Procurement Guidance for Transit Agencies

May 2026



LIST OF ABBREVIATIONS

A&E	Architectural and Engineering
ADA	Americans with Disabilities Act
ARP	American Rescue Plan
CARES	Coronavirus Ais, Relief, and Economic Security Act
CCNA	Consultants' Competitive Negotiation Act
CTD	Commission for the Transportation Disadvantaged
DBE	Disadvantaged Business Enterprise
EEO	Equal Employment Opportunity
FAC	Florida Administrative Code
FDOT	Florida Department of Transportation
FS	Florida Statutes
FTA	Federal Transit Administration
ICE	Independent Cost Estimate
ITB	Invitation to Bid
ITN	Invitation to Negotiate
MPOAC	Metropolitan Planning Organization Advisory Council
PTGA	Public Transportation Grant Agreement
RFP	Request for Proposals
RFQ	Request for Quotation
RPC	Regional Planning Council
TD	Transportation Disadvantaged
TIP	Transportation Improvement Plan
TVM	Transit Vehicle Manufacturer

TABLE OF CONTENTS

VERSION LOG ..... **IV**

QUICK REFERENCE GUIDE ..... **V**

1 INTRODUCTION **1**

1.1 Funding Programs for Transit Services 1

1.2 Types of Procurement 10

1.3 Procurement Levels 11

1.4 Procurement Requirements 12

2 MICRO/DISCRETIONARY PURCHASE PROCEDURES **15**

2.1 Micro Purchases with Federal Funds 15

2.2 Small/Discretionary Purchases (<$10,000) with State Funds 16

3 SIMPLIFIED ACQUISITION OR SMALL/DISCRETIONARY PURCHASE PROCEDURES **18**

3.1 Simplified Acquisition with Federal Funds 18

3.2 Small/Discretionary Purchases ($10,001-$34,999) with State Funds 21

4 COMPETITIVE PROCUREMENT PROCEDURES **23**

4.1 Competitive Procurement Procedures with Federal Funds 23

4.2 Competitive Procurement Procedures with State Funds 29

5 ADDITIONAL RESOURCES **38**

APPENDIX A. FEDERAL CERTIFICATION & ASSURANCES

APPENDIX B. PROCUREMENT POLICY GUIDE AND CHECKLIST

APPENDIX C. MICRO/DISCRETIONARY PURCHASE FORMS

APPENDIX D. SMALL/DISCRETIONARY PURCHASE FORMS

APPENDIX E. COMPETITIVE PROCUREMENT FORMS

TABLES

Table 1-1: Federal And State Transit Funding Programs 1

FIGURES

Figure 1-1: Determining Funding Source 2
Figure 1-2: Procurement Types 11
Figure 1-3: State and Federal Procurement thresholds 12
Figure 1-4: Federal and State Procurement Requirements 13
Figure 2-1: Process for Federally Funded Micro Purchases 15
Figure 2-2: Process for State Funded Small/Discretionary Purchases (<$10,000) 17
Figure 3-1: Process for Federally Funded Simplified acquisition 18
Figure 3-2: Process for State Funded Discretionary Purchases ($10,001-$34,999) 21
Figure 4-1: Process for Federally Funded Competitive Purchases 23
Figure 4-2: Process for State Funded Competitive Purchases 29

VERSION LOG

Version	Date	Section/Page	Description
1.0	October 2023	N/A	Initial document released.
1.1	April 2024	Section 2	Revisions to flow charts and text to clarify FDOT approval requirements for micro purchases.
1.2	June 2024	Appendix A	Revisions to federal clause language and references.
1.3	October 2025	All Sections and Appendices	Revisions to thresholds and language to align with FTA Circular 4220.1G. Updates to state Micro and Small Purchase thresholds. Updates to Federal Assurances.
1.4	May 2026	Appendix A	Updated Master Agreement references from MA 33 to MA 34.

QUICK REFERENCE GUIDE

Determine the funding source and threshold for your procurement and use the table below to navigate to the appropriate section for step-by-step guidance on how to complete the procurement process. For guidance on determining the funding source and threshold of a procurement, proceed to Section 1 of this document.

Funding Threshold	Funding Source	
	Federal	State
Micro/Discretionary Purchase (≤$10,000)	Section 2.1	Section 2.2
Simplified Acquisition or Small/Discretionary Purchase ($10,001-$34,999)	Section 3.1	Section 3.2
Competitive Purchase (≥ $35,000)	Section 4.1	Section 4.2

Note: If using a combination of federal and state funds, follow the process for federal procurements as the inclusion of federal clauses will be required.

1 INTRODUCTION

The Federal Transit Administration (FTA) and the Florida Department of Transportation (FDOT) provide grant funding to public transit service providers through various programs to assist with meeting the transportation needs of specific populations.

To qualify for maximum reimbursement, all purchases made by recipients with FTA, FDOT, or other federal or state funds must follow the procurement procedures that have been established for each funding program, procurement type, and procurement amount. This guidance document is designed to assist public transit grant recipients in Florida with navigating the procurement process.

1.1 Funding Programs for Transit Services

Table 1-1 outlines the federal and state funding programs primarily used to fund transit services and projects in Florida. More detail regarding these funding programs is provided below.

TABLE 1-1: FEDERAL AND STATE TRANSIT FUNDING PROGRAMS

Federal Funding Sources	State Funding Sources
• **Sections 5303 and 5305(e),** Metropolitan Transportation and State Planning[1] • **Section 5307,** Urbanized Area Formula[2] • **Section 5310,** Enhanced Mobility of Seniors, and Individuals with Disabilities • **Section 5311,** Formula Grants for Rural Areas • **Sections 5539(a) and 5339(c),** Bus and Bus Facilities Grant and Low or No Emission Vehicle Program • **American Rescue Plan (ARP)** • **Coronavirus Aid, Relief, and Economic Security (CARES) Act** • **Coronavirus Response and Relief Supplemental Appropriations Act (CRRSSA)**	• **Florida State Block Grant Program** • **Service Development Program** • **Transit Corridor Program** • **Park-and-Ride Program** • **Commuter Assistance Program** • **Florida Transportation Disadvantaged (TD) Program Funds[3]**

[1] These funds are administered by FDOT to Metropolitan Planning Organizations (MPOs).

[2] Most Florida transit agencies receive Section 5307 program funds directly from FTA and are not administered by FDOT.

[3] Administered by the Florida Commission for the Transportation Disadvantaged (CTD).

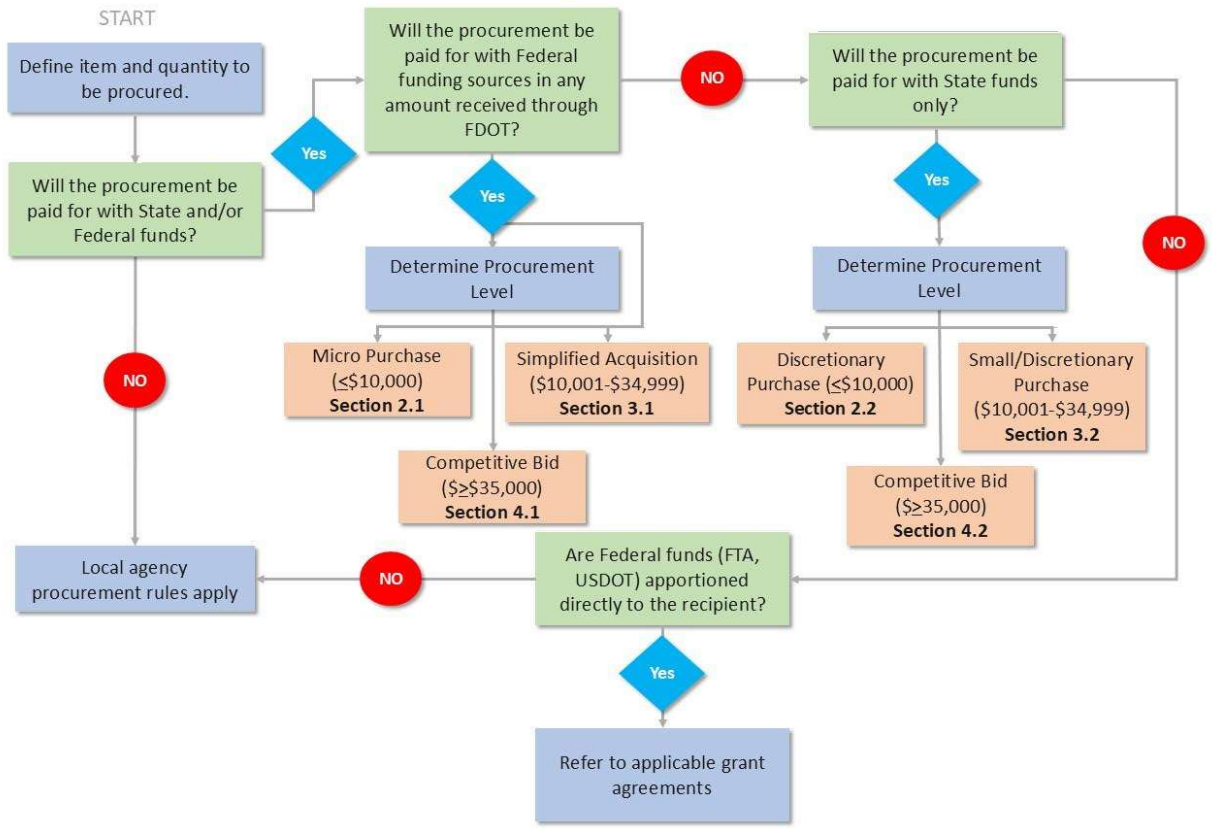
FDOT has been designated by the Governor to administer federal funds to subrecipients that do not receive these funds from FTA as a direct recipient. This includes the Section 5310 and 5339 programs for small urban areas (areas with populations of 50,000–199,999) and rural areas (areas with populations

below 50,000). Additionally, FDOT administers the Section 5311 program that includes funding for the provision of public transit services designed to serve the mobility needs of rural areas.

When an entity applies for and accepts federal funds, as either a direct recipient or a subrecipient, or accepts State (FDOT) funds, they also accept the responsibility of maintaining oversight of the procurement process and assuring compliance with all applicable requirements.

Procurement requirements can vary depending on the funding source. In subsequent sections, this document details the procurement requirements that apply when procuring goods or services as a subrecipient of federal grant programs vs. state funding sources, as shown in Figure 1-1. Direct recipients of Federal funds have specific grant agreements in place with FTA and are required to follow all applicable federal procurement rules.

FIGURE 1-1: DETERMINING FUNDING SOURCE



1.1.1 Federal Transit Funding Programs

This section describes the federal public transit funding sources that FDOT has been designated by the Governor to administer. The Section 5307 Urbanized Area Formula Grant Program is included below, as it is a major source of federal funding for public transit in urbanized areas of Florida; however, nearly all Section 5307 program funds in Florida are received by transit agencies from FTA as direct recipients and are not administered by FDOT.

Section 5303 and 5305(e), Metropolitan and Statewide Transportation Planning

This program provides funding to support the cooperative, continuous, and comprehensive planning program for making transportation investment decisions in metropolitan areas, required by 49 U.S. Code § 5303–5306. FDOT has developed, after consultation with the Florida MPO Advisory Council (MPOAC), a formula for the distribution of Section 5303 planning funds to MPOs who then distribute funds to eligible subrecipients as part of their respective Transportation Improvement Program (TIP).

Section 5307, Urbanized Area Formula Grants

The Section 5307 program makes federal resources available to urbanized areas and to Governors for transit planning, capital, and operating assistance in urbanized areas with populations less than 200,000. In areas over 200,000 in population, operating assistance is an eligible expense for transit agencies that operate 100 or fewer buses in fixed route service during peak service hours; in this instance operators may use a variable percentage of Section 5307 funds for operating assistance based on the number of buses operated.

Eligible Expenses for Capital Assistance

Eligible expenses include traditional capital expenses as defined by 49 U.S. Code § 5302, which include the vehicles, equipment, and/or facilities necessary to carry out the public transportation service. Examples include:

- Buses, vans or other paratransit vehicles
- Capital cost of contracting
- Radios and communications equipment
- Wheelchair lifts and restraints
- Vehicle maintenance
- Microcomputer hardware/software and initial installation costs
- Vehicle procurement, inspection and acceptance costs
- Introduction of new technology
- Construction or rehabilitation of transit facilities including design, engineering, and land acquisition

Other eligible projects include:

- Planning, engineering, design, and evaluation of transit projects and other technical transportation-related studies
- Capital investments in new and existing fixed guideway systems, including rolling stock, overhaul and rebuilding of vehicles, track, signals, communications, and computer hardware/software
- All preventive maintenance
- Defined percentage of costs to provide Americans with Disabilities Act (ADA) complementary paratransit service costs

The federal share for capital expenses is not to exceed 80%. Refer to 49 U.S. Code § 5307 for a complete description of eligible capital expenses.

Eligible Expenses for Operating Assistance

Eligible expenses include administrative, management, and operations costs directly related to public transportation services less operating revenue (i.e., primarily fare revenue).

Eligible expenses also include personnel salaries and benefits for operators, dispatchers, maintenance mechanics, and administrative staff.

Other direct expenses include:

- Fuel and oil
- Tires, parts, and maintenance
- Vehicle licenses
- Vehicle insurance
- Uniform purchase
- Administration of third-party contract

Refer to 49 U.S. Code § 5307 for a complete description of eligible operating expenses.

Eligible Expenses for Job Access and Reverse Commute Projects

The Job Access and Reverse Commute (JARC) program was established under 49 U.S. Code § 5316 to address the unique transportation challenges faced by welfare recipients and low-income persons seeking to obtain and maintain employment. While this program was repealed in 2012 by The Moving Ahead for Progress in the 21st Century Act (MAP-21) federal funding authorization, JARC projects are an eligible expense under the Section 5307 program. This includes capital, planning, and operating expenses for projects that transport low-income individuals to and from jobs and activities related to employment, and for reverse commute projects. There is no requirement or limit to the amount of Section 5307 funds that can be used for JARC projects.

Refer to 49 U.S. Code § 5307 for a complete description of eligible expenses under this program.

Section 5310, Enhanced Mobility for Seniors and Individuals with Disabilities

The Section 5310 program provides formula funding to states for the purpose of assisting private nonprofit groups in meeting the transportation needs of older adults and people with disabilities when the transportation service provided is unavailable, insufficient, or inappropriate to meeting these needs.

Eligible expenses for Section 5310 Program funds include capital assistance, operating assistance, and mobility management.

Eligible Expenses for Capital Assistance

Traditional capital expenses as defined by 49 U.S. Code § 5302(3), which include the vehicles, equipment, and/or facilities necessary to carry out the public transportation service. Examples include:

- Buses, vans or other paratransit vehicles
- Capital cost of contracting
- Radios and communications equipment
- Wheelchair lifts and restraints

- Vehicle maintenance
- Microcomputer hardware/software and initial installation costs
- Vehicle procurement, inspection and acceptance costs
- Introduction of new technology
- Construction or rehabilitation of transit facilities including design, engineering, and land acquisition
- Other durable goods such as spare components with a unit cost over $300 and a useful life of more than one (1) year

Refer to 49 U.S. Code § 5310 for a complete description of eligible capital expenses.

Eligible Expenses for Operating Assistance

Eligible expenses include administrative, management, and operations costs directly related to public transportation services less operating revenue. See examples provided under *Section 5307, Urbanized Area Formula Grants-- Eligible Expenses for Operating Assistance*. Refer to 49 U.S. Code § 5310 for a complete description of eligible capital expenses.

Eligible Expenses for Mobility Management

Mobility management is defined as consisting of short-range planning and management activities and projects for improving coordination among public transportation and other transportation service providers carried out by a recipient or subrecipient through an agreement entered into with a person, including a governmental entity; but excluding operating public transportation services.

Eligible mobility management activities include:

- Promoting, enhancing, and facilitating access to transportation services that result in more service options or increases the efficiency of trips for passengers.
- Conducting short-term management activities to plan and implement coordinated services.
- Supporting state and local coordination policy bodies and councils.
- Operating transportation brokerages to coordinate providers, funding agencies, and customers.
- Providing customer-oriented travel navigator systems and neighborhood travel coordination activities such as coordinating individualized travel training and trip planning activities for customer
- Conducting operations planning for the acquisition of intelligent transportation technologies.
- Developing and operating one-stop transportation traveler call centers to coordinate transportation information on all travel modes and to manage eligibility requirements and arrangements for customers among supporting programs.

Refer to 49 U.S. Code § 5310 for a complete description of eligible mobility management expenses.

Section 5311, Formula Grants for Rural Areas

The Section 5311 program provides support for public transportation in rural areas with populations of less than 50,000, where many residents often rely on public transportation to reach their destinations. The program also provides funding for state and national training and technical assistance through the Rural Transportation Assistance Program (RTAP).

Eligible expenses Section 5311 Program funds include planning, capital, operating, and the acquisition of public transportation services.

Eligible Expenses for Capital Assistance

Eligible expenses include traditional capital expenses as defined by 49 U.S. Code § 5302(3), which include the vehicles, equipment, and/or facilities necessary to carry out the public transportation service. See examples provided under Eligible Expenses for Section 5307 Program Funds (*Eligible Expenses for Capital Assistance*).

Eligible Expenses for Operating Assistance

Eligible expenses include administrative, management, and operations costs directly related to public transportation services in rural areas less operating revenue. See examples provided under *Eligible Expenses for Section 5307 Program Funds (Eligible Expenses for Operating Assistance)*.

Eligible Expenses for Mobility Management

Eligible expenses include short-range planning and management activities and projects for improving coordination among public transportation and other transportation service providers. See definition and examples provided under *Eligible Expenses for Section 5310 Program Funds (Eligible Expenses for Mobility Management)*.

Eligible Expenses for Job Access and Reverse Commute Projects

Eligible expenses include capital, planning and operating expenses for projects that transport low-income individuals to and from jobs and activities related to employment, and for reverse commute projects. See definition and examples provided under *Eligible Expenses for Section 5307 Program Funds (Eligible Expenses for Job Access and Reverse Commute Projects).*

Section 5339, Bus and Bus Facilities Grant

The Section 5339 program provides funding to replace, rehabilitate and purchase buses and related equipment and to construct bus-related facilities including technological changes or innovations to modify low or no emission vehicles or facilities. Eligible expenses for Section 5339 Program Funds include capital projects related to buses and bus facilities. This includes:

- Replacement, rehabilitation and purchase of buses, vans, and related equipment
- Construction of or technological changes/innovations to bus-related facilities
- Modifications to vehicles or facilities to low- or no-emission

Refer to 49 U.S. Code § 5339 for a complete description of eligible capital expenses under this program.

American Rescue Plan (ARP)

The ARP Act of 2021 includes $30.5 billion in federal funding to help support public transportation systems return service from COVID-19 suspensions. These funds must be obligated by September 30, 2024, and disbursed by September 30, 2029. Eligible expenses include:

- Payroll of public transit providers, including private providers of public transportation
- Operating costs of public transit during the public health emergency, including the purchase of personal protective equipment
- Administrative leave for operations or contractors due to reductions in service

Coronavirus Aid, Relief, and Economic Security (CARES) Act

The CARES Act of 2020 provides emergency assistance and health care response for individuals, families, and businesses affected by the COVID-19 pandemic, including public transportation providers. FTA allocated $25 billion to recipients of urbanized area and rural area formula funds with no local match required. These funds support capital, operating, and other expenses generally eligible under the Section 5307 and 5311 programs incurred on or after January 20, 2020. Funds are available until expended.

Refer to FTA's CARES Act page for more information on eligible expenses.

Coronavirus Response and Relief Supplemental Appropriations Act (CRRSAA)

The CRRSAA allocated $14 billion in supplemental appropriations for transit infrastructure to help transit agencies respond to COVID-19. Funds are available for operating and capital expenses for all FTA Sections 5307, 5310 and 5311 recipients, including those in large urban areas, and including administrative leave for transit workers. Similar to the CARES Act, these funds support expenses incurred pm or after January 20, 2020. Funds are available until expended.

Refer to FTA's CRRSAA page for more information on eligible expenses.

1.1.2 State Transit Funding Programs

This section describes the state public transit funding sources FDOT has been designated to administer.

Florida Public Transit Block Grant Program

The Public Transit Block Grant Program was established by the Florida Legislature to provide a stable source of funding for public transit. The specific program authority is provided in § 341.052, F.S. Funds are awarded by FDOT to public transit providers eligible to receive funding from the FTA's Section 5307 and 5311 programs and to Community Transportation Coordinators (CTCs). To receive Block Grant funds, eligible transit providers must provide a 10-year Transit Development Plan, a major update of which is due every five years (refer to Rule 14-73.001, Florida Administrative Code [F.A.C.]).

Eligible expenses include capital, service development, and operations.

Eligible Expenses for Capital Assistance

Eligible expenses include traditional capital expenses as defined by 49 U.S. Code § 5302(3), which include the vehicles, equipment, and/or facilities necessary to carry out the public transportation

service. State participation is limited to 50% of the non-federal share of the costs, not to exceed the local share, of any eligible public transit capital project or commuter assistance project. State participation in the final design, right-of-way acquisition, and construction phases of an individual fixed-guideway project that is not approved for federal funding cannot exceed an amount equal to 12.5% of the total cost of each phase.

At FDOT's discretion, State participation can be increased to 100% of the cost of any eligible transit capital project, intercity bus service project, or commuter assistance project that is statewide in scope or involves more than one county where no other governmental entity or appropriate jurisdiction exists. State participation can also be increased to 100% of the capital costs of transit service development projects with statewide significance or transit corridor projects.

Eligible Expenses for Operating Assistance

Eligible expenses include administrative, management, and operations costs directly related to providing public transportation services. State participation in eligible public transit operating costs may not exceed 50% net of farebox, charter, and advertising revenue and federal funds received by the provider for operating costs, whichever amount is less. As with capital assistance, State participation can be increased to 100% of the operating costs of transit service development projects with statewide significance or transit corridor projects.

Public Transit Service Development Program

The Public Transit Service Development Program was enacted by the Florida Legislature to provide initial funding for special projects and is authorized in Chapter 341, F.S. The discretionary funding program is selectively applied to determine whether a new or innovative technique or measure can be used to improve or expand public transit services. Eligible projects specifically include those involving the use of new technologies; services, routes, or vehicle frequencies; the purchase of special transportation services; and other such techniques for increasing service to the riding public. Projects involving the application of new technologies or methods for improving operations, maintenance, and marketing in public transit systems are also eligible for Service Development Program funding. State funding for eligible projects under this program is limited to three (3) years.

Transit Corridor Program

The Transit Corridor Program is authorized in Chapter 341, F.S., and provides funding to CTCs or transit agencies to support new services within specific corridors when the services are designed and expected to help reduce or alleviate congestion or other mobility issues. Transit Corridor funds are discretionary and are distributed based on documented need. Program funds may be used for capital or operating expenses. Eligible projects must be identified in a Transit Development Plan, Congestion Management System Plan, or other formal study undertaken by a public agency.

Park-and-Ride Program

The Park-and-Ride Program was initiated in 1982 and provides for the statewide purchase and/or leasing of private land for the construction of park-and-ride lots, promotion of these lots, and monitoring their use. This program is an integral part of FDOT's Commuter Assistance Program to

encourage the use of transit, carpools, vanpools, and other high-occupancy modes and reduce single-occupant vehicle travel. FDOT will fund up to 50% of the non-federal share of park-and-ride capital projects. If a local project is in the best interest of FDOT, the local share may be provided in cash, donated land value, or in-kind services. If federal funds are involved, federal match guidelines must be used.

Commuter Assistance Program

The Commuter Assistance Program was established by Chapters 187 and 341, F.S. to identify effective employer-based transportation demand management (TDM) strategies, foster development of public/private partnerships, and fund appropriate eligible recipients to carry out commuter assistance program projects on behalf of FDOT.

Eligible commuter assistance expenses include:

- Program administration and operational costs.
- Computer hardware and software necessary to establish trip-matching services, where not redundant or sharing could be a more efficient use of equipment.
- Specialized demonstration projects of statewide or regional impact designed to show innovative approaches to commuter assistance.
- Other capital purchases for the accomplishment of program objectives.
- Other operating expenses for the accomplishment of program objectives, such as a Guaranteed Ride Home Project or vanpool administration.

Eligible recipients of matching grant funds are local governments or their designees, including MPOs, Regional Planning Councils (RPCs), transportation authorities, or designated CTCs.

FDOT will fund up to 100% of the eligible costs of commuter assistance projects determined by FDOT to be regional in scope and application or statewide in nature.

Florida Transportation Disadvantaged Program

The Florida Transportation Disadvantaged (TD) Trust Fund was established under § 427.0159, F.S. Funds deposited in the TD Trust Fund may be used by the Florida Commission for the Transportation Disadvantaged (CTD) to subsidize a portion of an eligible TD person's transportation costs not sponsored by an agency if a cash or in-kind match is required. Funds for non-sponsored TD services are distributed based upon the needs of the recipient and according to criteria developed by the Florida CTD. In addition to TD operating funds, there are other reoccurring grant programs offered through the Florida CTD.

Trip and Equipment Grant Program

The Trip and Equipment Grant program was established to provide opportunities for TD citizens to obtain access to transportation for daily living needs not sponsored by any other available federal, state or local funding source. This is a reimbursement grant whereby grantees must provide service or procure capital equipment before seeking reimbursement.

Shirley Conroy Grant Program

The Shirley Conroy Grant Program is a discretionary grant focusing on addressing the capital needs of rural areas. The applicant is required to state the specific amount of money and eligible equipment required to complete the project, as well as provide specific details supporting the need, impact, and value of the project on the coordinated system.

Florida CTD Planning Grant

The Planning Grant Program was established to provide funding to designated official planning agencies to assist the Florida CTD in their responsibilities at the local level and to provide support to the Local Coordinating Boards (LCB). Eligible recipients include any official body, agency, or entity designated by the Florida CTD to fulfill the functions associated with staffing the LCB and other local designated planning agency functions. This is a fixed-price agreement to complete certain tasks outlined in the Florida CTD's *Program Manual and Instructions for the Planning Grant* document found on their website.

1.2 Types of Procurement

It is important at the initial stage of the procurement process that subrecipients identify not only the funding source, but also the procurement type as some types of procurement require specific clauses and certifications to be recognized. The requirements by procurement type can be found in the matrix in Appendix A. As shown in Figure 1-2, there are five major types of procurement:

- Professional Services
- Operations/Management Services
- Rolling Stock
- Construction
- Materials/Supplies.

Formal definitions for these have not been established by FTA, but the figure also provides general examples of each procurement type.

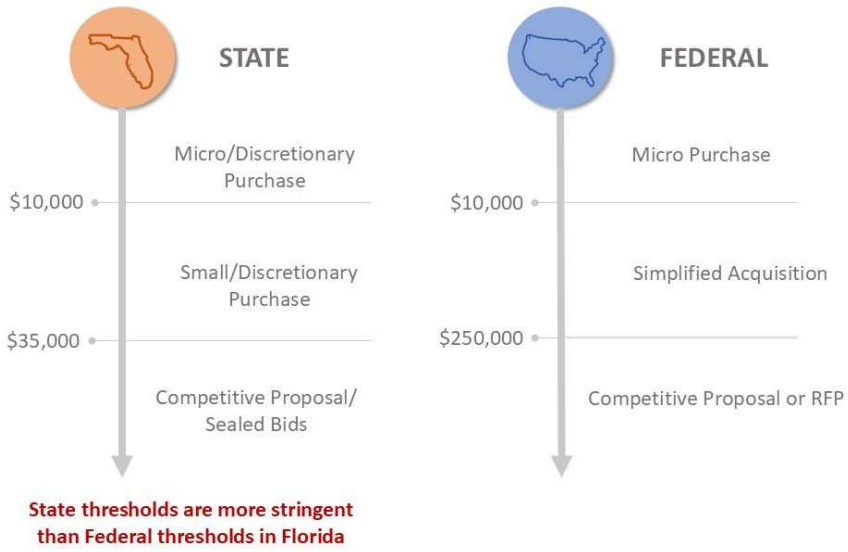
FIGURE 1-2: PROCUREMENT TYPES

Professional Services/Architectural Engineering Services 	• Program management • Architecture & Engineering • Design • Survey/Mapping • Feasibility Studies
Operations/Management/ Subrecipients 	• Accounting • Legal, procurement, etc. • Operating transit vehicles
Rolling Stock 	Buses, vans, cars, railcars, trolleys, ferry boats, and other vehicles used to provide public transportation
Construction 	Construction, alteration, or repair (including dredging, excavating, and painting) of buildings, structures or other real property.
Materials and Supplies 	• Office or program supplies/equipment related to transportation system • Low-cost spare parts for vehicles (oil, filters, etc.)

