

Lehigh and Northampton Transportation Authority Purchasing Policies & Procedures



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I. MANAGEMENT STRUCTURE

A. Statement of Purpose

The purchasing and materials management function are considered only as support functions to the Lehigh and Northampton Transportation Authority's ("LANta," the "Authority") primary mission of providing quality public transportation services. This does not, however, indicate that the purchasing function should not be taken seriously or that it is unimportant to the overall success of LANTA. Toward this end, purchasing at LANTA is meant to accomplish a number of goals. These are as follows:

1. To support transit operations with an uninterrupted supply of goods and services.
2. To make purchases in an environment of fair and open competition with a focus on product value.
3. To keep inventory investment and inventory losses to a practical minimum.
4. To maintain adequate sources of supply to assure constant availability of goods and adequate competition.
5. To assure that suppliers perform in accordance with the terms and conditions of their purchase agreements.
6. To maintain an atmosphere of honest and ethical conduct avoiding both actual and perceived conflicts of interest.

B. Board of Directors' Perspective

The importance of the purchasing function is highlighted with the amount of attention it receives from the highest level of the organization - the Board of Directors. Significant purchases of goods and services must be approved by the Board.

The LANTA Board supports the above stated purchasing goals. Further, it has adopted a formal "procurement policy" that shall govern Authority purchasing. This procurement policy is outlined within.



C. Organization of the Purchasing Function

Because LANTA has no centralized Purchasing Department, purchasing functions are shared among several individuals. The responsibilities of each individual are outlined as follows:

Board of Directors – Approves annual operating and capital budgets. Approves all purchases in excess of \$150,000 in accordance with Board-adopted policy.

Executive Director – Has executive oversight of the purchasing function, including the responsibility to assure that all policies and procedures are in accordance with pertinent laws and regulations. Review and approve all purchases between \$25,000 and \$150,000. Final authority for bid protests. Responsible for development of the Authority's annual capital plan that dictates long range purchasing planning for capital assets. Responsible for pre-purchase planning including the development of purchasing schedules.

Director of Finance & Administration – Responsible for assuring that purchasing procedures and reporting are organized within accepted accounting standards. Approves all purchases between \$3,500 and \$25,000. Responsible for payment processing and purchasing reporting to outside agencies on such issues as Disadvantaged Business Enterprise and record keeping with direct supervision of the Inventory Specialist.

Director of Facilities & Fleet Maintenance – Responsible for supervision of all mechanics and service personnel, and the scheduling of preventive and other maintenance of vehicles, parts inventory, maintenance control, and record keeping. This includes the evaluation of maintenance programs making recommendations for program revisions, making technical decisions relative to repairs and maintenance, handling routine personnel matters and training activities. The position also includes monitoring /scheduling of work at all LANTA facilities including the transportation centers, purchase of equipment and major repairs, and the monitoring of work at contractors that use LANTA owned vehicles. Can approve non-routine purchases under \$3,500 and routine purchases under \$25,000.

Director of Planning & Development, Director of Operations, and the Director of Paratransit - Can approve non-routine purchases under \$3,500 and routine purchases under \$25,000.

Administrative Services Specialist – Responsible for oversight of LANTA's procurement and managing purchasing at the authority. The position maintains LANTA's vendor database and serves as the designated staff person for posting all RFPs, IFB/ITB, RFQs, and any other procurement postings. The position also ensures all bids/proposals are responsive, before they can be evaluated by bid committees.

Inventory Specialist – Responsible for maintaining appropriate levels of inventory in the Maintenance area, primarily with maintenance inventory and repairs. Orders routine purchases. Conducts receiving inspections on goods received. Enters received supplies into inventory system. Maintains purchasing information system, including inventory and vehicle/facility records.

Although the positions above have primary responsibility for purchasing, certain other positions in the organization also play an important role. For instance, all Department Heads are responsible for initiating purchasing requests within their departments and assuring the quality of goods and services received. In addition, the Inventory Specialist has primary responsibility for the purchasing and inventory of office supplies.



D. Ethics in Purchasing

The purchasing function has more potential for creating conflicts of interest and impropriety (both real and perceived) than almost any other area of the Authority's operations. As a result, all employees involved in purchasing and vendor management must go out of their way to avoid such an interpretation by other employees, suppliers, or the public at large. Important to this line of thinking is one fact: even if what you are doing, is legal, if it could be perceived as improper by the general public, **IT IS WRONG!** Two benchmarks for testing whether an action meets this criterion may be helpful:

1. If I am deriving a benefit directly through my involvement in the purchasing function, could a member of the general public get the same benefit? An example that might fall under this benchmark would be the practice of taking volume discounts extended by vendors to the Authority for personal purchases. These discounts would not be available to you without your Authority affiliation.
2. Would I be pleased to see a description of my activities printed in the newspaper? This gets back to the "perception" of conflict. Even if the law (or for that matter, company policy) does not prohibit an action, it may still be wrong if the general public thinks less of the Authority as a result of your actions. Examples here would be accepting gifts from vendors.

The Authority has adopted two policies pertaining to ethics in purchasing: the [Code of Conduct](#) and the [Code of Ethics](#) that provide for disciplinary action for conflict of interest violations by the LANTA's officers, employees, or agents, or by contractors or subrecipients or their agents to the extent permitted by state or local law or regulations. All individuals associated with the organization, from the Chair of the Board of Directors to the frontline employees, receive training, and are required to sign documentation acknowledging their training and affirming their commitment to abide by the policies. The policies are introduced and reviewed in the new hire orientation. These policies provide the framework for sound judgment of those employees involved in the purchasing function to make sure that proper business dealings are pursued. Additionally, the policies provide all the guidance to identify and report potential issues. In addition to the policies, the following general guidelines that may be applied:

1. Treat all sources in an equal and equitable manner. There should be no favoritism applied toward any vendor, neither during procurement nor during the course of doing business with that vendor. Likewise, there should be no negative treatment of vendors, regardless of their past experience with the Authority, except as specifically documented in this manual and in formal purchasing solicitations.
2. Maximize full and open competition. Only when all suppliers perceive that they have an equal opportunity to obtain our business can we get the best product at the best price. Restricting competition can be found in the compilation of proprietary specifications, imposition of unreasonable contract terms or failure to respond to serious supplier inquiries and requests.
3. Establish an "arm's length relationship" with suppliers. This is a variation on the principle of equal treatment that bears repeating. Once a supplier believes that we prefer a particular vendor, it becomes impossible to promote competition. The "preferred" vendor feels no incentive to "sharpen their pencil," and any vendors who perceive preference will decline to participate in our solicitations.



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4. Respond promptly and consistently to vendor requests for information. Keep in mind that consistency means the same way with each vendor.
5. Do not seek to take advantage of an "honest mistake" made by a vendor or to bury significant contract provisions where they are unlikely to be found.
6. Always award business in accordance with the terms and procedures outlined in solicitation documents. If an award is to be based on low price, do not change the "rules of the game" after bids have been submitted and seek to evaluate on any other factor.
7. Do not take personal advantage of "trade discounts" offered by vendors. A trade discount is an amount by which the catalog price of an item is reduced when sold to LANta. Trade discounts are generally offered to limit purchasing competition.
8. The issue of gifts and gratuities is one that bears careful examination. The distribution of promotional materials (i.e.: baseball caps, coffee mugs, etc.) has been standard industry practice for a number of years. Caution must be exercised in this area. It will be the policy of LANTA that:
 - a. No promotional material or gift, with a retail value in excess of \$25.00 may be solicited nor accepted at any time by any officer, employee, agent, or board member of the Authority from a current or prospective vendor or parties to subcontracts.
 - b. During the course of an active procurement (from specification development through contract award), no token of any value may be accepted from a vendor in the business being purchased through the active offering.
9. In the event an employee with purchasing responsibility becomes aware of a conflict of interest with a vendor with whom they may do business, such conflict must be disclosed to either the Executive Director or Chairperson of the Board of Directors immediately. In such case, the responsibility for that vendor relationship will be removed from the affected employee. **Conflict of interest exists when any employee, member of his/her immediate family, partner, or any organization that employs or is about to employ any of the above has a financial or other interest in the firm selected for a contract award.**



II. PRE-PURCHASE PLANNING

A. Determining Need

The most critical function of purchasing at LANTA is assuring a constant flow of essential goods and services necessary for supporting transit operations. This goal can only be met through proper planning. Underestimating need can result in inventory shortages when items are needed most. Overestimating need can result in wasted organization resources through exorbitant carrying costs.

Determining the need for purchases varies in terms of both who is responsible and the methods for evaluating need depending on the nature of the item. Although not exhaustive, Table 1 below displays a listing of several categories of Authority purchases that make up the majority of the value of goods and services purchased.

Product Category	Primary Responsibility	Tools
Maintenance Supplies	Director of Facilities & Fleet Maintenance	Inventory Usage, Stock Status and Reorder Reports
Office Supplies	Inventory Specialist	Department requests
Public Information Inventory – Fixed Route	Director of Planning & Development	Usage
Public Information Inventory – Paratransit	Director of Paratransit	Usage
Operating Services	Executive Director Director of Finance & Administration Director of Facilities & Fleet Maintenance	Need, Departmental requests
Professional Services	Director of Finance & Administration Director of Planning & Development	Need / Usage
Capital Assets	Executive Director Director of Finance & Administration	Fixed Assets Listing, Departmental requests, Annual capital plan
Construction Projects	Executive Director Director of Finance & Administration Director of Materials & Maintenance	Need, annual capital plan

Table 1 - Purchase Planning Tools



PURCHASE/PROCUREMENT REQUEST

Submitted by: _____

Signature: _____

Date: _____

Please describe the item or service to be procured:

If you know the funding source to be used for this procurement, please list it. If not, please leave blank.

Initial estimate of total cost of procurement (to be completed by Admin Services Specialist):

Concurrence on Capital Grant Use		Concurrence on Op Budget Use		Approval to proceed to procurement process		
DFA		DFA		Estimate \$3,500-\$24,999	DFA	
DPD				Estimate over \$25,000	ED	

Justification:

Approved by: _____ Date: _____



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All of the persons identified above have primary responsibility in their area to avoid the purchase of unnecessary or duplicative items. In the event procurement includes "optional items," such additional items will be in a quantity of not more than 50% of the base quantity. In general, options should not be used and, in particular may not be used when:

1. Projected requirements involve economic order quantities that make option pricing abnormally high.
2. The item is readily available on the open market.
3. There is undue risk on the part of the vendor in holding an option open.
4. Current market prices are unstable.
5. For maintenance supplies (parts, lubricants, etc.), the Director of Facilities & Fleet Maintenance is primarily responsible for assuring that sufficient stock is maintained to continue operation of the fleet. The Inventory Specialist will support the Director of Facilities & Fleet Maintenance in this area. Specific attention must be paid to those items that require long lead-time in ordering. The Director of Facilities & Fleet Maintenance should constantly be looking for:
 - a. Slow moving articles.
 - b. Alternate sources for particular items.
 - c. Instances where revenue equipment must be held from service for lack of parts.
 - d. Parts and supplies available locally on a "drop-in" or same day delivery basis.

Using these experiences, as well as recommended spare parts listings from manufacturers, as a guide the Director of Facilities & Fleet Maintenance shall make sure that the level of inventory is adequate to keep the fleet running on a continual basis while refraining from binding essential organizational resources in unnecessary inventory.

The Administrative Services Specialist shall have primary oversight responsibility for purchasing and procurement, in addition to processing small and micro-purchases, while the Inventory Specialist shall be responsible for maintaining an adequate inventory of office supplies, and the Director of Planning & Development & Development shall have primary responsibility for public information. To the maximum extent practical, these purchases shall be coordinated company-wide to promote efficiency. Routine turnover items (pens, paper, etc.) will be monitored by the Inventory Specialist to assure prompt reorder. All other items will be purchased only upon submission of an approved request from a department director.

In terms of printed public information, the Director of Planning & Development will monitor turnover of such materials as timetables, route maps, and brochures to assure a constant supply. Route by route analysis shall also be monitored to assure the most efficient ordering quantities. The Director of Planning & Development will coordinate changes in public information among appropriate persons within the Authority and will be responsible for the accurate interpretation of this information by the printing vendor.



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Operating Services are the overall responsibility of the Executive Director with support from the Director of Finance & Administration and/or the Director – Facilities & Fleet Maintenance. Operating services fall into two categories:

1. Ongoing services (insurance, fuel, tires, computer service, legal, audit, etc.)
2. As-needed services (software development, security services, etc.)

Ongoing service needs will be based on operating schedules to assure timely solicitation of proposals. All other services shall be based on departmental requests and justification.

Capital Asset purchasing requires the most advance planning as a result of the funding streams that finance these projects. The timeline for capital project development is as follows:

March - Departments submit capital equipment requests for the following year.

April - Executive Director reviews project justifications for inclusion in capital program.

May - Program of Projects advertised for public comment and grant applications prepared.

June - Capital program submitted to Board of Directors for approval.

As Needed - Grant application submitted to FTA.

Within 60 Days of Application - Grant award made by FTA. Project purchasing activities begin based on pre-award authority ability.

Every 2 years - Capital program submitted to MPO Commission for inclusion in Transportation Improvement Program (TIP) based on Board approved program of projects/multi-year capital planning.

