
</thead>
<tbody>
<tr>
<td>[Insert quantity, size, type and description] <strong>buses</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Manuals</td>
<td>Lump Sum</td>
<td></td>
</tr>
<tr>
<td>Training</td>
<td>Lump Sum</td>
<td></td>
</tr>
<tr>
<td><strong>Spare parts package</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Test equipment and special tools</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Extended Warranty [Agency to identify subsystem]</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Extended Warranty [Agency to identify subsystem]</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Extended Warranty [Agency to identify subsystem]</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Extended Warranty [Agency to identify subsystem]</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Other [Agency to specify]</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Sales tax (if applicable)</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Delivery charges</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL PROPOSED PRICE</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>ADA equipment (included in above unit prices)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

All prices are to be in United States dollars.

This form is to be completed and included in the Price Package.
Warranty

Fleet Defect Occurrence

- Cumulative failures of twenty-five (25) percent of the same components in the same or similar application
- Minimum fleet size of twelve (12) or more buses where such items are covered by warranty
- Applies only to the base warranty period for complete bus, propulsion system and major subsystems

---

Warranty

Fleet Defect Occurrence

- Remaining warranty on that item or component stops
- Warranty period does not restart until the Fleet Defect is corrected
- Does not apply to agency supplied items, interior and exterior finishes, hoses, fittings and fabric
Warranty

Fleet Defect Remedy

- Contractor corrects a fleet defect
- Contractor develops a plan to prevent the occurrence of the same defects in the remainder of the fleet
- If the defect can be attributed to particular identifiable part, the work program shall include redesign and/or replacement of those part.
- In all other cases, contractor must inspect and/or correct all buses in the fleet as agreed between the contractor and the agency

Warranty

Warranty Repairs

- Contractor has primarily responsibility for repairs
- Agency may elect to repair
  - May use agency or contractor supplied parts
  - Labor reimbursement includes straight time, benefits and overhead plus towing, if necessary
  - Parts reimbursement includes 15% handling costs
Warranty

Warranty after repair/replacement

- Component, unit or subsystem shall have the unexpired warranty period of the original item
  - Must use contractor supplied or authorized part
- For a fleet defect, the item shall have three (3) months or remaining time and/or miles of the original warranty, whichever is greater

Quality Assurance

Section Eight (8) covers:

- Contractor’s in-plant quality assurance requirements
- Inspection
- Acceptance tests
- Agency-specific requirements
- New bus manufacturing inspection guidelines
## Forms and Certifications

Section Nine (9) covers:

<table>
<thead>
<tr>
<th>Item</th>
<th>Item</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proposer's checklist</td>
<td>Pricing schedule</td>
</tr>
<tr>
<td>Request for pre-offer change or approved equal</td>
<td>Pre-award evaluation data form</td>
</tr>
<tr>
<td>Acknowledgment of addenda</td>
<td>Federal/other certifications</td>
</tr>
<tr>
<td>Contractor service and parts support data</td>
<td>Vehicle questionnaire</td>
</tr>
<tr>
<td>Form for proposal deviation</td>
<td></td>
</tr>
</tbody>
</table>
How to Use it – Sample Forms

CER 10. Vehicle Questionnaire

NOTE: This is a sample form. The Agency should customize to comply with its proposed requirements.

This form must be completed and included in the Technical Proposal.

GENERAL COACH DATA SHEET:
[INSERT BUS TYPE]

| Bus Manufacturer: |  |
| Bus Model Number: |  |
| Basic Body Construction Type: |  |

General Dimensions

<table>
<thead>
<tr>
<th>Overall length</th>
<th>Over bumpers feet</th>
<th>inches</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Over body feet</td>
<td>inches</td>
</tr>
<tr>
<td>Overall width</td>
<td>Over body excluding mirrors and lights feet</td>
<td>inches</td>
</tr>
<tr>
<td></td>
<td>Over body including mirrors feet</td>
<td>inches</td>
</tr>
<tr>
<td></td>
<td>Over tires feet</td>
<td>inches</td>
</tr>
<tr>
<td>Overall height (maximum)</td>
<td>feet</td>
<td>inches</td>
</tr>
</tbody>
</table>

Angle of approach degrees
Angle of departure degrees
Breakover angle 1 degrees
Breakover angle 2 degrees

Doorway clear opening (at widest point) inches

APTA Standard Bus Procurement Guidelines RFP, Section 9: Forms and Certifications
Contract