1.3 Procurement Levels

Once the funding source has been identified by an agency, the next step is to determine the type of procurement process that must be followed. This is primarily determined by the total cost of the procurement itself. Figure 1-3 illustrates the procurement levels and their thresholds by funding source. State thresholds are applicable in Florida per § 287.017, F.S. and Rule 60A-1.002, F.A.C. and are more stringent than federal thresholds. Federal thresholds are established in FTA Circular C 4220.1, Chapter VI, Section 3. Procurements using only local funds should follow procurement procedures established in local policies. If using a combination of federal, state, and local funds, the more stringent thresholds should be followed. Therefore, if receiving federal funds through FDOT, the state thresholds should be used.

FIGURE 1-3: STATE AND FEDERAL PROCUREMENT THRESHOLDS



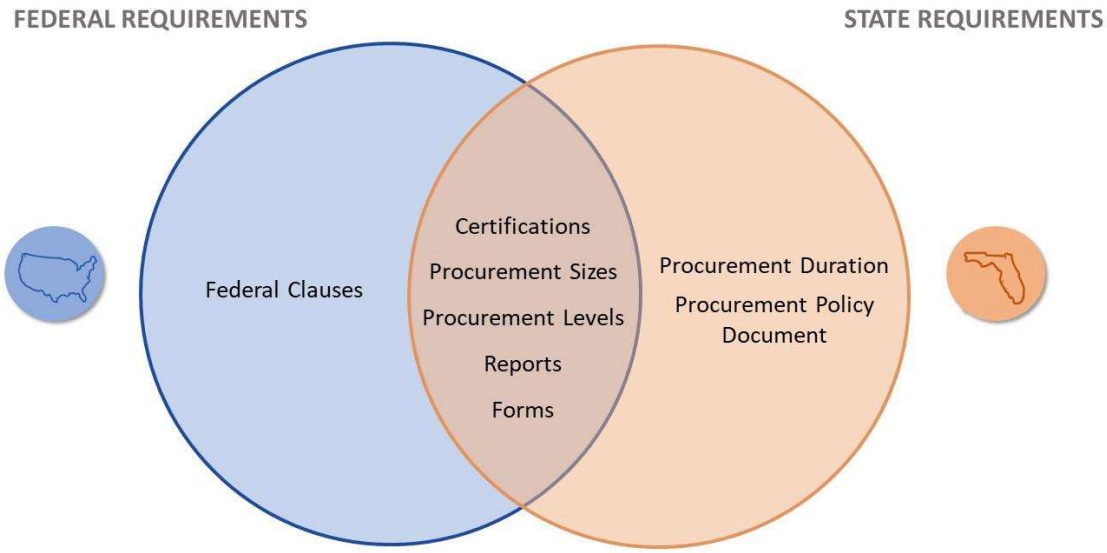
1.4 Procurement Requirements

Figure 1-4 shows how state and federal procurement requirements overlap and where they differ. More detail regarding these steps is provided after the figure.

The primary differences between the procurement process using federal funds vs. state funds are:

- The method for determining the type of procurement.
- Procurements funded with federal funds require acceptance of applicable federal clauses based on the type and amount of procurement; acceptance of these clauses is not required when no federal funding is used.
- Commodity or contractual service procurements funded with state grant funds require an attorney certification to FDOT that the procurement complies with § 287.057, F.S.

FIGURE 1-4: FEDERAL AND STATE PROCUREMENT REQUIREMENTS



Federal Clauses

It is the responsibility of the direct recipient and subrecipients of federal funds to ensure that all federal requirements, required clauses, and certifications are properly followed and included, whether in a master contract or in a purchase document/order. For more information on the applicability of federal clauses, see Appendix A.

Required Certifications, Reports, and Forms

Each procurement level will have a corresponding number of required certifications, reports, and forms. These are required by federal or state entities. To find a matrix of required certifications, reports, and forms, see Appendix A.

Procurement Sizes

Direct recipients and subrecipients of federal funds are prohibited from dividing or reducing the size of a procurement merely to avoid the additional procurement requirements applicable to larger acquisitions. For example, a procurement that would otherwise be considered a small purchase cannot be split into several different procurements so that each separate procurement would then fall within the micro purchase threshold of less than or equal to $10,000.

Procurement Level Thresholds

If the estimated procurement cost is close to the threshold of the next procurement level, agencies should comply with the requirements of the next procurement level, as it is more difficult to ensure compliance at a later date. For example, if procurement is anticipated to come in under the state's small purchase threshold of $10,001, but there is reasonable chance that the amount ultimately paid for that procurement could exceed $10,001, the subrecipient should treat the procurement as a small purchase

from the beginning of the procurement process to ensure that all aspects of the procurement are ultimately in compliance if the micro purchase threshold is exceeded.

For direct federal recipients using federal funds that do not pass through the state, recipients have the option to self-certify a micro purchase threshold up to $50,000, according to current guidelines under Federal Acquisition Regulations (FAR) 13.201. Recipients should follow the procedures outlined in 2 CFR 200 if considering self-certification.

Procurement Duration

FDOT specifies in capital contracts that the subrecipient must complete all purchases within a one-year period. The funds will expire at the end of the one-year period if the subrecipient has not completed all purchases.

FDOT may, however, exercise its discretion to approve an extension to a grant on a case-by-case basis and, depending on the type of purchase, whether the subrecipient demonstrates that "reasons beyond its control" (lack of planning excluded), it is following all applicable procurement policies and requirements, and has demonstrated:

1. that a good faith effort has been made to complete the purchases, and
2. that it can complete such purchases within a reasonable amount of time

Procurement Policy Document

FDOT subrecipients with historical or anticipated upcoming procurements that meet (or exceed) the small purchase threshold are required to develop an internal procurement policy document. This document should outline the processes and procedures the agency will use to ensure compliance with all federal and state procurement rules and regulations. The internal procurement policy document must be reviewed and approved by the FDOT District Grant Program Manager every three years. A sample agency procurement policy is provided in Appendix B for reference.

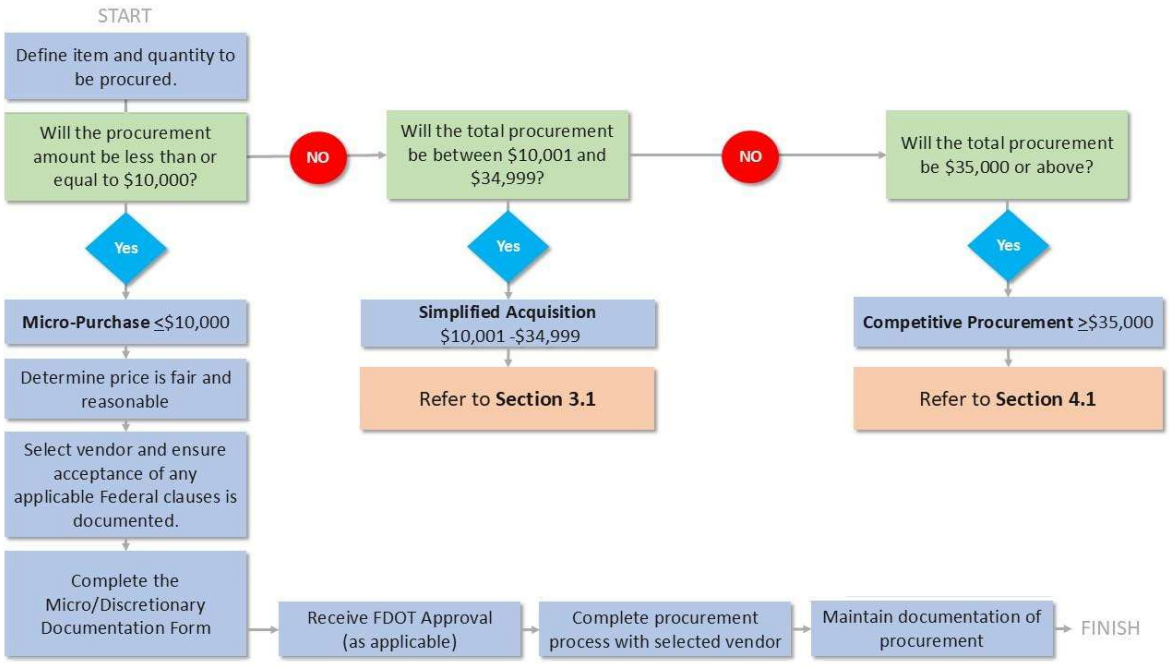
2 MICRO/DISCRETIONARY PURCHASE PROCEDURES

A micro purchase refers to the procurement of a service or item less than or equal to the cost of $10,000. When referring to state funded procurements, a micro purchase is referred to as a discretionary purchase. The following section outlines the appropriate procedure for a micro/discretionary purchase when federal or state funding sources are used.

2.1 Micro Purchases with Federal Funds

Purchases less than or equal to the cost of $10,000 using federal funds in any capacity must be completed using the micro purchase procedures outlined below and in Figure 2-1[1]. As previously noted, dividing or reducing the size of a procurement to avoid the requirements of a simplified acquisition is not allowed. A micro purchase may be made without obtaining competitive quotes if the subrecipient determines that the price to be paid is fair and reasonable (e.g., based on recent research, experience, or purchases). Repetitive micro purchases for the same good or service should be distributed among qualified buyers within a reasonable geographic area.

FIGURE 2-1: PROCESS FOR FEDERALLY FUNDED MICRO PURCHASES



[1] If using federal funds only (i.e., no state funds are used in any amount), the federal thresholds identified in Figure 1-3 may be followed.

The steps for completing a micro purchase procurement include:

1. Determine the item and quantity to be purchased based on the grant award (funding source).
2. Gather price information to determine if the price is fair and reasonable. This normally will be based on a comparison of historical prices paid for the item or commercial/Internet catalog or advertised prices. The subrecipients are encouraged to obtain quotes (orally or written), but it is not required. Refer to Section 3.2 for procedures to obtain a quote.
3. Select the vendor and ensure acceptance of any applicable federal clauses is documented.
4. Complete a Micro/Discretionary Purchase Documentation Form (Appendix C) and submit to the FDOT District Grant Program Manager for review and approval, if required. Such a requirement may be in response to a risk assessment finding, triennial review corrective action, etc. but will be discussed with the subrecipient in advance of executing the PTGA. It is crucial the purchase order clearly specifies the item(s) or service(s) being purchased and the terms and conditions of the purchase.
5. If approval is required, the FDOT Grant Program Manager must approve the micro purchases before the recipient places a written or oral purchase order. FDOT encourages subrecipients to work collaboratively with their FDOT District Program Manager to ensure they are in full compliance with all federal and state regulations and can show documented evidence to support the recommendation and decision to make a micro purchase award.
6. The procurement process is completed with the selected vendor.
7. Documentation must be kept to support the method of purchase, basis for vendor selection, and reasonableness of price.

2.1.1 Applicable Federal Clauses

For procurements funded with federal grants, it is the responsibility of the subrecipient to ensure that all federal requirements, required clauses, and certifications are properly followed and included, whether in a master contract or in a purchase document/order.

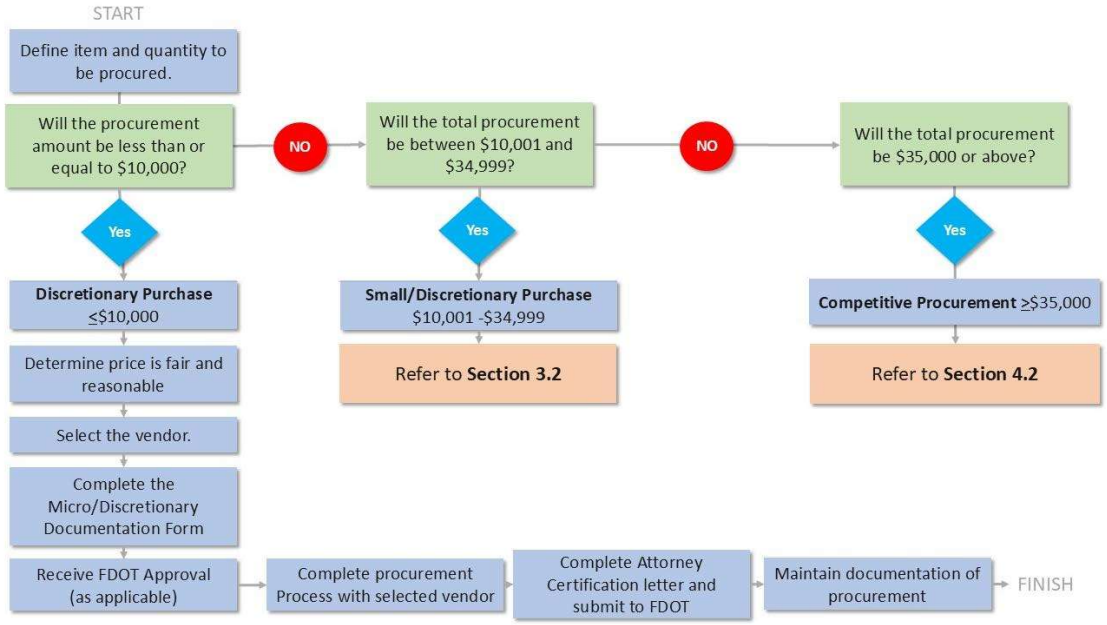
Generally, federal clauses do not apply to micro purchases, **with the exception of construction contracts of $2,000–$9,999**. In this event, the applicant should review all federal clauses to identify those appropriate to consider in their procurement process.

2.2 Small/Discretionary Purchases (≤$10,000) with State Funds

Purchases less than or equal to the cost of $10,000 procured with only state funds should be carried out using good purchasing practices. Such practices include but are not limited to the receipt of written quotations or written records of telephone quotations. As previously noted, dividing or reducing the size of a procurement to avoid the requirements of a small purchase is not allowed.

A discretionary purchase may be made without obtaining competitive quotes if the subrecipient determines that the price to be paid is fair and reasonable (e.g., based on recent research, experience, or recent similar purchases). The steps for completing a discretionary procurement less than or equal to $10,000 are described below and illustrated in Figure 2-2.

FIGURE 2-2: PROCESS FOR STATE FUNDED SMALL/DISCRETIONARY PURCHASES (≤$10,000)



1. Determine the item and quantity to be purchased based on the grant award.
2. Gather price information to determine if the price is fair and reasonable. This normally will be based on a comparison of historical prices paid for the item or commercial/Internet catalog or advertised prices. The subrecipients are encouraged to obtain quotes (orally or written), but it is not required.
3. Select the vendor.
4. Complete a Micro/Discretionary Purchase Documentation Form (Appendix C) and submit to the FDOT District Grant Program Manager for review and approval, if required. Such a requirement may be in response to a risk assessment finding, triennial review corrective action, etc. but will be discussed with the subrecipient in advance of executing the PTGA. It is crucial the purchase order clearly specifies the item(s) or service(s) being purchased and the terms and conditions of the purchase.
5. If approval is required, the FDOT Grant Program Manager must approve the micro purchases before the recipient places a written or oral purchase order. FDOT encourages subrecipients to work collaboratively with their FDOT District Program Manager to ensure they are in full compliance with all federal and state regulations and can show documented evidence to support the recommendation and decision to make a micro purchase award.
6. The procurement process is completed with the selected vendor.
7. Documentation to support the method of purchase, basis for vendor selection, and reasonableness of price must be kept.

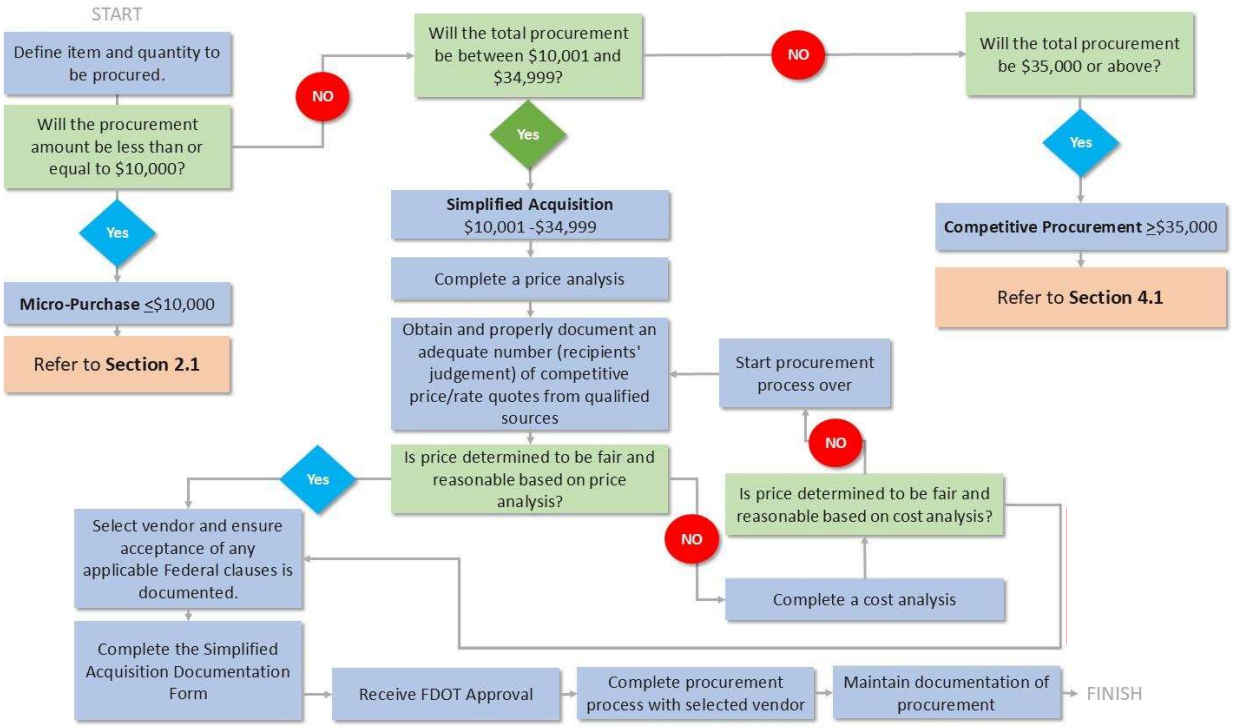
3 SIMPLIFIED ACQUISITION OR SMALL/DISCRETIONARY PURCHASE PROCEDURES

Simplified acquisitions or small purchases refer to the purchase of a service or item between $10,001 and $35,000. Purchases made within these thresholds using state funds are also referred to as discretionary purchases. The following section outlines the appropriate procedure for either a simplified acquisition or small/discretionary purchase when using either federal or state funding sources.

3.1 Simplified Acquisition with Federal Funds

The minimum federal threshold for a simplified acquisition can be set lower than the established $250,000 threshold by the recipient. Purchases of $10,001 or greater but less than $35,000 using federal funds in any capacity must be completed using the simplified acquisition procedures outlined below[2]. As previously noted, dividing or reducing the size of a procurement to avoid the requirements of a competitive procurement required for procurements $35,000 or greater is not allowed. The steps for completing a simplified acquisition are described below and illustrated in Figure 3-1.

FIGURE 3-1: PROCESS FOR FEDERALLY FUNDED SIMPLIFIED ACQUISITION



[2] If using federal funds only (i.e., no state funds are used in any amount), the federal thresholds identified in Figure 1-3 may be followed.

1. The subrecipient completes a price or cost analysis.

The price analysis for simplified acquisitions is more detailed than that of a micro purchase, but less detailed than for a competitive bid procurement. The purpose of a cost or price analysis (sometimes also referred to as an independent cost estimate [ICE]) is to demonstrate that the quotes solicited are fair and reasonable and in line with the anticipated cost for the goods and services being procured.

A price analysis should be conducted if the subrecipient determines that competition was adequate. However, if a price analysis is expected to not provide sufficient information to determine the reasonableness of the contract price, a cost analysis should be conducted in addition to or in place of a price analysis.

The price analysis should be completed before beginning a procurement request, i.e., when requesting funds for a grant application. Appendix D provides an example form for a simplified acquisition price or cost analysis.

2. The subrecipient solicits at least three competitive price or rate quotes from an adequate number of qualified sources.

   Competitive quotes may be obtained in writing or verbally. Verbal quotes are acceptable for commercially available items, while written quotes are more appropriate when it is necessary to provide vendors with detailed specifications or information about the procurement that cannot be conveyed orally or when pricing for specific items is needed for evaluation.

   Quotes must be adequately documented and include the names and address of vendor, item description, unit price, all other fees and charges, and applicable taxes.

3. As mentioned, the subrecipient completes a cost analysis if needed.

   If, based on a price analysis, the subrecipient can determine that the price is fair and reasonable, and if the bid is responsive and the bidder responsible, the subrecipient may proceed with award. If, however, the reasonableness of the bid cannot be determined based on a price analysis, then the subrecipient will have to request a detailed breakdown of costs and profit from the bidder and perform a cost analysis.

   A cost analysis is the review and evaluation of the separate cost elements and profit in an offeror's or contractor's proposal and the application of judgment to determine how well the proposed costs represent what the cost of the contract should be, assuming reasonable economy and efficiency.

   A cost analysis also is required if the procurement is being sought as a sole source purchase (including contract modification or change order) or the solicitation required the submittal of specific cost elements, i.e., labor hours, overhead, materials, etc.

   Sole source procurement occurs when a recipient's stated contract requirements can only be fulfilled from one source, rendering the award noncompetitive. The reason for which a sole source procurement may arise includes unsolicited proposals from the offeror presenting a unique, innovative idea or approach; patent or data right restrictions if they justify a noncompetitive award; substantial duplication of costs for follow on contracts of highly specialized equipment or components that are expected to not be recovered through competition; and unacceptable delays in the continued development of specialized equipment

or components that would be caused by the process of awarding another contractor with the contract.

A cost analysis is more complex and detailed than a price analysis. Therefore, it is recommended to use a price analysis whenever possible. For more information on how to complete a cost analysis, please refer to FTA's Best Practices Procurement Manual, Section 5.2. A link to the manual can be found in Section 6 of this document.

4. The subrecipient selects the vendor/contractor and ensures acceptance of all appropriate federal clauses.
5. The subrecipient completes the Small Purchase Documentation Form provided in Appendix D. Generally, a comparison of proposed prices received in response to the solicitation is sufficient to establish price reasonableness. Other methods to determine price reasonableness may include:
    - Comparison of catalog or market prices
    - Comparison of regulated prices such as utility purchases
    - Comparison with recent prices for similar goods and services

    The subrecipient is required to complete the form found in Appendix D to provide a sole source justification if only one price or rate quotation is received.
6. The subrecipient submits the small purchase documentation form to the FDOT District Grant Program Manager to obtain approval for the purchase.
7. The subrecipient will then complete the procurement process with the selected vendor.
8. The subrecipient must keep documentation to support the method of purchase, basis for vendor selection, and reasonableness of price.

Other requirements for small purchase procurements include:

- Using appropriate specifications and avoiding unduly restrictive specifications, such as specifying only a "brand name" product instead of allowing "an equal" product to be offered without listing its salient characteristics.
- Not applying a geographic preference for local or in-state suppliers when evaluating quotes for award (except when purchasing architectural engineering services).
- Subrecipients should periodically review purchases to discern procurement patterns for a particular product or service.

For a small purchase, the subrecipient may provide a separate signature page indicating that the contractor or supplier agrees to the applicable federal clause(s). An example of this signature page is also included in Appendix D.

3.1.1 Applicable Federal Clauses

Small purchases require compliance with different federal clauses, depending on the dollar amount and/or type of procurement.

A full list of federal clauses that may apply based on type of procurement, procurement amount, or other circumstances can be found in Appendix A followed by descriptions of more common federal

VETERANS PREFERENCE

49 U.S.C. § 5325(k)

Applicability to Contracts

The Veterans Preference requirements apply to construction contracts totaling $150,000 or more.

Flow Down

None.

Model Clauses/Language

To the extent practicable, the Contractor agrees to give a hiring preference to veterans (as defined in 5 U.S.C. § 2108) who have the skills and abilities required to perform construction work required for a capital project supported with funds made available or appropriated for 49 USC chapter 53; provided, however, the Contractor may not give a hiring preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability or a former employee.

PROMPT PAYMENT

49 C.F.R. Part 26 (2016)

Applicability to Contracts

Specific requirements for ensuring prompt payment or release of retainage to subcontractors, subconsultants, third party contractors, and vendors, are promulgated in 49 C.F.R. Part 26.13, 26.29, 26.37, and 26.109. The regulations outline what recipients must do to ensure compliance with the requirement that subcontractors (which includes subconsultants) must be promptly paid for work performed on a U.S. Department of Transportation funded (DOT-assisted) contract. The applicability is extended to DBE subcontractors specifically and must be outlined in the recipients DBE program. Recipients must use legal and contract remedies available under Federal, state, and local law, to include available penalties or sanctions that may be imposed, if they should breach the prompt payment or release of retainage clause. The recipient's DBE program must specify the requirements, remedies, and penalties or sanctions that may be imposed specifically. Recipients are expected to enforce the terms of the contract that specifies what happens if this provision of the contract is breached. The recipient's DBE program plan also must describe the process used by the recipient, if any, to resolve disputes concerning the subcontractor's performance or indicate what happens in the event of a dispute.

Recipients that hold retainage must make incremental acceptances of portions of the prime contract as the work is completed so that retainage that covers that work is released before final payment for completion of the entire contract. If retainage is held by the recipient against the prime contractor or held by the prime contractor against the subcontractor, there must be a contract clause obligating the payment of retainage within 30 days of the recipient's incremental acceptance of the work performed by the subcontractor. Contractors must submit the required documentation to recipients to begin the payment process. Similarly, subcontractors may be required to submit documentation to the prime contractor. The contractual commitment is a material term of the contract between the recipient and the prime contractor, and it is a material term of the contract between the prime contractor and the subcontractor.

Flow Down

This section applies to subcontractors at all tiers.

Model Clauses/Language

Recipients are required to pay promptly to contractors, subcontractors, subconsultants, and third-party vendors, and must ensure that contractors and subcontractors pay promptly and includes such language in applicable contracts and agreements. Recipients can draw on language provided in 49 C.F.R. Part 26 for appropriate Prompt Payment Clauses for use in their federally funded projects and programs.

SPECIAL NOTIFICATION REQUIREMENTS FOR STATES

Master Agreement 34 §37

Applicability to Contracts

Statutory Authorities

(a) Federal transit laws, 49 U.S.C. chapter 53,
(b) Continuing Resolutions or Other Appropriations Resolutions or Acts funding the Department of Transportation during Fiscal Year 2025.
(c) Title 23, United States Code (Highways).
(d) Other federal legislation that FTA administers, as FTA so determines

Section 37. Special Notification Requirements for States.

(a) Types of Information. To the extent required under federal law, the State, as the Recipient, agrees to provide the following information about federal assistance awarded for its State Program, Project, or related activities:

(1) The Identification of FTA as the federal agency providing the federal assistance for a State Program or Project;
(2) The Catalog of Federal Domestic Assistance Number (CFDA#) of the program from which the federal assistance for a State Program or Project is authorized; and
(3) The amount of federal assistance FTA has provided for a State Program or Project.

(b) Documents. The State agrees to provide the information required under this provision in the following documents:

(1) applications for federal assistance,
(2) requests for proposals or solicitations,
(3) forms,
(4) notifications,
(5) press releases, and
(6) other publications

Flow Down

This section applies to subcontractors at all tiers.

Model Clauses/Language

Recipients are required to acknowledge and provide notification of the FTA assistance and can draw on language provided in their FTA Master Agreement.

DOMESTIC PREFERENCES FOR PROCUREMENTS

2 C.F.R. 184

2 C.F.R. 200.322

2 C.F.R. Appendix II (L)

Applicability to Contracts

As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

(b) For purposes of this section:

(1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

Flow Down

This section applies to subcontractors at all tiers.