Planning for all other categories of purchasing will vary depending on the nature of the item(s). The above categories, however, make up the overwhelming value of goods and services purchased by LANTA.

A complete, adequate, and realistic specification or purchase description must be available for every procurement transaction.



III. PROCUREMENT DEVELOPMENT

A. Competition

1. All procurement transactions will be conducted via PennBid in a manner providing full and open competition. Some situations considered to be restrictive of competition include, but are not limited to:
 - a. Unreasonable requirements placed on firms in order for them to qualify to do business;
 - b. Unnecessary experience and excessive bonding requirements;
 - c. Noncompetitive pricing practices between firms or between affiliated companies;
 - d. Noncompetitive awards to any person or firm on retainer contracts;
 - e. Organizational conflicts of interest. An organizational conflict of interest means that because of other activities, relationships, or contracts, a contractor is unable, or potentially unable, to render impartial assistance or advice to the grantee; a contractor's objectivity in performing the contract work is or might be otherwise impaired; or a contractor has an unfair competitive advantage;
 - f. Specifying only a "brand name" product instead of allowing "an equal" product to be offered without listing its' salient characteristics.
2. **Prohibition Against Geographic Preferences.** Procurements shall be conducted in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. This does not preempt State licensing laws. However, geographic location may be a selection criterion in procurements for architectural and engineering (A&E) services provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.
3. **Written Procurement Selection Procedures.** Written selection procedures will be developed for procurement transactions. All solicitations shall:
 - a) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. In competitive procurements, descriptions of technical requirements shall not contain features that unduly restrict competition. The description may include a statement of the qualitative nature of the material, product, or service to be procured and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if feasible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient characteristics of a procurement. The specific features of the named brand, which must be met by proposers, shall be clearly stated.



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- b) Identify all requirements that proposers must fulfill and all other factors to be used in evaluating bids or proposals.
- 4. Prequalification Criteria. LANTA staff will ensure that all lists of prequalified persons, firms, or products that are used in acquiring goods and services are current and include enough qualified sources to ensure maximum full and open competition. No potential bidders will be precluded from qualifying during the solicitation period, which is from the issuance of the solicitation to its closing date.

B. Procurement Method

The method by which goods and services are procured is dictated by internal Authority purchasing policies as adopted by the Board of Directors, as well as governmental requirements. Once need is established, the next step is to determine the appropriate purchasing technique. The table in Table 2 below is presented as a guideline:

Procurement Method	Criteria	Criteria	Examples
Micro-Purchase	no quote required	Value of goods/services procured is less than \$3,500.	Office supplies
Small Purchase	Documented quotes – minimum of two (2) quotes unless Executive Director requires 3 quotes	Value of goods/services procured is between \$3,500 and \$150,000. Item carries a warranty.	Computers Power tools Electronics
IFB	Low Bid, Formal Advertising, Firm Fixed Price Contract	Goods/services that can be completely defined on paper with a dollar value in excess of \$24,999.99.	Vehicles Construction Fuel
RFP	Request for Proposal, Formal Advertising, Firm Fixed Price Contract	Professional services where supplier qualifications and experience are an important part of determination.	Professional Services: <ul style="list-style-type: none"> • Auditing • Legal • Marketing Contracted Services <ul style="list-style-type: none"> • Insurance Brokerage • Printing Sign & Shelter Installs
Sole Source		Item only available from one source.	Service Agreements for ATMS or Farebox Equipment



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A&E	Request for Proposal	Professional services	Architectural & Engineering Services
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Table 2 - Procurement Method

The following general procedures will apply to each of the above procurement methods. In addition, LANTA can purchase from the State Contracts. State Contracts is a program sponsored by the Commonwealth of Pennsylvania whereby certain commonly used goods are bid out in bulk quantities. Great care must be given to ensure that when using Federal funds that the State procurement process meets the FTA purchasing requirements set forth in FTA Circular 4220.1F based on the procurement type. When applicable, further competitive procurement is not required, as items on the state contract have been pre-bid by the Commonwealth. However, LANTA must ensure there is an assignability clause as part of the contract and determine that the contract pricing is fair & reasonable through a price analysis (See Attachment). The contract file must be documented with how this determination was made, to include any supporting documentation. Note: When using Government funding LANTA is eligible to use GSA Advantage but are still required to determine that the contract pricing is “Fair & Reasonable.”

C. Micro-Purchase Procedure – Under \$3,500 – Does not apply to warrantied items

1. Purchase requests are initiated by staff and must be approved by their Department Director.
2. Purchase order is produced by Administrative Services Specialist or Inventory Specialist.
3. Order is placed with selected vendor. Depending on circumstances, multiple quotes should be obtained verbally. No quote is required; however, sources should be evaluated to assure fairness and full knowledge of prevailing prices.
4. Exempt from Buy America.
5. There should be equitable distribution among qualified suppliers and no splitting of procurements to avoid competition.
6. The Davis-Bacon Act applies to construction contracts over \$2,000.
7. A determination that the price is fair and reasonable and how this determination was derived should be included and documented in the procurement file.

D. Small Purchase Procedure – Value between \$3,500 and \$150,000

1. Purchase request approved by Department Director.
2. Two quotes minimum, unless Executive Director requires three quotes, to be solicited in writing or by phone by Administrative Services Specialist. Quotes and sources are documented for file.
3. Purchase order is produced by Administrative Services Specialist or Inventory Specialist.



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4. Order is placed with selected vendor.
5. Exempt from Buy America.

E. Invitation For Bid - IFB

Invitation for Formal Bid is used when a complete, adequate, and realistic specification or purchase description is available; two or more responsible bidders are willing and able to compete effectively for the business; the procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price; and, no discussion with bidders is needed. If this procurement method is used, the following requirements apply:

1. The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time to prepare bids prior to the date set for opening the bids;
2. The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services sought in order for the bidder to properly respond;
3. All bids will be publicly opened at the time and place prescribed in the invitation for bids;
4. A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. When specified in bidding documents, factors such as discounts, transportation costs, and life cycle costs shall be considered in determining which bid is lowest;
5. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and,
6. Any or all bids may be rejected if there is a sound documented business reason.
7. The sealed bid method is the preferred method for procuring construction if the conditions in paragraph above apply.
8. Specifications for the product or service are developed by those individuals most familiar with the item. For example, the Executive Director and Director – Maintenance/Materials would be primarily responsible for development of vehicle specifications. A complete, adequate, and realistic specification or purchase description must be available.
9. Specifications must be written around minimum needs for the product or service, must be specific enough to allow comparable bids, and must not be unduly restrictive (i.e.: if the specification eliminates certain products, the minimum need of LANTA eliminating that product from competition must be documented. The vendor should be able to resubmit an acceptable product within the allotted bid timeframe.) Specifying particular components, a brand name, should be avoided unless impractical or uneconomical. If a brand name must be used, the words "or approved equal" must follow.



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10. Solicitation Document Development - The solicitation document is the document distributed to interested parties giving them details on the procurement. The specification is part of this solicitation document. In general, this document includes the following sections:
 - a. Cover Sheet (same as advertisement).
 - b. Instructions to Bidders (sample contents contained in Appendix 6). Among its other contents, this section should detail payment terms for the item. Normal LANTA payment terms are Net 30 days from receipt and these terms should be noted in the solicitation documents. Under no circumstances will advance or down payments be made. Progress payments may be made if the purchase is of such nature that the vendor will incur costs during the project period prior to completion that will have a significant impact on its working capital. If progress payments are used, the timing of payments must be timed to the actual completion or delivery of certain work tasks that become the property of the LANTA.
 - c. Technical Specifications.
 - d. General Conditions (Circular 4220.1F is Appendix 1; minimum conditions are contained in Appendices 2, 3 and 4; sample contents contained in Appendix 5).
 - e. Submission forms and basis for award.
11. Advertising for Bids - Bids must be advertised as set forth in Parts I and III of this policy. A certification of the advertisement received from the appropriate periodical. For generic items (ie: computers, construction, etc.) advertising locally is sufficient. Advertisements may be placed in The Morning Call and The Express Times newspapers. Advertisements must appear (and solicitation documents be available) no later than 30 days prior to the scheduled bid opening. The Administrative Services Specialist maintains a list of contacts at each of the newspapers for placing these advertisements. In the case of more transit specific products (i.e.: buses, passenger waiting shelters, etc.), an advertisement should be placed in "Passenger Transport." Please keep in mind that publication in "Passenger Transport" has a two-week lead-time.
12. In addition to mailing solicitation documents to individuals responding to advertisements, active vendor listings for products are to be maintained by the individual coordinating the purchase. Documents should be sent to these firms on the publication date of the advertisements without need for a call in response to an ad.
13. Pre-Bid Conference - In general, a pre-bid conference should only be scheduled when the procurement is of a high dollar volume (>\$100,000) and/or the solicitation documents are sufficiently complicated to warrant further explanation. In cases where a pre-bid conference is to be scheduled, the bid advertisement shall indicate time and place. Following completion of the conference, a document summarizing major points and responses to vendor questions shall be drawn up and distributed to all vendors on the distribution list, regardless of whether or not the vendor was at the conference. In no case will a vendor's bid be disallowed for failure to attend the pre-bid conference.
14. Post-Award Conference - The primary objective of the debriefing is to help the proposer improve its chances of success on future proposals, and not to defend the agency's selection decision. This is also a chance to give a summary of the rationale for the selection decision, as well as providing reasonable responses to relevant questions about whether the evaluation procedures contained in the solicitation were followed.



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15. **Approved Equals** - For significant purchases of equipment (ie: vehicles, computer systems, etc.) a formal approved equals process shall be used. When this process is used, the formal advertisement date must be a minimum of 45 days prior to bid opening, with 60 days being preferred. In the solicitation document, the approved equals' process will be explained. Equals are to be submitted by vendors no later than 28 days prior to bid opening with responses issued by LANTA no later than 14 days prior to bid opening. Approved equals are to be reviewed by the same group of employees who developed the technical specifications. If proposed "equals" are not approved the file should be documented with the determination and notice to the vendor. The vendor should be provided an opportunity to resubmit within the bid timeframe.
16. **Handling of Protests** -Either prior to bid opening or immediately thereafter, prospective bidders may protest some element of the bidding process or the subsequent award. In such cases, LANTA bid protest procedure contained in [Appendix 7](#) must be followed. At the time of the protest, all activity on the procurement must be suspended until resolution of the protest unless, in the opinion of the Executive Director, suspending the process would not be in the best interest of LANTA. The Executive Director must notify FTA and document in the contract file.
17. **Bid Opening** - Bid openings are to be considered formal. They are to start promptly at the time indicated on the advertisement. A sign-in sheet should be maintained, as well as a tabulation sheet summarizing the bid submitted by each participating vendor. All bids are to be opened and read aloud at the bid opening. All information is to be considered public and available for vendor inspection unless a submitting vendor indicates (in writing) that materials contained in the proposal are proprietary in nature and may not be released. In such case, documents should be turned over to the Authority Solicitor for opinion.
18. **Responsive/Responsible Determination** - Following determination of the apparent low bidder, the responsible employee must determine responsiveness and responsibility. For responsiveness, a careful examination of the technical aspects of the bid response must be carried out to assure compliance with the specifications. If there is a conflict between the vendor's proposal and the specification, a determination must be made as to whether the violation is material or non-material. A significant inconsistency (ie: bid wrong size bus) should result in throwing out the bid as a material violation, as would failure to adhere to general conditions (Buy America, EEO, Affirmative Action and DBE.). Minor inconsistencies may be judged immaterial in the case of technical issues if avoidance of the inconsistency would not have changed the bid results. For example, specification requires stainless steel stepwell for van, vendor proposes aluminum. Upgrade to stainless steel would add \$400 to cost, vendor was low by \$1,000. Similarly, if a vendor neglects to sign an appropriate form in the tender, and this was a simple oversight, the vendor should be given the opportunity to correct the oversight.
19. **Responsibility** may be more difficult to determine. In general, the vendor must not be prohibited from bidding on government contracts. The SAM and the Commonwealth system for debarred parties should be checked to make sure the vendor is not on the excluded parties listing. A dated print-screen of the search results should be filed with the procurement documents. In addition, specifications should carefully consider experience, financial and insurance requirements. For these cases, vendors may be found non-responsible if they lack the minimum necessary



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experience. Finally, any vendor who is in a state of default to the Authority must be found non-responsible.

20. Contract Award - Upon determination that a low bidder is both responsive and responsible, that vendor should be notified with a written "Notice of Intent to Proceed." This notice has no weight and is simply intended to let the vendor know what is happening and when they can expect further action. At this time, all non-successful vendors should also be notified of that fact in writing. Upon adoption of the contract by the Board of Directors at their next meeting, a "Notice to Proceed" should be issued to the successful vendor. This provides the vendor with the authority to incur expenses on the project and begin to submit invoices in accordance with payment provisions. No invoices can be submitted for payment prior to the execution of the contract. It should also reference the solicitation documents and vendor proposal as guiding documents in lieu of a formal contract. If the notice to proceed is conditional, that fact should be so stated with the conditions included and timeframes for adherence. The notice to proceed should also lay out budget ceiling and schedule.

