



# Local Agency Procurement Manual for Section 5310, 5311 & 5339 Program Sub-Recipients

## Frequently Asked Questions (FAQs)

This document contains a list of Frequently Asked Questions (FAQs) pertaining to procurement of goods or services funded with Section 5310, 5311, and 5339 formula grants. This list will be continuously updated as further information becomes available and as procurement trainings throughout Florida are held. The complete list of FAQs will be posted as a resource upon completion of the trainings. If you have any questions or would like to add to the FAQ list, please contact one of the following individuals listed under the Contact Information section at the end of this document.

### Frequently Asked Questions

#### Florida Department of Transportation (FDOT) Procurement Manual Resource

Q: Where can I find a link to FDOT's *Procurement Guidance for Transit Agencies Handbook*?

A: [https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/transit/procurement/procurement-guidance-2-2024-final.pdf?sfvrsn=c4a8364\\_1](https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/transit/procurement/procurement-guidance-2-2024-final.pdf?sfvrsn=c4a8364_1)

Q: How do I check to see whether a potential vendor/contractor has been disbarred (or suspended)?

A: To determine if a vendor/contractor is on the Federal Excluded Parties List, the agency should utilize the SAM.gov website. The agency will need to create a log in for SAM.gov and will then be able to search the system.

#### Determining Procurement Level/Avoiding "Bid-Splitting"

Q: How do you decide what procurement level to use if the allocated funds are greater than \$10,000, but the purchases are done separately throughout the year? Do you use the total allocated amount or time of purchase amount?

A: Here are two examples for answering this scenario:

- Example #1: If you are purchasing tires and the total cost for the year is \$20,000 even though purchases are completed throughout the year, you should complete the small purchase process and obtain quotes and have the applicable federal clauses accepted. You could create an agreement with the tire company that would cover you for the year.
- Example #2: if you are purchasing office supplies and the total cost for the year is \$20,000 and the purchases are completed throughout the year and may or may not include some of the same items, these would be considered individual purchases. In this case you would follow the guidance for each purchase, whether it is under the micro purchase or small purchase limit.



Q: If you go to a repair shop for a single oil change, does this count as “bid-splitting” or breaking up the purchase?

A: It depends on how you manage the contracts. For agencies that do fewer services, maybe 1-2 every month or less often, it makes sense to purchase each service as needed. However, for these you still need to follow micro purchase guidelines and get a fair and reasonable price for each. It is likely more advantageous cost-wise when doing frequent service with shop(s) to do a contract under small or competitive bid, as appropriate.

Q: When purchasing gasoline/fuel, what is the latitude for that in the context of breaking up purchases?

A: Fuel is regulated so you can go just about anywhere and buy gas. If you want bulk purchase discounts, then consider which procurement level/method you would need to use based on fuel needed and price. If you buy off a state or other government contract, then you must make sure federal assurances are followed.

Q: For smaller and general materials and supplies we use and need on a daily basis, how should we determine when the procurement rules apply?

A: The simple answer is to follow the money. Anytime you pursue or require reimbursement from federal or state funding, then the rules or regulations apply. Another thought would be to follow the rules, or practice the procedures consistently in all procurements, so that if you secure and want reimbursement from federal or state sources you are eligible.

#### **Procurement Process for Insurance, Brokers, Surcharge Costs**

Q: What would constitute the need to competitively procure services provided by a broker (e.g., insurance, fuel, etc.)?

A: When the agency is paying separately for the brokered services with federal or state funding, then procurement guidelines based on the appropriate procurement level should be followed for the additional brokered costs. Otherwise, the brokered costs should be considered in the original procurement. For example, if a fuel broker is paid via the fuel provider, no separate procurement process for the fuel broker is needed provided those costs were originally included in the procurement process used to select the fuel provider. However, if the fuel broker fees are a separate cost not included in the original procurement or charged by a different vendor, then the appropriate method to procure the broker’s services should be undertaken by the agency.