Section Ten (10) covers:

- The contract
- Agency insertion of Form of Contract
- Sample contract (available in Appendix D)

Appendixes

Section Eleven (11) covers:

A. Guidelines for Calculating Liquidated Damages
B. Guidelines for Calculating Early Delivery Incentives
C. Examples of Evaluation Criteria
D. Sample Contract
E. Sample Performance Bond Form
F. Sample Assignment of an Option to Purchase Agreement
G. Example of a Software Escrow Agreement
How to Use it – Sample Forms

Request for Proposal
[inset date]
[inset Proposal number]

Appendix C: Examples of Evaluation Criteria

EXAMPLE 1: EVALUATION OF PROPOSALS AND SELECTION PROCESS
A. Evaluation/Selection Committee
An Evaluation/Selection Committee (Committee), which may include Agency staff, consortium members, and possibly one or more outside experts, will review and screen the Proposals submitted according to the pre-established criteria as set forth below.

B. Pre-Proposal Meeting (maximum of 5 points)
Attendance at the Pre-Proposal Meeting on [insert date].

C. Technical Evaluation Criteria (maximum of 80 points)
Proposals will be evaluated using the following principal selection criteria:

1. **Product design and performance (0-30 points):** The information provided by the Proposer in its technical submittal relating to the buses to be provided will be utilized to evaluate the Proposal in relation to this factor. Vehicle construction and system design, as well as documented reliability, may be used in this evaluation, as well as other design and performance elements of the components that comprise those systems. At a minimum, test results, safety and maintenance factors, and cost of normal operation for the bus design and system components proposed, may be considered in determining a final value for this factor.

2. **Proposer's reputation and performance (0-30 points):** The Committee will consider the capability and reputation of the Proposer as presented in the Proposal or as is determined by review of information available from references or other resources. The evaluation may look at the Proposer’s overall organizational and financial capabilities and consider key components such as organizational reporting structure, quality control, quality assurance, research and development, technical, training and parts support, response time, product capabilities, ability to furnish multiple bus configurations, bonding capacity, and financial history, as well as other considerations, in reaching a final point determination. The committee may also look at judgments, liens, Fleet Defect history, warranty claims and the steps that the manufacturer took to resolve these concerns in assessing the overall reputation of the manufacturer.

3. **Delivery schedule (0-20 points):** The Committee will review the proposed delivery schedule for the Agency’s minimum purchase of coaches. Delivery schedules that fulfill the delivery requirements, with evidence that the schedule can be accomplished, may receive higher points for this category.

APTA Standard Bus Procurement Guidelines RFP, Appendix C: Examples of Evaluation Criteria
How to Use it – Omitting a Section

TS 7.4 Operating Range
The operating range of the coach shall be designed to meet the operating profile as stated in the “Design Operating Profile” section.

TS 7.4.1 Diesel
SECTION NOT USED

TS 7.4.2 CNG
DEFAULT
The operating range of the coach when run on the Altoona Test cycle shall be at least 350 mi or 20 hrs with an initial gas settled pressure of 3600 psi at 70 °F.

IP 3. Obtaining Proposal Documents
Proposal documents may be obtained from [insert name], in person at [insert location] or electronically at [insert address]. Documents requested by mail will be packaged and sent postage paid. Documents requested by courier will be packaged and sent only at the Proposers’ expense.

IP 4. Proposal Security Requirements (Reserved)
[Insert as needed]
SBPG – Next Steps

- Continue additional outreach
- Continuously review comments
- Create an online spec building tool
- Review and update annually to stay current with new industry practices, updated regulations, policies and technologies.

Summary

- The APTA SBPG can streamline bus procurement RFPs
- Customizable areas within document allow for differences between agencies
- Manufacturers can more easily respond to standard RFPs
- You have a better chance of getting what you need and what you want
Summary

- Federal requirements ensure open and clear procurement process
- SBPG document facilitates RFP process
- End result allows the public to use transit services
Bibliography

Anti-Discrimination clauses
www.eeoc.gov/laws/statutes/index.cfm

FTA Circular 4220.1F
www.fta.dot.gov/documents/C_4220_1F.pdf
Please check the FTA website for the most current version.