F. Request For Proposal-RFP

Request for Proposal is used for professional service and/or when it is impossible to specify an item in such a manner as to assure consistent bidding. PennBid will be used for all RFPs in which the process is similar in nature to formally advertised bidding with the following significant changes:

1. Solicitation documents and advertisement for bids must include the criteria on which proposals will be judged, as well as the relative importance of each of these criteria. The weightings of these criteria must be logical. These documents should also include the process that will be used to evaluate proposals (ie: a committee of three people).
2. Proposals will be solicited from an adequate number of qualified sources via PennBid.
3. Price proposals as well as technical aspects of the proposal should be submitted via PennBid in order to avoid subconsciously placing more weight on price than is warranted.
4. Proposal opening is not a public process. Upon receipt of the proposals in PennBid, copies are distributed to committee members for individual evaluation. The facilitator prepares and distributes rating sheets for each member based on the published evaluation criteria. Upon completion of proposal rating, the committee meets and discusses outcomes to arrive at a group rating. Once the technical score is determined, prices are opened and inserted in the equation. Recommendation for award is made to the highest scoring responsive and responsible proposer. Aspects of formal bid opening such as timeliness of proposals is adhered to via PennBid. The process for receipt and opening of competitive proposals is not public. Prior to the evaluations, LANTA should address the confidentiality of the proposal with all the evaluators.
5. Awards will be made to the responsible firm whose proposal is most advantageous to the LANTA's program with price and other factors considered; and,
6. In determining which proposals is most advantageous, LANTA may award (if consistent with State law) to the proposer whose proposals offer the greatest business value to the Authority



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based upon an analysis of a tradeoff of qualitative technical factors and price/cost to derive which proposal represents the “best value” to LANTA. If the best value selection method is elected as the basis for award, however, the solicitation must contain language, which establishes that an award will be made on a “best value” basis.

7. Evaluation results of the committee do become public once they are final.
8. Protest Procedure: LANTA shall assure solicitation documents reflect the FTA’s current bid protest procedures and policy. Since many contractors do not have a readily available copy of FTA Circular 4220.1F, LANTA shall state FTA’s current bid protest policy in each solicitation. Bidders wishing to protest bid openings or awards may do so by giving written notice to the Administrative Services Specialist at LANTA. This notice must be given within (5) calendar days after bid opening or award. The protestor must state in writing the reason for protest and provide supporting documentation. If LANTA determines a bid opening should be postponed due to a Protest, all bidders will be notified in writing. All protests must be in writing, and filed directly with the Office of the Executive Director at:

Lehigh and Northampton Transportation Authority
1060 Lehigh Street
Allentown, PA 18103

and must contain the following information:

- a. The name, address and telephone number of the Protestant; and
- b. Identity of the IFB or RFP (by number and description); and
- c. A detailed factual statement of the grounds for protest; and
- d. The desired relief, action or ruling.

LANTA’s Executive Director will respond in detail to each substantive issue raised in the protest within a reasonable time after the protest is filed. LANTA’s response shall address only the issues raised originally by the Protestant. When, on its face a protest does not state a valid basis for protest or is untimely, the Executive Director may summarily dismiss the protest without requiring a detailed response.

Two-Step Procurement Procedures

If permitted by State and local law, LANTA may use two-step procurement procedures in both sealed bid and competitively negotiated procurements, provided the opportunity for full and open competition is retained.

1. Review of Technical Qualifications and Approach. The first step is a review of the prospective contractors’ technical approach to LANTA’s request and technical qualifications to carry out that approach. LANTA then may narrow the competitive range to prospective contractors that demonstrate a technically satisfactory approach and have satisfactory qualifications.
2. Review of Bids and Proposals Submitted by Qualified Prospective Contractors. The second step consists of a Committee of at least three individuals in soliciting and reviewing complete bids



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(sometimes referred to as “two-step sealed bidding”) or proposals (as in “competitive negotiations”), including price, submitted by each prospective contractor determined to be qualified. Absent exceptional circumstances, LANTA should attempt to solicit bids or proposals from at least three qualified prospective contractors. Unlike qualifications-based procurement procedures required for A&E services, LANTA must consider all bid or proposal prices submitted as well as other technical factors, rather than limiting reviews to the most qualified bidder or proposer.

Architectural Engineering (A&E) Services and Other Services

LANTA shall use the qualifications-based competitive proposal procedures (i.e., Brooks Act procedures) when contracting for A&E services as defined in 40 U.S.C. §541 and 49 U.S.C. §5325(d). Services subject to this requirement are program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, and related services.

Qualifications-based competitive proposal procedures require that:

1. An proposer’s qualifications be evaluated;
2. Price be excluded as an evaluation factor;
3. Negotiations be conducted with only the most qualified proposer; and,
4. Failing agreement on price, negotiations with the next most qualified proposer be conducted until a contract award can be made to the most qualified proposer whose price is fair and reasonable to the grantee.

These qualifications-based competitive proposal procedures can only be used for the procurement of the services listed above. This method of procurement cannot be used to obtain other types of services even though a firm that provides A&E services is also a potential source to perform other types of services.

These requirements apply except to the extent the LANTA’s State adopts or has adopted by statute a formal procedure for the procurement of these services.

Bonding Requirements

For those construction or facility improvement contracts or subcontracts exceeding \$100,000, LANTA must meet the following minimum criteria for bonding:

1. A **bid guarantee** from each bidder equivalent to five percent (5%) of the bid price. The "bid guarantee" shall 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 his bid, execute such contractual documents as may be required within the time specified;
2. A **performance bond** on the part of the contractor for 100 percent (100%) 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; and
3. A **payment bond** on the part of the contractor. 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. Payment bond amounts determined to adequately protect the federal interest are as follows:



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- a) Fifty percent of the contract price if the contract price is not more than \$1 million;
- b) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
- c) Two and a half million dollars if the contract price is more than \$5 million.

G. Sole Source Purchases

Sole Source procurements are accomplished through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. A contract change that is not within the scope of the original contract is considered a sole source procurement that must comply with this following:

1. A determination that conditions exist to support sole source procurement must be made by the Executive Director. This determination must be in writing with a justification for the reasons.
2. A price or cost analysis of the price quoted by the sole vendor must be completed and documented. The price analysis is intended to demonstrate that the quoted price is "fair and reasonable" for the product or services being procured. This analysis should include:
 - a. Comparability to prices submitted on other procurements in the presence of full and open competition.
 - b. Cost of source materials going into the goods or service (ie: number of hours proposed for a professional, labor rate for an engineer, cost of components).
 - c. Information from published price lists of the vendor.

The price/cost analysis described above must also be completed in situations where multiple bids are solicited, but only a single bid is received. In this instance, a "Competition Analysis" must also be completed to determine whether or not the procurement took place in an environment of fair and open competition. Such an analysis might include:

- a. Listing of vendors to whom solicitation documents were sent.
- b. Copies of formal advertisements
- c. Specification source information.
- d. Survey information from vendors not responding to the solicitation to determine why they declined to bid.
- e. Any indications that the sole bidder had or did not have prior knowledge of the lack of competition.

H. Cost Analysis

A cost or price analysis must be completed in connection with every procurement action, including contract modifications. The method and degree of analysis depends on each particular procurement situation, but as a starting point, an independent estimate must be completed before receiving bids or proposals.

1. Cost Analysis. A cost analysis must be performed when the proposer is required to submit the elements (i.e., labor hours, overhead, materials, etc.) of the estimated cost, (e.g., under professional consulting and architectural and engineering services contracts, etc.).



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A cost analysis will be necessary when adequate price competition is lacking and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or on the basis of prices set by law or regulation.

2. **Price Analysis.** A price analysis may be used in all other instances to determine the reasonableness of the proposed contract price.
3. **Profit.** Profit will be negotiated as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.
4. **Federal Cost Principles.** Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles.
5. **Cost Plus Percentage of Cost Prohibited.** The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

I. The Procurement File – A Written Record of History

Each procurement must have a procurement file associated with it. A checklist is included as Attachment. Note that not all procurements will require every item on this checklist. For routine small purchases, this might just include the purchase order and receiving documents. For larger procurements, it becomes more involved. Depending on the size of the procurement, the file should include:

1. Rationale for method of procurement.
2. Type of contract.
3. Solicitation document distribution list.
4. Solicitation document.
5. Certification of Advertisement
6. Addenda, if any.
7. Correspondence of any kind relative to the project.
8. Intergovernmental approvals, if applicable.
9. Requests for, and responses to, approved equals.
10. Copies of all submitted bids.
11. Bid attendance and tabulation sheets.
12. Evaluation memoranda including, but not limited to: responsiveness and responsibility determinations, Board resolutions, sole source justifications, etc.



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13. Dated Print Screen of SAM/Commonwealth System barred vendors Search Results.
14. Contract cost or Price Justification.
15. Bonds.
16. Insurance.
17. Bid samples.
18. Reps and Certs contract.
19. All modifications.
20. Copies of invoices and packing slips.
21. Inspection and approval documentation.
22. Pre- and post-award certifications for all vehicle purchases.

For more details on the standard inclusions for each method of procurement, see Table 3 on the next page.



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

Table 3 – Documentation Requirements by Procurement Type

For special circumstances to consider when conducting in procurement, see Table 4 on the next page.



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

Table 4 - Special Circumstances in Procurement



IV. CONTRACT ADMINISTRATION

A. Pre-Delivery Administration

After a contract has been awarded, but before the product is delivered, work must take place to make sure the product will arrive as expected. Contracts are needed when a substantial amount (\$25,000) is being procured and is required by the agency. For stock purchases (generally all items that fall under the small purchase procedures), this is the primary responsibility of the position(s) outlined in Figure 1 and is a simple matter of:

1. Maintaining a file of open orders to keep running track of items to be received.
2. Contacting vendors when items are not delivered in the time expected.
3. For larger items, a full project file should be initiated, in addition to the procurement file. This file should contain, at a minimum, the following:
 - a. Copy of the contract for goods or services.
 - b. Copies of all project correspondence with the vendor.
 - c. Notes of all telephone and personal conversations with the vendor.
 - d. Copies of any change orders altering the dollar amount and/or scope of the purchase.
 - e. Acceptance documentation.
 - f. Letters of conditional and final acceptance.

In the case of vehicle purchases, it will be the policy of LANTA to conduct in-plant inspections during vehicle production to assure quality of assembly and adherence to specifications. Inspections will be made either by a third party firm specifically selected for that task or by a Maintenance Department employee with specific mechanical knowledge and a detailed knowledge of the specifications. In either case, all costs are to be borne by LANTA and its representatives (either employees or consultants) are prohibited from accepting gratuities from the vehicle manufacturer during the site visit including, but not limited to: meals; lodging; transportation (other than that which might be reasonable to access the manufacturing facility from an adjacent airport and/or hotel); or entertainment.

B. Delivery and Acceptance

Upon delivery of the item, it will be the responsibility of the person described in Figure 1 to coordinate acceptance. In the case of small purchases of stock items, this will simply be a matter of verifying items and quantities, processing shipping slips for payment with the purchase order, and entering the item into inventory.



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For larger items, the acceptance process is more involved and must include a full test of the specified requirements of the item, followed by documented acceptance. Various types of acceptance include:

1. *Vehicles* - Complete LANTA vehicle acceptance sheets or review of independent vehicle inspectors report. (Buy America pre/post-delivery audits)
2. *Computers and Software* - Full system test and inventory.
3. *Construction* - Inspection by design professional and submission of Davis-Bacon certified payroll data.
4. *Miscellaneous* - Test full specified item capability, verify complete order and adherence to all contract provisions. Acceptance testing is to begin immediately upon receipt of the item and proceed with all due haste. Unless vendor intervention is necessary, acceptance testing should never exceed one week.

Upon identification of specification variances, the variance is to be written up immediately and faxed to the vendor for correction, followed up with a mailing. In the fax/letter, a detailed description of the variance, the relevant specification section and the required timeframe for repair must be indicated. In no case may a full payment be made to a vendor whose item has not been brought into complete compliance. Partial payments may only be approved by the Executive Director if such payments are deemed to be in the best interest of LANTA.

Upon acceptance of the item, formal correspondence to that effect should be transmitted to the vendor. Any warranty provisions should begin on the date of acceptance, not delivery, and this should be so indicated in contract documents and in the acceptance letter. In no case may an item enter service before final, formal acceptance without the approval of the Executive Director and, in this case, a conditional acceptance must be issued. Warranty monitoring is the responsibility of the individual described in Figure 1.

If the purchase documents required liquidated damages, and if damages are in order, the amount of these damages should be calculated at this time and communicated to the vendor. Damages must be based on a real cost of delay to the Authority and not simply on convenience. Liquidated damages are not penalties to the contractor and penalties may not be applied unless incentives are also offered.

LANTA shall not enter into any contract for rolling stock or replacement parts with a period of performance exceeding five (5) years inclusive of options. All other types of contracts (supply, service, leases of real property, revenue and construction, etcetera) should be based on sound business judgment. LANTA is expected to be judicious in establishing and extending contract terms no longer than minimally necessary to accomplish the purpose of the contract. Additional factors to be considered include competition, pricing, fairness and public perception. Once a contract has been awarded, an extension of the contract term length that amounts to an out of scope change will require a sole source justification.

All contracts shall include provisions to define a sound and complete agreement. In addition, contract and subcontracts shall contain contractual provisions or conditions that allow for:



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1. Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, including sanctions and penalties as may be appropriate. (All contracts in excess of the small purchase threshold.)
2. Termination for cause and for convenience by the grantee or sub-grantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000.)