Q: Does the renewal of insurance policies for the transit agency, such as worker's compensation or liability coverage fall under procurement guidelines? Are we required to have our broker approach the insurance market every year for quotes or can we ask them to approach carriers about our account to determine if there is a lower cost than our incumbent carrier?

A: Procurement of insurance that is financed with FTA grant funds (e.g., an operating grant) would be covered by FTA Circular 4220.1G. If, however, the agency pays for the insurance entirely out of its own funds, then procurement guidelines under Circular 4220.1G would not apply. Circular 4220.1G requires that you award the insurance contracts competitively, but the length of these contracts is up to your good business judgment as to how long it is prudent to continue before requesting quotes from



different carriers. That may be one year, or it may be some longer period. Your insurance broker could advise you on this issue.

Q: If the transit agency's (a recipient of FTA funds) insurance broker is procured through a competitive RFP process, is that broker required to solicit specific insurance plans and costs from insurance carriers through yet another formal RFP process?

A: All contracts awarded with FTA funds must comply with FTA Circular 4220.1G, which is available online. The short answer is that the solicitation (RFP) and resulting contract must comply in all respects with the FTA procurement requirements even though a broker is involved. The RFP is really your agency's RFP regardless of who prepares it.

Q: Insurance can be complicated and if an agency uses an insurance agent to help with this process does the agency need to get quotes each year for the insurance agent? Is the process different for an insurance broker if your agency is not the entity paying the broker?

A: As with fuel broker services mentioned above, if you hire and pay the broker directly for that service, then yes, the appropriate procurement method is required. If the broker's fees are included through the insurance company's payments, then a separate procurement process for the broker is probably not required. In most cases where a broker or agent is involved, a simple test to help determine the procurement requirements is to follow who gets the dollars from the sub-recipient/agency.

### **Federal Clauses**

Q: Does FDOT's contract with Sterling Infosystems for drug and alcohol testing and other services have the applicable federal clauses?

A: Yes, the applicable clauses are listed in the contract with Sterling Infosystems. .

Q: What are the options or steps if a vendor/contractor will not accept the applicable federal clauses for the procurement level?

A: The applicable federal clauses must be accepted from any vendor/contractor you purchase from. This may involve an extensive search until one is found. If you cannot find a vendor/contractor to accept the federal clauses, you may need to use another funding source for this amount. Getting potential vendors to agree to the various stipulations, including the required federal clauses, may be difficult. Having a pre-bid discussion with the vendor to explain the required federal clauses and other stipulations may help this process.

FDOT's Public Transit Office has entered into a statewide contract for fire suppression maintenance ,.

For vehicle maintenance and other operating services that smaller transit agencies procure, it can be difficult working with locally owned providers and shops to get them to understand and agree to accept the numerous federal clauses and stipulations. Currently local agencies will need to negotiate and work with vendors on incorporating the federal clauses in contracts and complying with their stipulations. Note many companies have never been approached on these issues before and how presented may make the difference. Most of their effort is in documentation, not major changes to the way they do business. Being aware of the requirements and being able to explain their impacts can help in negotiations.



Q: If a vendor is procured to operate services then uses subcontractors to help provide some or all the contracted services, do the subcontractors have to follow the same federal and state clauses and procurement rules/regulations?

A: Yes, the requirements follow the funding and all third-party contracts. Note that some of the thresholds could change and the effort or methodology may be in a lower category. Here is an example: an agency enters into a \$150,000 transit operations/maintenance service contract selected through the Competitive Bid method. Then the contractor uses subcontractors performing vehicle maintenance services, and one of the subcontractors will only receive about \$12,000. While the main contract was procured via a Competitive Bid, the maintenance subcontractor can be selected via the requirements of a Small Purchase method.

Q: Does the federal Buy America requirements apply for vehicles purchased off the DMS contract?