Model Clauses/Language

Recipients are required to include the preference to purchase domestic, to the extent practicable, and must include this requirement in all subawards and applicable contracts and agreements. Recipients can draw on language provided in 2 C.F.R. Part 200.322 for appropriate Clauses for use in their federally funded projects, contracts, and agreements.

APPENDIX B: PROCUREMENT POLICY GUIDE AND CHECKLIST

This appendix includes the following to assist agencies in creating a procurement policy:

Materials	Description	Page
Procurement Policy Guide		B-2
Procurement Policy Checklist		B-4

[Agency Name]

Procurement and Purchasing Policy

This guide is intended to assist subrecipients in developing policies and procedures for procurements and purchases using Federal Section 5310, 5311 and 5339 and State funds. The procurement and purchasing policy submitted to the FDOT District Grant Manager should reflect the subrecipient's specific internal policies and procedures.

GRADUATED PURCHASING AUTHORITY

<<Authorization thresholds are at the discretion of the agency>>

Staff shall acquire authorization for purchases in accordance with the following:

- Petty cash (under $100): General Manager/Director or a GM/Director-authorized staff member or senior secretary
- Products and services with a cost less than $2,500: General Manager/Director or GM/Director-authorized staff member
- Products and services with cost between $2,500 and $35,000: General Manager/Director
- Products and services costing more than $50,000: The Board of Trustees

PURCHASE PROCEDURES FOR FEDERAL (SECTION 5310, 5311, and 5339) AND STATE FUNDS BY THRESHOLD

<<Listed according to FDOT thresholds and FTA regulations; agency may select lower price thresholds. Agency is encouraged to elaborate on the procedures used by threshold>>

[*Agency*] shall purchase products and services in accordance with the following:

- Micro Purchases – Procurements less than or equal to $10,000:
  - Equitably distribute among qualified suppliers.
  - Document that the purchase was "fair and reasonable" with a description of howthis determination was made
  - Follow agency's written micro purchase procedures (which should align with CFR 200.320 and FTA guidance).
- Small Purchases – Procurements greater than $10,000 but less than $35,000:
  - Perform a price or cost analysis.
  - Avoid unreasonable qualifications, specifying brand, and geographic preference.
  - Obtain documented price or rate quotations from an adequate number of qualified sources.
- Large Procurements –Procurements $35,000 or more:
  - Formal bid process adhering to all FTA procurement requirements.

APPEAL AND PROTEST PROCEDURES

Any bidder, vendor, or contractor who is aggrieved in connection with the solicitation or award of a bid or contracted products and services may file an appeal with [Agency]. Bidders or contractors may submit an appeal of an award to the General Manager/Director in accordance with the following procedure:

1. Bidder or contractor shall submit an appeal no later than five (5) business days after notification of the bid award. Such appeals must be received by the Director no later than 5:00 p.m. within five (5) days of notice of award postmark date.
2. All appeals must be in writing and signed by the bidder or an authorized agent of the bidder.
3. The appeal shall include the name and address of the bidder or contractor.
4. The appeal shall include a detailed description of the facts and disagreement that form the basis of the bidder/vendor/contractor's appeal and supporting documentation and the specific decision requested. The bidder or contractor shall also promptly provide any additional documentation related to the appeal upon request from the General Manager/Director.
5. The General Manager/Director (or authorized representative of [Agency]) will provide the allegedly aggrieved bidder or contractor with a written decision within five (5) business days after receipt of the appeal. Decision by the General Manager/Director of [Agency] is final. If additional time is mutually agreed on, the General Manager/Director shall notify the bidder or contractor of any delay.
6. Failure to comply with the appeal procedure shall render an appeal untimely or inadequate and result in rejection by [Agency].

In the case of FDOT-grant funded operation, the vendor may further file a protest of the decision that resulted in the appeal process to FDOT. The protest to FDOT shall include a detailed description of the facts and disagreement that form the basis of the bidder's or contractor's protest and supporting documentation and the specific decision requested.

<<Some agencies choose to incorporate their required ethics policy here. Many keep their ethics policy as a separate, stand-alone document, which complements the procurement policy.>>

***FTA has developed a "Procurement System Self-Assessment Guide". The guide will assist grantees in identifying the specific procurement policy requirements in FTA Circular 4220.1G that grantees must address in their procurement policies and procedures. Please note: the Procurement System Self-Assessment Guide includes thresholds established by the FTA. The Department's thresholds are more stringent and therefore should be adhered to*

Procurement Policy Review Checklist

The following checklist is provided as a resource for District staff in reviewing procurement policies. It can also be used by grantees to develop their procurement policy. It is not mandatory for a District to use this checklist during the review and approval of the sub-recipient plan.

1. ☐ Does the agency's procurement policy include the procurement process for using local funds? Does it reference local purchasing procedures/policies?
2. ☐ Does the agency's procurement policy include the procurement process for using state funds? Does it reference state purchasing procedures/policies?
3. ☐ Does the agency's procurement policy include the procurement process for using federal funds?
   - ☐ Does it reference the Procurement Guidance for Transit Agencies for Third Party contracts?
   - ☐ Does it reference FTA Circular 4220.1G, Third Party Contracting Guidance?
   - ☐ Does it address Personal Conflicts of Interest [FTA C 4220.1G Ch. 3 (1)(a)]?
   - ☐ Does it address Third Party Contracting Capacity [FTA C 4220.1G Ch. 3 (3)] to include Written Procurement Procedures [FTA C 4220.1G Ch. 3 (3)(a)]?
     - ☐ Solicitations [FTA C 4220.1G Ch. 3 (3)(a)(1)(a-e)]
       - ☐ Clear Descriptions
       - ☐ Nonrestrictive Specifications
       - ☐ Quality Requirements
       - ☐ Preference for Performance Specifications
       - ☐ Brand Name or Equal
4. Does it address [FTA C 4220.1G Ch. 3 (3)(a)(2-5)], requiring recipients to have written procurement procedures that identify:
   - ☐ Necessity
   - ☐ Lease versus Purchase
   - ☐ Metric Usage
   - ☐ Environmental and Energy Efficiency Preferences
5. Does it address [FTA C 4220.1G Ch. 3 (3)(a)(6-10)]:
   - ☐ Procurement Methods
   - ☐ Legal Restrictions
   - ☐ Third Party Contract Provisions
   - ☐ Sources
   - ☐ Resolution of Third Party Contracting Issues
6. Does it address Record Keeping [FTA C 4220.1G Ch. 3 (3)(d)]:
   - ☐ Procurement History [FTA C 4220.1G Ch. 3 (3)(d)(1)(a-d)]
     - ☐ Procurement Method
     - ☐ Contract Type
     - ☐ Contractor Selection
     - ☐ Cost or Price
   - ☐ Reasonable Documentation [FTA C 4220.1G Ch. 3 (3)(d)(2)]
   - ☐ Constructive Changes [FTA C 4220.1G Ch. 3 (3)(d)(3)]

***FTA has developed a "Procurement System Self-Assessment Guide". The guide will assist grantees in identifying the specific procurement policy requirements in FTA Circular 4220.1G that grantees must address in their procurement policies and procedures. Please note: the Procurement System Self-Assessment Guide includes thresholds established by the FTA. The Department's thresholds are more stringent and therefore should be adhered to*

APPENDIX C: MICRO/DISCRETIONARY PURCHASE FORMS

Appendix C compiles all of the resources needed to assist in the micro purchase process and includes the following:

Materials	Description	Page
Micro/Discretionary Purchase Documentation Form	A form to help document the micro purchase process.	C-2
Request for Quotation Form	A form for agencies to send to vendors to request quotes for goods and services.	C-4
Price Analysis Form	A form to help document the price analysis process.	C-5
Sole Source Justification Form	A form to document the justification for non-competitive proposals, if applicable.	C-6

MICRO PURCHASE DOCUMENTATION FORM

SECTION 1: SUB-RECIPIENT INFORMATION

Agency:_____ Contact:_____
Phone:_____ Email:_____
Address:_____ City:_____
ZIP Code: _____ County: _____

SECTION 2: MICRO PURCHASE PROCUREMENT DOCUMENTATION

I hereby determine the price quoted by_____(*supplier name*) for the purchase of this item to be fair and reasonable based on the following:

Check all that apply:

☐ Comparison of and based on current quotes received for the same or similar item (complete the matrix below).

☐ Comparison of proposed pricing with pricing from recent purchases of the same or similar item, adjusted by the pertinent Consumer or Producer Price Index or Inflation Rate over the corresponding time period, if appropriate. This includes the same or similar items found on existing state or municipal contracts (identify contract pricing sources and attach supporting documentation).

☐ Comparison of price components against current industry standards, such as labor rates, dollars per pound, dollars per square foot, etc., to justify the price reasonableness of the whole (attach the analysis which supports the conclusions drawn).

☐ Comparison with published catalog prices or price lists, commercially-advertised sales prices, or prices obtained through other market research (e.g., internet-based, trade journals, etc.) for the same or similar item commercially available from competing suppliers (complete the matrix below and attach supporting quotes, catalog pages, price lists, advertisements, etc.).

☐ Comparison of proposed pricing with an in-house price analysis for the same or similar item (complete the matrix below, attach the signed in-house estimate, and explain factors influencing any differences found).

☐ The quoted price is from a regulated utility (identify the utility in the "Comments" section below).

☐ Other (e.g., verifiable sales information for the same or similar items sold to the supplier's other customers (discuss in the "Comments" section below and attach supplier's sales information).

SUMMARY MATRIX

Item	Proposed Pricing	Average Market Price	Competitor A	Competitor B	In-House Estimate	Other

Reason for Selection:

The price is fair and reasonable because:

_____

_____

_____

Equitable Distribution & Fair and Reasonable Price Determination:

I,_____, certify that_____(*agency name*) distributed this micro purchase equitably among qualified suppliers where geographically reasonable as required by FTA Circular 4220.1G Chapter VI, 3.a(3)(a).

☐ Not Applicable (No Federal Funding)

No Cost/Bid Splitting:

I,_____, certify that_____(*agency name*) did not reduce the size of this procurement merely to come within the micro purchase limit as required by FTA Circular 4220.1G Chapter VI, 3.a(3)(b) and Rule 60A- 1.002(5), F.A.C.

☐ Not Applicable

Federal Clauses:

This procurement is a construction contract? ☐ Yes ☐ No ☐ Not Applicable

If yes, has documentation been provided that the purchase order or contract references the appropriate Federal clauses? ☐ Yes ☐ No ☐ Not Applicable

SECTION 3: FDOT INTERNAL USE ONLY

Form completed and signed? ☐ Yes ☐ No

Price within micro purchase limits? ☐ Yes ☐ No

Independent cost analysis attached? ☐ Yes ☐ No ☐ Not Applicable

Additional information needed for micro purchase approval? ☐ Yes ☐ No

If yes, describe:

_____

Approved by:_____ Date:_____

Micro/Discretionary Purchase (≤$10,000)
Price Analysis

Section 1: Sub-Recipient Information

Name of Agency	Item Description/Project Name	Delivery/Completion Date
Name/Signature of Preparer	Total Estimated Price/Cost	Date of Estimate

Section 2: Price Analysis Details

Method. The above estimate has been developed as follows (check all that apply):

☐ Published catalog or Internet price list (attach pertinent catalog or price list pages).

☐ Recent prices for the same or similar item/service (identify contracts, purchase orders, sources, and additional helpful information (e.g. dates of award), and attach any pertinent documents):

_____

☐ In-house engineering or technical estimate (provide as cost analysis below).

☐ Independent Third-Party estimate developed by _____ (attach estimate).

☐ Other_____

If appropriate, the estimates/prices herein have been made current by adjusting for inflation using the following Producer or Consumer Price Index: _____

Request for Quotation

Date:_____ All prices to be F.O.B Department of Transportation (DOT) at _____
City

Requisition #:_____ Reply Requested by Date:_____ Reply by Time:_____

Quote on All or None

Item Description	Recycled Y-N-A*	Quantity – Unit	Unit Price	Total Price
Delivery will be made within _____ days after receipt of order.				

*Y = Recycled Content N = Non-Recycled A = Recycled but not quoted

If recycled content is available, please send information separate from this quote.

Accepts VISA? ☐ Yes ☐ No

Minority Business Enterprise (MBE)? ☐ Yes ☐ No

RETURN COMPLTED FORM TO:
Florida Department of Transportation

COMPANY NAME: _____

ADDRESS: _____

_____

_____

PHONE: _____

EMAIL: _____

FEID NO.: _____

NAME: _____

ADDRESS: _____

_____

_____

PHONE: _____

EMAIL: _____

QUOTED BY: _____
Name

THIS IS A REQUEST FOR QUOTES, NOT A PURCHASE ORDER
VENDORS MUST SHOW UNIT PRICES AS SPECIFIED

IMPORTANT INFORMATION: *FOR QUOTE TO BE ACCEPTED VENDOR MUST BE REGISTERED IN THE STATE'S E-PROCUREMENT SYSTEM, MyFloridaMarketPlace (MFMP) at https://vendor.myfloridamarketplace.com

Micro/Discretionary Purchase (≤$10,000)
Sole Source Justification Form

Section 1: Sub-Recipient Information

Name of Agency	Item Description/Project Name	Delivery/Completion Date
Name/Signature of Preparer	Total Estimated Price/Cost	Date of Estimate

Section 2: Sole Source Justification

Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures and at least one of the following circumstances applies:

Item Description:	

I, _____, certify that the reason, as noted below, for seeking a sole source justification for this procurement is accurate.

Check One:

- ☐ The item is available only from a single source (sole source justification is attached or described below in the "Comments" section).
- ☐ The public urgent need or emergency for the requirement will not permit a delay resulting from competitive solicitation (documented emergency condition is attached).
- ☐ FTA authorizes noncompetitive negotiations (letter of authorization is attached).
- ☐ After soliciting a number of sources, competition is determined inadequate (record of the sources solicited is attached).

Recommend Source:	
Price or Cost Analysis attached?	☐ Yes ☐ No
Comments:	

FDOT Internal Use Only

Approved by: _____ Date: _____

APPENDIX D: SMALL/DISCRETIONARY PURCHASE FORMS

Appendix D compiles all of the documentation needed to assist in the small purchase process and includes the following:

Materials	Description	Page
Sample Paragraph for Small Purchases	A sample letter for confirming that the contractor or supplier agrees to the applicable federal clause(s).	D-2
Small Purchases Paragraph Template	A letter template for confirming that the contractor or supplier agrees to the applicable federal clause(s).	D-3
Small/Discretionary Purchase Documentation Form	A form to help document the small purchase process.	D-4
Request for Quotation Form	A form for agencies to send to vendors to request quotes for goods and services.	D-6
Price Analysis Form	A form to help document the price analysis process.	D-7
Sole Source Justification Form	A form to document the justification for non-competitive proposals, if applicable.	D-8

Sample Paragraph for Small Purchases

(Sample Only. Please see the next page for a letter template.)

(DATE)

To: Joe's Auto Shop

From: BBB Transit Agency

Subject: Acceptance of Federal Clauses

This purchase shall conform in all respects to the Federal Transit Administration's Federally Required and Other Model Clauses including but not limited to: No government obligation to third parties; Program fraud and false or fraudulent statements and related acts, 31 U.S.C. 3801 et seq., 49 CFR part 3118 U.S.C. 1001, 49 U.S.C. 5307; Access to records and reports, 49 U.S.C. 5325, 18.36(i), 49 CFR 633.17; Federal changes, 2 CFR Part 1201; Disadvantaged Business Enterprise (DBE), 49 CFR part 26; Termination, 49 U.S.C. part 18, FTA circular 4220.1G.

Date:_____

Signature: _____

Company Name:_____

Title:_____

Small Purchases Paragraph Template

Instructions: Insert the appropriate information below. Use the federal clause checklists from Appendix A to help determine which federal clauses are applicable and list them in the body of this letter.

To:

From:

Subject: Acceptance of Federal Clauses

This purchase shall conform in all respects to the Federal Transit Administration's Federally Required and Other Model Clauses including but not limited to:

Date:_____

Signature: _____

Company Name:_____

Title:_____

Small/Discretionary Purchase ($10,001–$34,999)
Documentation Form

Section 1: Sub-recipient Information

Agency: _____ Contact: _____
Phone: _____ Email: _____
Address: _____ City: _____
ZIP Code: _____ County: _____

Section 2: Results of Small Purchase Competitive Bid Process

I, _____ certify that price or rate quotations were received from (*# of)* _____ sources for the purchase as summarized below. If a sole source justification is being sought, see additional documentation required below in lieu of obtaining at least three price or rate quotations.

Following completion of the procurement process, _____ (*agency name*) intends to award this procurement to _____(*supplier*).

SUMMARY MATRIX OF COMPETITIVE BID RESULTS

Item	Price/Cost Analysis Findings	Competitive Bid #1	Competitive Bid #2	Competitive Bid #3

No Cost/Bid Splitting:
I, _____, certify that _____ (*agency name*) did not reduce the size of procurement merely to come within the small purchase limit as required by FTA Circular 4220.1G Chapter VI, 3.b(2)(b) and Rule 60A-1.002(5), F.A.C..

Required Documentation:

The following documentation must be provided for a small purchase:

- Federal clause checklist to document that the purchase order or contract reference the appropriate Federal clauses) ☐ Yes ☐ No ☐ Not Applicable
- Price analysis (Federal Funding Only) ☐ Yes ☐ No ☐ Not Applicable
- Cost analysis (Federal Funding Only) ☐ Yes ☐ No ☐ Not Applicable (required in lieu of a price analysis if a single bid was received or procurement is being sought after a single source purchase)
- Sole source justification form (if applicable) ☐ Yes ☐ No ☐ Not Applicable

Section 3: FDOT Internal Use Only

Form completed and signed? ☐ Yes ☐ No

Price within small purchase limits? ☐ Yes ☐ No

Required documentation attached? ☐ Yes ☐ No

If no, indicate what document is missing: _____

Additional information needed for small purchase approval? ☐ Yes ☐ No

Approved Sub-recipient Internal Procurement Policy Document on file? ☐ Yes ☐ No

Additional comments:

_____

_____

Approved by: _____ Date: _____

Small/Discretionary Purchase ($10,001-$34,999)
Price Analysis

Section 1: Sub-Recipient Information

Name of Agency	Item Description/Project Name	Delivery/Completion Date
Name/Signature of Preparer	Total Estimated Price/Cost	Date of Estimate

Section 2: Price Analysis Details

Method. The above estimate has been developed as follows (check all that apply):

☐ Published catalog or Internet price list (attach pertinent catalog or price list pages).

☐ Recent prices for the same or similar item/service (identify contracts, purchase orders, sources, and additional helpful information (e.g. dates of award), and attach any pertinent documents):

_____

☐ In-house engineering or technical estimate (provide as cost analysis below).

☐ Independent Third-Party estimate developed by _____ (attach estimate).

☐ Other_____

If appropriate, the estimates/prices herein have been made current by adjusting for inflation using the following Producer or Consumer Price Index: _____

Request for Quotation

Date:_____ All prices to be F.O.B Department of Transportation (DOT) at _____
City

Requisition #:_____ Reply Requested by Date:_____ Reply by Time:_____

Quote on All or None

Item Description	Recycled Y-N-A*	Quantity – Unit	Unit Price	Total Price
Delivery will be made within _____ days after receipt of order.				

*Y = Recycled Content N = Non-Recycled A = Recycled but not quoted

If recycled content is available, please send information separate from this quote.

Accepts VISA? ☐ Yes ☐ No

Minority Business Enterprise (MBE)? ☐ Yes ☐ No

RETURN COMPLTED FORM TO:
Florida Department of Transportation

COMPANY NAME: _____

ADDRESS: _____

_____

_____

PHONE: _____

EMAIL: _____

FEID NO.: _____

QUOTED BY: _____
Name

NAME: _____

ADDRESS: _____

_____

_____

PHONE: _____

EMAIL: _____

THIS IS A REQUEST FOR QUOTES, NOT A PURCHASE ORDER
VENDORS MUST SHOW UNIT PRICES AS SPECIFIED

IMPORTANT INFORMATION: *FOR QUOTE TO BE ACCEPTED VENDOR MUST BE REGISTERED IN THE STATE'S E-PROCUREMENT SYSTEM, MyFloridaMarketPlace (MFMP) at https://vendor.myfloridamarketplace.com

Small/Discretionary Purchase ($10,001-$34,999)
Sole Source Justification Form

Section 1: Sub-Recipient Information

Name of Agency	Item Description/Project Name	Delivery/Completion Date
Name/Signature of Preparer	Total Estimated Price/Cost	Date of Estimate

Section 2: Sole Source Justification

Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures and at least one of the following circumstances applies:

Item Description:	

I, _____, certify that the reason, as noted below, for seeking a sole source justification for this procurement is accurate.

Check One:

- ☐ The item is available only from a single source (sole source justification is attached or described below in the "Comments" section).
- ☐ The public urgent need or emergency for the requirement will not permit a delay resulting from competitive solicitation (documented emergency condition is attached).
- ☐ FTA authorizes noncompetitive negotiations (letter of authorization is attached).
- ☐ After soliciting a number of sources, competition is determined inadequate (record of the sources solicited is attached).

Recommend Source:	
Price or Cost Analysis attached?	☐ Yes ☐ No
Comments:	

FDOT Internal Use Only

Approved by: _____ Date: _____

APPENDIX E: COMPETITIVE PROCUREMENT FORMS

Appendix E compiles all of the documentation needed to assist in the competitive bid purchase process and includes the following:

Materials	Description	Page
Attorney Certification to FDOT (Sample)	A sample attorney certification letter.	E-2
Competitive Purchase Documentation Form	A form to help document the competitive purchase process.	E-3
Price Analysis Form	A form to help document the price analysis process.	E-5
Single Bid Analysis	A form to document the justification for non-competitive proposals, if applicable.	E-6

Attorney Certification to
Florida Department of Transportation

(Project Name) _____ (FM#) _____

(Project Description) _____

The undersigned serves as the General Counsel to the _____ (agency name) (the "Agency"). In reference to _____ (project name, contract number) between the Florida Department of Transportation (the "Department") and the Agency, this is to certify that, based upon my personal knowledge and information provided by the Agency and without independent examination, investigation or audit, that the selection by the Agency of _____ was done in compliance with the applicable provisions of Sections 287.057, Florida Statues, known as the Procurement of Commodities or Contractual Services and the Agency's established procurement policies. This Information has been provided solely for the Department and for no other person and no other than the Department may rely on such certification.

(Agency Name)

By: _____
Attorney

Date: _____

Competitive Purchase (≥$35,000)
Documentation Form

Section 1: Sub-recipient Information

Agency: _____ Contact: _____
Phone: _____ Email: _____
Address: _____ City: _____
ZIP Code: _____ County: _____

Section 2: Method of Procurement

☐ Request for Proposal ☐ Sealed Bid ☐ Competitive Proposal
☐ Invitation to Bid ☐ Qualification Based Proposal ☐ Sole Source

Section 3: Results of Competitive Purchase Bid Process

I, _____ certify that price or rate quotations were received from (*# of)* _____ sources for the purchase as summarized below. If a sole source justification is being sought, see additional documentation required below in lieu of obtaining at least three price or rate quotations.

Following completion of the procurement process, _____ (*agency name*) intends to award this procurement to _____(*supplier*).

SUMMARY MATRIX OF COMPETITIVE BID RESULTS

Item	Price/Cost Analysis Findings	Competitive Bid #1	Competitive Bid #2	Competitive Bid #3

No Cost/Bid Splitting:
I, _____, certify that _____ (*agency name*) did not reduce the size of procurement merely to come within the competitive purchase limit as required by FTA Circular 4220.1F Chapter VI, 3.b(2)(b) and Rule 60A-1.002(5), F.A.C..

Required Documentation:

The following documentation must be provided for a competitive purchase:

- Federal clause checklist to document that the purchase order or contract reference the appropriate Federal clauses) ☐ Yes ☐ No ☐ Not Applicable
- Price analysis (Federal Funding Only) ☐ Yes ☐ No ☐ Not Applicable

- Cost analysis (Federal Funding Only) ☐ Yes ☐ No ☐ Not Applicable (required in lieu of a price analysis if a single bid was received or procurement is being sought after a single source purchase)
- Sole source justification form (if applicable) ☐ Yes ☐ No ☐ Not Applicable

Section 3: FDOT Internal Use Only

Form completed and signed? ☐ Yes ☐ No

Price within competitive purchase limits? ☐ Yes ☐ No

Required documentation attached? ☐ Yes ☐ No

If no, indicate what document is missing:

Additional information needed for competitive purchase approval? ☐ Yes ☐ No

Approved Sub-recipient Internal Procurement Policy Document on file? ☐ Yes ☐ No

Additional comments:

_____

_____

Approved by: _____ Date: _____

Competitive Purchase (≥$35,000)
Price Analysis

Section 1: Sub-Recipient Information

Name of Agency	Item Description/Project Name	Delivery/Completion Date
Name/Signature of Preparer	Total Estimated Price/Cost	Date of Estimate

Section 2: Price Analysis Details

Method. The above estimate has been developed as follows (check all that apply):

☐ Published catalog or Internet price list (attach pertinent catalog or price list pages).

☐ Recent prices for the same or similar item/service (identify contracts, purchase orders, sources, and additional helpful information (e.g. dates of award), and attach any pertinent documents):

_____

☐ In-house engineering or technical estimate (provide as cost analysis below).

☐ Independent Third-Party estimate developed by _____ (attach estimate).

☐ Other_____

If appropriate, the estimates/prices herein have been made current by adjusting for inflation using the following Producer or Consumer Price Index: _____

Single Bid Analysis

Solicitation #:_____ Bid/Proposal Due Date:_____

# of Solicitations Requested:_____ Product/Service to be Procured:_____

# of Bids Received: _____Date Filled Out:_____

1) Reasons for Lack of Competition:

- ☐ Lack of Competency
- ☐ Lack of Available Resources
- ☐ Poor Timing
- ☐ Short Response Due Date
- ☐ Other: _____

2) Action to Plan (Choose one):

- ☐ Award Contract Basis
- ☐ Extend Deadline
  New Due Date: _____
- ☐ Reprocure:
  New Solicitation Due to be Completed:
  *Projected Due Date:*_____

Name of Authorized Preparer: _____

Signature of Authorized Preparer: _____

Title Role: _____

Date Completed: _____

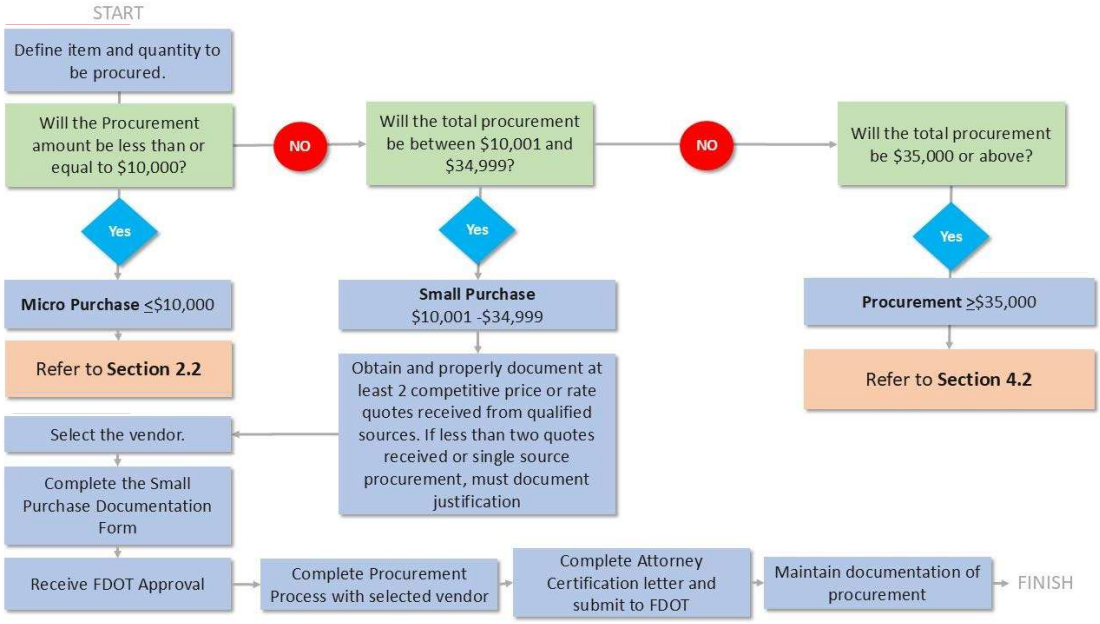
Attach copies of correspondence with other vendors (i.e., emails, phone calls, etc.)

clauses. If any federal clauses should apply, then the issuance of a contract or purchase document/order should include reference to the applicable federal clauses and the appropriate federal clause checklists included in Appendix A of this document.