Best Practices Procurement Manual
www.fta.dot.gov/funding/thirdpartyprocurement/grants_financing_6037.html

Buy America Provisions
www.fta.dot.gov/laws/leg_reg_178.html

Bus Testing Requirements
www.fta.dot.gov/funding/thirdpartyprocurement/faq/grants_financing_6087.html

Excluded Parties List System
www.epis.gov/

Master Agreement

Grant Agreement
www.fta.dot.gov/documents/16-Grant.pdf

Annual List of Certifications and Assurances

Cargo Preference Act

Conducting Pre-Award and Post-Delivery Audits for Bus Procurements
fta.dot.gov/laws/leg_reg_5423.html

Fly America Act
www.vanderbilt.edu/ocga/vupolicies/FLYAMERICAACT.pdf

FTA Bus Testing Reports
www.fta.dot.gov/research_8878.html

FTA Disadvantaged Business Enterprise
www.fta.dot.gov/civilrights/civil_rights_5089.html
Clean Air Act
www.epa.gov/air/caa/

Clean Water Act
www.epa.gov/oecaagct/lcwa.html

Disadvantaged Business Enterprise
www.osdbu.dot.gov/DBEProgram/

Protection of Environment
www.fta.dot.gov/planning/planning_environment_5222.html

Termination of contracts
www.fta.dot.gov/funding/thirdpartyprocurement/faq/grants_financing_6112.html

Liquidated Damages
www.fta.dot.gov/funding/thirdpartyprocurement/faq/grants_financing_6160.html

Progress Payments
www.fta.dot.gov/funding/thirdpartyprocurement/faq/grants_financing_6180.html

Advance Payments
www.fta.dot.gov/funding/thirdpartyprocurement/faq/grants_financing_6075.html

Contract Work Hours and Safety Standards
www.fta.dot.gov/funding/thirdpartyprocurement/bppm/grants_financing_6195.html#BM17

APTA Standard Bus Procurement Guidelines 2011
www.apta.com/resources/reportsandpublications/Pages/BusParatransit.aspx
Please check this webpage for the most current version of the SBPG.

ADA Access
www.fta.dot.gov/civilrights/ada/civil_rights_3905.html
## Acronyms

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
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<tbody>
<tr>
<td>A/C</td>
<td>air conditioning</td>
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<tr>
<td>ABS</td>
<td>anti-lock braking system</td>
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<tr>
<td>AC</td>
<td>alternating current</td>
</tr>
<tr>
<td>ACQ</td>
<td>alkaline copper quaternary</td>
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<tr>
<td>ADA</td>
<td>Americans with Disabilities Act</td>
</tr>
<tr>
<td>Ah</td>
<td>amp hour</td>
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<tr>
<td>ALR</td>
<td>auto-locking retractor</td>
</tr>
<tr>
<td>APA</td>
<td>The Engineered Wood Association, formerly the American Plywood Association</td>
</tr>
<tr>
<td>APC</td>
<td>automatic passenger counter</td>
</tr>
<tr>
<td>APTA</td>
<td>American Public Transportation Association</td>
</tr>
<tr>
<td>ASTM</td>
<td>ASTM International, formerly the American Society for Testing and Materials</td>
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<tr>
<td>ATC</td>
<td>automatic traction control</td>
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<td>AVL</td>
<td>automatic vehicle location</td>
</tr>
<tr>
<td>AWG</td>
<td>American Wire Gauge</td>
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<tr>
<td>BAFO</td>
<td>Best and Final Offer</td>
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<td>BMS</td>
<td>Battery Management System</td>
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<tr>
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<td>bus rapid transit</td>
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<td>CARB</td>
<td>California Air Resources Board</td>
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<td>CCS</td>
<td>climate control system</td>
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<td>closed-circuit television</td>
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<tr>
<td>cfm</td>
<td>cubic feet per minute</td>
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<td>CFR</td>
<td>Code of Federal Regulations</td>
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<tr>
<td>CGA</td>
<td>Compressed Gas Association</td>
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<td>compressed natural gas</td>
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<td>decibel</td>
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<td>DBE</td>
<td>Disadvantaged Business Enterprise</td>
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<td>direct current</td>
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<td>driver display unit</td>
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<td>diesel exhaust fluid</td>
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<td>Department of Transportation</td>
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<td>diesel particulate filter</td>
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<td>Engine Control and Monitoring</td>
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<td>Excluded Parties List System</td>
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<td>Finite Element Analysis</td>
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<td>failure mode effects analysis</td>
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<td>Federal Motor Carrier Safety Administration</td>
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<td>FMCSR</td>
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<tr>
<td>FMVSS</td>
<td>Federal Motor Vehicle Safety Standards</td>
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