A: Yes, when using federal funding, the requirements are applicable. However, vehicles available under the DMS state contract are not required as part of that procurement to follow federal regulations, specifically the FTA application for transit systems. Therefore, before vehicles can be purchased off the DMS contract, the procuring agency must determine compliance on their own. When considering to purchase from this avenue, one of two things can be done. One is to contact the TRIPS program manager and ask them if they can help get proper assurances and the pre- and post-delivery audits for Buy America from the vendor you want to buy from. Or, you can contact the vendor and get them to agree, sign, and comply with the federal FTA assurances yourself, including the pre- and post-delivery

### **Grant Application and Cost Estimating Support**

Q: Can FDOT Districts assist with putting together the applications and cost estimates of agencies requesting FTA funding?

A: This would not be very practical, as there are so many grant applications. District staff can invite agencies to share their draft findings and proposals so they can review and advise as needed. Also, if an agency is a first-time recipient, FDOT District staff should check with them regularly to monitor their progress. Lastly, the District can also probably supply some historical data from previous grants that could be used as reference materials for assisting in the cost estimating process. This support will need to be determined on a District-by-District basis. Note that on vehicle purchases, the TRIPS program is a ready source for cost estimation and other relative information for grant preparation.

Q: How can an agency ensure that the price quotes required for a micro purchase are fair and equitable? There is concern that some agencies may be able to manipulate the quotes to favor their preferred supplier.

A: It is the responsibility of the agency to provide adequate documentation of the three (minimum) price quotes and reasoning for selection of the preferred vendor. District staff that review and approve invoices for these purchases must make a call when they get the procurement documentation. District staff will look out for unusual patterns in selection history (e.g., the same vendor is routinely selected even if price is not the lowest for different supplies/materials) or documentation that may warrant a request for additional information. Plus they have similar purchases by other grant recipients to rely on as a resource for assisting in their review. Lastly, if questionable, reviewers may do some of the same



research as the local agencies would do, on-line or via telephone, to test for fair and equitable practices or decisions.

### **Vendor Geographical Preference**

Q: How can agencies ensure they do not have to purchase services (like vehicle maintenance) from vendors that are in different cities or many miles away? Can an agency include a local preference in selecting a vendor/contractor?

A: For Architectural & Engineering (A&E) services, specifying local preference in a RFP or competitive bid package is allowed, but with certain limitations. However, for other services this is not allowed. An alternative way to assist in this effort is to include certain “fair and reasonable” performance standards in your specifications or bid scope can help. Items like towing a vehicle when it breaks down within 60 minutes of notice, or preventative maintenance scheduling that requires a vehicle be out of service for no more than certain amount of time (e.g., one day, or 6 hours) could limit the distance of the bidder’s location. Other performance standards could help address this as well, but generally a reasonableness test needs to apply. For example, if you are located in Orlando, you do not have to accept a low bid from Tampa, unless they make arrangements to have local resources or sub vendors to ensure you are not waiting an unreasonable amount of time for vehicles being grounded to perform routine preventative maintenance. Additionally, procuring services off another approved contract may provide the opportunity to choose a vendor from a certain location. However, all federal requirements and assurances apply, and compliance must be adhered to.

### **Bid Process**

Q: Can an agency use a dealership/vehicle distributor for service, tires, etc. and not have to seek a bid?

A: Only if this service was included in the original bid, included under a piggy-back contract with another agency (if approved), or determined to be an appropriate sole source award.

Q: Can an agency contract with the County or Community Transportation Coordinator (CTC) for maintenance without going through the required bid process?

A: Those agencies (County or non-profit CTC) can contract directly with the County or non-profit CTC, or the County or CTC can submit a bid along with for profits to win the services, as long it is fair and reasonable. If an agency puts out a bid and gets no responses, then they can do sole source with the County or CTC (non-profit) and evaluate it for reasonableness.

Q: Can a sole source contract be awarded to a non-profit (501c-3) if that was the only proposal submitted?

Grantees have the authority to make sole source subcontract awards under certain conditions as discussed in FTA Circular 4220.1G, Chapter VI, pages VI-16 through 20, which is available online. The status of the subcontractor as a 501(c)(3) would not in itself justify a sole source award. If your agency has a need that this non-profit organization can fill, FTA recommends that you advertise the need and request information (not necessarily proposals) from sources that feel they can meet that need. If in fact no firms come forward, you can then proceed with the sole source award based on your research of the market demonstrating that no other organization can meet the need. If other firms do come forward, then you can solicit proposals from all interested firms and evaluate which one best meets your need.