3.2 Small/Discretionary Purchases ($10,001-$34,999) with State Funds

Purchases $10,001 or greater but less than $35,000 using only state funds may be made using written quotations, written records of telephone quotations, or informal bids to be opened upon receipt, whenever practical. As previously noted, dividing or reducing the size of a procurement to avoid the requirements of a competitive procurement required for procurements $35,000 or greater is not allowed. The steps for completing a discretionary procurement in the amount of $10,001–$34,999 is illustrated in Figure 3-2 and detailed below.

FIGURE 3-2: PROCESS FOR STATE FUNDED DISCRETIONARY PURCHASES ($10,001-$34,999)



1. The subrecipient solicits competitive price or rate quotes from qualified sources. Generally, a comparison of proposed prices received in response to the solicitation is sufficient to establish price reasonableness. Other methods to determine price reasonableness may include: a) Comparison of catalog or market prices; b) Comparison of regulated prices such as utility purchases; c) Comparison with recent prices for similar goods and services.
   Quotes must be adequately documented and include the names and address of vendor, item description, unit price, all other fees and charges, and applicable taxes.
2. The subrecipient completes the Small Purchase Documentation Form provided in Appendix D. If the subrecipient receives less than two quotes, it must include a statement as to why additional quotes were not received. If the subrecipient determines that commodities or contractual services are available only from a single source, or that conditions warrant negotiation on the

best terms and conditions, the subrecipient may proceed with the procurement. The subrecipient is required to complete the form found in Appendix D to provide a sole source justification if only one price or rate quotation is received.

3. The subrecipient submits the small purchase documentation form to the FDOT District Grant Program Manager and obtains approval for purchase from FDOT.
4. The subrecipient signs the Public Transportation Grant Agreement (PTGA) with FDOT if new grant funds will be used for procurement. This agreement must be fully executed prior to committing any state funding.
5. The subrecipient completes the procurement process with the selected vendor.
6. The subrecipient must keep documentation to support the method of purchase, basis for vendor selection, and reasonableness of price.

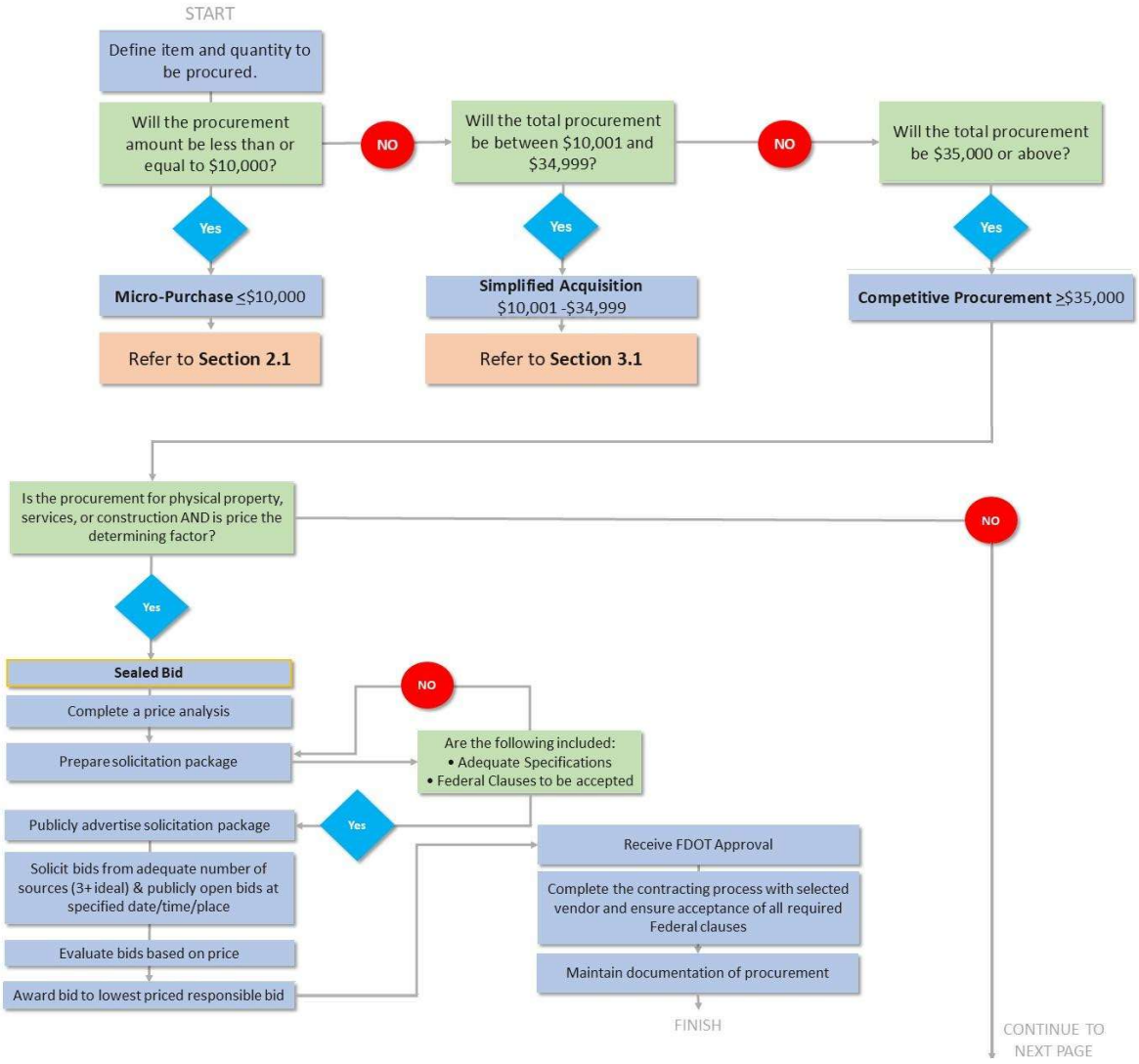
4 COMPETITIVE PROCUREMENT PROCEDURES

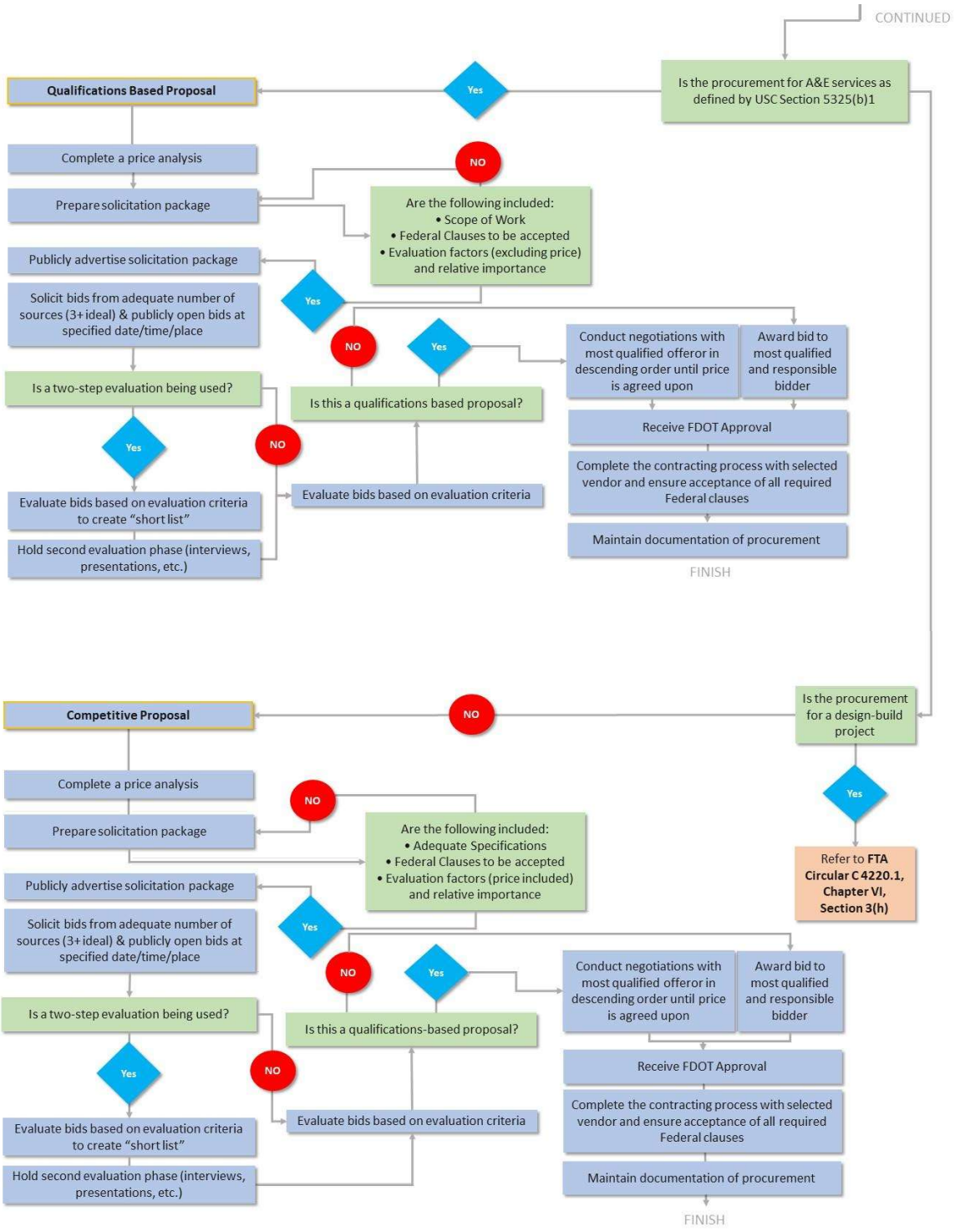
The specific procedures for procurements equal to or greater than $35,000 vary depending on the type of property, good, material, or services being procured. For more information regarding competitive bids or sealed proposal procurements, contact your District Grant Program Manager listed in Section 5.

4.1 Competitive Procurement Procedures with Federal Funds

Purchases $35,000 or greater using federal funds in any capacity must be completed using the competitive procurement procedures illustrated in Figure 4-1 and outlined below[3].

FIGURE 4-1: PROCESS FOR FEDERALLY FUNDED COMPETITIVE PURCHASES





[3] If using federal funds only (i.e., no state funds are used in any amount), the federal thresholds identified in Figure 1-3 may be followed.

4.1.1 Determining the Type of Competitive Procurement

For competitive procurements, the type of goods or services being procured influences what procedures must be followed. There are two types of competitive purchase procedures:

- *Sealed bids*— Involves competitive bids used for high-cost purchases of physical property, construction, or other services. For example, it is common to use sealed bids for heavy equipment purchases where the lowest-priced bidder that meets the established requirements will win the bid.
- *Competitive proposals*—Considers more than just price; further evaluation is required to determine which bid provides the best value or response. Best Value is a procurement strategy that seeks the most advantageous overall offer by weighing factors beyond price, such as technical quality and past performance, to achieve the best outcome for the recipient.

Sealed Bids

Sealed bids are bids that are publicly solicited, and a firm fixed-price contract (lump sum or unit price) is awarded to the lowest-priced responsible bidder whose bid conforms to all the material terms and conditions.

Sealed bid procurements should be used when the following circumstances are present:

- **Precise Specifications** – A complete, adequate, precise, and realistic specification or purchase description is available.
- **Adequate Sources** – Two or more responsible bidders are willing and able to compete effectively for the business.
- **Fixed Price Contract** – The procurement generally lends itself to a firm fixed-price contract.
- **Price Determinative** – The successful bidder can be selected based on price and the price-related factors listed in the solicitation including, but not limited to, transportation costs, life cycle costs, and discounts expected to be taken. Selection may not be determined based on other factors whose costs cannot be measured at the time of award.
- **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 bidders 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 during a sealed bid procurement process can be useful.

Competitive Proposals

Competitive proposals, also referred to as Request for Proposals (RFPs), should be issued 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. A competitive proposal should be issued when any of the following circumstances are present:

- **Type of Specifications** – Precise specifications on the goods or services to be acquired cannot be provided or other circumstances, such as the need for discussions or the importance of basing the contract award on factors other than price alone, are present.
- **Uncertain Number of Sources** – Uncertainty about whether more than one bid will be submitted in response to an invitation to bid (ITB), 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.
- **Price Alone Not Determinative** – Due to the nature of the procurement, the 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. A price analysis should be conducted if the subrecipient determines that competition was adequate. However, if a price analysis is expected to not provide sufficient information to determine the reasonableness of the contract price, a cost analysis should be conducted in addition to or in place of a price analysis.
- **Discussions Expected** – Separate discussions with individual bidder(s) are expected to be necessary after they have submitted their proposals. This contrasts with sealed bid 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.

Qualifications-Based Procurement Procedures

Qualifications-based procurement procedures are required when contracting for Architectural & Engineering (A&E) services and other services listed in 49 U.S. Code § 5325(b)(1) that are directly in support of, directly connected to, directly related to, or lead to construction, alteration, or repair of real property. This includes program management, architectural engineering, construction management, planning, surveying, mapping, or related services.

Unless FTA determines otherwise in writing, a subrecipient may not use qualifications-based procurement procedures to acquire other types of services if those services are not directly in support thereof, directly connected to, directly related to, or do not lead to construction, alteration, or repair of real property.

Mixed A&E Construction Contract: Alternative Contract Methods

Alternative Contracting Methods (ACMs) such as design-build, construction manager/general contractor (CM/GC), and progressive design-build combine design and construction services differently from the traditional design-bid-build approach. When selecting a procurement method for an ACM, the recipient should evaluate whether design or construction costs predominate—using sealed bidding or competitive proposals if construction costs are higher, or qualifications-based selection if design costs lead. However, for methods like progressive design-build, where costs shift over time, qualifications-based selection may still be appropriate, and recipients should use judgment and consult FTA if pursuing an unaddressed method..

More information on the requirements for design-build contracts can be found in FTA Circular C 4220.1G, Chapter VI, Section 3(g).

4.1.2 Sealed Bid Procurement Process

The following procedures apply to sealed bid procurements.

1. The subrecipient determines the item and quantity to be purchased based on the grant award.
2. The subrecipient completes a price or cost analysis to assist in determining the reasonableness or unreasonableness of the bid or proposal being evaluated.
3. The subrecipient prepares the solicitation package, which includes:
    a. Adequate specifications, including any specifications and pertinent attachments necessary to describe the property or services sought in sufficient detail that a prospective bidder will be able to submit a proper bid.
    b. Appropriate federal clauses that must be accepted by the vendor upon contract execution.
4. The subrecipient publicly advertises the solicitation package and provides bidders sufficient time to prepare bids before the stated date of bid opening. This may include holding a pre-bid meeting to answer bidder questions about the procurement.
5. Bids are solicited from an adequate number of known suppliers. All bids are publicly opened at the time and place prescribed in the ITB.
6. The firm price contract is awarded in writing to the lowest responsive and responsible bidder, unless it is determined that any or all bids should be rejected due to a sound, documented business reason.
7. The subrecipient submits the purchase documentation to the FDOT District Grant Program Manager and obtains approval for purchase from FDOT.
8. The subrecipient signs the PTGA with FDOT if new grant funds will be used for procurement. This agreement must be fully executed prior to committing any federal pass-through funding.
9. The subrecipient completes the contracting process with the selected vendor and ensures acceptance of all required federal clauses.
10. The subrecipient must keep documentation to support the method of purchase, basis for vendor selection, and reasonableness of price.

4.1.3 Competitive Procurement Process (RFP)

Typically, competitive proposals follow a two-step process. In the first step, respondents are ranked, and a “short list” of firms to participate may be developed. In the second step, further evaluations and potential negotiations are conducted with the top ranked or short-listed firms to arrive at the award of a contract.

The following procedures apply to competitive proposal procurements:

1. The subrecipient determines the item and quantity to be purchased based on the grant award.
2. The subrecipient completes a price or cost analysis to assist in determining the reasonableness or unreasonableness of the bid or proposal being evaluated.
3. The subrecipient prepares the solicitation package, which includes:
    a. Adequate specifications or scope of work, including any specifications and pertinent attachments necessary to describe the services sought in sufficient detail that a prospective bidder will be able to submit a proper bid.

b. Appropriate federal clauses that must be accepted by the vendor upon contract execution.
c. All evaluation factors and their relative importance are specified in the solicitation, but numerical or percentage ratings or weights need not be disclosed.
d. Indication whether an award will be selected from the proposals or if a two-step evaluation process will be used.
e. As allowed under § 287.057, F.S., the recipient may award the contract to the bidder whose proposal provides the "best value" to the recipient. To do so, the recipient's solicitation must inform potential bidders 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 subrecipient.

4. The subrecipient publicly advertises the solicitation package and provides bidders sufficient time to prepare bids before the stated date of bid opening. This may include holding a pre-bid meeting to answer bidder questions about the procurement.
5. Bids are solicited from an adequate number of known suppliers, and all bids are publicly opened at the time and place prescribed in the ITB.
6. The subrecipient conducts technical evaluations of the proposals received based on the established methodology to determine the most qualified bidder.
    a. If a two-step evaluation process is used, the bids are initially ranked, and a short list of bidders are asked to participate in a subsequent evaluation phase (typically an interview or presentation).
    b. The interview/presentation or other means of evaluating the short list of bids is completed.
7. An award is made to the responsible bidder whose proposal is most advantageous to the recipient's program, with price and other factors considered based on the established evaluation criteria.
8. The subrecipient submits the purchase documentation to the FDOT District Grant Program Manager and obtains approval for purchase from FDOT.
9. The subrecipient signs the PTGA with FDOT if new grant funds will be used for procurement. This agreement must be fully executed prior to committing any federal pass-through funding.
10. The subrecipient completes the contracting process with the selected vendor and ensures acceptance of all required federal clauses.
11. The subrecipient must keep documentation to support the method of purchase, basis for vendor selection, and reasonableness of price.

4.1.4 Qualifications-Based Procurement Procedures

Qualifications-based procurement procedures follow those previously described for competitive proposals with the following exceptions:

- Only a bidder's qualifications are evaluated to determine contract award; price is excluded as an evaluation factor.

- Negotiations are first conducted with only the most qualified bidder.
- If a fair and reasonable price cannot be agreed upon, negotiations may then be conducted with the next most qualified bidder and subsequently, as needed, with bidders in descending order until contract award can be made to the bidder whose price the recipient believes is fair and reasonable.

4.1.5 Applicable Federal clauses

Competitive purchases require compliance with different federal clauses, depending on the dollar amount and/or type of procurement.

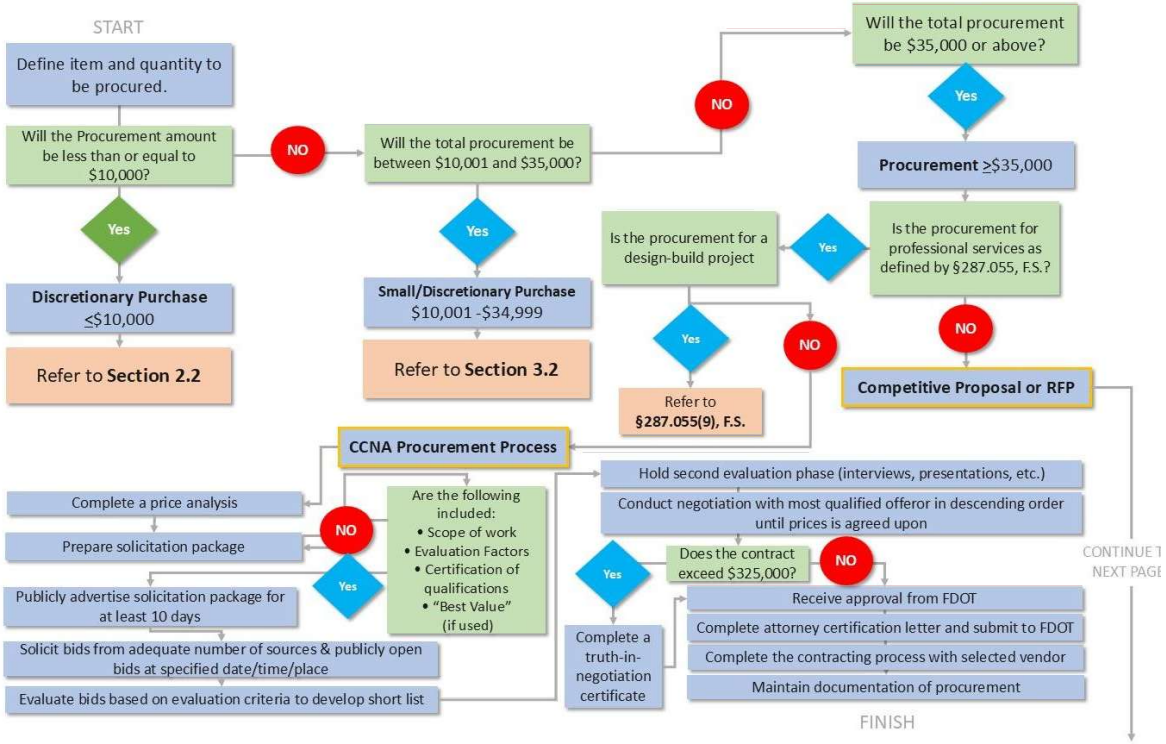
A full list of federal clauses that may apply based on type of procurement, procurement amount, or other circumstances can be found in Appendix A followed by descriptions of more common federal clauses. If any federal clauses should apply, then the issuance of a contract or purchase document/order should include reference to the applicable federal clauses and the appropriate federal clauses checklists included in Appendix A of this document.

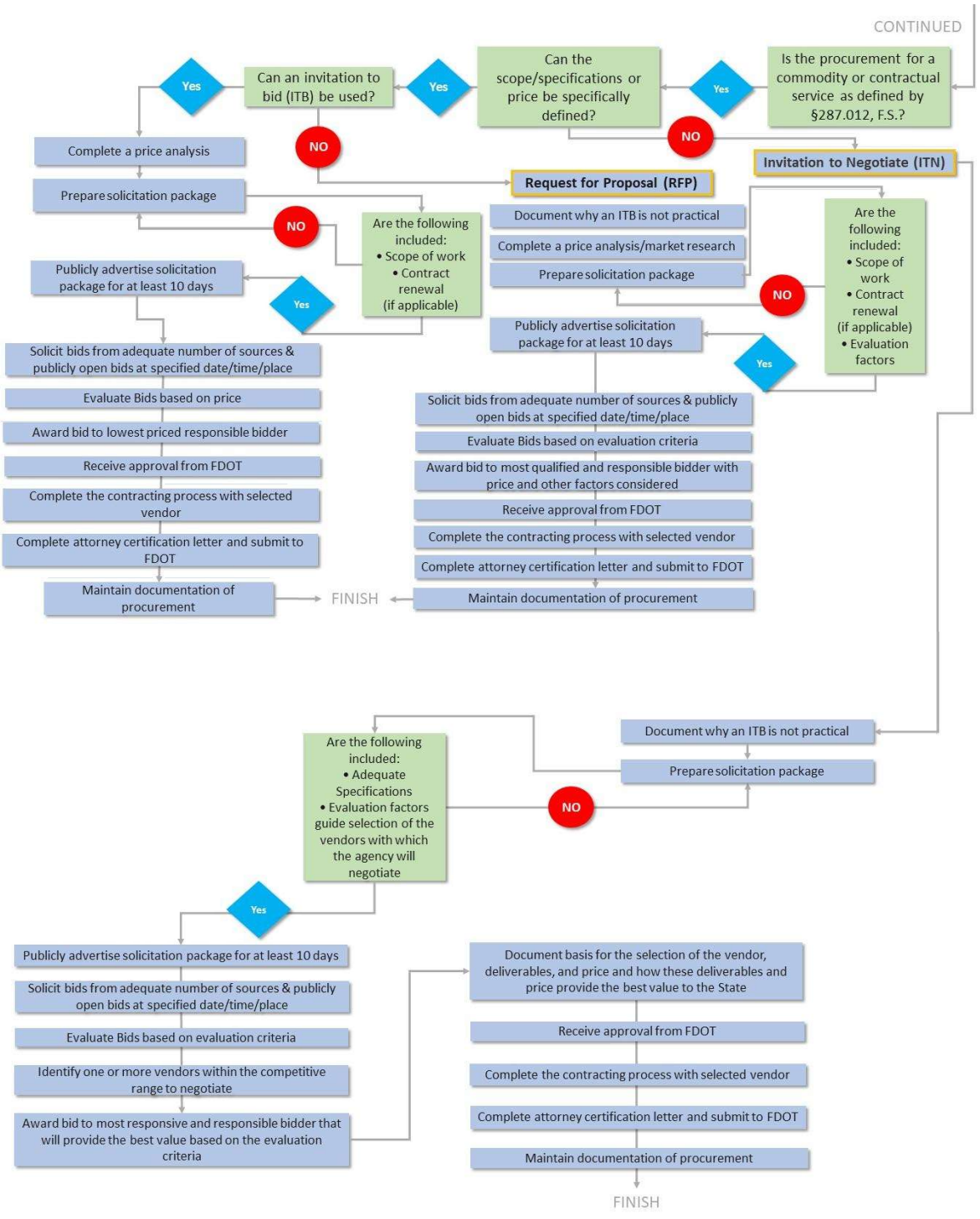
4.2 Competitive Procurement Procedures with State Funds

Section 287.057, F.S., and Rule 60A-1.002(4), F.A.C., require formal competitive solicitations for purchases using state transit funds exceeding $35,000 (defined as a Category Two purchase by § 287.012, F.S.) with few exceptions (e.g., declared emergency, through a stated term contract, a single-source procurement, etc., as defined in § 287.057(3), F.S.

Purchases $35,000 or greater using only state funds must be completed using the competitive procurement procedures illustrated in Figure 4-1 and outlined below.

FIGURE 4-2: PROCESS FOR STATE FUNDED COMPETITIVE PURCHASES





4.2.1 Determining the Type of Competitive Procurement

For competitive procurements, the type of goods or services being procured influences the procedures to be followed.

Professional Consulting Services

Procurements for professional consulting services such as A&E, landscaping, surveying, planning, etc., must be completed using the procedures outlined in the "Consultants' Competitive Negotiation Act" (CCNA) provided under § 287.055 F.S. The CCNA procurement process applies to a planning or study activity when the fee for professional services exceeds a Category Two threshold of $35,000 or when professional services must be purchased for a construction project where the costs are estimated to exceed a Category Five threshold of $325,000 (as provided in § 287.017 F.S.).

Commodities or Contractual Services

Commodities refer to various supplies, materials, goods, merchandise, food, equipment, information technology, and other personal property. Contractual services are the rendering by a contractor of its time and effort rather than the furnishing of specific commodities (accounting, security, management systems, management consulting, educational training programs, etc.), as defined by § 287.012 F.S. Three types of competitive purchase procedures are used to procure commodities or contractual services above a Category Two threshold ($35,000):

- Invitation to Bid
- Request for Proposal
- Invitation to Negotiate

These are ranked from most price-driven to least price-driven and move from least to greatest flexibility and least to most time consuming.