LANTA may include options in contracts. An option is a unilateral right in a contract by which, for a specified time, LANTA may elect to purchase additional equipment, supplies, or services called for by the contract, or may elect to extend the term of the contract. If it is decided to use options, the requirements below apply:

1. Evaluation of Options. The option quantities or periods contained in the contractor's bid or offer must be evaluated in order to determine contract award. When options have not been evaluated as part of the award, the exercise of such options will be considered a sole source procurement.
2. Exercise of Options.
 - a) LANTA must ensure that the exercise of an option is in accordance with the terms and conditions of the option stated in the initial contract awarded.
 - b) An option may not be exercised unless it has been determined that the option price is better than prices available in the market or that the option is the more advantageous offer at the time the option is exercised.

LANTA may enter into time and materials contracts, only if:

1. After a determination that no other type of contract is suitable; and,
2. If the contract specifies a ceiling price that the contractor shall not exceed except at its own risk.

The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

C. Responsibility for Settlement of Contract Issues / Disputes

Disputes arising from contractors regarding, price, quality, or warranty from day-to-day purchases are handled on a one-to-one basis by the Administrative Service Specialist and the Controller. If a dispute cannot be resolved between a Contractor and LANTA via contact with the Administrative Services Specialist and/or Controller, notice shall be sent in writing to LANTA's Executive Director

Procurement is conducted under contracting guidelines issued by the Federal Transit Administration (FTA) Circular 4220.1F dated November 1, 2008. All protest decisions must be in writing. A protester must exhaust all administrative remedies with LANTA before pursuing a protest with FTA. Under C4220.1F protests and appeals to FTA may be made only on the basis that LANTA does not have written protest procedures or failed to follow such procedures.



D. BREACHES AND DISPUTES RESOLUTION

Disputes – Unless otherwise noted within individual contracts, disputes arising in the performance of contracts with LANTA, which are not resolved by agreement of the parties, shall be decided in writing by the authorized representative of LANTA's Executive Director. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Executive Director. 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 Executive Director shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by LANTA, the 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 his employees, agents or others for whose acts he 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 of damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the LANTA 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 of Pennsylvania.

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 LANTA, (Architect) 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.

Disputes concerning labor standards – Disputes arising out of the labor standards provisions of LANTA contracts shall not be subject to the general disputes clause of the contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.



V. DISADVANTAGED BUSINESS ENTERPRISES

Policy

The Lehigh and Northampton Transportation Authority (LANTA) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. LANTA has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, LANTA has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of LANTA to ensure that DBEs, as defined in part 26, have an equal opportunity to receive and participate in DOT assisted contracts. It is also our policy:

1. To ensure nondiscrimination in the award and administration of DOT assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accord with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

LANTA's Director of Finance & Administration, currently Randy Lease, has been delegated as the DBE Liaison Officer. In that capacity, the Director of Finance & Administration is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by LANTA in its financial assistance agreements with the Department of Transportation.

LANTA has disseminated this policy statement to its Board of Directors and the Counties of Lehigh and Northampton and all of the components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT assisted contracts via mail, electronic mail and this information is posted on the LANTA website: www.lantabus.com.



Promoting the Use of DBE's

Promotion of DBE business will be conducted in the following manner:

1. Maintenance of vendor files containing DBE's for all classes of purchases made by the Authority. These files will be generated from listings of the Greater Lehigh Valley Chambers of Commerce, listings published periodically by the Pennsylvania Department of Transportation (UCP Program); and sources known by other area transit authorities and local government. DBE Certification should be based on the Small Business Administration DBE Program.
2. All requests for proposals will include DBE content as an evaluation factor.
3. All contract solicitations that include subcontracting components will require all prime contractors to extend best good faith efforts to include DBE's in the project. Larger contracts will require DBE participation in subcontracting.

Tracking DBE Participation

The Disadvantaged Business Enterprise Liaison Officer will be responsible for the submission of DBE utilization reports to the appropriate agencies based on the dollar volume of disbursements to those vendors. To assist in this tracking, all certified DBE's will be recorded as such.

Certification will be based on the ability of the vendor to obtain certification from the Unified Certification Program of Pennsylvania.

See DBE Plan for additional information.



VI. INVENTORY CONTROL AND MATERIALS MANAGEMENT

Recording Inventory Entries

For each of the areas identified in Figure 2, the responsible employee must assure that items are properly stored and entered into inventory. The lone exception to this rule is for maintenance supplies where this responsibility falls upon the Inventory Specialist in order to separate the ordering and receiving functions. As maintenance supplies are received, Inventory Specialist enters these into the fleet maintenance software/purchasing system as an inventory item. All items leaving inventory must then be specifically charged to vehicle work orders. A physical inventory is taken annually and the results reconciled with those figures calculated on the inventory system. Additional information on the software system is in the software user documentation.

Office supplies and public information inventories are not maintained on the computer. These are kept in a central location, under the control of the Inventory Specialist, and employees obtain their supplies from here. Inventory levels are monitored by sight only with reorders occurring when supplies get low.

Capital assets are to be entered into the accounting system as fixed assets and proper depreciation schedules associated with them. A physical inventory of the equipment must be taken and the results reconciled with equipment records at least once every two years. Any differences must be investigated to determine the cause of the difference. Property should be tagged or otherwise identified as federally assisted property. A tag system is currently in place to cross-reference items to the fixed asset schedule.

Property Disposition

Real property shall be managed and disposed of in accordance with FTA regulations, specifically FTA Circular 5010.1A, using Public Surplus. The Board of Directors must specifically approve the disposition plan for any real property.

For equipment:

1. Equipment means any article of nonexpendable, tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost that equals or exceeds the lesser of the capitalization level established by the recipient or sub-recipient for financial statement purposes, or \$5,000. Equipment includes rolling stock, computing devices, information technology systems, and all other such property used in the provision of public transit service. Rolling stock describes equipment that is used to transport passengers and includes buses, vans, cars, locomotives, trolley cars, ferryboats, light rails, streetcars, other rail vehicles, and vehicles used for guideways and incline planes.
2. Equipment which has reached the end of its useful life and with a unit fair market value exceeding \$5,000, or unused supplies with a total aggregate fair market value of more than \$5,000, may be retained or sold with the approval of the Board of Directors, and with reimbursement to FTA of an amount calculated by multiplying the total aggregate fair market value at the time of disposition, or the net sales proceeds, by the percentage of the FTA's participation in the original grant.



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3. Equipment with a unit fair market value of \$5,000 or less, or supplies with a total aggregate fair market value of \$5,000 or less, may be retained, sold, or otherwise disposed of at the discretion of the Executive Director and no obligation to reimburse FTA.
4. No property or equipment may be sold or disposed of without the approval of the Executive Director.
5. All equipment, regardless of value, must be disposed of via Public Surplus, while using competitive sales procedure to insure the highest possible return. The sales procedure for each piece of equipment must be recorded and permanently retained. When items are placed for competitive sale on Public Surplus website, such sale shall also be advertised on the LANTA website, as well as in relevant newspapers, in an as is/where is condition. In addition to normal advertising, a copy of the sales solicitation should be sent to:
 - a. Other Pennsylvania transit properties.
 - b. Parties who have previously requested information about LANTA surplus property.
 - c. Employee bulletin board when the item is one of general interest (ie: automobiles, computers). Employees with decision-making responsibility in the disposition (Executive Director, Director – Maintenance/Materials) shall not be eligible to bid on surplus property.

Sale shall be made via Public Surplus to the highest bidder. Under certain circumstances, surplus property may be transferred to other entities without a public sale. Such situations must be approved by the Executive Director in accordance with applicable Federal and State guidelines.



APPENDIX 1 - CIRCULAR FTA C 4220.1F

THIRD PARTY CONTRACTING REQUIREMENTS

http://www.fta.dot.gov/documents/FTA_Circular_4220.1F.pdf



APPENDIX 2 - MINIMUM REQUIRED FEDERAL PROVISIONS

LANTA is funded by the Federal government and therefore all vendors are subject to and all procurements include the contract provisions implicitly. The following provisions are the minimum required provisions. Typically required provisions are contained in Appendix 3. All required provisions, by procurement type, are contained in Appendix 4.

No Federal Government Obligations to Third Parties.

(1) LANTA and the 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 Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal Assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

False or Fraudulent Statements or Claims

The supplier acknowledges and agrees that:

(1) 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 activities in connection with the Project. Accordingly, by accepting the purchase order, the supplier certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it may make in connection with the Project covered by the purchase order. In addition to other penalties that may apply, the Recipient also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on the Recipient to the extent the Federal Government deems appropriate.

(2) If the supplier makes a false, fictitious, or fraudulent claim, state, submission, or certification to the Federal Government in connection with an urbanized area formula project financed with Federal assistance authorized for 49 U.S.C. § 5307, the Government reserves the right to impose on the Recipient the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n) (1), to the extent the Federal Government deems appropriate.



Access to Records of Recipients and Sub-recipients

Upon request, the supplier agrees to permit, and require its subcontractors to permit, the U.S. Secretary of Transportation, the Comptroller General of the United States, and, to the extent appropriate, the State, or their authorized representatives, to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts of the supplier and its subcontractors pertaining to the Project.

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 this Agreement and in agreements between the LANTA and FTA, as they may be amended or promulgated from time to time during the terms of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

Civil Rights Requirements

(1) Nondiscrimination – In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and 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, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements that the FTA may issue.

(2) Equal Employment Opportunity – The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex – In accordance with Title VII of the Civil Rights, as amended, 42 U.S.C. § 2000e, and Federal transit laws, 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of the 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. Parts et. seq., (which implement Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. 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, creed, national origin, sex, or age. Such action shall include, but not be limited to the following: employment, upgrading, 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 that the FTA may issue.

(b) Age – In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 623 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 the FTA may issue.



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(c) Disabilities – In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of 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, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(d) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with the Federal Assistance provided by the FTA, modified only if necessary to identify the affected parties.

Termination of Contract

This contract may be terminated upon the occurrence of any of the following:

A. If, through any cause the supplier shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or, if the supplier shall violate any of the covenants, agreements or stipulations of the Agreement, LANTA may terminate this Agreement by giving written notice to the supplier of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. The supplier will only be paid for services and materials delivered and accepted.

B. LANTA may terminate this Agreement at any time without cause, provided that it gives written notice to the supplier of such termination, which shall be effective on the date of such notice. In the event of such termination, the supplier shall be compensated for the materials and services or materials delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

Disadvantaged Business Enterprise

It is federal and state policy to award a fair share of contracts to disadvantaged business firms. Accordingly, affirmative steps must be taken to assure that disadvantaged businesses are utilized to meet DBE goals and objectives as outlined in the Grant Agreement. It is hereby declared to be the public policy of the LANTA to encourage, develop and support the full participation of disadvantaged business in LANTA contracts. “Disadvantaged Business Enterprises” as defined in Section 8(d) of the Small Business Act, is a small business concern owned and controlled by socially and economically disadvantaged individuals. The term “owned” means that at least fifty-one percent (51%) of the business is owned by disadvantaged group members, or in case of publicly owned business, at least fifty-one percent (51%) of the stock of which is owned by disadvantaged group members.

Incorporation of FTA Terms

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, Rev 4, dated March 18, 2013 (or latest version), 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 LANTA requests, which would cause LANTA to be in violation of the FTA Terms and Conditions.



APPENDIX 3 - TYPICALLY REQUIRED FEDERAL PROVISIONS

Before LANTA may use FTA assistance to support the acquisition of property or services, it must comply with all applicable Federal laws and regulations, whether or not addressed in the Common Grant Rules. Some of those laws and regulations will affect the third party contractor providing the property or services, or even determine which entities may qualify as a third party contractor. Other laws and regulations will affect the nature of the property or services to be acquired or the terms under which the property or services must be acquired. A recipient may not use FTA assistance to support acquisitions that do not comply with all applicable Federal requirements.

FTA's Master Agreement contains a current, but not all-inclusive, description of statutory and regulatory requirements that may affect a recipient's procurement (such as Disadvantaged Business Enterprise (DBE) and Clean Air requirements). The Master Agreement states that applicable Federal requirements will apply to project participants to the lowest tier necessary to ensure compliance with those requirements. A recipient will also need to include applicable Federal requirements in each subagreement, lease, third party contract, or other document as necessary. For specific guidance on cross-cutting requirements administered by other Federal agencies, FTA recommends that the recipient contact those agencies.

Some of the more typical requirements and restrictions that will affect the use of FTA assistance to finance a recipient's third party contracts include:

- a. Contractor Qualifications. The following Federal laws and regulations may affect contractor selection:
 - (1) "Responsibility" Requirements. In addition to the Common Grant Rules that require contract awards be made only to responsible contractors, Federal transit law at 49 U.S.C. Section 5325(j) limits third party contractor awards to those contractors capable of successfully performing under the terms and conditions of the proposed contract. Before selecting a contractor for award, the recipient must consider such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.
 - (2) Debarment and Suspension. Debarment and suspension regulations and guidance include the following:
 - (a) DOT Debarment and Suspension Regulations. Department of Transportation (DOT) regulations, "Nonprocurement Suspension and Debarment," 2 CFR Part 1200 apply to each third party contract at any tier of \$25,000 or more, to each third party contract at any tier for a federally required audit (irrespective of the contract amount), and to each third party contract at any tier that must be approved by an FTA official irrespective of the contract amount. *See*, 2 CFR Part 1200. Thus, the recipient must apply DOT's debarment and suspension requirements to itself and each third party contractor at every tier to the extent required by DOT's regulations that incorporate the requirements of Office of Management and Budget (OMB), "Guidelines to



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Agencies on Government wide Debarment and Suspension (Nonprocurement),”
2 CFR Part 180.