Q: Are there maintenance implications from the manufacturer's warrantee that should be included in the bid or award contracts?

A: Not specified by FTA guidance, but a statement should be included in the bid that the maintenance should not alter the equipment or equipment unless specifically discussed.

### **Impact of Using State Toll Credits on Procurement Processes**

Q: Are federal or state procurement requirements impacted when using State Toll Fee Credits as match towards capital purchases made with Section 5339 funds?

A: Title 23 U.S.C. 120(j)(1) permits states to substitute certain previous toll-financed investments for state matching funds on current federal-aid projects, allowing the non-federal share of a project's cost to be met through a "soft match" of toll credits. By using toll credits to substitute for the required nonfederal share on a new federal-aid project, the federal share can effectively be increased to 100%. Since toll credits serve as an effective match to federal funds, federal procurement rules apply.

### **Other Questions**

Q: Does the E-Verify for employees requirement apply to micro-purchases?

A: It could if for staff services, construction, and some other things, but typically these are not micro, small or competitive. See the E-Verify website for specific direction.

Q: Are there methods or guidelines available to help streamline the process and not get bogged down in paperwork when purchasing multiple or recurring items that total more than \$10,000?

A: Here are several thoughts that may make sense to consider.

- Developing and using a multi-year contract for services or purchasing materials.
- The option of using master contracts, like the state contract from the Florida DMS, however, you must ensure compliance with federal assurances and regulations.
- "Piggybacking" on another government contract when specifically allowed through contract bidding and contract language.
- Pooling together several agencies and doing a joint bid.
- Developing and using standard templates, forms, and procedures can assist in streamlining the purchasing process, even on varying items.

Just remember all these options have benefits and potential weaknesses and need to be fully vetted before proceeding.

Q: Is there a threshold amount where components or parts move from an operating expense to a capital expense?

A: The current definition of what can be classified as capital for eligibility under the FTA capital program includes two parts. First, all components of capital items and ADA accessories are eligible at initial purchase. Secondly, associated capital maintenance items (e.g., equipment, tires, tubes, and material, etc.) each costing 0.5% or more of the current fair market value of the rolling stock that it supports or



will be used are considered a capital expense. Refer to FTA Program Circular 9030.1E, for 5307 Urban Formula Funding, Chapter IV, Section 2(h).<sup>1</sup>

Q: For purchasing from the Center for Urban Transportation Research's (CUTR) Substance Abuse Management System (SAMS) contract, what type of purchase is it and do we have to follow one of the procurement methods?

A: CUTR/FDOT address and manage procurement requirements for testing activities and sites approved under the SAMS contract, so signing the CUTR purchase order is all that is required to comply. This is comparable to purchasing vehicles under the TRIPS program.

Q: Does bonding on construction contracts (i.e., for multiple shelter pads) impact the procurement threshold?

A: Yes, if an agency requires bonding then it should be included as part of bid price. For example; if the bid is for 15 shelters pads estimated at \$2,000 each (or \$30,000 total), this amount falls within the small purchase range of \$10,001-\$35,000. However, if bonding is required and included in the cost being bid and the total cost then exceeds \$35,000, then the competitive purchase process would then apply.

Q: What is an appropriate length for contracts?

A: This should be discussed with the appropriate District Grant Program Manager.

## **Contact Information**

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<sup>1</sup> [https://www.transit.dot.gov/sites/fta.dot.gov/files/2021-04/FTA-Circular-9030-1E%E2%80%93Urbanized-Area-Formula-Program-Program-Guidance-and-Application-Instructions\\_0.pdf](https://www.transit.dot.gov/sites/fta.dot.gov/files/2021-04/FTA-Circular-9030-1E%E2%80%93Urbanized-Area-Formula-Program-Program-Guidance-and-Application-Instructions_0.pdf)