4.2.2 Professional Consulting Services (CCNA) Procurement Process

The following procedures apply to CCNA procurements:

1. The subrecipient determines the item and quantity to be purchased based on the grant award.
2. The subrecipient completes a detailed analysis of the cost of the professional services required based on the project or scope of work.
3. The subrecipient prepares the solicitation package:
    a. A scope of work regarding the professional services sought or information regarding the project with enough detail to where the bidder can provide an adequate response is prepared.
    b. All evaluation factors and their relative importance are specified in the solicitation; however, numerical or percentage ratings or weights need not be disclosed. Capabilities, adequacy of personnel, past record, experience, whether the firm is a certified minority business enterprise, and other factors should be included. The price for services may be considered only during the competitive negotiation process.
    c. Certification of qualifications by any firm or individual desiring to provide professional services to the subrecipient must be found to be fully qualified to provide the required service. Among the factors to be considered in making this finding are the capabilities, adequacy of personnel, past record, and experience of the firm or individual.
    d. As allowed under § 287.057, F.S., the subrecipient may award the contract to the bidder whose proposal provides the "best value." To do so, the solicitation package must

inform potential bidders that the award will be made on a "best value" basis and identify what factors will form the basis for the award. The evaluation factors for a specific procurement should reflect the subject matter and the elements that are most important to the subrecipient.

4. The subrecipient publicly advertises the solicitation package simultaneously to all potential bidders per § 287.012(16), F.S. The solicitation must be advertised for a minimum of ten (10) calendar days per § 287.042(3)(b)(1) unless the agency determines in writing that a shorter period is necessary to avoid harming the interests of the State. However, a longer period is advisable to assure adequate competition (30 days is a typical advertisement period). This may include holding a pre-bid meeting to answer bidder questions about the procurement.
5. Bids are solicited from an adequate number of known firms/vendors, and all bids are publicly opened at the time and place prescribed in the ITB.
6. The subrecipient conducts technical evaluations of the proposals received based on the established methodology to determine the most qualified bidder.
7. The evaluated bids are initially ranked in order of preference, and a short list of bidders (no fewer than three) deemed to be the most highly qualified are listed. These bidders are asked to participate in a subsequent discussion, which may require public presentations, regarding their qualifications, approach to the project, and ability to furnish the required services.
8. An interview/presentation or other means of further evaluating the short list of firms is completed.
9. The subrecipient enters into competitive negotiation with the most qualified firm at the price the subrecipient determines is fair, competitive, and reasonable based on the internal cost analysis. If the professional service contract exceeds $325,000, the subrecipient requires the firm receiving the award to execute a Truth-in-Negotiation Certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. If the subrecipient is unable to successfully negotiate with the firm considered to be the most qualified at a price determined to be fair, competitive, and reasonable, then negotiations with that firm must be formally terminated. Negotiations are then undertaken with the second most qualified firm. If negotiations with that firm fail, the subrecipient must terminate negotiations and undertake negotiations with the third most qualified firm. This continues until successful negotiations are completed or the subrecipient determines that a negotiation at a fair, competitive, and reasonable price cannot be completed.
10. The subrecipient submits the purchase documentation to the FDOT District Grant Program Manager and obtains approval for purchase from FDOT. The contract file for a firm selected through an RFP must contain a short, plain statement that explains the basis for the selection of the vendor and that sets forth the vendor's deliverables and price, pursuant to the contract, along with an explanation of how these deliverables and price provide the best value to the State.
11. The subrecipient signs the PTGA with FDOT if new grant funds will be used for procurement. This agreement must be fully executed prior to committing any state funding.

12. The subrecipient completes the contracting process with the selected vendor; per § 287.055(6), F.S., each contract entered into for professional services must contain a prohibition against contingent fees. The text of the prohibition should be inserted as follows: *"The (firm name) warrants that he or she has not employed or retained any company or person, other than a bona fide employee working solely for the architect (or registered surveyor and mapper, or professional engineer, as applicable) to solicit or secure this agreement and that he or she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the architect (or registered surveyor and mapper or professional engineer, as applicable) any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this agreement."* For the breach or violation of this provision, the subrecipient has the right to terminate the agreement without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.
13. The subrecipient must keep documentation to support the method of purchase, basis for vendor selection, and reasonableness of price.

4.2.3 Invitation to Bid (ITB)

An ITB is a written or electronically-posted solicitation for competitive sealed bids. The ITB method is used when the agency is capable of specifically defining the scope of work for which a contractual service is required or when the agency can establish precise specifications defining the actual commodity or group of commodities required.

Reasons for choosing an ITB include the following:

- Standard off-the-shelf products are known to meet the determined need.
- Standard services of a usual commercial type and price structure, especially technical or nonprofessional services, such as custodial or waste removal services, or equipment maintenance, are known to meet the need.
- Filling an immediate need one or a few times or fulfilling a long-term requirement with repetitive deliveries of same or similar products/services will meet the need.
- Wide competition for the goods or services is available.
- The agency desires to fulfill the requirement at the lowest possible price while meeting its minimum standards.
- The vendor's qualifications do not greatly impact the agency's results.
- Any concerns about vendor qualifications can be easily addressed by a simple submittal with the bid (e.g., copy of licenses, references, etc.)

Similar to sealed bids discussed in Section 4.1, ITBs should be used when the following circumstances are present:

- *Precise Specifications* – A complete, adequate, precise, and realistic specification or purchase description is available.
- *Adequate Sources* – Two or more responsible bidders are willing and able to compete effectively for the business.

- *Fixed Price Contract* – The procurement generally lends itself to a firm fixed-price contract.
- *Price Determinative* – The successful bidder can be selected based on price and the price-related factors listed in the solicitation.
- *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 (CCNA) procedures in which discussions with individual bidders 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.

4.2.4 ITB Procurement Process

The following procedures apply to sealed bid procurements:

1. The subrecipient determines the item and quantity to be purchased based on the grant award.
2. The subrecipient completes the necessary market research in advance of preparing the solicitation package.
3. The subrecipient prepares the solicitation package, which includes:
    a. *Adequate specifications*, including any specifications, scope of work, and pertinent attachments necessary to describe the commodities or services sought in sufficient detail that a prospective bidder will be able to submit a proper bid. Deliverables are clearly and unequivocally spelled out.
    b. *Contract renewal* – if the subrecipient contemplates renewal of the contract, a statement to that effect.
4. The subrecipient publicly advertises the solicitation package simultaneously to all vendors per § 287.012(16), F.S. The solicitation must be advertised for a minimum of ten (10) calendar days per § 287.042(3)(b)(1) unless the agency determines in writing that a shorter period is necessary to avoid harming the interests of the State. However, a longer period is advisable to assure adequate competition (30 days is a typical reasonable advertisement period). This may include holding a pre-bid meeting to answer bidder questions about the procurement.
5. Bids are solicited from an adequate number of known suppliers. All bids are publicly opened at the time and place prescribed in the ITB.
6. The firm price contract is awarded in writing to the lowest responsive and responsible bidder, unless it is determined that any or all bids should be rejected due to a sound, documented business reason. Bids submitted in response to an ITB in which the subrecipient contemplates renewal of the contract must include the price for each year for which the contract may be renewed.
7. The subrecipient submits the purchase documentation to the FDOT District Grant Program Manager and obtains approval for purchase from FDOT.
8. The subrecipient signs the PTGA with FDOT if new grant funds will be used for procurement. This agreement must be fully executed prior to committing any state funding.
9. The subrecipient completes the contracting process with the selected vendor.
10. The subrecipient completes the attorney certification to FDOT (sample provided in Appendix E).

11. The subrecipient must keep documentation to support the method of purchase, basis for vendor selection, and reasonableness of price.

4.2.5 RFP Procurement Process

An RFP is used when the purposes and uses for which the commodity or contractual service being sought can be specifically defined and the subrecipient can identify necessary deliverables; however, for purposes determined by the subrecipient, an ITB is not the best choice for the procurement.

The following procedures apply to RFP procurements:

1. The subrecipient determines the item and quantity to be purchased based on the grant award.
2. Before issuing the RFP, the subrecipient must determine and specify in writing the reasons that procurement by an ITB is not practicable.
3. The subrecipient prepares the solicitation package, which includes:
    a. A statement describing the commodities or contractual services sought.
    b. A statement as to whether the subrecipient contemplates renewal of the contract.
    c. All evaluation factors and their relative importance are specified in the solicitation, but numerical or percentage ratings or weights need not be disclosed. Criteria must include but are not limited to, price, consideration of the total cost for each year of the contract (including renewal years) as submitted by the vendor, and prior relevant experience by the bidder.
4. The subrecipient publicly advertises the solicitation package simultaneously to all vendors per § 287.012(16), F.S. The solicitation must be advertised for a minimum of ten (10) calendar days per § 287.042(3)(b)(1) unless the agency determines in writing that a shorter period is necessary to avoid harming the interests of the State. However, a longer period is advisable to assure adequate competition (30 days is a typical reasonable advertisement period). This may include holding a pre-bid meeting, if necessary, to answer bidder questions about the procurement.
5. Bids are solicited from an adequate number of known suppliers. All bids are publicly opened at the time and place prescribed in the ITB.
6. The subrecipient conducts technical evaluations of the proposals received based on the established methodology to determine the most qualified bidder.
7. An award is made to the responsible bidder whose proposal is most advantageous to the recipient's program with price and other factors considered based on the established evaluation criteria.
8. The subrecipient submits the purchase documentation to the FDOT District Grant Program Manager and obtains approval for purchase from FDOT. The contract file for a vendor selected through an RFP must contain a short, plain statement that explains the basis for the selection of the vendor and that sets forth the vendor's deliverables and price, pursuant to the contract, along with an explanation of how these deliverables and price provide the best value to the State.
9. The subrecipient signs the PTGA with FDOT if new grant funds will be used for procurement. This agreement must be fully executed prior to committing any state funding.
10. The subrecipient completes the contracting process with the selected vendor.

11. The subrecipient completes the attorney certification to FDOT (sample in Appendix E).
12. The subrecipient must keep documentation to support the method of purchase, basis for vendor selection, and reasonableness of price.

4.2.6 Invitation to Negotiate (ITN)

An Invitation to Negotiate (ITN) is a solicitation process intended to determine the best method for achieving a specific goal or solving a problem and identifies one or more responsive vendors with which the subrecipient may negotiate to receive the best value. ITN requirements are specified in §287.057(1)(c), F.S., and the following procedures apply:

1. The subrecipient determines the item and quantity to be purchased based on the grant award.
2. Before issuing an ITN, the subrecipient must determine and specify in writing the reasons that procurement by an ITB or an RFP is not practicable.
3. The subrecipient prepares the solicitation package, which must describe:
    a. Adequate information to bid, including the questions being explored, the facts being sought, and the specific goals or problems that are the subject of the solicitation.
    b. Evaluation criteria that will be used for determining the acceptability of the reply and guiding the selection of the vendors with which the agency will negotiate must be specified. The evaluation criteria must include consideration of prior relevant experience of the vendor.
4. The subrecipient publicly advertises the solicitation package simultaneously to all vendors per § 287.012(16), F.S. The solicitation must be advertised for a minimum of ten (10) calendar days per § 287.042(3)(b)(1) unless the agency determines in writing that a shorter period is necessary to avoid harming the interests of the State. However, a longer period is advisable to assure adequate competition (30 days is a typical reasonable advertisement period). This may include holding a pre-bid meeting, if necessary, to answer bidder questions about the procurement.
5. Bids are solicited from an adequate number of known suppliers. All bids are publicly opened at the time and place prescribed in the ITB.
6. The subrecipient conducts technical evaluations of the proposals received based on the evaluation criteria established.
7. The subrecipient may select one or more vendors within the competitive range to begin negotiations.
8. An award is made to the responsible and responsive vendor that the subrecipient determines will provide the best value to the state, based on the evaluation criteria.
9. The subrecipient submits the purchase documentation to the FDOT District Grant Program Manager and obtains approval for purchase from FDOT. The contract file for a vendor selected through an ITN must contain a short, plain statement that explains the basis for the selection of the vendor and that sets forth the vendor's deliverables and price, pursuant to the contract, along with an explanation of how these deliverables and price provide the best value to the State.
10. The subrecipient signs the PTGA with FDOT if new grant funds will be used for procurement. This agreement must be fully executed prior to committing any state funding.

11. The subrecipient completes the contracting process with the selected vendor.
12. The subrecipient completes the attorney certification to FDOT (sample in Appendix E).
13. The subrecipient must keep documentation to support the method of purchase, basis for vendor selection, and reasonableness of price.

5 ADDITIONAL RESOURCES

Procurement FAQs

A series of procurement related "Frequently Asked Questions", or FAQs, were compiled during local agency procurement trainings conducted around Florida between August 2017 and April 2019 and were updated in October 2025. The FAQ document can be found here https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/transit/procurement/fdot-procurement-faq_final-2025.pdf?sfvrsn=b8f686cd_1

FDOT Procurement Resource Guides

Procurement resource guides that address the topics below can be found here https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/transit/procurement/fdot-procurement-resource-guides.pdf?sfvrsn=2c289ae1_2.

- Acquisition through Assigned Contract Rights or "Piggybacking"
- Purchasing through the Florida Department of Management Services Contracts
- Joint Procurements

FTA Circular C 4220.1G, Third Party Contracting Guidance

https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/third-party-contracting-guidance

2 CFR 200 (Super Circular):

https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200?toc=1

FTA Best Practices Procurement & Lessons Learned Manual:

https://www.transit.dot.gov/funding/procurement/third-party-procurement/best-practices-procurement-manual

FTA Triennial Review Manual:

https://www.transit.dot.gov/funding/grantee-resources/triennial-reviews/triennial-reviews

National RTAP ProcurementPRO Website:

ProcurementPRO is a free web-based application that guides rural and Tribal grantees and State DOTs through FTA procurement procedures.

https://www.nationalrtap.org/Technology-Tools/ProcurementPRO

Other Grants Administration and Procurement Resources:

https://www.fdot.gov/fdottransit/transitofficehome/grantsadministration.shtm

APPENDIX A: FEDERAL CERTIFICATIONS & ASSURANCES

This appendix includes references and materials that support the procurement process where federal clauses need to be included in a procurement agreement. All procurements using federal funds in any capacity will need to include the applicable federal clauses. See table below for materials and what page they can be found.

Materials	Description	Page
Federal Certifications and Assurances Clauses Matrix	Guide to applicable federal clauses by procurement level and type.	A-2
Federal Clauses Checklists	Checklists that identify applicable federal clauses by procurement type.	
Professional Services/A&E		A-5
Operations/Management/Subrecipients		A-7
Rolling Stock		A-9
Construction		A-11
Materials and Supplies		A-13
Federal Clause Text	Sample federal clause text.	
Access to Records and Audits		A-15
Bonding Requirements		A-16
Bus Testing		A-19
Buy America Requirements		A-20
Cargo Preference Requirements		A-22
Charter Service		A-23
Clean Air Act		A-24
Clean Water Act (Federal Water Pollution Control Act)		A-25
Civil Rights Laws and Regulations		A-26
Disadvantaged Business Enterprise (DBE)		A-28
Employee Protections		A-32
Energy Conservation		A-34
Federal Changes		A-35
Federal Tax Liability and Recent Felony Convictions		A-36
Fly America		A-37
Government-Wide Debarment and Suspension		A-38
Incorporation of FTA Terms		A-39
Lobbying Restriction		A-40
No Government Obligation to Third Parties		A-41
Patent Rights and Inventions Under Federally Assisted Agreements		A-42
Pre-Award/Post-Delivery Audits of Rolling Stock Purchases		A-44
Program Fraud and False or Fraudulent Statements		A-45
Transit Employee Protective Arrangements		A-46
Recycled Products		A-47
Safe Operation of Motor Vehicles		A-48
School Bus Operations		A-49
Seismic Safety		A-50
Substance Abuse Requirements		A-51
Termination		A-53
Violation and Breach of Contract		A-56
Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment		A-58
ADA Access		A-60
Veterans Preference		A-61
Prompt Payment		A-62
Special Notification Requirements for States		A-63
Domestic Preferences for Procurements		A-64

Federal Certifications and Assurances Clauses Matrix

CLAUSE	COMPETITIVE PURCHASE (≥$35,000)					SIMPLIFIED ACQUISITION/SMALL PURCHASE ($10,001 - $34,999)					MICRO/DISCRETIONARY PURCHASE (≤$10,000)				
*Waiver currently in effect, see corresponding section for more information															
FLY AMERICA	Foreign air transport/ travel	Foreign air transport/ travel	Foreign air transport/ travel	Foreign air transport/ travel	Foreign air transport/ travel	Foreign air transport/ travel	Foreign air transport/ travel	Foreign air transport/ travel	Foreign air transport/ travel	Foreign air transport/ travel					
BUY AMERICA			>$150,000	>$150,000	>$150,000										
CHARTER BUS SERVICE OPERATIONS		All					All								
SCHOOL BUS OPERATIONS		All					All								
CARGO PREFERENCE			Transport by ocean vessel	Transport by ocean vessel	Transport by ocean vessel			Transport by ocean vessel	Transport by ocean vessel	Transport by ocean vessel					
SEISMIC SAFETY	A&E for new buildings and additions			New buildings and additions		A&E for new buildings and additions			New buildings and additions						
FEDERAL CHANGES	All	All	All	All	All	All	All	All	All	All					
ENERGY CONSERVATION	All	All	All	All	All	All	All	All	All	All					
CLEAN WATER	>$150,000	>$150,000	>$150,000	>$150,000	>$150,000										
BUS TESTING			All, except minivans					All, except minivans							
PRE AND POST AWARD DELIVERY AUDIT REQUIREMENTS			All					All							
LOBBYING	>$100,000	>$100,000	>$100,000	>$100,000	>$100,000										
ACCESS TO RECORDS AND AUDITS	All	All	All	All	All	All	All	All	All	All					

Legend

Professional Services/A&E

Operations/Management/Subrecipients

Rolling Stock

Construction

Materials & Supplies

CLAUSE	COMPETITIVE PURCHASE (≥$35,000)					SIMPLIFIED ACQUISITION/SMALL PURCHASE ($10,001 - $34,999)					MICRO/DISCRETIONARY PURCHASE (≤$10,000)				
															
BONDING				>$250,000											
CLEAN AIR ACT	>$150,000	>$150,000	>$150,000	>$150,000	>$150,000										
RECYCLED PRODUCTS		EPA-selected items ≥$10,000, annually		EPA-selected items ≥$10,000, annually	EPA-selected items ≥$10,000, annually		EPA-selected items ≥$10,000, annually		EPA-selected items ≥$10,000, annually	EPA-selected items ≥$10,000, annually					
DAVIS BACON ACT AND COPELAND ANTI-KICKBACK ACT				>$2,000					>$2,000					>$2,000	
CONTRACT WORK HOURS AND SAFETY STANDARDS ACT		>$100,000	>$100,000	>$100,000											
NO GOVERNMENT OBLIGATION TO THIRD PARTIES	All	All	All	All	All	All	All	All	All	All					
PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS	All	All	All	All	All	All	All	All	All	All					
TERMINATION PROVISIONS	All	All	All	All	All	All	All	All	All	All					
GOVERNMENT-WIDE DEBARMENT AND SUSPENSION	All	All	All	All	All	>$25,000	>$25,000	>$25,000	>$25,000	>$25,000					
CIVIL RIGHTS	All	All	All	All	All	All	All	All	All	All	All	All	All	All	All
BREACHES AND DISPUTE RESOLUTION	>$250,000	>$250,000	>$250,000	>$250,000	>$250,000										
PATENT RIGHTS AND INVENTIONS UNDER FEDERALLY ASSISTED AGREEMENTS	Research and Develop-ment					Research and Develop-ment									
DOMESTIC PREFERENCES			All	All	All			All	All	All					

CLAUSE	COMPETITIVE PURCHASE (≥$35,000)					SIMPLIFIED ACQUISITION/SMALL PURCHASE ($10,001 - $34,999)					MICRO/DISCRETIONARY PURCHASE (≤$10,000)				
															
TRANSIT EMPLOYEE PROTECTIVE ARRANGEMENT		Transit operations					Transit operations								
DISADVANTAGED BUSINESS ENTERPRISE	All	All	All	All	All	All	All	All	All	All	All	All	All	All	All
PROMPT PAYMENT	All	All	All	All	All	All	All	All	All	All					
INCORPORATION OF FTA TERMS	All	All	All	All	All	All	All	All	All	All					
DRUG AND ALCOHOL TESTING		Transit operations					Transit operations								
NOTICE TO FTA AND USDOT INSPECTOR GENERAL OF INFORMATION RELATED TO FRAUD, WASTE, ETC.	$25,000 or more. Prime and Subs	$25,000 or more. Prime and Subs	$25,000 or more. Prime and Subs	$25,000 or more. Prime and Subs	$25,000 or more. Prime and Subs	$25,000 or more. Prime and Subs	$25,000 or more. Prime and Subs	$25,000 or more. Prime and Subs	$25,000 or more. Prime and Subs	$25,000 or more. Prime and Subs					
SEAT BELT USE	All	All	All	All	All	All	All	All	All	All					
DISTRACTED DRIVING	All	All	All	All	All	All	All	All	All	All					
PROHIBITION ON CERTAIN TELECOMMUNICA-TIONS EQUIPMENT	All	All	All	All	All	All	All	All	All	All					
VETERANS PREFERENCE				>150,000											
ADA ACCESS	A&E	All	All	All	All	A&E	All	All	All	All	A&E	All	All	All	All
FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS	All	All	All	All	All	All	All	All	All	All					
SPECIAL NOTICE FOR STATES	All	All	All	All	All	All	All	All	All	All					

Instructions: Determine the method of procurement (i.e., micro purchase, small purchase, RFP, Sealed Bid, etc.) and apply any applicable federal clauses based on method of procurement (cost of purchase). Indicate where the clause is located in the purchasing package and submit completed checklist along with purchasing package to FDOT.

Method of Procurement:	___ Micro Purchase (≤$10,000)	___ Small Purchase ($10,001-$34,999)
	___ Competitive Proposals (≥$35,000)	

Requirements	Location of Requirement in Purchasing Package
General Procurement Questions	
Does procurement exhibit Geographic Preference? For reference purposes: 49 CFR 18.36(c)(1)(2) and FTA C 4220.1G, Ch. VI, Section 2.e(8)	
Has proposed contracted entity been verified that they are not excluded or disqualified through the Excluded Parties List System (EPLS)? For reference purposes: https://www.sam.gov/portal/public/SAM	
Has an adequate number of sources been solicited?	
Has applicable ADA language been included?	
Has an adequate cost analysis been performed? For reference purposes: 49 CFR 18.36(f)(1) and FTA C 4220.1G, Ch. VI, Section 5	
Applicable Federal Clauses (excluding micro-purchases, except Construction Contracts over $2,000)	
NO GOVERNMENT OBLIGATION TO THIRD PARTIES	
PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS 49 U.S.C. § 5323(l) (1); 31 U.S.C. §§ 3801-3812; 18 U.S.C. § 1001; 49 C.F.R. part 31	
ACCESS TO RECORDS AND AUDITS 49 U.S.C. § 5325(g); 2 C.F.R. § 200.337; MA 34 §9	
FEDERAL CHANGES	
CIVIL RIGHTS REQUIREMENTS	
DISADVANTAGED BUSINESS ENTERPRISE (DBE) 49 CFR Part 26; 49 C.F.R. § 26.13(b)	
INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS FTA Circular 4220.1G	
ENERGY CONSERVATION REQUIREMENTS 42 U.S.C. 6321 et seq.; 49 C.F.R. part 622, subpart C	
PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT 2 CFR 200.216	
SEAT BELT USE MA 34 §34(a); 23 U.S.C. part 402; EO 13043	
DISTRACTED DRIVING MA 34 §34(a); 23 U.S.C. part 402; EO 13513	
FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS DOT Order 4200.6; MA 34 § 4(g)	
SPECIAL NOTIFICATION REQUIREMENTS FOR STATES MA 34 §37	

PROMPT PAYMENT 49 C.F.R. Part 26 (2016)	
Additional Federal Clauses when procurement exceeds $10,000	
TERMINATION 2 C.F.R. § 200.339; 2 C.F.R. part 200	
Additional Federal Clauses when procurement exceeds $25,000	
GOVERNMENT-WIDE DEBARMENT AND SUSPENSION 2 C.F.R. part 180; 2 C.F.R. part 100; 2 C.F.R. § 200.213; 2 C.F.R. part 200; Executive Order 12549; Executive Order 12689	
NOTICE TO FTA AND US DOT INSPECTOR GENERAL OF INFORMATION RELATED TO FRAUD, WASTE, ETC. MA 34 §39(b); 2 CFR 180.220 and 1200.220	
Additional Federal Clauses when procurement exceeds $100,000	
LOBBYING 31 U.S.C. 1352(b); 2 C.F.R. § 200.450; 49 CFR Part 20 Appendix A	
Additional Federal Clauses when procurement exceeds $150,000	
CLEAN AIR 42 U.S.C. 7401-7671q	
CLEAN WATER REQUIREMENTS 33 U.S.C. 1251-1388; Federal Water Pollution Control Act 33 U.S.C. 1251-1387	
Additional Federal Clauses when procurement exceeds $250,000	
BREACHES AND DISPUTE RESOLUTION 49 CFR Part 18.36	
Additional Federal Clauses when procurements involve foreign transport or travel by air	
FLY AMERICA REQUIREMENTS 49 U.S.C. § 40118; 41 CFR Part 301-10; 48 C.F.R. part 47.4	
Additional Federal Clauses when procurements involve A&E for new buildings and additions	
SEISMIC SAFETY REQUIREMENTS 42 U.S.C. 7701 et seq.; 49 CFR Part 41; Executive Order 12699	
Additional Federal Clauses when procurement involve Research & Development	
PATENT RIGHTS AND INVENTIONS UNDER FEDERALLY ASSISTED AGREEMENTS 2 C.F.R. part 200; 37 CFR Part 401; 49 CFR Parts 18 and 19	

Approval:

Subrecipient _____ Date: _____

Approval:

Florida Department of Transportation_____ Date: _____

Instructions: Determine the method of procurement (i.e., micro purchase, small purchase, RFP, Sealed Bid, etc.) and apply any applicable federal clauses based on method of procurement (cost of purchase). Indicate where the clause is located in the purchasing package and submit completed checklist along with purchasing package to FDOT.