- (b) General Services Administration (GSA) Excluded Parties List System. Even though the recipient may collect a debarment and suspension certification from the prospective third party contractor, or include a clause in the third party contract requiring disclosure, FTA strongly recommends that the recipient check the Excluded Parties List System (EPLS). Now a part of the System for Awards Management (SAM), the EPLS is an electronic, web-based system that identifies those parties excluded from receiving Federal contracts, certain subcontracts, and certain types of Federal financial and non-financial assistance and benefits. The EPLS keeps its user community aware of administrative and statutory exclusions across the entire government, and individuals barred from entering the United States. Go to www.sam.gov and the Extracts and Data Access area and click on the Public Data Access box to find the individual firm, individual, or vessel you may seek.
 - (c) State Debarment and Suspension Lists. A recipient may also treat any prospective contractor or subcontractor listed on a centralized State government debarment and suspension list as nonresponsible and ineligible for contract award.
- (3) Conflict of Interest. The Common Grant Rules require the recipient to be aware of conflict of interest issues a prospective contractor might have, including lack of impartiality, impaired objectivity, or unfair competitive advantage, as discussed more fully in Chapter VI, paragraph 2.a(4)(h).
- (4) Lobbying Certification and Disclosure. If the third party contract will exceed **\$100,000**, the recipient must obtain a lobbying certification before awarding the contract, and if applicable, a lobbying disclosure from a prospective third party contractor. *See*, DOT regulations, “New Restrictions on Lobbying” 49 CFR Part 20, modified as necessary by 31 U.S.C. Section 1352, which implement the Byrd “Anti-Lobbying” Amendment, 31 U.S.C. Section 1352.
- (5) Federal Civil Rights Laws and Regulations. Each FTA recipient has agreed that it and its third party contractors at each tier will comply with:
- (a) Federal Equal Employment Opportunity (EEO) Requirements. These include, but are not limited to:
 - 1 Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. Section 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53 prohibits discrimination on the basis of race, color, creed, national origin, sex, 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. Section 2000e, and Executive Order No. 11246, “Equal Employment Opportunity,” September 24, 1965, as amended by Executive



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Order No. 11375, October 13, 1967, that prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.

- (b) Nondiscrimination on the Basis of Sex. Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. Sections 1681 *et seq.* and implementing Federal regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 CFR Part 25 prohibit discrimination on the basis of sex.
 - (c) Nondiscrimination on the Basis of Age. The “Age Discrimination Act of 1974, as amended, 42 U.S.C. Sections 6101 *et seq.*, and Department of Health and Human Services implementing regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance, 45 CFR Part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. Sections 621 *et seq.*, and Equal Employment Opportunity Commission (EEOC) implementing regulations, “Age Discrimination in Employment Act,” 29 CFR Part 1625, also prohibit employment discrimination against individuals on the basis of age.
 - (d) Federal Protections for Individuals with Disabilities. The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. Sections 12101 *et seq.*, prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private 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.
- (6) Socio-Economic Development. Each FTA recipient must comply with applicable Federal laws and regulations that provide competitive opportunities for a contractor that qualifies as a disadvantaged business enterprise (DBE), minority owned firm, women’s business enterprise, or small business.
- (a) Disadvantaged Business Enterprises (DBES). Section 1101 (b) of MAP-21, 23 U.S.C. Section 101 note, extends the Federal statutory requirements that FTA make available at least 10 percent of its funding under that Act for contracts with small business concerns owned and controlled by socially and economically disadvantaged people. Each FTA recipient and sub-recipient of FTA funding assists FTA in meeting this national goal. To receive FTA assistance, each FTA recipient and sub-recipient of FTA funding must comply with applicable requirements of DOT regulations, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs,” 49 CFR Part 26. If the recipient is required to have a DBE program, the third party contracts that the recipient has included in its DBE program determine whether the recipient meets the DBE threshold for goal setting, and the goal if the threshold is met.



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(b) Small and Minority Firms and Women’s Business Enterprises. The Common Grant Rules require each recipient and sub-recipient to take steps to ensure that it uses small and minority firms and women’s business enterprises (irrespective of whether they qualify as DBEs) to the fullest extent practicable. Notably, some potential contractors may have established their home office in a Historically Underutilized Business Zone (HUBZone). A HUBZone small business is determined, qualified, and certified by the Small Business Administration (SBA) and then added to the List of Qualified HUBZone Small Business Concerns at SBA’s website at <http://www.sba.gov/hubzone>. Although the Common Grant Rule for governmental recipients includes labor surplus area firms in the category of firms authorized for special treatment, this circular does not include them because Section 7101(a) of the Federal Acquisition Streamlining Act of 1994, 15 U.S.C. Section 644 note, enacted after publication of the Common Grant Rule for governmental recipients removed nearly all labor surplus area preferences.

- 1 Notice. The Common Grant Rules requires each recipient to make information about procurement opportunities available to potentially qualified firms. Each governmental recipient is directed to include these contractors on solicitation lists and request their participation when they are potential sources.
- 2 Contract Size. To foster greater participation of small and minority firms and women’s business enterprises, the Common Grant Rule for governmental recipients directs the governmental recipient to divide its total contracting requirements into small tasks or quantities, when economically feasible. The Common Grant Rule for non-governmental recipients encourages the non-governmental recipient to contract with consortia when a contract is too large for one of these firms to handle individually.
- 3 Delivery Schedule. The Common Grant Rules requires the recipient to specify delivery schedules that encourage their participation.
- 4 Small Business Administration and the Department of Commerce Minority Business Development Agency. The Common Grant Rules instructs the recipient to use the services and assistance of the Small Business Administration and the Department of Commerce’s Minority Business Development Agency.
- 5 Subcontracting Opportunities. The Common Grant Rule for governmental recipients directs each governmental recipient to require its prime third party contractors to include the preceding provisions in FTA assisted subcontracts. The Common Grant Rule for non-governmental recipients directs each non-governmental recipient to consider whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women’s business enterprises. In addition, DOT’s “Disadvantaged Business Enterprise: Program Improvements” amendments to its DBE regulations, effective February 28, 2011, now state that recipients may use race-neutral (and gender-neutral) small business set-asides for prime contracts under a stated amount, although set-



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asides restricted to DBEs continue to be prohibited except in limited and extreme circumstances.

- (7) Sensitive Security Information. Each third party contractor must protect, and take measures to ensure that its subcontractors at each tier protect, “sensitive security information” made available during the administration of a third party contract or subcontract to ensure compliance with 49 U.S.C. Section 40119(b) and implementing DOT regulations, “Protection of Sensitive Security Information,” 49 CFR Part 15, and with 49 U.S.C. Section 114(r) and implementing Department of Homeland Security regulations, “Protection of Sensitive Security Information,” 49 CFR Part 1520.
 - (8) Seat Belt Use. In compliance with Federal Executive Order No. 13043, “Increasing Seat Belt Use in the United States,” April 16, 1997, 23 U.S.C. Section 402 note, FTA encourages each third party contractor to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company owned, rented, or personally operated vehicles, and to include this provision in each third party subcontract involving the project.
 - (9) Texting While Driving and Distracted Driving. Consistent with Executive Order No. 13513, “Federal Leadership on Reducing Text Messaging While Driving,” October 1, 2009, 23 U.S.C. Section 402 note, and DOT Order 3902.10, “Text Messaging While Driving,” December 30, 2009, FTA encourages each third party contractor to promote policies and initiatives for its employees and other personnel that adopt and promote safety policies that to decrease crashes by distracted drivers, including policies to ban text messaging while driving, and to include this provision in each third party subcontract involving the project.
- b. Administrative Restrictions on the Acquisition of Property and Services. The following Federal laws and regulations impose administrative requirements, many of which will affect specific third party procurements.
- (1) Legal Eligibility. The property or services acquired must be eligible for support under the restrictions accompanying the Federal statute authorizing the Federal assistance to be used.
 - (2) Scope of the Project. The property or services acquired must be eligible for support within the scope of the underlying grant or cooperative agreement from which the Federal assistance to be used is derived.
 - (3) Period of Performance. FTA expects the recipient to use sound business judgment and be judicious in establishing and extending a contract’s period of performance.
 - (a) General Standards. The period of performance generally should not exceed the time necessary to accomplish the purpose of the contract. The recipient should also consider competition, pricing, fairness, and public perception. The recipient’s procurement files should document its rationale for determining the performance period designated for each contract.



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- (b) Federal Restrictions. Except for procurements of rolling stock and replacement part contracts, which are limited by law to five (5) or seven (7) years as discussed in subsection 2.e of this Chapter, the recipient's other third party contracts (such as property, services, leases, construction, revenue, and so forth) are not encumbered by Federal requirements restricting the maximum periods of performance. Nevertheless, the duration of the recipient's other contracts must be reasonable.
 - (c) Time Extensions. Consistent with the general tone of the circular, contract time extensions will be considered in light of whether they are permissible changes or impermissible cardinal changes. Once the recipient awards the third party contract, an extension of the contract term length that amounts to a cardinal change will require a sole source justification.
- (4) Federal Cost Principles. The Common Grant Rules require project costs to conform to applicable Federal cost principles for allowable costs. In general, costs must be necessary and reasonable, allocable to the project, authorized or not prohibited by Federal law or regulation, and must comply with Federal cost principles applicable to the recipient. Separate cost principles apply to the following four categories of recipients:
- (a) Governmental Entities. OMB Guidance for Grants and Agreements, "Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87)," 2 CFR Part 225, applies to project costs incurred by a recipient that is a State, local, or Indian tribal government.
 - (b) Educational Institutions. OMB Guidance for Grants and Agreements, "Cost Principles for Educational Institutions (OMB Circular A-21)," 2 CFR Part 220, applies to project costs incurred by a recipient that is a public or private institution of higher education.
 - (c) Non-Profit Entities. OMB Guidance for Grants and Agreements "Cost Principles for Non-Profit Organizations (OMB Circular A-122)," 2 CFR Part 230, applies to project costs incurred by a recipient that is a private non-profit entity.
 - (d) For-Profit Entities. FAR at 48 CFR Chapter 1, Subpart 31.2, "Contracts with Commercial Organizations," applies to project costs incurred by a recipient that is a for-profit entity.
- (5) Payment Provisions. The recipient may use its own funds to finance its contracts. However, if the recipient intends to use FTA assistance, expects to be reimbursed with FTA assistance, or dedicates its local share funds to support contract costs it has financed, then it must structure its payment provisions carefully.
- (a) FTA Support for the Project. FTA must indicate its general interest in the project before a recipient may use FTA assistance to finance or reimburse project costs, or use local share funds for project costs. FTA expresses its general interest in the project when it has taken one of the following actions:



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- 1 Award Made. FTA has awarded Federal assistance to the recipient through a grant or cooperative agreement for the underlying project,
 - 2 Preaward Authority. FTA has provided preaward authority for the underlying project through a *Federal Register* notice, or
 - 3 Letter of No Prejudice. FTA has issued a letter of no prejudice for the underlying project.
- (b) Advance Payments. Advance payments are payments made to a contractor before the contractor incurs contract costs. The recipient may use its local share funds for advance payments. However, if there is no automatic pre-award authority for its project, then advance payments made with local share funds before FTA assistance has been awarded, or before a letter of no prejudice has been issued or other pre-award authority has been provided, or before FTA approval for the specific advance payment has been obtained, are ineligible for reimbursement. The following principles and restrictions apply:
- 1 Use of FTA Assistance Prohibited. The recipient may not use FTA assistance to make payments to a third party contractor before the contractor has incurred the costs, for which the payments would be attributable.
 - 2 Exceptions for Sound Business Reasons. Apart from advance payments that are customary, as discussed further, FTA does occasionally make exceptions to its advance payment prohibitions, if the recipient can provide sound business reasons for doing so and has obtained FTA's advance written concurrence. A recipient that seeks to use FTA assistance to support advance payments should contact the regional office administering its project to obtain FTA concurrence.
 - a Adequate Security for Advance Payments. FTA recognizes that advance payments may be needed for certain costs supported by sound business judgment. Adequate security for the advance payment is an essential precondition to FTA's concurrence in the use of FTA or local share funds.
 - b Customary Advance Payments. FTA recognizes that advance payments are typically required for, but are not limited to, public utility connections and services, rent, tuition, insurance premiums, subscriptions to publications, software licenses, construction mobilization costs, transportation, hotel reservations, and conference and convention registrations. Accordingly, the recipient may use FTA assistance to support or reimburse the costs of such acquisitions. FTA concurrence is required only when such advance payment or payments customarily required in the marketplace exceed \$100,000.

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



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- (c) Progress Payments. Progress payments are payments for contract work that has not been completed. The recipient may use FTA assistance to support progress payments provided the recipient obtains adequate security for those payments and has sufficient written documentation to substantiate the work for which payment is requested.
 - 1 Adequate Security for Progress Payments. Adequate security for progress payments may include taking title or obtaining a letter of credit or taking equivalent measures to protect the recipient's financial interest in the progress payment. Adequate security should reflect the practical realities of different procurement scenarios and factual circumstances. FTA acknowledges the practical reality that taking title to work in progress may not be desirable in some circumstances. The recipient should always consider the costs associated with providing security (for example, the recipient may need to acquire bonds or letters of credit in the commercial marketplace) and the impact of those costs on the contract price, as well as the consequences of incomplete performance.
 - 2 Adequate Documentation. Sufficient documentation is required to demonstrate completion of the amount of work for which progress payments are made.
 - 3 Percentage of Completion Method. The Common Grant Rules requires that any progress payments for construction contracts be made on a percentage of completion method described therein. The recipient, however, may not make progress payments for other than construction contracts based on this percentage method.
- (6) Protections Against Performance Difficulties. The Common Grant Rule for governmental recipients authorizes FTA to require each governmental recipient to include contract provisions that would reduce potential problems that might occur during contract performance. In addition to other clauses that may be approved by the Office of Federal Procurement Policy, FTA expects the governmental recipient to include provisions as described below:
 - (a) Changes. FTA expects a governmental recipient to include changes and changed conditions provisions or clauses in most contracts, except for routine supply contracts.
 - (b) Remedies. The Common Grant Rule for governmental recipients authorizes FTA to require remedies. Accordingly, FTA expectations are as follows:
 - 1 Liquidated Damages. FTA has determined that a recipient may use liquidated damages if the recipient reasonably expects to suffer damages through delayed contract completion, or if weight requirements are exceeded, and the extent or amount of such damages are uncertain and would be difficult or impossible to determine. The rate and measurement standards must be calculated to reasonably reflect the recipient's costs should the standards not be met, and must be specified in the solicitation and contract. The assessment for damages is often established at a specific rate per day for each day beyond the contract's delivery date or



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performance period. A measurement other than a day or another period of time, however, may be established if that measurement is appropriate, such as weight requirements in a rolling stock purchase. The procurement file should include a record of the calculation and rationale for the amount of damages established. Any liquidated damages recovered must be credited to the project account involved unless FTA permits otherwise. We also refer you to Chapter V, paragraph 5(a)(1) for a discussion of how liquidated damages can be used to encourage settlements.

- 2 Violation or Breach. Third party contracts exceeding \$100,000 must include administrative, contractual, or legal remedies for violations or breach of the contract by the third party contractor.
- 3 Suspension of Work. FTA may require provisions pertaining to suspension of work.
- 4 Termination. Termination for cause and termination for convenience provisions must be included in contracts exceeding \$10,000.

The Common Grant Rule for non-governmental recipients requires administrative, contractual, or legal contract remedies in instances in which a contractor violates or breaches terms of a contract that exceeds the small purchase threshold, which FTA recognizes as the simplified acquisition threshold. *See*, Chapter II, Subsection 3.b. The Common Grant Rule for non-governmental recipients also requires termination clauses for non-governmental recipients when procurements exceed the small purchase threshold, which FTA recognizes as the simplified acquisition threshold. *See*, Chapter II, Subsection 3.b. FTA strongly encourages care in developing appropriate performance remedies in all third party contracts.

- c. Socio-Economic Requirements for the Acquisition of Property and Services. The following Federal laws and regulations imposing socio-economic requirements may affect a specific procurement:
 - (1) Labor. The following Federal labor protection laws and regulations may affect the types of property and services that may be acquired with FTA assistance:
 - (a) Wage and Hour Requirements. The Common Grant Rules direct the recipient to include provisions in its third party contracts requiring the contractor to compute the wages of every mechanic and laborer based on a standard workweek of 40 hours. Work in excess of the standard workweek is permitted if the worker is compensated at a rate of not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in the workweek. The Common Grant Rules require these provisions for compliance with Sections 102 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. Section 3702, and Department of Labor (DOL) regulations, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and



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Safety Standards Act),” 29 CFR Part 5. Section 4104(c) of the Federal Acquisition Streamlining Act of 1994, 40 U.S.C. Section 3701(b)(3)(A)(iii), increased the wage and hour thresholds of \$2,000 for construction work and \$2,500 for non-construction work set forth in the Common Grant Rules to \$100,000. A federally assisted contract must exceed \$100,000 before these wage and hour requirements apply to that contract.

- (b) Fair Labor Standards. The Fair Labor Standards Act, 29 U.S.C. Sections 201 *et seq.* applies to employees performing work involving commerce.
 - (c) Veterans Employment. Recipients and sub-recipients of Federal financial assistance under this chapter shall ensure that contractors working on a capital project funded using such assistance give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed, or enforced in any manner that would require an employer to give preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or former employee.
- (2) Civil Rights. The following Federal civil rights laws and regulations may affect the types of property and services that may be acquired with FTA assistance:
- (a) Nondiscrimination in Federal Public Transportation Programs. Federal transit law at 49 U.S.C. Section 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53 prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity.
 - (b) Title VI of the Civil Rights Act. In determining the types of property or services to acquire, no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity receiving Federal financial assistance in violation of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. Sections 2000d *et seq.* and DOT regulations, “Nondiscrimination in Federally Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964,” 49 CFR Part 21. In addition, FTA Circular 4702.1, “Title VI and Title VI-Dependent Guidelines for FTA Recipients,” 05-13-07, provides FTA guidance and instructions for implementing DOT’s Title VI0020 regulations.
 - (c) Environmental Justice. Executive Order No. 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” February 11, 1994, 42 U.S.C. Section 4321 note, and DOT Order 5610.2, “Department of Transportation (DOT) Order To Address Environmental Justice in Minority Populations and Low-Income Populations,” 62 FR 18377, April 15, 1997, protect minority populations and low-income populations against disproportionately



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high and adverse effects of federally assisted programs. FTA Circular 4702.1, “Title VI and Title VI-Dependent Guidelines for FTA Recipients,” 05-13-07, also provides FTA guidance and instructions for implementing the DOT Order on Environmental Justice.

- (d) Limited English Proficiency (LEP). Executive Order No. 13166, “Improving Access to Services for Persons with Limited English Proficiency,” August 11, 2000, 42 U.S.C. Section 2000d-1 note, and DOT, “Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficient (LEP) Persons,” December 14, 2005, clarifies the responsibilities of recipients of Federal financial assistance from DOT and assists them in fulfilling their responsibilities to LEP persons, pursuant to Title VI of the Civil Rights Act of 1964 and implementing regulations. FTA Circular 4702.1, “Title VI and Title VI-Dependent Guidelines for FTA Recipients,” 05-13-07, also provides FTA guidance and instructions for implementing the DOT Policy Guidance.
- (e) Nondiscrimination on the Basis of Disability. The recipient agrees to comply, and assures the compliance of each third party contractor and each sub-recipient at any tier of the project, with the applicable laws and regulations, discussed below, for nondiscrimination on the basis of disability.
 - 1 Section 504 of the Rehabilitation Act of 1973, as amended (Section 504), 29 U.S.C. Section 794, prohibits discrimination on the basis of disability by recipients of Federal financial assistance.
 - 2 The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. Sections 12101 *et seq.*, prohibits discrimination against qualified individuals with disabilities in all programs, activities, and services of public entities, as well as imposes specific requirements on public and private providers of transportation.
 - 3 DOT Public Transportation Regulations implementing Section 504 and the ADA. These regulations include DOT regulations, “Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 CFR Part 27, DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 CFR Part 37, and Joint Architectural and Transportation Barriers Compliance Board (ATBCB)/DOT regulations, “Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 CFR Part 1192 and 49 CFR Part 38. Examples of requirements include, but are not limited to, the following:
 - a Design and Construction. Accessibility requirements for the design and construction of new transportation facilities;
 - b Accessibility and Usability. Requirements that vehicles acquired (with limited exceptions) be accessible to and usable by individuals with disabilities, including individuals using wheelchairs;



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- c Complementary Paratransit Service. Requirements that public entities providing fixed-route service, (including a private non-profit entity providing public transportation service on behalf of the State or designated recipient as a sub-recipient providing fixed-route service), provide complementary paratransit service to individuals with disabilities who cannot use the fixed-route service;
 - d Equal Opportunity. Requirements for compliance with service requirements intended to ensure that individuals with disabilities are afforded equal opportunity to use transportation systems and services.
- (f) Electronic Reports and Information. Reports and other information prepared in electronic format developed in connection with a third party contract that the recipient intends to provide to FTA, among others, whether as a contract end item or in compliance with contract administration provisions, must comply with the accessibility standards of Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. Section 794d, and ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 CFR Part 1194.
- (3) Environmental Protections. Federal laws and regulations require the recipient to comply with applicable environmental requirements and implement them as necessary through third party contracts.
- (a) Environmental Mitigation. FTA expects the recipient to include adequate third party contract provisions to facilitate compliance with environmental mitigation measures it has agreed to implement.
 - (b) Solid Waste Disposal Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
 - (c) National Environmental Policy Act. Certain acquisitions and the timing of certain acquisitions can adversely affect the environmental review process for a project constituting a major Federal action, and may result in a violation of the National Environmental Policy Act (NEPA), 42 U.S.C. Sections 4321 through 4335, and joint FHWA/FTA regulations, “Environmental Impact and Related Procedures,” 23 C.F.R. Part 771 and 49 C.F.R. Part 622.
- 1 Property. The recipient may not enter into binding arrangements for the acquisition of property that may or would affect environmental impact



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determinations with respect to the underlying project or otherwise interfere with any required environmental impact reviews until applicable environmental impact determinations have been made.

- 2 Services. Council on Environmental Quality regulations, “Other Requirements of NEPA,” 40 CFR Part 1506, at Section 1506.5(c), require the recipient to obtain a disclosure statement from the contractor selected to prepare an environmental impact statement specifying that the contractor has no financial or other interest in the outcome of the project.
- (d) Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites. DOT’s enabling legislation has special requirements designed to protect publicly owned parks, recreation areas, wildlife and waterfowl refuges, and historic sites, at 49 U.S.C. Sections 303(b) and 303(c) (often referred to as “Section 4(f)”), that may affect the timing and methods of recipient procurements. The Federal Highway Administration (FHWA) and FTA have published implementing regulations, “Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites,” 23 CFR Parts 771 and 774, and 49 CFR Part 622.
- (e) Clean Air. The Common Grant Rules specifically prohibit the use of facilities included in the Environmental Protection Agency (EPA) “List of Violating Facilities,” in the performance of any third party contract at any tier exceeding \$100,000. The contractor must also comply with all applicable standards, orders, or regulations issued under Section 306 of the Clean Air Act, as amended, 42 U.S.C. Section 7414, and other applicable provisions of the Clean Air Act, as amended, 42 U.S.C. Sections 7401 through 7671q.
- (f) Clean Water. The Common Grant Rules specifically prohibit the use of facilities included in the EPA “List of Violating Facilities,” in the performance of any third party contract at any tier exceeding \$100,000. The contractor must also comply with all applicable standards, orders, or regulations issued under Section 508 of the Clean Water Act, as amended, 33 U.S.C. Section 1368, and other applicable requirements of the Clean Water Act, as amended, 33 U.S.C. Sections 1251 through 1377.
- (g) Recycled Products. The Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6962, requires governmental recipients to provide a competitive preference to products and services that conserve natural resources, protect the environment, and are energy efficient. EPA guidelines, “Comprehensive Procurement Guideline for Products Containing Recovered Materials,” 40 CFR Part 247, direct that third party contracts of \$10,000 or more with governmental recipients specify a competitive preference for products containing recycled materials identified in those EPA guidelines. For information about EPA’s recovered materials advisory notices, see EPA’s Web site: <http://www.epa.gov/cpg/backgrnd.htm>.
- (h) Other Federal Environmental Protection Requirements. Additional third party contract provisions may be needed for compliance with other Federal laws and regulations. FTA’s Master Agreement includes environmental laws and regulations that may



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affect the acquisition of property or services with FTA assistance such as various provisions to protect wild and scenic rivers, manage coastal zones, protect wetlands, conserve endangered species, and protect fisheries, archeological sites, and Indian sacred sites.

- (4) Energy Conservation. The Common Grant Rules require third party contract provisions as necessary for compliance with applicable energy efficiency standards and policies of State energy conservation plans issued under the Energy Policy and Conservation Act, as amended, 42 U.S.C. Sections 6321 *et seq.*
- (5) Preference for U.S. Property—Buy America. FTA’s “Buy America” law and regulations apply to projects that involve the purchase of more than \$100,000 of iron, steel, manufactured goods, or rolling stock to be delivered to the recipient to be used in the FTA assisted project. If FTA funds are used for the project, Buy America requirements apply to all procurement contracts under the project irrespective of whether a recipient decides to fund a discrete part of the project without FTA funds. Only if an activity is outside the FTA project and is financed entirely without funds to which FTA’s Buy America regulations would apply may the recipient disregard FTA’s Buy America requirements. Property that the contractor acquires to fabricate a deliverable for the recipient, such as tools, machinery, and other equipment or facilities, is not subject to FTA’s Buy America requirements unless the recipient intends to take possession of that property upon completion of the project. Thus, if a third party contractor is acquiring property for its general inventory of equipment or facilities to conduct its overall business affairs, the recipient may enter the cost of that acquisition into its calculations of overhead amounts applicable to the FTA assisted project irrespective of whether the property acquired would comply with FTA’s Buy America regulations. FTA’s Buy America statute does not preempt State laws with stricter requirements on the use of foreign articles, materials, and supplies.