Method of Procurement: ___ Micro Purchase (≤$10,000) ___ Small Purchase ($10,001-$34,999) ___ Competitive Proposals (≥$35,000)

Requirements	Location of Requirement in Purchasing Package
General Procurement Questions	
Has proposed contracted entity been verified that they are not excluded or disqualified through the Excluded Parties List System (EPLS)? For reference purposes: https://www.sam.gov/portal/public/SAM	
Has an adequate number of sources been solicited?	
Has applicable ADA language been included?	
Has an adequate cost analysis been performed? For reference purposes: 49 CFR 18.36(f)(1) and FTA C 4220.1G, Ch. VI, Section 5	
Applicable Federal Clauses (excluding micro-purchases, except Construction Contracts over $2,000)	
NO GOVERNMENT OBLIGATION TO THIRD PARTIES	
PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS 49 U.S.C. § 5323(l) (1); 31 U.S.C. §§ 3801-3812; 18 U.S.C. § 1001; 49 C.F.R. part 31	
ACCESS TO RECORDS AND AUDITS 49 U.S.C. § 5325(g); 2 C.F.R. § 200.337; MA 34 §9	
FEDERAL CHANGES	
CIVIL RIGHTS REQUIREMENTS	
DISADVANTAGED BUSINESS ENTERPRISE (DBE) 49 CFR Part 26; 49 C.F.R. § 26.13(b)	
INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS FTA Circular 4220.1G	
ENERGY CONSERVATION REQUIREMENTS 42 U.S.C. 6321 et seq.; 49 C.F.R. part 622, subpart C	
CHARTER BUS REQUIREMENTS 42 U.S.C. 5323(d); 49 C.F.R. part 604	
SCHOOL BUS REQUIREMENTS 42 U.S.C. 5323(f); 49 C.F.R. part 605	
PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT 2 CFR 200.216	
SEAT BELT USE MA 34 §34(a); 23 U.S.C. part 402; EO 13043	
DISTRACTED DRIVING MA 34 §34(b); 23 U.S.C. part 402; EO 13513	
FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS DOT Order 4200.6; MA 34 § 4(g)	
SPECIAL NOTIFICATION REQUIREMENTS FOR STATES	

MA 34 §37	
PROMPT PAYMENT 49 C.F.R. Part 26 (2016)	
Additional Federal Clauses when procurement exceeds $10,000	
TERMINATION 2 C.F.R. § 200.339; 2 C.F.R. part 200	
Additional Federal Clauses when procurement exceeds $25,000	
GOVERNMENT-WIDE DEBARMENT AND SUSPENSION 2 C.F.R. part 180; 2 C.F.R. part 100; 2 C.F.R. § 200.213; 2 C.F.R. part 200; Executive Order 12549; Executive Order 12689	
NOTICE TO FTA AND US DOT INSPECTOR GENERAL OF INFORMATION RELATED TO FRAUD, WASTE, ETC. MA 34 §39(b); 2 CFR 180.220 and 1200.220	
Additional Federal Clauses when procurement exceeds $100,000	
LOBBYING 31 U.S.C. 1352(b); 2 C.F.R. § 200.450; 2 C.F.R. part 200 appendix II (I); 49 CFR Part 20 Appendix A	
EMPLOYEE PROTECTIONS 49 U.S.C. § 5333(a); 40 U.S.C. §§ 3141 – 3148; 29 C.F.R. part 5; 18 U.S.C. § 874; 29 C.F.R. part 3; 40 U.S.C. §§3701-3708; 29 C.F.R. part 1926	
Additional Federal Clauses when procurement exceeds $150,000	
CLEAN AIR 42 U.S.C. 7401-7671q	
CLEAN WATER REQUIREMENTS 33 U.S.C. 1251-1388; Federal Water Pollution Control Act 33 U.S.C. 1251-1387	
Additional Federal Clauses when procurement exceeds $250,000	
BREACHES AND DISPUTE RESOLUTION 49 CFR Part 18.36	
Additional Federal Clauses when procurements involve foreign transport or travel by air	
FLY AMERICA REQUIREMENTS 49 U.S.C. § 40118; 41 CFR Part 301-10; 48 C.F.R. part 47.4	
Additional Federal Clauses **Transit Operations funded with Section 5307, 5339, 5311, or 5316 funds**	
TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS 49 U.S.C. § 5333; 29 CFR Part 215	
DRUG AND ALCOHOL TESTING 49 U.S.C. § 5331; 49 CFR Part 655; 49 CFR Part 40	
Additional Federal Clauses **Contracts for items designed by EPA, when procuring $10,000 or more per year**	
RECYCLED PRODUCTS 42 U.S.C. 6962; 40 CFR Part 247; 2 C.F.R. § 200.323	

Approval:

Subrecipient _____ Date: _____

Approval:

Florida Department of Transportation_____ Date: _____

FEDERAL CHANGES

Applicability to Contracts

The Federal Changes requirement applies to all contracts.

Flow Down

The Federal Changes requirement flows down appropriately to each applicable changed federal requirement.

Model Clause/Language

No specific language is mandated. The following language has been developed by FTA.

Federal Changes

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, Super Circular 2 CFR Part 200 and FTA Circular 4220.1G, as they may be amended or promulgated from time to time during the term of the contract. Contractor's failure to so comply shall constitute a material breach of this contract.

FEDERAL TAX LIABILITY AND RECENT CONVICTIONS

Master Agreement 34 § 4(g)

Applicability to Contracts

The Federal Tax Liability and Recent Convictions requirement applies to all contracts.

Flow Down

The Recipient agrees to require all Third Party Participants to flow this requirement down to participants at all lower tiers, without regard to the value of any subagreement.

Model Clause/Language

Recipients can draw on the following language for inclusion in their federally funded procurements.

Federal Tax Liability and Recent Convictions

The Contractor certifies that:

a) The Contractor does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and

b) Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months.

If the Contractor cannot so certify, the Recipient may refer the matter to FTA and not to enter into any Third Party Agreement with the Contractor without FTA's written approval.

FLY AMERICA
49 U.S.C. § 40118
41 C.F.R. part 301-10
48 C.F.R. part 47.4

Applicability to Contracts
The Fly America requirements apply to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation. Transportation on a foreign air carrier is permissible when provided by a foreign air carrier under a code share agreement when the ticket identifies the U.S. air carrier's designator code and flight number. Transportation by a foreign air carrier is also permissible if there is a bilateral or multilateral air transportation agreement to which the U.S. Government and a foreign government are parties and which the U.S. DOT has determined meets the requirements of the Fly America Act.

Flow Down Requirements
The Fly America requirements flow down from FTA recipients and subrecipients to first tier contractors who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

Model Clause/Language
The relevant statutes and regulations do not require any specific clause or language that recipients use in their third party contracts. A sample clause is provided for Federal contracts at 48 C.F.R. 52.247-63. Recipients can draw on the following language for inclusion in their federally funded procurements.
FTA proposes the following language, modified from the Federal clause.

Fly America Requirements

a) Definitions. As used in this clause—"International air transportation" means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States. "United States" means the 50 States, the District of Columbia, and outlying areas.
"U.S.-flag air carrier" means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

b) When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, recipients, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign- flag air carrier if a U.S.-flag air carrier is available to provide such services.

c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.

d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:
Statement of Unavailability of U.S.-Flag Air Carriers
International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403.
[State reasons]: _____ (End of Statement)

e) The Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

GOVERNMENT-WIDE DEBARMENT AND SUSPENSION

2 C.F.R. part 180
2 C.F.R. part 100
2 C.F.R. § 200.213
Executive Order 12549
Executive Order 12689

Background and Applicability

A contract award (of any tier) in an amount expected to equal or exceed $25,000 or a contract award at any tier for a federally required audit (irrespective of the contract amount) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. part 180. The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
Recipients, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) with which they propose to contract or subcontract is not excluded or disqualified. This is done by: (a) checking the SAM exclusions; (b) collecting a certification from that person; or (c) adding a clause or condition to the contract or subcontract.

Flow Down

Recipients, contractors, and subcontractors who enter into covered transactions with a participant at the next lower level, must require that participant to: (a) comply with subpart C of 2 C.F.R. part 180, as supplemented by 2 C.F.R. part 1200; and (b) pass the requirement to comply with subpart C of 2 C.F.R. part 180 to each person with whom the participant enters into a covered transaction at the next lower tier.

Model Clause/Language

There is no required language for the Debarment and Suspension clause. Recipients can draw on the following language for inclusion in their federally funded procurements.

Debarment, Suspension, Ineligibility and Voluntary Exclusion

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of $25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

a) Debarred from participation in any federally assisted Award;
b) Suspended from participation in any federally assisted Award;
c) Proposed for debarment from participation in any federally assisted Award;
d) Declared ineligible to participate in any federally assisted Award;
e) Voluntarily excluded from participation in any federally assisted Award; or
f) Disqualified from participation in ay federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:
The certification in this clause is a material representation of fact relied upon by the AGENCY. If it is later determined by the AGENCY that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the AGENCY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

FTA Circular 4220.1G

Applicability to Contracts

The incorporation of FTA terms applies to all contracts.

Flow Down

This requirement flows down to all subcontracts at every tier.

Model Clause/Language

FTA has developed the following incorporation of terms language:

Incorporation of Federal Transit Administration (FTA) Terms

All contractual provisions required by FTA, as set forth in FTA Circular 4220.1G and the Super Circular 2 CFR Part 200, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any State requests, which would cause the State to be in violation of the FTA terms and conditions.

LOBBYING RESTRICTIONS

31 U.S.C. § 1352(b)
2 C.F.R. § 200.450
49 C.F.R. part 20

Applicability to Contracts

The lobbying requirements apply to all contracts and subcontracts of $100,000 or more at any tier under a Federal grant. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this agreement, the payor must complete and submit the Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Flow Down

The lobbying requirements mandate the maximum flow down pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5).

Model Clause/Language

49 C.F.R. part 20, Appendix A provides specific language for inclusion in FTA funded third party contracts as follows:

Lobbying Restrictions

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

_____ Signature of Contractor's Authorized Official
_____ Name and Title of Contractor's Authorized Official
_____ Date

(End of statement)

NO GOVERNMENT OBLIGATION TO THIRD PARTIES

Applicability to Contracts

The No Obligation clause applies to all third-party contracts that are federally funded.

Flow Down

The No Obligation clause extends to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

Model Clause/Language

There is no required language for the No Obligations clause. Recipients can draw on the following language for inclusion in their federally funded procurements.

No Federal Government Obligation to Third Parties.

The Recipient and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Recipient, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

PATENT RIGHTS AND INVENTIONS DEVELOPED UNDER FEDERALLY ASSISTED AGREEMENTS

2 C.F.R. part 200
37 C.F.R. part 401
49 C.F.R. Parts 18 and 19

Applicability to Contracts

Research projects in which FTA finances the purpose of the grant is to finance the development of a product or information. These patent and data rights requirements do not apply to capital projects or operating projects, even though a small portion of the sales price may cover the cost of product development or writing the user's manual or to micro-purchases (less than $10,000). If the federal award meets the definition of "funding agreement" under 37 C.F.R. § 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 C.F.R. part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency. Additionally, the requirements under 2 C.F.R. Part 200 regarding Intangible and Intellectual Properties developed under federally assisted agreements must be included in appropriate contracts and agreements. Specific conditions and activities identified in 2 C.F.R. Part 200 outline various agency types and work products that are applicable and are to be protected by these clauses.

Flow Down

The Patent Rights and Rights in Data requirements flow down to all third-party contractors and their contracts at every tier that meet the definition of a research-type project under 37 U.S.C. § 401.2 and include Intangible and Intellectual Properties under 2 C.F.R. Part 200 of agencies on federal agreements and contracts.

Model Clause/Language

Recipients can draw on language provided in 37 C.F.R. § 401.3 and 401.14 (Standard Patent Rights Clauses) for appropriate Patent Rights and Data Rights Clauses for use in their federally funded research, development, demonstration, or special studies projects. Additionally, standard contractual language can be drawn from 2 CFR 200.315, 435, 448, and 449 regarding the rights for all intangible and intellectual properties. Recipients should consult legal counsel for guidance in developing an appropriate Intellectual Property Agreement. At a minimum, recipients can include the following language in their standard boilerplates. At a minimum, recipients can include the following language in their standard boilerplates.

Intellectual Property Rights

This Project is funded through a Federal award with FTA for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this Contract. The Contractor shall grant the AGENCY intellectual property access and licenses deemed necessary for the work performed under this Agreement and in accordance with the requirements of 37 C.F.R. part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by FTA or U.S. DOT. The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Agreement and shall, at a minimum, include the following restrictions: Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of FTA, until such time as FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution. For purposes of this agreement, the term "subject data" means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of "subject data" include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.

1. The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for "Federal Government Purposes," any subject data or copyright described below. For "Federal Government Purposes," means use only for the direct purposes of the Federal

Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

   a. Any subject data developed under the Contract, whether or not a copyright has been obtained; and
   b. Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part by the FTA.

2. Unless FTA determines otherwise, the Contractor performing experimental, developmental, or research work required as part of this Contract agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.
3. Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. The Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
4. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
5. Data developed by the Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying Contract is exempt from the requirements herein, provided that the Contractor identifies those data in writing at the time of delivery of the Contract work.
6. The Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

PRE-AWARD AND POST-DELIVERY AUDITS OF ROLLING STOCK PURCHASES

49 U.S.C. 5323(m)
49 C.F.R. part 663
2 CFR part 200 subpart F

Applicability to Contracts

Recipients purchasing revenue service rolling stock with FTA funds must comply with the pre-award and post-delivery audit requirements set forth in 49 U.S.C. 5323(m) and supplemented by 49 C.F.R. part 663. For more information about pre-award and post-delivery audit requirements, please go to FTA's Buy America page on its website.

Flow Down

There is no flow down requirement for Pre-Award and Post-Delivery Audits of Rolling Stock.

Model Clause/Language

Part 663 of Title 49, Code of Federal Regulations, does not contain specific language to be included in third party contracts but does contain requirements applicable to subrecipients and third-party contractors. Recipients are advised to use the model certificates and language contained in the audit handbook. Additionally, recipients can draw on the following language for inclusion in their federally funded procurements.

Pre-Award and Post-Delivery Audit Requirements

The Contractor agrees to comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 2 CFR part 200 subpart F. The Contractor shall comply with the Buy America certification(s) submitted with its proposal/bid. The Contractor agrees to participate and cooperate in any pre-award and post-delivery audits performed pursuant to 2 CFR part 200 subpart F and related FTA guidance.

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

49 U.S.C. § 5323(l) (1)
31 U.S.C. §§ 3801-3812
18 U.S.C. § 1001
49 C.F.R. part 31

Applicability to Contracts

The Program Fraud clause applies to all third-party contracts that are federally funded.

Flow Down

The Program Fraud clause extends to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier. These requirements flow down to contractors and subcontractors who make, present, or submit covered claims and statements.

Model Clause/Language

There is no required language for the Program Fraud clause. Recipients can draw on the following language for inclusion in their federally funded procurements.

Program Fraud and False or Fraudulent Statements or Related Acts

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

Additional Notice to U.S. DOT Inspector General. The Contractor must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Project is located, if the Contractor has knowledge of potential fraud, waste, or abuse occurring on any project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs regardless of whether the project is related to this Contract or another agreement with FTA, and also applies to subcontractors at any tier. "Knowledge," as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Contractor. In this paragraph, "promptly" means to refer information without delay and without change.

The Contractor agrees to include the above two clauses on each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

TRANSIT EMPLOYEE PROTECTIVE ARRANGEMENTS

49 U.S.C. § 5333

29 C.F.R. part 215

Applicability to Contracts

The Public Transportation Employee Protective Arrangements apply to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator.

Flow Down

The employee protective arrangements clause flows down to all third-party contractors and their contracts at every tier.

Model Clause/Language

There is no required language for the Public Transportation Employee Protective Arrangements clause. Recipients can draw on the following language for inclusion in their federally funded procurements.

Transit Employee Protective Arrangements

The Contractor agrees to comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):

1. U.S. DOL Certification. Under this Contract or any Amendments thereto that involve public transportation operations that are supported with federal assistance, a certification issued by U.S. DOL is a condition of the Contract.
2. Special Warranty. When the Contract involves public transportation operations and is supported with federal assistance appropriated or made available for 49 U.S.C. § 5311, U.S. DOL will provide a Special Warranty for its Award, including its Award of federal assistance under the Tribal Transit Program. The U.S. DOL Special Warranty is a condition of the Contract.
3. Special Arrangements. The conditions of 49 U.S.C. § 5333(b) do not apply to Contractors providing public transportation operations pursuant to 49 U.S.C. § 5310. FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate, and, in those instances, any special arrangements required by FTA will be incorporated herein as required.

RECYCLED PRODUCTS

42 U.S.C. § 6962
40 C.F.R. part 247
2 C.F.R. § 200.323

Applicability to Contracts

All contracts over $10,000 for items designated by the EPA Contractor and subcontractor agree to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and the regulatory provisions of 40 CFR Part 247. In the performance of this contract and to the extent practicable, the Contractor and subcontractors are to use products containing the highest percentage of recovered materials for items designated by the Environmental Protection Agency (EPA) under 40 CFR Part 247 whenever:

1. The contract requires procurement of $10,000 or more of a designated item during the fiscal year; or
2. The contractor has procured $10,000 or more of a designated item using Federal funding during the previous fiscal year.

The list of EPA-designated items is available at www.epa.gov/smm/comprehensive-procurement-guidelines-construction-products. Section 6002(c) establishes exceptions to the preference for recovery of EPA- designated products if the contractor can demonstrate the item is:

a) Not reasonably available within a timeframe providing for compliance with the contract performance schedule;
b) Fails to meet reasonable contract performance requirements; or
c) Is only available at an unreasonable price.

Flow Down

These requirements extend to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier where the value of an EPA designated item exceeds $10,000.

Model Clause/Language

There is no required language for preference for recycled products. Recipients can draw on the following language for inclusion in their federally funded procurements.

Recovered Materials

The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247.

SAFE OPERATION OF MOTOR VEHICLES

23 U.S.C. part 402
Executive Order No. 13043
Executive Order No. 13513

Applicability to Contracts

The Safe Operation of Motor Vehicles requirements apply to all federally funded third party contracts. In compliance with Federal Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. Section 402 note, FTA encourages each third-party contractor to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company owned, rented, or personally operated vehicles, and to include this provision in each third-party subcontract involving the project. Additionally, recipients are required by FTA to include a Distracted Driving clause that addresses distracted driving, including text messaging in each of its third-party agreements supported with Federal assistance.

Flow Down Requirements

The Safe Operation of Motor Vehicles requirements flow down to all third-party contractors at every tier.

Model Clause/Language

There is no required language for the Safe Operation of Motor Vehicles clause. Recipients can draw on the following language for inclusion in their federally funded procurements.

Safe Operation of Motor Vehicles

Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company rented vehicles, or personally operated vehicles. The terms "company owned" and "company-leased" refer to vehicles owned or leased either by the Contractor or [Recipient]. Contractor is further encouraged to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contactor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement. Contractor is also encouraged to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

SCHOOL BUS OPERATIONS

49 U.S.C. 5323(f)

49 C.F.R. part 605

Applicability to Contracts

The School Bus requirements apply to contracts for operating public transportation service.

Flow Down Requirements

The School Bus requirements flow down from FTA recipients and subrecipients to first tier service contractors.

Model Clause/Language

The relevant statutes and regulations do not mandate any specific clause or language. Recipients can draw on the following language for inclusion in their federally funded procurements.

School Bus Operations

The contractor agrees to comply with 49 U.S.C. 5323(f), and 49 C.F.R. part 604, and not engage in school bus operations using federally funded equipment or facilities in competition with private operators of school buses, except as permitted under:

1. Federal transit laws, specifically 49 U.S.C. § 5323(f);
2. FTA regulations, "School Bus Operations," 49 C.F.R. part 605;
3. Any other Federal School Bus regulations; or
4. Federal guidance, except as FTA determines otherwise in writing.

If Contractor violates this School Bus Agreement, FTA may:

1. Bar the Contractor from receiving Federal assistance for public transportation; or
2. Require the contractor to take such remedial measures as FTA considers appropriate.

When operating exclusive school bus service under an allowable exemption, the contractor may not use federally funded equipment, vehicles, or facilities. The Contractor should include the substance of this clause in each subcontract or purchase under this contract that may operate public transportation services.

SEISMIC SAFETY
42 U.S.C. 7701 et seq.
49 C.F.R. part 41
Executive Order 12699

Applicability to Contracts
The Seismic Safety requirements apply only to contracts for the construction of new buildings or additions to existing buildings.

Flow Down
The Seismic Safety requirements flow down from FTA recipients and subrecipients to first tier contractors to assure compliance with the applicable building standards for Seismic Safety, including the work performed by all subcontractors.

Model Clauses/Language
The regulations do not provide suggested language for third party contract clauses. Recipients can draw on the following language for inclusion in their federally funded procurements.

Seismic Safety
Contractor agrees that any new building or addition to an existing building shall be designed and constructed in accordance with the standards required in USDOT Seismic Safety Regulations 49 CFR 41 and shall certify compliance to the extent required by the regulation. Contractor shall also ensure that all work performed under this contract, including work performed by subcontractors, complies with the standards required by 49 CFR 41 and the certification of compliance issued on the project.

SUBSTANCE ABUSE REQUIREMENTS

49 U.S.C. § 5331
49 C.F.R. part 655
49 C.F.R. part 40

Applicability to Contracts

Third party contractors who perform safety-sensitive functions must comply with FTA's substance abuse management program under 49 C.F.R. part 655, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations." Under 49 C.F.R. § 655.4, Safety-sensitive function means any of the following duties, when performed by employees of recipients, subrecipients, operators, or contractors:

1. Operating a revenue service vehicle, including when not in revenue service;
2. Operating a nonrevenue service vehicle, when required to be operated by a holder of a Commercial Driver's License;
3. Controlling dispatch or movement of a revenue service vehicle;
4. Maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service. This section does not apply to the following: an employer who receives funding under 49 U.S.C. § 5307 or § 5309, is in an area less than 200,000 in population, and contracts out such services; or an employer who receives funding under 49 U.S.C.
5. § 5311 and contracts out such services;
6. Carrying a firearm for security purposes.

Additionally, third party contractors providing testing services involving the performance of safety sensitive activities must also comply with 49 C.F.R. part 40, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs."

Flow Down Requirements

The Substance Abuse requirements flow down to all third-party contractors at every tier who perform a safety-sensitive function for the recipient or subrecipient.

Model Clause/Language

FTA's drug and alcohol rules, 49 C.F.R. part 655, are unique among the regulations issued by FTA. First, they require recipients to ensure that any entity performing a safety-sensitive function on the recipient's behalf (usually subrecipients and/or contractors) implement a complex drug and alcohol testing program that complies with part 655. Second, the rules condition the receipt of certain kinds of FTA funding on the recipient's compliance with the rules; thus, the recipient is not in compliance with the rules unless every entity that performs a safety-sensitive function on the recipient's behalf is in compliance with the rules. Third, the rules do not specify how a recipient ensures that its subrecipients and/or contractors comply with them.

How a recipient does so depends on several factors, including whether the contractor is covered independently by the drug and alcohol rules of another Department of Transportation operating administration, the nature of the relationship that the recipient has with the contractor, and the financial resources available to the recipient to oversee the contractor's drug and alcohol testing program. In short, there are a variety of ways a recipient can ensure that its subrecipients and contractors comply with the rules.

FTA has developed three model contract provisions for recipients to use "as is" or to modify to fit their particular situations.

Explanation of Model Contract Clauses

Option 1

The recipient ensures the contractor's compliance with the rules by requiring the contractor to participate in a drug and alcohol program administered by the recipient. The advantages of doing this are obvious: the recipient maintains total control over its compliance with 49 C.F.R. part 655. The disadvantage is that the recipient, which may not directly employ any safety-sensitive employees, has to implement a complex testing program. Therefore, this may be a practical option for only those recipients that have a testing program for their employees, and can add the contractor's safety-sensitive employees to that program.

Option 2

The recipient relies on the contractor to implement a drug and alcohol testing program that complies with 49 C.F.R. part 655 but retains the ability to monitor the contractor's testing program; thus, the recipient has less control over its compliance with the drug and alcohol testing rules than it does under Option 1. The advantage of this approach is that it places the

responsibility for complying with the rules on the entity that is actually performing the safety-sensitive function. Moreover, it reserves to the recipient the power to ensure that the contractor complies with the program. The disadvantage of Option 2 is that, without adequate monitoring of the contractor's program, the recipient may find itself out of compliance with the rules.

Option 3

The recipient specifies some or all of the specific features of a contractor's drug and alcohol compliance program. Thus, it requires the recipient to decide what it wants to do and how it wants to do it. The advantage of this option is that the recipient has more control over the contractor's drug and alcohol testing program, yet it is not actually administering the testing program. The disadvantage is that the recipient has to specify and understand clearly what it wants to do and why.

SUBSTANCE ABUSE TESTING

Option 1

The Contractor agrees to participate in AGENCY's drug and alcohol program established in compliance with 49 C.F.R. part 655.

SUBSTANCE ABUSE TESTING Option 2

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. parts 655, produce any documentation necessary to establish its compliance with part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of [name of State], or AGENCY, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. part 655 and review the testing process. The Contractor agrees further to certify annually its compliance with parts 655 before [insert date] and to submit the Management Information System (MIS) reports before [insert date before March 15] to [insert title and address of person responsible for receiving information]. To certify compliance, the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

SUBSTANCE ABUSE TESTING Option 3

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. part 655, produce any documentation necessary to establish its compliance with part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of [name of State], or AGENCY, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. part 655 and review the testing process. The Contractor agrees further to certify annually its compliance with parts 655 before[insert date] and to submit the Management Information System (MIS) reports before [insert date before March 15] to [insert title and address of person responsible for receiving information]. To certify compliance the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register. The Contractor agrees further to [Select a, b, or c] (a) submit before [insert date or upon request] a copy of the Policy Statement developed to implement its drug and alcohol testing program; OR (b) adopt [insert title of the Policy Statement the recipient wishes the contractor to use] as its policy statement as required under 49 C.F.R. part 655; OR (c) submit for review and approval before [insert date or upon request] a copy of its Policy Statement developed to implement its drug and alcohol testing program. In addition, the Contractor agrees to: [to be determined by the recipient, but may address areas such as: the selection of the certified laboratory, substance abuse professional, or Medical Review Officer, or the use of a consortium].

TERMINATION
2 C.F.R. § 200.339
2 C.F.R. part 200

Applicability to Contracts
All contracts in excess of $10,000 must address termination for cause and for convenience, including the manner by which it will be effected and the basis for settlement.
Flow Down
For all contracts in excess of $10,000, the Termination clause extends to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.
Model Clause/Language
There is no required language for the Terminations clause. Recipients can draw on the following language for inclusion in their federally funded procurements.
Termination for Convenience (General Provision)
The AGENCY may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the AGENCY's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to AGENCY to be paid the Contractor. If the Contractor has any property in its possession belonging to AGENCY, the Contractor will account for the same, and dispose of it in the manner AGENCY directs.
Termination for Default [Breach or Cause] (General Provision)
If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the AGENCY may terminate this contract for default. Termination shall be effected by serving a Notice of Termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will be paid only the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.
If it is later determined by the AGENCY that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the AGENCY, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.
Opportunity to Cure (General Provision)
The AGENCY, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions
If Contractor fails to remedy to AGENCY's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [10 days] after receipt by Contractor of written notice from AGENCY setting forth the nature of said breach or default, AGENCY shall have the right to terminate the contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude AGENCY from also pursuing all available remedies against Contractor and its sureties for said breach or default.
Waiver of Remedies for any Breach
In the event that AGENCY elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by AGENCY shall not limit AGENCY's remedies for any succeeding breach of that or of any other covenant, term, or condition of this contract.
Termination for Convenience (Professional or Transit Service Contracts)
The AGENCY, by written notice, may terminate this contract, in whole or in part, when it is in the AGENCY's interest. If this contract is terminated, the AGENCY shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.
Termination for Default (Supplies and Service)
If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the AGENCY may terminate this contract for default. The AGENCY shall terminate by delivering to the Contractor a Notice of Termination specifying the

nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.
If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the AGENCY.

Termination for Default (Transportation Services)

If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the AGENCY may terminate this contract for default. The AGENCY shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.
If this contract is terminated while the Contractor has possession of AGENCY goods, the Contractor shall, upon direction of the AGENCY, protect and preserve the goods until surrendered to the AGENCY or its agent. The Contractor and AGENCY shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the AGENCY.

Termination for Default (Construction)

If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will ensure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provision of this contract, AGENCY may terminate this contract for default. The AGENCY shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the AGENCY may take over the work and compete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the AGENCY resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the AGENCY in completing the work.
The Contractor's right to proceed shall not be terminated nor shall the Contractor be charged with damages under this clause if:

1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of AGENCY, acts of another contractor in the performance of a contract with AGENCY, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. The Contractor, within [10] days from the beginning of any delay, notifies AGENCY in writing of the causes of delay. If, in the judgment of AGENCY, the delay is excusable, the time for completing the work shall be extended. The judgment of AGENCY shall be final and conclusive for the parties, but subject to appeal under the Disputes clause(s) of this contract. If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of AGENCY.

Termination for Convenience or Default (Architect and Engineering)

The AGENCY may terminate this contract in whole or in part, for the AGENCY's convenience or because of the failure of the Contractor to fulfill the contract obligations. The AGENCY shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the AGENCY 's Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. AGENCY has a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, all such data, drawings, specifications, reports, estimates, summaries, and other information and materials.
If the termination is for the convenience of the AGENCY, the AGENCY's Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.
If the termination is for failure of the Contractor to fulfill the contract obligations, the AGENCY may complete the work by contact or otherwise and the Contractor shall be liable for any additional cost incurred by the AGENCY.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of AGENCY.

Termination for Convenience or Default (Cost-Type Contracts)

The AGENCY may terminate this contract, or any portion of it, by serving a Notice of Termination on the Contractor. The notice shall state whether the termination is for convenience of AGENCY or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the Contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the AGENCY, or property supplied to the Contractor by the AGENCY. If the termination is for default, the AGENCY may fix the fee, if the contract provides for a fee, to be paid the Contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the AGENCY and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of AGENCY, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a Notice of Termination for Default, the AGENCY determines that the Contractor has an excusable reason for not performing, the AGENCY, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

VIOLATION AND BREACH OF CONTRACT

49 C.F.R. part 18.36

Applicability to Contracts

All contracts in excess of the Simplified Acquisition Threshold (currently set at $150,000) shall contain administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

Flow Down

The Violations and Breach of Contracts clause flow down to all third party contractors and their contracts at every tier.

Model Clauses/Language

FTA does not prescribe the form or content of such provisions. The provisions developed will depend on the circumstances and the type of contract. Recipients should consult legal counsel in developing appropriate clauses. The following clauses are examples of provisions from various FTA third party contracts. Recipients can draw on these examples for inclusion in their federally funded procurements.

Rights and Remedies of the AGENCY

The AGENCY shall have the following rights in the event that the AGENCY deems the Contractor guilty of a breach of any term under the Contract.

1. The right to take over and complete the work or any part thereof as agency for and at the expense of the Contractor, either directly or through other contractors;
2. The right to cancel this Contract as to any or all of the work yet to be performed;
3. The right to specific performance, an injunction or any other appropriate equitable remedy; and
4. The right to money damages.

For purposes of this Contract, breach shall include [AGENCY to define].

Rights and Remedies of Contractor

Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Contract, which may be committed by the AGENCY, the Contractor expressly agrees that no default, act or omission of the AGENCY shall constitute a material breach of this Contract, entitling Contractor to cancel or rescind the Contract (unless the AGENCY directs Contractor to do so) or to suspend or abandon performance.

Remedies

Substantial failure of the Contractor to complete the Project in accordance with the terms of this Agreement will be a default of this Agreement. In the event of a default, the AGENCY will have all remedies in law and equity, including the right to specific performance, without further assistance, and the rights to termination or suspension as provided herein. The Contractor recognizes that in the event of a breach of this Agreement by the Contractor before the AGENCY takes action contemplated herein, the AGENCY will provide the Contractor with sixty (60) days written notice that the AGENCY considers that such a breach has occurred and will provide the Contractor a reasonable period of time to respond and to take necessary corrective action.

Disputes

- **Example 1:** Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by the authorized representative of AGENCY's [title of employee]. This decision shall be final and conclusive unless within [10] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide be the decision.
- **Example 2:** The AGENCY and the Contractor intend to resolve all disputes under this Agreement to the best of their abilities in an informal manner. To accomplish this end, the parties will use an Alternative Dispute Resolution process to resolve disputes in a manner designed to avoid litigation. In general, the parties contemplate that the Alternative Dispute Resolution process will include, at a minimum, an attempt to resolve disputes through communications between their staffs, and, if resolution is not reached at that level, a procedure for review and action on such disputes by appropriate management level officials within the AGENCY and the Contractor's organization.

In the event that a resolution of the dispute is not mutually agreed upon, the parties can agree to mediate the dispute or proceed with litigation. Notwithstanding any provision of this section, or any other provision of this Contract, it is expressly agreed and understood that any court proceeding arising out of a dispute under the Contract shall be heard by a Court de novo and the court shall not be limited in such proceeding to the issue of whether the Authority acted in an arbitrary, capricious or grossly erroneous manner.

Pending final settlement of any dispute, the parties shall proceed diligently with the performance of the Contract, and in accordance with the AGENCY's direction or decisions made thereof.

Performance during Dispute

Unless otherwise directed by AGENCY, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages

Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of its employees, agents or others for whose acts it is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies

Unless this Contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the AGENCY and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the AGENCY is located.

Rights and Remedies

The duties and obligations imposed by the Contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the AGENCY or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

2 CFR 200.216

Applicability to Contracts

The Prohibition on Certain Telecommunications and Video Surveillance Service or Equipment requirements applies to all contracts.

Flow Down

This requirement flows down to all subcontracts at every tier.

Model Clauses/Language

(a) Definitions. As used in this clause—

Backhaul means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).

Covered foreign country means The People's Republic of China.

Covered telecommunications equipment or services means–

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);

(2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

(3) Telecommunications or video surveillance services provided by such entities or using such equipment; or

(4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Critical technology means–

(1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;

(2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled-

(i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or

(ii) For reasons relating to regional stability or surreptitious listening;

(3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);

(4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of

Federal Regulations (relating to export and import of nuclear equipment and material);

(5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or

(6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

Interconnection arrangements means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (e.g., connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.

Reasonable inquiry means an inquiry designed to uncover any information in the entity's possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.

Roaming means cellular communications services (e.g., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.

Substantial or essential component means any component necessary for the proper function or performance of a piece of equipment, system, or service.

(b) *Prohibition.* (1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the Department from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The Contractor is prohibited from providing to the Department any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(2)Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the Department on or after August 13, 2020, from entering into a contract, or extending or renewing a contract, with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract.

(c) *Exceptions*. This clause does not prohibit contractors from providing—

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(d) *Reporting requirement*. (1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in paragraph (d)(2) of this clause to the Department immediately.

ADA ACCESS

49 U.S.C. § 5301
29U.S.C. § 794
42 U.S.C. § 12101

Applicability to Contracts

The ADA Access requirements apply to all contracts.

Flow Down

This section applies to subcontractors at all tiers.

Model Clauses/Language

The Contractor agrees to comply with the requirements of 49 U.S.C. § 5301(d) which expresses the federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement those policies. The Contractor also agrees to comply with all applicable requirements of sections 503 and 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, and with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires the provision of accessible facilities and services, and with the following federal regulations, including any amendments thereto: (1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37; (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27; (3) Joint U.S. Architectural and Transportation Barriers Compliance Board/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38; (4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35; (5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36; (6) U.S. GSA regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19; (7) U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630; (8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and (9) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and (10) Any implementing requirements FTA may issue.

Instructions: Determine the method of procurement (i.e., micro purchase, small purchase, RFP, Sealed Bid, etc.) and apply any applicable federal clauses based on method of procurement (cost of purchase). Indicate where the clause is located in the purchasing package and submit completed checklist along with purchasing package to FDOT.

Method of Procurement: ___ Micro Purchase (<$10,000) ___ Small Purchase ($10,001-$34,999) ___ Competitive Proposals (≥$35,000)

Requirements	Location of Requirement in Purchasing Package
General Procurement Questions	
Does procurement exhibit Geographic Preference? For reference purposes: 49 CFR 18.36(c)(1)(2) and FTA C 4220.1G, Ch. VI, Section 2.e(8)	
Has proposed contracted entity been verified that they are not excluded or disqualified through the Excluded Parties List System (EPLS)? For reference purposes: https://www.sam.gov/portal/public/SAM	
Has an adequate number of sources been solicited?	
Has applicable ADA language been included?	
Has an adequate cost analysis been performed? For reference purposes: 49 CFR 18.36(f)(1) and FTA C 4220.1G, Ch. VI, Section 5	
Applicable Federal Clauses (excluding micro-purchases, except Construction Contracts over $2,000)	
NO GOVERNMENT OBLIGATION TO THIRD PARTIES	
PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS 49 U.S.C. § 5323(l) (1); 31 U.S.C. §§ 3801-3812; 18 U.S.C. § 1001; 49 C.F.R. part 31	
ACCESS TO RECORDS AND AUDITS 49 U.S.C. § 5325(g); 2 C.F.R. § 200.337; MA 34 §9	
FEDERAL CHANGES	
CIVIL RIGHTS REQUIREMENTS	
DISADVANTAGED BUSINESS ENTERPRISE (DBE) 49 CFR Part 26; 49 C.F.R. § 26.13(b)	
INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS FTA Circular 4220.1G	
ENERGY CONSERVATION REQUIREMENTS 42 U.S.C. 6321 et seq.; 49 C.F.R. part 622, subpart C	
PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT 2 CFR 200.216	
SEAT BELT USE MA 34 §34(a); EO 13043; 23 U.S.C. part 402	
DISTRACTED DRIVING MA 34 §34(b); EO 13513; 23 U.S.C. part 402	
FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS DOT Order 4200.6; MA 34 § 4(g)	
SPECIAL NOTIFICATION REQUIREMENTS FOR STATES MA 34 §37	

PROMPT PAYMENT 49 C.F.R. Part 26 (2016)	
DOMESTIC PREFERENCES FOR PROCUREMENTS 2 C.F.R. 184; 2 C.F.R. 200.322; 2 C.F.R. Appendix II (L)	
Additional Federal Clauses when procurement exceeds $10,000	
TERMINATION 2 C.F.R. § 200.339; 2 C.F.R. part 200	
Additional Federal Clauses when procurement exceeds $25,000	
GOVERNMENT-WIDE DEBARMENT AND SUSPENSION 2 C.F.R. part 180; 2 C.F.R. part 100; 2 C.F.R. § 200.213; 2 C.F.R. part 200; Appendix II (I); Executive Order 12549; Executive Order 12689	
NOTICE TO FTA AND US DOT INSPECTOR GENERAL OF INFORMATION RELATED TO FRAUD, WASTE, ETC. MA 34 §39(b); 2 CFR 180.220 and 1200.220	
Additional Federal Clauses when procurement exceeds $100,000	
PRE-AWARD AND POST DELIVERY AUDIT REQUIREMENTS 49 U.S.C. 5323(m); 49 CFR Part 663	
LOBBYING 31 U.S.C. 1352(b); 2 C.F.R. § 200.450; 2 C.F.R. part 200 appendix II (I); 49 CFR Part 20 Appendix A	
EMPLOYEE PROTECTIONS 49 U.S.C. § 5333(a); 40 U.S.C. §§ 3141 – 3148; 29 C.F.R. part 5; 18 U.S.C. § 874; 29 C.F.R. part 3; 40 U.S.C. §§3701-3708; 29 C.F.R. part 1926	
Additional Federal Clauses when procurement exceeds $150,000	
BUY AMERICA REQUIREMENTS 49 U.S.C. 5323(j); 49 CFR Part 661	
CLEAN AIR 42 U.S.C. 7401-7671q	
CLEAN WATER REQUIREMENTS 33 U.S.C. 1251-1388; Federal Water Pollution Control Act 33 U.S.C. 1251-1387	
Additional Federal Clauses when procurement exceeds $250,000	
BREACHES AND DISPUTE RESOLUTION 49 CFR Part 18.36	
Additional Federal Clauses when procurements involve foreign transport or travel by air	
FLY AMERICA REQUIREMENTS 49 U.S.C. § 40118; 41 CFR Part 301-10; 48 C.F.R. part 47.4	
Additional Federal Clauses when procurements involve property that may be transported by ocean vessel	
CARGO PREFERENCE REQUIREMENTS 46 U.S.C. §55305; 46 CFR Part 381	

Approval:

Subrecipient _____ Date: _____

Approval:

Florida Department of Transportation_____ Date: _____

GUIDE FOR CONSTRUCTION – CHECKLIST

Instructions: Determine the method of procurement (i.e., micro purchase, small purchase, RFP, Sealed Bid, etc.) and apply any applicable federal clauses based on method of procurement (cost of purchase). Indicate where the clause is located in the purchasing package and submit completed checklist along with purchasing package to FDOT.

Method of Procurement: ___ Micro Purchase (≤$10,000) ___ Small Purchase ($10,001-$34,999) ___ Competitive Proposals (≥$35,000)

Requirements	Location of Requirement in Purchasing Package
General Procurement Questions	
Does procurement exhibit Geographic Preference? For reference purposes: 49 CFR 18.36(c)(1)(2) and FTA C 4220.1G, Ch. VI, Section 2.e(8)	
Has proposed contracted entity been verified that they are not excluded or disqualified through the Excluded Parties List System (EPLS)? For reference purposes: https://www.sam.gov/portal/public/SAM	
Has an adequate number of sources been solicited?	
Has applicable ADA language been included?	
Has an adequate cost analysis been performed? For reference purposes: 49 CFR 18.36(f)(1) and FTA C 4220.1G, Ch. VI, Section 5	
Applicable Federal Clauses (excluding micro-purchases, except Construction Contracts over $2,000)	
NO GOVERNMENT OBLIGATION TO THIRD PARTIES	
PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS 49 U.S.C. § 5323(l) (1); 31 U.S.C. §§ 3801-3812; 18 U.S.C. § 1001; 49 C.F.R. part 31	
ACCESS TO RECORDS AND AUDITS 49 U.S.C. § 5325(g); 2 C.F.R. § 200.337; MA 34 §9	
FEDERAL CHANGES	
CIVIL RIGHTS REQUIREMENTS *Note: Special DOL EEO clause for construction projects should be included. Reference material: MA 34* §12	
DISADVANTAGED BUSINESS ENTERPRISE (DBE) 49 CFR Part 26; 49 C.F.R. § 26.13(b)	
INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS FTA Circular 4220.1G	
ENERGY CONSERVATION REQUIREMENTS 42 U.S.C. 6321 et seq.; 49 C.F.R. part 622, subpart C	
PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT 2 CFR 200.216	
SEAT BELT USE MA 34(a); EO 13043; 23 U.S.C. part 402	
DISTRACTED DRIVING MA 34(b); EO 13513; 23 U.S.C. part 402	
FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS DOT Order 4200.6; MA 34 § 4(g)	
SPECIAL NOTIFICATION REQUIREMENTS FOR STATES MA 34 §37	
PROMPT PAYMENT 49 C.F.R. Part 26 (2016)	
DOMESTIC PREFERENCES FOR PROCUREMENTS 2 C.F.R. 184; 2 C.F.R. 200.322; 2 C.F.R. Appendix II (L)	

Additional Federal Clauses when procurement exceeds $10,000	
TERMINATION 2 C.F.R. § 200.339; 2 C.F.R. part 200	
Additional Federal Clauses when procurement exceeds $25,000	
GOVERNMENT-WIDE DEBARMENT AND SUSPENSION 2 C.F.R. part 180; 2 C.F.R. part 100; 2 C.F.R. § 200.213; 2 C.F.R. part 200; Executive Order 12549; Executive Order 12689	
NOTICE TO FTA AND US DOT INSPECTOR GENERAL OF INFORMATION RELATED TO FRAUD, WASTE, ETC. MA 34 §39(b); 2 CFR 180.220 and 1200.220	
Additional Federal Clauses when procurement exceeds $100,000	
LOBBYING 31 U.S.C. 1352(b); 2 C.F.R. § 200.450; 2 C.F.R. part 200 appendix II (I); 49 CFR Part 20 Appendix A	
BONDING REQUIREMENTS 2 C.F.R. § 200.325	
EMPLOYEE PROTECTIONS 49 U.S.C. § 5333(a); 40 U.S.C. §§ 3141 – 3148; 29 C.F.R. part 5; 18 U.S.C. § 874; 29 C.F.R. part 3; 40 U.S.C. §§3701-3708; 29 C.F.R. part 1926	
Additional Federal Clauses when procurement exceeds $150,000	
BUY AMERICA REQUIREMENTS 49 U.S.C. 5323(j); 49 CFR Part 661	
VETERANS PREFERENCE 49 USC § 5325(k)	
CLEAN AIR 42 U.S.C. 7401-7671q	
CLEAN WATER REQUIREMENTS 33 U.S.C. 1251-1388; Federal Water Pollution Control Act 33 U.S.C. 1251-1387	
Additional Federal Clauses when procurement exceeds $150,000	
BREACHES AND DISPUTE RESOLUTION 49 CFR Part 18.36	
Additional Federal Clauses when procurements involve foreign transport or travel by air	
FLY AMERICA REQUIREMENTS 49 U.S.C. § 40118; 41 CFR Part 301-10; 48 C.F.R. part 47.4	
Additional Federal Clauses when procurements involve property that may be transported by ocean vessel	
CARGO PREFERENCE REQUIREMENTS 46 U.S.C. § 55305; 46 CFR Part 381	
Additional Federal Clauses – New Buildings and Additions	
SEISMIC SAFETY REQUIREMENTS 42 U.S.C. 7701 et seq.; 49 CFR Part 41; Executive Order 12699	
Additional Federal Clauses **Contracts for items designated by EPA, when procuring $10,000 or more per year**	
RECYCLED PRODUCTS 42 U.S.C. 6962; 40 CFR Part 247; 2 C.F.R. § 200.323	

Approval:

Subrecipient _____ Date: _____

Approval:

Florida Department of Transportation_____ Date: _____

Instructions: Determine the method of procurement (i.e., micro purchase, small purchase, RFP, Sealed Bid, etc.) and apply any applicable federal clauses based on method of procurement (cost of purchase). Indicate where the clause is located in the purchasing package and submit completed checklist along with purchasing package to FDOT.

Method of Procurement: ___ Micro Purchase (≤$10,000) ___ Small Purchase ($10,001-$34,999) ___ Competitive Proposals (≥$35,000)

Requirements	Location of Requirement in Purchasing Package
General Procurement Questions	
Does procurement exhibit Geographic Preference? For reference purposes: 49 CFR 18.36(c)(1)(2) and FTA C 4220.1G, Ch. VI, Section 2.e(8)	
Has proposed contracted entity been verified that they are not excluded or disqualified through the Excluded Parties List System (EPLS)? For reference purposes: https://www.sam.gov/portal/public/SAM	
Has an adequate number of sources been solicited?	
Has applicable ADA language been included?	
Has an adequate cost analysis been performed? For reference purposes: 49 CFR 18.36(f)(1) and FTA C 4220.1G, Ch. VI, Section 5	
Applicable Federal Clauses (excluding micro-purchases, except Construction Contracts over $2,000)	
NO GOVERNMENT OBLIGATION TO THIRD PARTIES	
PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS 49 U.S.C. § 5323(l) (1); 31 U.S.C. §§ 3801-3812; 18 U.S.C. § 1001; 49 C.F.R. part 31	
ACCESS TO RECORDS AND AUDITS 49 U.S.C. § 5325(g); 2 C.F.R. § 200.337; MA 34 §9	
FEDERAL CHANGES	
CIVIL RIGHTS REQUIREMENTS	
DISADVANTAGED BUSINESS ENTERPRISE (DBE) 49 CFR Part 26; 49 C.F.R. § 26.13(b)	
INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS FTA Circular 4220.1G	
ENERGY CONSERVATION REQUIREMENTS 42 U.S.C. 6321 et seq.; 49 C.F.R. part 622, subpart C	
PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT 2 CFR 200.216	
SEAT BELT USE MA 34 §34(a); EO 13043; 23 U.S.C. part 402	
DISTRACTED DRIVING MA 34 §34(b); EO 13513; 23 U.S.C. part 402	
FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS DOT Order 4200.6; MA 34 § 4(g)	
SPECIAL NOTIFICATION REQUIREMENTS FOR STATES MA 34 §37	

PROMPT PAYMENT 49 C.F.R. Part 26 (2016)	
DOMESTIC PREFERENCES FOR PROCUREMENTS 2 C.F.R. 184; 2 C.F.R. 200.322; 2 C.F.R. Appendix II (L)	
Additional Federal Clauses when procurement exceeds $10,000	
TERMINATION 2 C.F.R. § 200.339; 2 C.F.R. part 200	
Additional Federal Clauses when procurement exceeds $25,000	
GOVERNMENT-WIDE DEBARMENT AND SUSPENSION 2 C.F.R. part 180; 2 C.F.R. part 100; 2 C.F.R. § 200.213; 2 C.F.R. part 200; Executive Order 12549; Executive Order 12689	
NOTICE TO FTA AND US DOT INSPECTOR GENERAL OF INFORMATION RELATED TO FRAUD, WASTE, ETC. MA 34 §39(b); 2 CFR 180.220 and 1200.220	
Additional Federal Clauses when procurement exceeds $100,000	
LOBBYING 31 U.S.C. §1352; 2 C.F.R. §200.450; 2 C.F.R. part 200 appendix II (I); 49 CFR Part 20 Appendix A	
Additional Federal Clauses when procurement exceeds $150,000	
BUY AMERICA REQUIREMENTS 49 U.S.C. 5323(j); 49 CFR Part 661	
CLEAN AIR 42 U.S.C. 7401-7671q	
CLEAN WATER REQUIREMENTS 33 U.S.C. 1251-1388; Federal Water Pollution Control Act 33 U.S.C. 1251-1387	
Additional Federal Clauses when procurement exceeds $250,000	
BREACHES AND DISPUTE RESOLUTION 49 CFR Part 18.36	
Additional Federal Clauses when procurements involve foreign transport or travel by air	
FLY AMERICA REQUIREMENTS 49 U.S.C. § 40118; 41 CFR Part 301-10; 48 C.F.R. part 47.4	
Additional Federal Clauses when procurements involve property that may be transported by ocean vessel	
CARGO PREFERENCE REQUIREMENTS 46 U.S.C. § 55305; 46 CFR Part 381	
Additional Federal Clauses **Contracts for items designated by EPA, when procuring $10,000 or more per year**	
RECYCLED PRODUCTS 42 U.S.C. 6962; 40 CFR Part 247; 2 C.F.R. § 200.323	

Approval:

Subrecipient _____ Date: _____

Approval:

Florida Department of Transportation_____ Date: _____

ACCESS TO RECORDS AND AUDITS

49 U.S.C. § 5325(g)
2 C.F.R. § 200.337
Master Agreement 34 § 9

Applicability to Contracts

The record keeping and access requirements apply to all contracts funded in whole or in part with FTA funds. Under 49 U.S.C. § 5325(g), FTA has the right to examine and inspect all records, documents, and papers, including contracts, related to any FTA project financed with Federal assistance authorized by 49 U.S.C. Chapter 53.

Flow Down

The record keeping and access requirements extend to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

Model Clause/Language

There is no required language for record keeping and access requirements. Recipients can draw on the following language for inclusion in their federally funded procurements.

Access to Records and Audits

a) Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.

b) Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts, and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.

c) Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to the performance of this contract as reasonably may be required. Contractor is notified that the Authority may be subject to the Single Audit Act, set forth in 2 CFR Part 200, Subpart F – Audit Requirements, as amended.

d) Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors' access to the sites of performance under this contract as reasonably may be required.

e) Closeout. Closeout of the Award does not alter the record retention or access requirements of this section of this Master Agreement.

BONDING REQUIREMENTS

2 C.F.R. § 200.325

Applicability to Contracts

Bonds are required for all construction or facility improvement contracts and subcontracts exceeding the simplified acquisition threshold. FTA may accept the bonding policy and requirements of the recipient if FTA has determined that the Federal interest is adequately protected. If such a determination has not been made, the following minimum requirements apply:

a) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

b) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

c) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

Flow Down

These requirements extend to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier that exceed the simplified acquisition threshold.

Model Clauses/Language

There is no required language for bonding requirements. Recipients can draw on the following language for inclusion in their federally funded procurements.

Bond Requirements

Bid Guarantee

Bidders shall furnish a bid guaranty in the form of a bid bond, or certified treasurer's or cashier's check issued by a responsible bank or trust company, made payable to the RECIPIENT. The amount of such a guarantee shall be equal to **$$$$** or **X%** of the total bid price.

In submitting this bid, it is understood and agreed by bidder that the RECIPIENT reserves the right to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [90] days subsequent to the opening of bids, without the written consent of RECIPIENT.

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within [90] days after the bid opening without the written consent of the RECIPIENT, or refuse or be unable to enter into this Contract as provided above, or refuse or be unable to furnish adequate and acceptable Performance and Payment Bonds, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, it shall forfeit its bid guaranty to the extent RECIPIENT'S damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security thereof.

It is further understood and agreed that to the extent the defaulting bidder's bid guaranty shall prove inadequate to fully recompense RECIPIENT for the damages occasioned by default, then the undersigned bidder agrees to indemnify RECIPIENT and pay over to RECIPIENT the difference between the bid guarantee and RECIPIENT'S total damages so as to make RECIPIENT whole.

The undersigned understands that any material alteration of any of the above or any of the material contained herein, other than that requested will render the bid unresponsive.

Performance Guarantee

A Performance Guarantee in the amount of 100% of the Contract value is required by the Recipient to ensure faithful performance of the Contract. Either a Performance Bond or an Irrevocable Stand-By Letter of Credit shall be provided by the Contractor and shall remain in full force for the term

of the Agreement. The successful Bidder shall certify that it will provide the requisite Performance Guarantee to the RECIPIENT within ten (10) business days from Contract execution. The RECIPIENT requires all Performance Bonds to be provided by a fully qualified surety company acceptable to the RECIPIENT and listed as a company currently authorized

under 31 C.F.R. part 22 as possessing a Certificate of Authority as described hereunder. RECIPIENT may require additional performance bond protection when the contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The RECIPIENT may secure additional protection by directing the Contractor to increase the amount of the existing bond or to obtain an additional bond.

If the Bidder chooses to provide a Letter of Credit as its Performance Guarantee, the Bidder shall furnish with its bid, certification that an Irrevocable Stand-By Letter of Credit will be furnished should the Bidder become the successful contractor. The Bidder shall also provide a statement from the banking institution certifying that an Irrevocable Stand-By Letter of Credit for the action will be provided if the Contract is awarded to the Bidder. The Irrevocable Stand-By Letter of Credit will only be accepted by the RECIPIENT if:

1. A bank in good standing issues it. The RECIPIENT will not accept a Letter of Credit from an entity other than a bank.
2. It is in writing and signed by the issuing bank.
3. It conspicuously states that it is an irrevocable, non-transferable, "standby" Letter of Credit.
4. The RECIPIENT is identified as the Beneficiary.
5. It is in an amount equal to 100% of the Contract value. This amount must be in U.S. dollars.
6. The effective date of the Letter of Credit is the same as the effective date of the Contract
7. The expiration date of the Letter of Credit coincides with the term of this Agreement.
8. It indicates that it is being issued in order to support the obligation of the Contractor to perform under the Contract. It must specifically reference the Contract between the RECIPIENT and the Contractor the work stipulated herein.

The issuing bank's obligation to pay will arise upon the presentation of the original Letter of Credit and a certificate and draft (similar to the attached forms contained in Sections X and Y) to the issuing bank's representative at a location and time to be determined by the parties. This documentation will indicate that the Contractor is in default under the Contract.

Payment Bonds

A Labor and Materials Payment Bond equal to the full value of the contract must be furnished by the contractor to Recipient as security for payment by the Contractor and subcontractors for labor, materials, and rental of equipment. The bond may be issued by a fully qualified surety company acceptable to (Recipient) and listed as a company currently authorized under 31 C.F.R. part 223 as possessing a Certificate of Authority as described thereunder.

Sample Bond Certifications

Performance Guarantee Certification

The undersigned hereby certifies that the Bidder shall provide a Performance Guarantee in accordance with the Specifications.

Designate below which form of Performance Guarantee shall be provided: Performance Bond
Irrevocable Stand-By-Letter of Credit

BIDDER'S NAME:
AUTHORIZED SIGNATURE:
TITLE:
DATE:

Performance Bond

KNOW ALL MEN BY THESE PRESENTS: that
(Insert full name and address and legal title of Contractor) as Principal, hereinafter called Contractor, and
(Insert full name and address or legal title of Surety) as Surety, hereinafter called Surety, are held and firmly bound unto RECIPIENT as Obligee, hereinafter called Authority, in the amount of Dollars ($) for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Contractor has by written agreement dated, 20____, entered into a contract with the RECIPIENT for Contract No._____, which contract is by reference made a part hereof, and is hereinafter referred to as the Contract. NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly and faithfully perform said Contract, then this obligation shall be null and void; otherwise, it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the RECIPIENT.

Whenever Contractor shall be, and is declared by the RECIPIENT to be in default under the Contract, the RECIPIENT having performed RECIPIENT'S obligations thereunder, the Surety may promptly remedy the default, or shall promptly

1. Complete the Contract in accordance with it terms and conditions, or
2. Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or, if the RECIPIENT elects, upon determination by the RECIPIENT and the Surety jointly of the lowest responsible bidder, arrange for a contract between such bidder and the Authority, and make available as Work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, the amount set forth in the first paragraph hereof. The term "balance of the contract price," as used in this paragraph, shall mean the total amount payable by the RECIPIENT to Contractor under the Contract and any amendments thereto, less the amount properly paid by the RECIPIENT to Contractor.

Any suit under this bond must be instituted before the expiration of two (2) years from the date on which final payment under the Contract falls due.
No right of action shall accrue on this bond to or for the use of any person or corporation other than the RECIPIENT or the heirs, executors, administrators or successors of the RECIPIENT.
Signed and sealed this day of 20 . WITNESS PRINCIPAL
(SEAL)
(Title) WITNESS SURETY
(SEAL)
(Title)
Attach hereto proof of authority of officers or agents to sign bond.