FTA cautions that its Buy America regulations that apply to FTA assisted third party procurements, published at 49 CFR Part 661, differ from Federal “Buy American Act” regulations that apply to direct Federal procurements, published in the FAR at 48 CFR Chapter 1, Subparts 25.1 and 25.2. FTA strongly recommends that the recipient review FTA’s Buy America regulations before undertaking any FTA assisted procurement.

- (6) Shipments of Property—U.S. Flag Requirements.
 - (a) Shipments by Ocean Vessel. The Common Grant Rules require third party contract provisions to ensure compliance with 46 U.S.C. Section 55303 and Maritime Administration regulations, “Cargo Preference-U.S. Flag Vessels,” 46 CFR Part 381, implementing the codified Cargo Preference Act. With few exceptions, the regulations require that U.S. Flag vessels be used to transport at least 50 percent of any federally assisted property.
 - (b) Shipments by Air Carrier. Third party contracts involving shipments of federally assisted property by air carrier will require provisions to ensure compliance with Section 5 of the International Air Transportation Fair Competitive Practices Act of



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1974, as amended (“Fly America” Act), 49 U.S.C. Section 40118, and GSA regulations, “Use of United States Flag Air Carriers,” 41 CFR Sections 301-10.131 through 301-10.143. The regulations require shipment by U.S. flag air carriers unless such carriers are not reasonably available within the standards of GSA’s implementing regulations.

- (7) Project Travel—Use of U.S. Flag Air Carriers. Third party contracts to acquire transportation by air carrier needed by people participating in a federally assisted project require provisions to ensure compliance with Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended (“Fly America” Act), 49 U.S.C. Section 40118, and GSA regulations, “Use of United States Flag Air Carriers,” 41 CFR Sections 301-10.131 through 301-10.143. The regulations require transportation by U.S. flag air carriers unless U.S. flag air carriers are not reasonably available within the standards of the GSA’s implementing regulations.
- d. Technical Restrictions on the Acquisition of Property and Services. The following Federal laws and regulations imposing technical requirements may affect a specific procurement:
- (1) Intelligent Transportation Systems. Intelligent transportation system (ITS) property and services must comply with the National ITS Architecture and Standards to the extent required by 23 U.S.C. Section 517(d) and FTA Notice, “FTA National ITS Architecture Policy on Transit Projects,” 66 FR 1455 *et seq.*, January 8, 2001, and later published policies or implementing directives FTA may issue. Consequently, third party contracts involving ITS are likely to require provisions to ensure compliance with Federal requirements.
 - (2) Metric Measurements. The Common Grant Rules require the recipient to accept property and services with dimensions expressed in metric measurements, to the extent practicable and feasible, in compliance with the Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act, 15 U.S.C. Sections 205a *et seq.*; Executive Order No. 12770, “Metric Usage in Federal Government Programs,” July 25, 1991, 15 U.S.C. Section 205a note; and applicable Federal regulations.
 - (3) Use of \$1 Coins. To comply with Section 104 of the Presidential \$1 Coin Act of 2005, 31 U.S.C. Section 5312(p), FTA assisted property that requires the use of coins or currency in public transportation service or supporting service must be fully capable of accepting and dispensing \$1 coins.
- e. Rolling Stock—Special Requirements. The following Federal laws and regulations impose requirements that may affect rolling stock procurements:
- (1) Accessibility. Rolling stock must comply with the accessibility requirements of DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 CFR Part 37, and Joint ATBCB/DOT regulations, “Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 CFR Part 1192 and 49 CFR Part 38.



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- (2) Transit Vehicle Manufacturer Compliance with DBE Requirements. Before a transit vehicle manufacturer (TVM) may submit a bid or proposal to provide vehicles to be financed with FTA assistance, 49 CFR Section 26.49 requires the TVM to submit a certification that it has complied with FTA's DBE requirements.
- (3) Minimum Service Life. FTA requires each recipient to maintain satisfactory continuing control of FTA assisted property. For buses and certain other vehicles, FTA has established minimum service life policies that may affect the quantity of vehicles that the recipient may acquire. *See*, the most recent versions of FTA Circular 5010.1, "Grant Management Requirements," FTA Circular 9030.1, "Urbanized Area Formula Program: Grant Application Instructions," and FTA Circular 9300.1, "Capital Program: Grant Application Instructions," that addresses minimum service life for vehicles.
- (4) Spare Ratios. While all FTA assistance for third party procurements must be limited to property and services the recipient will use in the near future, FTA is concerned that the recipient does not acquire an excessive number of spare vehicles not regularly used in public transportation service.
- (5) Air Pollution and Fuel Economy. Each third party contract to acquire rolling stock must include provisions to ensure compliance with applicable Federal air pollution control and fuel economy regulations, such as EPA regulations, "Control of Air Pollution from Mobile Sources," 40 CFR Part 85; EPA regulations, "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines," 40 CFR Part 86; and EPA regulations, "Fuel Economy of Motor Vehicles," 40 CFR Part 600.
- (6) Preaward Review and Post Delivery Review. Each third party contract to acquire rolling stock must include provisions for compliance with applicable requirements of 49 U.S.C. Section 5323(m) and those provisions of FTA regulations, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 CFR Part 663, that do not conflict with 49 U.S.C. Section 5323(m).
- (7) Bus Testing. Each third party contract to acquire a new bus model or a bus with significant alterations to an existing model must include provisions to assure compliance with applicable requirements of 49 U.S.C. Section 5318, as amended by MAP-21, and FTA regulations, "Bus Testing," 49 CFR Part 665.
- (8) In-State Dealers. The recipient may not limit its third party bus procurements to its in-State dealers, 49 U.S.C. Section 5325(i). Although FTA respects State licensing requirements, FTA is prohibited by law from providing FTA assistance to support bus procurements that have the result of limiting competition to entities that have been able to obtain a State license.
- (9) Basis for Contract Award. As permitted by 49 U.S.C. Section 5325(f), the recipient may award a third party contract for rolling stock based on initial capital costs, or based on performance, standardization, life cycle costs, and other factors, or by selection through a competitive procurement process.



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(10) Time Limits for Options on Rolling Stock Contracts. MAP-21 amended 49 U.S.C. Section 5325(e)(1) by adding subsections (A) and (B), retaining the five (5) year option for the procurement of buses, while extending the option for rail procurements to seven (7) years. Consequently:

(a) Buses. A recipient:

- 1 May enter into a multi-year contract to acquire buses or replacement parts, with an option not exceeding five(5) years to buy additional buses or replacement parts, 49 U.S.C. Section 5325(e)(1)(A), but
- 2 May not exercise the option to acquire buses or replacement parts later than five (5) years after the date of its original contract.

(b) Rail. A recipient:

- 1 May enter into a multi-year contract to acquire railcars or replacement parts, with an option not exceeding five(5) years to buy additional railcars or replacement parts, 49 U.S.C. Section 5325(e)(1)(B), but
- 2 May not exercise the option to acquire railcars or replacement parts later than seven (7) years after the date of its original contract.

FTA interprets these five and seven-year periods as covering the recipient's "material requirements" for rolling stock and replacement needs from the first day when the contract becomes effective to its "material requirements" at the end of the fifth or seventh year, as applicable. In the case of rolling stock, which frequently cannot be delivered expeditiously, FTA recognizes that a recipient's "material requirements" for rolling stock will necessarily precede its actual need to put that rolling stock to use in public transportation service. This means that the contract may not have options for more rolling stock and replacement parts than a recipient's material requirements for the applicable five or seven-year period. This does not mean the recipient must obtain delivery, acceptance, or even fabrication in five or seven years. Instead it means only that FTA limits a contract to purchasing no more than the recipient's material requirements for rolling stock or replacement parts for five or seven years based on the effective date of the contract.

f. Public Transportation Services—Special Requirements. Although the Common Grant Rules refer to the following Federal requirements in the context of federally assisted procurements, these requirements will affect how a third party contractor implements its contract to provide public transportation services financed with Federal assistance. Consequently, the recipient must include provisions in its third party contract ensuring compliance with the following requirements, or the recipient must obtain the third party contractor's agreement in another form, as a matter of contractor responsibility, to ensure compliance with the following:



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- (1) Protections for Public Transportation Employees. When the recipient acquires public transportation services from a third party contractor, the terms of the recipient's DOL certification of public transportation employee protective arrangements will apply to work under the contract provided by those employees covered by the certification. That certification is required by 49 U.S.C. Section 5333(b) (often referred to as "13(c)") and implementing DOL guidelines, "Section 5333(b), Federal Transit Law," 29 CFR Part 215. Consequently, the third party contractor must comply with the terms of that DOL certification.

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

- (2) Drug Use and Testing and Alcohol Misuse and Testing. A third party contractor providing services involving the performance of safety sensitive activities must comply with 49 U.S.C. Section 5331 and FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR Part 655.
- (3) Accessibility. A third party contractor providing public transportation services must operate its services in compliance with 42 U.S.C. Sections 12101 *et seq.*; DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)" using facilities and equipment that comply with 49 CFR Part 37; and Joint ATBCB/DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38. Private entities must comply with the requirements of 49 CFR Part 37 applicable to public entities with which they contract to provide public transportation services. The recipient should advise its third party contractors operating public transportation services to review the requirements for public entities in this context.
- (4) Protection of Animals. A third party contractor providing services involving the use of animals must comply with the Animal Welfare Act, 7 U.S.C. Sections 2131 *et seq.* and Department of Agriculture regulations, "Animal Welfare," 9 CFR Subchapter A, Parts 1, 2, 3, and 4.
- (5) Charter Service Restrictions. A third party contractor performing services using FTA assisted facilities or equipment may not use those facilities or that equipment to support any charter service operations except as permitted by 49 U.S.C. Section 5323(d) and FTA regulations, "Charter Service," 49 CFR Part 604.
- (6) School Bus Restrictions. A third party contractor performing services using FTA assisted facilities or equipment may not use those facilities or that equipment to support exclusive school bus operations except as permitted by 49 U.S.C. Sections 5323(f) or (g) and FTA regulations, "School Bus Operations," 49 CFR Part 605, to the extent consistent with 49 U.S.C. Sections 5323(f) or (g).

- g. Art. FTA recommends the following principles be used in procuring art works or the services of artists:



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- (1) Choosing Art Works and Services of Artists. The appropriate selection process should vary among projects, depending upon the nature and scope of the project, characteristics of the site, resources of the community, and State and local laws and regulations. The recipient's procedures should consist of the following:
 - (a) Process. A justifiable process demonstrating appropriate use of public funds that gives serious consideration to a variety of artists available and capable of working on the project.
 - (b) Nondiscrimination. Artists, regardless of race, color, creed, national origin, sex, or age, are eligible for consideration.
 - (c) Community Participation. The community surrounding the future facility participates in the selection process. This could include all levels of participation, including supplying information, attending panel meetings, and being voting members of the panel. The extent and type of participation should be determined by the commissioning entity and be appropriate to both the project and the community.
 - (d) Selection. Selection of art works or artists, or both, recommended to the recipient is determined by a panel of art and design professionals that may include, but need not be limited to, art administrators, artists, curators, and architects, and may include members of the community.
- (2) Criteria for Art in Federally Assisted Transit Projects. When artists are involved in the planning and design of transit projects and/or when individual works of art are commissioned, the following should be considered:
 - (a) Quality. Quality of the art or design,
 - (b) Effect. Impact on the public,
 - (c) Relationship. Connection to the site or the adjacent community, or both; art that relates, in form or substance, to the cultures, people, natural or built surroundings, or history of the area in which the project is located,
 - (d) Suitability. Appropriateness for the site, including safety and scale,
 - (e) Resilience. Durability of materials and fabrication,
 - (f) Indestructibility. Resistance to vandalism, and
 - (g) Preservation. Minimum maintenance.
- (3) Compensation of Artists. Artists may be paid a fixed fee or an hourly wage with a cap, similar to other FTA standard fees or wages for procurement of design professional services, in addition to other federally approved costs that may be recognized under the contract.



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- (4) Prohibition. Artistic undertakings that promote specific private or corporate business interests are ineligible for FTA funding.
- h. Architectural Engineering (A&E) and Related Services—Special Requirements. Federal laws and regulations impose the following requirements on A&E and related procurements:
- (1) Qualifications-Based Requirements. For projects related to or leading to construction, an FTA recipient must use the qualifications-based procurement procedures of 40 U.S.C. Chapter 11 (“Brooks Act” procedures) when contracting for A&E services and other services described in 49 U.S.C. Section 5325(b), which include program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, or related services.
 - (2) Relation to Construction. The nature of the services to be performed and its relationship to construction, not the nature of the prospective contractor, determines whether qualifications-based procurement procedures may be used.
 - (a) Purpose of Services. FTA has long administered the requirement for using qualifications-based procurement procedures for selection of contractors that perform A&E services, generally associated with the construction, alteration, or repair of real property. FTA interprets 49 U.S.C. Section 5325(b) to authorize the use of qualifications-based procurement procedures only for those services that directly support or are directly connected or related to construction, alteration, or repair of real property. FTA’s interpretation of 49 U.S.C. Section 5325(b) is consistent with typical Federal policies implementing the “Brooks Act,” 40 U.S.C. Section 1102, which limits qualifications-based procurement procedures to research, planning, development, design, construction, alteration, or repair of real property. Thus if services, such as program management, feasibility studies, or mapping, are not directly in support of, directly connected to, or directly related to, or lead to construction, alteration, or repair of real property, then the recipient may not use qualifications-based procurement procedures to select the contractor that will perform those services.
 - (b) Requirements in the Context of a Construction Project. A project involving construction (including an ITS project) does not always require the use of qualifications-based procurement procedures. Whether qualifications-based procurement procedures may be used depends on the actual services to be performed in connection with the construction project. For example:
 - 1 End Products Used in Construction. The design or fabrication of message signs, signals, and movable barriers that will become off-the-shelf items or will be fabricated and delivered as final end products for installation in an FTA assisted construction project, including an (ITS) construction project, are not services for which qualifications-based procurement procedures may be used.
 - 2 Services Related to Design of Construction Projects. In contrast, services of a program manager, project designer, construction manager, or engineer in which



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the contractor would select the finished products to be acquired for an FTA assisted construction project are services for which qualifications-based procurement procedures must be used.