Irrevocable Stand-By Letter Of Credit Certificate
The undersigned states that he/she is of the (Title)
(The "Beneficiary") and hereby (Name of Beneficiary)
Certifies on behalf of the Beneficiary to (the "Bank), with (Name of Issuing Bank)
Reference to Irrevocable Standby Letter of Credit No. Issued by the Bank (the "Letter of Credit"), that:

1. The undersigned is duly authorized to execute and deliver this certificate on behalf of the Beneficiary.
2. The Beneficiary is making a drawing under the Letter of Credit.
3. An Event of Default has occurred under Contract No. .
4. The amount of the draft presented with this certificate does not exceed the total maximum amount drawable today under the Letter of Credit as provided therein.

IN WITNESS WHEREOF, this certificate is executed this day of , 20_____. (NAME OF BENEFICIARY)
By:
Its:

Bank Draft
FOR VALUE RECEIVED
Pay on presentment to the sum of (Name of Beneficiary) Dollars ($)
Charge the Account of Irrevocably Standby Letter of (Name of Issuing Bank)
Credit No. Dated: 20_____.
To
(Name of Issuing Bank)
NAME OF BENEFICIARY
By:
Its:

BUS TESTING
49 U.S.C. § 5318(c)
49 C.F.R. part 665

Applicability to Contracts
The Bus Testing requirements pertain only to the purchase or lease of any new bus model, or any bus model with a major change in configuration or components to be acquired or leased with funds obligated by FTA. Recipients are responsible for determining whether a vehicle to be acquired requires full or partial testing or has already satisfied the bus testing requirements by achieving a passing test score in accordance with 49 C.F.R. part 665. Recipients must certify compliance with FTA's bus testing requirements in all grant applications for FTA funding for bus procurements.

Flow Down
There is no flow down requirement for Bus Testing.

Model Clause/Language
The operator of the bus testing facility is required to provide the resulting test report to the entity that submits the bus for testing. The manufacturer or dealer of a new bus model or a bus produced with a major change in component or configuration is required to provide a copy of the corresponding full bus testing report and any applicable partial testing report(s) to the recipient during the point in the procurement process specified by the recipient, but in all cases before final acceptance of the first bus by the recipient. The complete bus testing reporting requirements are provided in 49 C.F.R. § 665.11. Although no specific certification and bus testing language in required, recipients can draw on the following language for inclusion in their federally funded procurements.

Bus Testing
Contractor shall comply with 49 U.S.C. 5323(c) and FTA's implementing regulation 49 CFR part 665, to the extent they are consistent with 49 U.S.C. § 5318(e), as amended; and shall perform the following: (1) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient prior to the recipient's final acceptance of the first vehicle. (2) A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public. (3) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to the recipient's final acceptance of the first vehicle. If configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing. (4) If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the US before Oct. 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

BUY AMERICA REQUIREMENTS

49 U.S.C. 5323(j)

49 C.F.R. part 661

Applicability to Contracts

FTA's Buy America law and regulations apply to projects that involve the purchase of more than $150,000 of iron, steel, manufactured goods, or rolling stock to be delivered to the recipient to be used in an FTA assisted project. FTA cautions that its Buy America regulations are complex. Recipients can obtain detailed information on FTA's Buy America regulation at: The Federal Transit Administration's Buy America website.

WAIVERS IN EFFECT

A temporary waiver is currently in effect for construction materials procured through certain contracts. The waiver is applicable to awards that are obligated on or after **May 14, 2022,** and before **November 10, 2022**.

Unless extended, the waiver expires on **November 10, 2022**.

A temporary waiver is currently in effect for the domestic content requirement of certain commercially produced vans and minivans used in the provision of public transportation due to the unavailability of compliant vehicles. The waiver is in effect as of **October 25, 2022**, and unless extended, expires on **October 25, 2024**.

A waiver is in effect to ensure DOT and its grant recipients make efficient use of resources by focusing domestic sourcing efforts on products that provide the greatest manufacturing opportunities for American workers and firms. It is also intended to reduce delays in the delivery of important transportation infrastructure projects that provide jobs and promote economic growth. The waiver applies to a single financial assistance award obligated on or after **August 16, 2023**, for which 1) The total value of the non-compliant products is no more than the lesser of $1 million or 5% of total applicable costs for the project; or 2) The total amount of Federal financial assistance applied to the project, through awards or subawards, is below $500,000.

Flow Down

The Buy America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

Model Clause/Language

The Buy America regulation at 49 C.F.R. § 661.13 requires notification of the Buy America requirements in a recipients' bid or request for proposal for FTA funded contracts. Recipients can draw on the following language for inclusion in their federally funded procurements. Note that recipients are responsible for including the correct Buy America certification based on what they are acquiring. Recipients should not include both the rolling stock and steel, iron, or manufactured products certificates in the documents unless acquiring both in the same procurement.

Buy America

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(c) and 49 C.F.R. § 661.11. The [bidder or offeror] must submit to [Recipient] the appropriate Buy America certification below with its [bid or offer].

Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive.

The [Recipient] presumes that any Contractor who submitted such certificate is complying with the Buy America provisions. A false certification is a criminal act in violation of 18 U.S.C. § 1001. A Contractor who certifies that it will comply with the applicable Buy America requirement is bound by its original certification (in the case of a sealed bidding procurement) or the certification it submitted with its final offer (in the case of a negotiated procurement) and is not permitted to change its certification after bid opening or submission of its final offer. Where a Contractor certifies that it will comply with Buy America requirements, the Contractor is not eligible for a waiver of those requirements. The [Recipient] reserves the right to request additional information, and/or to conduct both pre-award and post-award audits to ensure that the Contractor is in compliance with Buy America requirements.

In accordance with 49 C.F.R. § 661.6, for the procurement of steel, iron or manufactured products, use the certifications below.

Certificate of Compliance with Buy America Requirements

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(1), and the applicable regulations in 49 C.F.R. part 661.

Date: _____
Signature: _____
Company: _____
Name: _____
Title: _____

Certificate of Non-Compliance with Buy America Requirements

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. 5323(j)(2), as amended, and the applicable regulations in 49 C.F.R. § 661.7.

Date: _____
Signature: _____
Company: _____
Name: _____
Title: _____

In accordance with 49 C.F.R. § 661.12, for the procurement of rolling stock (including train control, communication, and traction power equipment) use the following certifications:

Certificate of Compliance with Buy America Rolling Stock Requirements

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j), and the applicable regulations of 49 C.F.R. § 661.11.

Date: _____
Signature: _____
Company: _____
Name: _____
Title: _____

Certificate of Non-Compliance with Buy America Rolling Stock Requirements

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but may qualify for an exception to the requirement consistent with 49 U.S.C. 5323(j)(2)(c), and the applicable regulations in 49 C.F.R. § 661.7.

Date: _____
Signature: _____
Company: _____
Name: _____
Title: _____

CARGO PREFERENCE REQUIREMENTS

46 U.S.C. § 1241

46 C.F.R. part 381

Applicability to Contracts

The Cargo Preference Act of 1954 requirements applies to all contracts involving equipment, materials, or commodities that may be transported by ocean vessels.

Flow Down

The Cargo Preference requirements apply to all contracts involved with the transport of equipment, material, or commodities by ocean vessel.

Model Clause/Language

The Maritime Administration (MARAD) regulations at 46 C.F.R. § 381.7 contain suggested contract clauses. Recipients can draw on the following language for inclusion in their federally funded procurements.

Cargo Preference — Use of United States-Flag Vessels

The contractor agrees:

a) to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;

b) to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, “on-board” commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor’s bill-of-lading.); and

c) to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

CHARTER SERVICE
42 U.S.C 5323(f)
49 C.F.R. part 604

Applicability to Contracts
The Charter Bus requirements apply to contracts for operating public transportation service.
Flow Down Requirements
The Charter Bus requirements flow down from FTA recipients and subrecipients to first tier service contractors.
Model Clause/Language
The relevant statutes and regulations do not mandate any specific clause or language. Recipients can draw on the following language for inclusion in their federally funded procurements.
Charter Service
The contractor agrees to comply with 49 U.S.C. 5323(d), 5323(c), and 49 C.F.R. part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except as permitted under:

1. Federal transit laws, specifically 49 U.S.C. § 5323(d);
2. FTA regulations, "Charter Service," 49 C.F.R. part 604;
3. Any other federal Charter Service regulations; or
4. Federal guidance, except as FTA determines otherwise in writing.

The contractor agrees that if it engages in a pattern of violations of FTA's Charter Service regulations, FTA may require corrective measures or impose remedies on it. These corrective measures and remedies may include:

1. Barring it or any subcontractor operating public transportation under its Award that has provided prohibited charter service from receiving federal assistance from FTA;
2. Withholding an amount of federal assistance as provided by Appendix D to part 604 of FTA's Charter Service regulations; or
3. Any other appropriate remedy that may apply.

The contractor should also include the substance of this clause in each subcontract that may involve operating public transit services.

CLEAN AIR ACT

42 U.S.C. 7401-7671q

Applicability to Contracts

The Clean Air Act requirements apply to each contract and subcontract exceeding $150,000. Each contract and subcontract must contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

Flow Down

The Clean Air Act and Federal Water Pollution Control Act requirements extend to all subcontracts and their over $150,000 at every tier.

Model Clause/Language

Recipients can draw on the following language for inclusion in their federally funded procurements.

Clean Air

The Contractor agrees:

1. It will not use any violating facilities;
2. It will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities;"
3. It will report violations of use of prohibited facilities to FTA; and
4. It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

CLEAN WATER ACT (Federal Water Pollution Control Act)
33 U.S.C. 1251-1388
Federal Water Pollution Control Act 33 U.S.C. 1251-1387

Applicability to Contracts
The Federal Water Pollution Control Act requirements apply to each contract and subcontract exceeding $150,000. Each contract and subcontract must contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

Flow Down
The Federal Water Pollution Control Act requirements extend to all subcontracts over $150,000 at every tier.

Model Clause/Language
Recipients can draw on the following language for inclusion in their federally funded procurements.

Clean Water
Contractor shall comply with all applicable standards, orders or regulations issued pursuant to Section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and other requirements of the Clean Water Act, as amended, 33 U.S.C. §§ 1251 – 1377. Contractor shall report each violation to the recipient and understands and agrees that the recipient shall, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. Contractor shall include these requirements in each subcontract exceeding $150,000 financed in whole or in part with FTA assistance.

CIVIL RIGHTS LAWS AND REGULATIONS

Applicability to Contracts

The following Federal Civil Rights laws and regulations apply to all contracts.

1. Federal Equal Employment Opportunity (EEO) Requirements. These include, but are not limited to: a. Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity.
2. Prohibition against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order No. 11246, "Equal Employment Opportunity," September 24, 1965, as amended, prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.
3. Nondiscrimination on the Basis of Sex. Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq. and implementing Federal regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25 prohibit discrimination on the basis of sex.
4. Nondiscrimination on the Basis of Age. The "Age Discrimination Act of 1975," as amended, 42 U.S.C. § 6101 et seq., and Department of Health and Human Services implementing regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et seq., and Equal Employment Opportunity Commission (EEOC) implementing regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, also prohibit employment discrimination against individuals age 40 and over on the basis of age.
5. Federal Protections for Individuals with Disabilities. The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 et seq., prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

Flow Down

The Civil Rights requirements flow down to all third-party contractors and their contracts at every tier.

Model Clause/Language

Every federally funded contract must include an Equal Opportunity clause. Recipients can draw on the following language for inclusion in their federally funded procurements.

Civil Rights and Equal Opportunity

The AGENCY is an Equal Opportunity Employer. As such, the AGENCY agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the AGENCY agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

Under this Agreement, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

1. **Nondiscrimination.** In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
2. **Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R.

chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

3. **Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
4. **Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

Sanctions for Noncompliance. In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Contract, the Authority shall impose such contract sanctions as it, the FTA, FDOT or the U.S. DOT may determine to be appropriate, including, but not limited to: withholding of payments to the Contractor under the Contract until the Contractor complies and/or cancellation, termination or suspension of the Contract, in whole or in part.

DISADVANTAGED BUSINESS ENTERPRISE (DBE)
49 C.F.R. part 26
49 C.F.R. § 26.13(b)

Background and Applicability
The Disadvantaged Business Enterprise (DBE) program applies to FTA recipients receiving planning, capital and/or operating assistance that will award prime contracts (excluding transit vehicle purchases) exceeding $250,000 in FTA funds in a Federal fiscal year. All FTA recipients above this threshold must submit a DBE program and overall triennial goal for DBE participation. The overall goal reflects the anticipated amount of DBE participation on DOT-assisted contracts. As part of its DBE program, FTA recipients must require that each transit vehicle manufacturer (TVM), as a condition of being authorized to bid or propose on FTA assisted transit vehicle procurements, certify that it has complied with the requirements of 49 C.F.R. § 26.49. Only those transit vehicle manufacturers listed on FTA's certified list of Transit Vehicle Manufacturers, or that have submitted a goal methodology to FTA that has been approved or has not been disapproved at the time of solicitation, are eligible to bid.
FTA recipients must meet the maximum feasible portion of their overall goal using race-neutral methods. Where appropriate, however, recipients are responsible for establishing DBE contract goals on individual DOT-assisted contracts. FTA recipients may use contract goals only on those DOT-assisted contracts that have subcontracting responsibilities. See 49 C.F.R. § 26.51(c). Furthermore, while FTA recipients are not required to set a contract goal on every DOT-assisted contract, they are responsible for achieving their overall program goals by administering their DBE program in good faith. FTA recipients and third-party contractors can obtain information about the DBE program at the following website locations:
Federal Transit Administration's Disadvantaged Business Enterprise page click here
Department of Transportation's Disadvantaged Business Enterprise Program click here

Flow Down
The DBE contracting requirements flow down to all third-party contractors and their contracts at every tier. It is the recipient's and prime contractor's responsibility to ensure the DBE requirements are applied across the board to all subrecipients/contractors/subcontractors. Should a subcontractor fail to comply with the DBE regulations, FTA would look to the recipient to make sure it intervenes to monitor compliance. The onus for compliance is on the recipient.

Clause Language
For all DOT-assisted contracts, each FTA recipient must include assurances that third party contractors will comply with the DBE program requirements of 49 C.F.R. part 26, when applicable. The following contract clause is required in all DOT-assisted prime and subcontracts:
This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs and with section 1101(b) of SAFETEA LU, 23 U.S.C.§101.
The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

1. Withholding monthly progress payments;
2. Assessing sanctions;
3. Liquidated damages; and/or
4. Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

Further, recipients must establish a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the recipient makes to the prime contractor. 49 C.F.R. § 26.29(a). Finally, for contracts with defined DBE contract goals, each FTA recipient must include in each prime contract a provision stating that the contractor shall utilize the specific DBEs listed unless the contractor obtains the recipient's written consent; and that, unless the recipient's consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).
As an additional resource, recipients can draw on the following language for inclusion in their federally funded procurements.

Overview

It is the policy of the AGENCY and the United States Department of Transportation ("DOT") that Disadvantaged Business Enterprises ("DBE's"), as defined herein and in the Federal regulations published at 49 C.F.R. part 26, shall have an equal opportunity to participate in DOT-assisted contracts. It is also the policy of the AGENCY to:

1. Ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. Create a level playing field on which DBE's can compete fairly for DOT-assisted contracts;
3. Ensure that the DBE program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet 49 C.F.R. part 26 eligibility standards are permitted to participate as DBE's;
5. Help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To promote the use of DBEs in all types of federally assisted contracts and procurement activities; and
7. Assist in the development of firms that can compete successfully in the marketplace outside the DBE program.

This Contract is subject to 49 C.F.R. part 26. Therefore, the Contractor must satisfy the requirements for DBE participation as set forth herein. These requirements are in addition to all other equal opportunity employment requirements of this Contract. The AGENCY shall make all determinations with regard to whether or not a Bidder/Offeror is in compliance with the requirements stated herein. In assessing compliance, the AGENCY may consider during its review of the Bidder/Offeror's submission package, the Bidder/Offeror's documented history of non-compliance with DBE requirements on previous contracts with the AGENCY.

Contract Assurance

The Contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the AGENCY deems appropriate.

DBE Participation

For the purpose of this Contract, the AGENCY will accept only DBE's who are:

1. Certified, at the time of bid opening or proposal evaluation, by the [certifying agency or the Unified Certification Program (UCP)]; or
2. An out-of-state firm who has been certified by either a local government, state government or Federal government entity authorized to certify DBE status or an agency whose DBE certification process has received FTA approval; or
3. Certified by another agency approved by the AGENCY.

DBE Participation Goal

The DBE participation goal for this Contract is set at _%. This goal represents those elements of work under this Contract performed by qualified Disadvantaged Business Enterprises for amounts totaling not less than _% of the total Contract price. Failure to meet the stated goal at the time of proposal submission may render the Bidder/Offeror non-responsive.

Proposed Submission

Each Bidder/Offeror, as part of its submission, shall supply the following information:

1. A completed DBE Utilization Form (see below) that indicates the percentage and dollar value of the total bid/contract amount to be supplied by Disadvantaged Business Enterprises under this Contract.
2. A list of those qualified DBE's with whom the Bidder/Offeror intends to contract for the performance of portions of the work under the Contract, the agreed price to be paid to each DBE for work, the Contract items or parts to be performed by each DBE, a proposed timetable for the performance or delivery of the Contract item, and other information as required by the **DBE Participation Schedule** (see below). No work shall be included in the Schedule that the Bidder/Offeror has reason to believe the listed DBE will subcontract, at any tier, to other than another DBE. If awarded the Contract, the Bidder/Offeror may not deviate from the **DBE Participation Schedule** submitted in response to the bid. Any subsequent changes and/or substitutions of DBE firms will require review and written approval by the AGENCY.
3. An original **DBE Letter of Intent** (see below) from each DBE listed in the **DBE Participation Schedule**.
4. An original **DBE Affidavit** (see below) from each DBE stating that there has not been any change in its status since the date of its last certification.

Good Faith Efforts

If the Bidder/Offeror is unable to meet the goal set forth above (DBE Participation Goal), the AGENCY will consider the Bidder/Offeror's documented good faith efforts to meet the goal in determining responsiveness. The types of actions that the AGENCY will consider as part of the Bidder/Offeror's good faith efforts include, but are not limited to, the following:

1. Documented communication with the AGENCY's DBE Coordinator (questions of IFB or RFP requirements, subcontracting opportunities, appropriate certification, will be addressed in a timely fashion);
2. Pre-bid meeting attendance. At the pre-bid meeting, the AGENCY generally informs potential Bidder/Offeror's of DBE subcontracting opportunities;
3. The Bidder/Offeror's own solicitations to obtain DBE involvement in general circulation media, trade association publication, minority-focus media and other reasonable and available means within sufficient time to allow DBEs to respond to the solicitation;
4. Written notification to DBE's encouraging participation in the proposed Contract; and
5. Efforts made to identify specific portions of the work that might be performed by DBE's.

The Bidder/Offeror shall provide the following details, at a minimum, of the specific efforts it made to negotiate in good faith with DBE's for elements of the Contract:

1. The names, addresses, and telephone numbers of DBE's that were contacted;
2. A description of the information provided to targeted DBE's regarding the specifications and bid proposals for portions of the work;
3. Efforts made to assist DBE's contacted in obtaining bonding or insurance required by the Bidder or the Authority.

Further, the documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted when a non-DBE subcontractor was selected over a DBE for work on the contract. 49 C.F.R. § 26.53(b) (2) (VI). In determining whether a Bidder has made good faith efforts, the Authority may take into account the performance of other Bidders in meeting the Contract goals. For example, if the apparent successful Bidder failed to meet the goal, but meets or exceeds the average DBE participation obtained by other Bidders, the Authority may view this as evidence of the Bidder having made good faith efforts.

Administrative Reconsideration

Within five (5) business days of being informed by the AGENCY that it is not responsive or responsible because it has not documented sufficient good faith efforts, the Bidder/Offeror may request administrative reconsideration. The Bidder should make this request in writing to the AGENCY's [Contact Name]. The [Contact Name] will forward the Bidder/Offeror's request to a reconsideration official who will not have played any role in the original determination that the Bidder/Offeror did not document sufficient good faith efforts.

As part of this reconsideration, the Bidder/Offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The Bidder/Offeror will have the opportunity to meet in person with the assigned reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The AGENCY will send the Bidder/Offeror a written decision on its reconsideration, explaining the basis for finding that the Bidder/Offeror did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

Termination of DBE Subcontractor

The Contractor shall not terminate the DBE subcontractor(s) listed in the **DBE Participation Schedule** (see below) without the AGENCY's prior written consent. The AGENCY may provide such written consent only if the Contractor has good cause to terminate the DBE firm. Before transmitting a request to terminate, the Contractor shall give notice in writing to the DBE subcontractor of its intent to terminate and the reason for the request. The Contractor shall give the DBE five days to respond to the notice and advise of the reasons why it objects to the proposed termination. When a DBE subcontractor is terminated or fails to complete its work on the Contract for any reason, the Contractor shall make good faith efforts to find another DBE subcontractor to substitute for the original DBE and immediately notify the AGENCY in writing of its efforts to replace the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the Contract as the DBE that was terminated, to the extent needed to meet the Contract goal established for this procurement. Failure to comply with these requirements will be in accordance with Section 8 below (Sanctions for Violations).

Continued Compliance

The AGENCY shall monitor the Contractor's DBE compliance during the life of the Contract. In the event this procurement exceeds ninety (90) days, **it will be the responsibility of the Contractor to submit quarterly written reports to the AGENCY that** summarize the total DBE value for this Contract. These reports shall provide the following details:

- DBE utilization established for the Contract;
- Total value of expenditures with DBE firms for the quarter;
- The value of expenditures with each DBE firm for the quarter by race and gender;
- Total value of expenditures with DBE firms from inception of the Contract; and
- The value of expenditures with each DBE firm from the inception of the Contract by race and gender.

Reports and other correspondence must be submitted to the DBE Coordinator with copies provided to the [Agency Name1] and [Agency Name2]. Reports shall continue to be submitted quarterly until final payment is issued or until DBE participation is completed.
The successful Bidder/Offeror shall permit:

- The AGENCY to have access to necessary records to examine information as the AGENCY deems appropriate for the purpose of investigating and determining compliance with this provision, including, but not limited to, records of expenditures, invoices, and contract between the successful Bidder/Offeror and other DBE parties entered into during the life of the Contract.
- The authorized representative(s) of the AGENCY, the U.S. Department of Transportation, the Comptroller General of the United States, to inspect and audit all data and record of the Contractor relating to its performance under the Disadvantaged Business Enterprise Participation provision of this Contract.
- All data/record(s) pertaining to DBE shall be maintained as stated in Section [insert reference to record keeping requirements for the Project.]

Sanctions for Violations
If at any time the AGENCY has reason to believe that the Contractor is in violation of its obligations under this Agreement or has otherwise failed to comply with terms of this Section, the AGENCY may, in addition to pursuing any other available legal remedy, commence proceedings, which may include but are not limited to, the following:

- Suspension of any payment or part due the Contractor until such time as the issues concerning the Contractor's compliance are resolved; and
- Termination or cancellation of the Contract, in whole or in part, unless the successful Contractor is able to demonstrate within a reasonable time that it is in compliance with the DBE terms stated herein.

DBE UTILIZATION FORM
The undersigned Bidder/Offeror has satisfied the requirements of the solicitation in the following manner (please check the appropriate space):

- The Bidder/Offer is committed to a minimum of _____% DBE utilization on this contract.
- The Bidder/Offeror (if unable to meet the DBE goal of %) is committed to a minimum of % DBE utilization on this contract and submits documentation demonstrating good faith efforts.

DBE PARTICIPATION SCHEDULE
The Bidder/Offeror shall complete the following information for all DBE's participating in the contract that comprises the DBE Utilization percent stated in the DBE Utilization Form. The Bidder/Offeror shall also furnish the name and telephone number of the appropriate contact person should the Authority have any questions in relation to the information furnished herein.

DBE IDENTIFICATION AND INFORMATION FORM
Name and Address
Contact Name and Telephone Number
Participation Percent (Of Total Contract Value)
Description Of Work To Be Performed
Race and Gender of Firm

EMPLOYEE PROTECTIONS

49 U.S.C. § 5333(a)
40 U.S.C. §§ 3141 – 3148
29 C.F.R. part 5
18 U.S.C. § 874
29 C.F.R. part 3
40 U.S.C. §§3701-3708
29 C.F.R. part 1926

Applicability to Contracts

Certain employee protections apply to all FTA funded contracts with particular emphasis on construction related projects. The recipient will ensure that each third-party contractor complies with all federal laws, regulations, and requirements, including:

1. Prevailing Wage Requirements: a. Federal transit laws, specifically 49 U.S.C. § 5333(a), (FTA's "Davis-Bacon Related Act"); b. The Davis-Bacon Act, 40 U.S.C. §§ 3141 – 3144, 3146, and 3147; and
2. U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5.
3. "Anti-Kickback" Prohibitions a. Section 1 of the Copeland "Anti-Kickback" Act, as amended, 18 U.S.C. § 874;
4. Section 2 of the Copeland "Anti-Kickback" Act, as amended, 40 U.S.C. § 3145; and
5. U.S. DOL regulations, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States," 29 C.F.R. part 3.
6. Contract Work Hours and Safety Standards a. Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701-3708; and supplemented by Department of Labor (DOL) regulations, 29 C.F.R. part 5; and
7. U.S. DOL regulations, "Safety and Health Regulations for Construction," 29 C.F.R. part 1926.

Flow Down

These requirements extend to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier. The Davis-Bacon Act and the Copeland "Anti-Kickback" Act apply to all prime construction, alteration or repair contracts in excess of $2,000. The Contract Work Hours and Safety Standards Act apply to all FTA funded contracts in excess of $100,000 that involve the employment of mechanics or laborers.

Model Clause/Language

The recipient must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. In addition, recipients can draw on the following language for inclusion in their federally funded procurements.

Prevailing Wage and Anti-Kickback

For all prime construction, alteration or repair contracts in excess of $2,000 awarded by FTA, the Contractor shall comply with the Davis-Bacon Act and the Copeland "Anti-Kickback" Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction." In accordance with the statute, the Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor agrees to pay wages not less than once a week. The Contractor shall also comply with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States." The Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

Contract Work Hours and Safety Standards

For all contracts in excess of $100,000 that involve the employment of mechanics or laborers, the Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the DOL regulations

at 29 C.F.R. part 5. Under 40 U.S.C. § 3702 of the Act, the Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.

In the event of any violation of the clause set forth herein, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of this clause in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by this clause.

The FTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in this section. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this agreement.

Contract Work Hours and Safety Standards for Awards Not Involving Construction

The Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq., and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5.

The Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

Such records maintained under this paragraph shall be made available by the Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and the Contractor will permit such representatives to interview employees during working hours on the job.

The contractor shall require the inclusion of the language of this clause within subcontracts of all tiers.

ENERGY CONSERVATION

42 U.S.C. 6321 et seq.
49 C.F.R. part 622, subpart C

Applicability to Contracts

The Energy Policy and Conservation requirements are applicable to all contracts. The Recipient agrees to, and assures that its subrecipients, if any, will comply with the mandatory energy standards and policies of its state energy conservation plans under the Energy Policy and Conservation Act, as amended, 42 U.S.C. § 6201 et seq., and perform an energy assessment for any building constructed, reconstructed, or modified with federal assistance as required under FTA regulations, "Requirements for Energy Assessments," 49 C.F.R. part 622, subpart C.

Flow Down

These requirements extend to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

Model Clause/Language

No specific clause is recommended in the regulations because the Energy Conservation requirements are so dependent on the state energy conservation plan. Recipients can draw on the following language for inclusion in their federally funded procurements.

Energy Conservation

Contractor shall comply with mandatory standards and policies relating to energy efficiency, stated in the state energy conservation plan issued in compliance with the Energy Policy & Conservation Act, as amended, 42 U.S.C. § 6321 et seq., and perform an energy assessment for any building constructed, reconstructed, or modified with federal assistance required under FTA regulations, "Requirements for Energy Assessments," 49 C.F.R. part 622, subpart C.