- 3 Actual Construction. The actual construction or improvement to the real property to be used in an FTA assisted construction project, however, are not services for which qualifications-based procurement procedures may be used.
- (c) Type of Contractor Not Determinative. The nature of the firm performing the services does not determine whether it will be selected through the use of qualifications-based procurement procedures. For example, if a well-known A&E firm offers to provide mapping services not related to construction, alteration, or repair of real property, the recipient may not use qualifications-based procurement procedures to evaluate that contractor's offer. In contrast, if a firm that does not generally provide A&E services offers to provide mapping services that are directly in support of, directly connected to, or directly related to or lead to construction, alteration, or repair of real property, the recipient must evaluate that offer using qualifications-based procurement procedures.
- (3) Equivalent State Law. SAFETEA-LU also divided the former 49 U.S.C. Section 5325(b) by separating procurement requirements for FTA assisted A&E services from audit requirements for FTA assisted A&E services. As amended by the SAFETEA-LU Technical Corrections Act, 49 U.S.C. Section 5325(b)(1) requires A&E services to be procured using either "Brooks Act" procedures or an equivalent qualifications-based requirement adopted by a State before August 10, 2005.
- (4) Special Requirements for Indirect Cost Rates. In addition, SAFETEA-LU amended 49 U.S.C. Section 5325 to require the acceptance of FAR indirect cost rates for applicable one-year accounting periods if those rates are not currently in dispute. After the indirect cost rates are accepted as required, the recipient must use those indirect cost rates for contract estimates, negotiation, administration, reporting, and payments, with administrative or de facto ceiling limitations. *See*, 49 U.S.C. Section 5325(b)(2) and subparagraph 2.j(2)(c) of this Chapter.
- i. Construction—Special Requirements. The following Federal laws and regulations impose requirements that may affect FTA assisted construction projects:

 - (1) Bonding. The Common Grant Rules require bonds for all construction contracts exceeding the simplified acquisition threshold (*see*, Chapter II, Subsection 3.b) unless FTA determines that other arrangements adequately protect the Federal interest. FTA's bonding policies are as follows:

 - (a) Bid Guarantee. Both FTA and the Common Grant Rules generally require each bidder to provide a bid guarantee equivalent to 5 percent of its 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 to ensure that the bidder will honor its bid upon acceptance.



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- (b) Performance Bond. Both FTA and the Common Grant Rules generally require the third party contractor to obtain a performance bond for 100 percent of the contract price. A “performance bond” is obtained to ensure completion of the obligations under the third party contract.
- (c) Payment Bond. The Common Grant Rules generally require the third party contractor to obtain a standard payment bond for 100 percent of the contract price. A “payment bond” is obtained to ensure that the contractor will pay all people supplying labor and material for the third party contract as required by law. FTA, however, has determined that payment bonds in the following amounts are adequate to protect FTA’s interest and will accept a local bonding policy that meets the following minimums:
 - 1 Less Than \$1 Million. Fifty percent of the contract price if the contract price is not more than \$1 million,
 - 2 More Than \$1 Million but Less Than \$5 Million. Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million, or
 - 3 More Than \$5 Million. Two and one half million dollars if the contract price is more than \$5 million.
- (d) Acceptable Sureties. The Common Grant Rule for non-governmental recipients requires the non-governmental recipient to obtain construction bonds from companies holding certificates of authority as acceptable sureties under Department of the Treasury regulations, “Surety Companies Doing Business with the United States,” 31 CFR Part 223. For a current list of approved sureties, see Department of the Treasury’s Listing of Approved Sureties (Department Circular 570), <http://fms.treas.gov/c570/c570.html>. FTA encourages each governmental recipient to require similarly acceptable sureties.
- (e) Reduced Bonding. FTA recognizes that bonding costs can be expensive. FTA will accept a local bonding policy that conforms to the minimums described in this subparagraph 2.h(1) of this Chapter. FTA reserves the right to approve bonding amounts that do not conform to these minimums if the local bonding policy adequately protects the Federal interest. A recipient that wishes to adopt less stringent bonding requirements, for a specific class of projects, or for a particular project should submit its policy and rationale to the Regional Administrator for the region administering the project.
- (f) Excessive Bonding. Compliance with State and local bonding policies that are greater than FTA’s bonding requirements do not require FTA approval. FTA recognizes that in some situations bond requirements can be useful if the recipient has a material risk of loss because of a failure of the prospective contractor. This is particularly so if the risk results from the likelihood of the contractor’s bankruptcy or financial failure when the work is partially completed. Nevertheless, if the recipient’s “excessive bonding” requirements would violate the Common Grant Rules as restrictive of



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competition, FTA will not provide Federal assistance for procurements encumbered by those requirements. Consequently, if the recipient's bonding policies far exceed those described in this subsection; FTA reminds the recipient that it may find it useful to submit its policy and rationale to the Regional Administrator for the region administering the project.

- (2) Seismic Safety. The recipient must include seismic safety provisions in its third party contracts for the construction of new buildings or additions to existing buildings as required by 42 U.S.C. Sections 7701 *et seq.*, and DOT regulations, "Seismic Safety," 49 CFR Part 41 at Sections 41.117 and 41.120, implementing the Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. Sections 7701 *et seq.*
- (3) Value Engineering. The Common Grant Rule for governmental recipients encourages them to use value engineering provisions in contracts for construction projects, and cautions that value engineering can be a pre-requisite for some Federal assistance awards. FTA generally will not approve a New Starts grant application for final design funding or a full funding grant agreement until value engineering is complete. It is important to note that some contractual arrangements (for example, design-build contracts) may inherently include value engineering. When this is the case, FTA does not require separate value engineering proposals, contract changes, or other processes. From a procurement view, the concept of value engineering is more important than the form it takes.
- (4) Equal Employment Opportunity. The Common Grant Rules require that third party construction contracts include provisions ensuring compliance with DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Chapter 60, which implement Executive Order No. 11246, "Equal Employment Opportunity," September 24, 1965, as amended by Executive Order No. 11375, "Amending Executive Order No. 11246 Relating to Equal Employment Opportunity," October 13, 1967.
- (5) Prevailing Wages. Under 49 U.S.C. Section 5333(a), Davis-Bacon Act prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Common Grant Rules require third party contracts for construction, alteration, or repair at any contract tier exceeding \$2,000 to include provisions requiring compliance with the Davis-Bacon Act, 40 U.S.C. Sections 3141 *et seq.*, and implementing DOL regulations "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction," 29 CFR Part 5. The Davis-Bacon Act requires that contractors pay wages to laborers and mechanics at a rate not less than the minimum wages specified in the wage determination made by the Secretary of Labor. The Davis-Bacon Act also requires contractors to pay wages not less than once a week. The recipient must include a copy of the current prevailing wage determination issued by DOL in each contract solicitation and must condition contract award upon the acceptance of that wage determination. These requirements are in addition to the separate Wage and Hour Requirements addressed in paragraph 2.c(1) of this Chapter IV.



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- (6) Anti-Kickback. Section 1 of the Copeland “Anti-Kickback” Act, at 18 U.S.C. Section 874, prohibits anyone from inducing, by any means, any person employed on construction, prosecution, completion, or repair of a federally assisted building or work, to give up any part of his or her compensation to which he or she is otherwise entitled. Section 2 of that Act, at 40 U.S.C. Section 3145, as amended, and implementing DOL regulations, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States,” 29 CFR Part 3, impose record keeping requirement on all third party contracts for construction, alteration, or repair exceeding \$2,000. The Common Grant Rules also requires provisions for compliance with the Copeland “Anti-Kickback” Act, as amended, and implementing DOL regulations.
- (7) Construction Safety. The Common Grant Rules require provisions to ensure safety at construction sites so that no laborer or mechanic shall be required to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous as prohibited by the safety requirements of Section 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. Section 3704, and its implementing DOL regulations, “Safety and Health Regulations for Construction,” 29 CFR Part 1926. Notably, Section 4104(c) of the Federal Acquisition Streamlining Act of 1994, 40 U.S.C. Section 3701(b)(3)(A)(iii), increased the threshold for construction safety protections to \$100,000 from \$2,000 as set forth in the Common Grant Rules, so that a federally assisted construction contract must exceed \$100,000 before these construction safety requirements apply to that contract.
- (8) Labor Neutrality. Executive Order No. 13502, “Use of Project Labor Agreements for Federal Construction Projects,” February 6, 2009, rescinds Executive Order No. 13202, “Preservation of Open Competition and Government Neutrality Towards Government Contractors’ Labor Relations on Federal and Federally Funded Construction Projects,” February 17, 2001, as amended by Executive Order No. 13208, April 6, 2001, 41 U.S.C. Section 251 note. Consequently, a recipient may now require the use of a project labor agreement (PLA) in its third party contract, and a third party contractor or subcontractor may continue to use a PLA should it choose to do so.
- (9) Preference for U.S. Property—Buy America. For any FTA assisted project having third party construction contracts exceeding \$100,000, FTA’s Buy America law and regulations require the third party contractor to provide property produced or manufactured in the United States for use in the construction project that the recipient acquires, unless FTA has granted a waiver authorized by those regulations. If FTA funds are used for the project, Buy America requirements apply to all third party procurement contracts under the project irrespective of whether a recipient decides to fund a discrete part of the project without FTA funds. Only if an activity is outside the FTA project and is financed entirely without funds to which FTA’s Buy America regulations would apply may the recipient disregard FTA’s Buy America requirements. FTA cautions that its Buy America regulations are complex and different from the Federal “Buy America Act” regulations in the Federal Acquisition Regulation(FAR) at 48 CFR Chapter 1, Subchapter D, Part 25, Subparts 25.1 and 25.2.

Property that the contractor acquires to perform its construction activities for the recipient, such as tools, machinery, and other equipment or facilities, is not covered by FTA’s Buy



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America requirements unless the recipient intends to take possession of that property upon completion of the project. Thus, if a third party contractor is acquiring property for its general inventory of equipment or facilities to conduct its overall business affairs, the recipient may enter the cost of that acquisition into its calculations of overhead amounts applicable to the FTA assisted project irrespective of whether that property would comply with FTA's Buy America regulations.

- (10) Accessibility. Facilities to be used in public transportation service must comply with 42 U.S.C. Sections 12101 *et seq.*; DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37; and Joint ATBCBDOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38. Notably, DOT incorporated by reference into Appendix A of its regulations at 49 CFR Part 37 the ATBCB's "Americans with Disabilities Act Accessibility Guidelines" (ADAAG), revised July 2004, which include accessibility guidelines for buildings and facilities. DOT also added specific provisions to Appendix A of 49 CFR Part 37 modifying the ADAAG, with the result that buildings and facilities must comply with both the ADAAG and the DOT amendments.
- j. Research, Development, Demonstration, Deployment, and Special Studies—Special Requirements. Procurements of research-type services can involve circumstances that bring special Federal requirements into effect. Among these are:
- (1) Patent Rights. Irrespective of the status of the recipient, sub-recipient, or third party contractor (for example, a large business, small business, State government, State instrumentality, local government, Indian tribe, non-profit organization, institution of higher education, individual, and so forth) the Common Grant Rules require provisions consistent with Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms," 37 CFR Part 401 (implementing the Bayh-Dole Act, 35 U.S.C. Sections 200 *et seq.*), unless the Federal Government requires otherwise. Except in the case of an "other agreement" in which the Federal Government has agreed to take more limited rights, the Federal Government is entitled to a non-exclusive, royalty free license to use the resulting invention, or patent to the invention, for Federal Government purposes.
 - (2) Rights in Data. In general, FTA does not seek greater rights in data or copyright than described in the Common Grant Rules when it provides FTA capital assistance to support acquisitions. But when FTA provides Federal assistance to support the costs of a research, development, demonstration, or a special studies project, FTA generally seeks sufficient rights in the data developed so that the resulting data can be made available to any FTA recipient, sub-recipient, third party contractor, or third party subcontractor. FTA's general purpose in providing Federal assistance for a research, development, demonstration, or special studies project is to increase transportation knowledge, rather than limit the benefits of the project to project participants. Therefore, unless FTA determines otherwise in writing, FTA expects the following conditions to apply to rights in data requirements for FTA assisted research, development, demonstration, or special studies projects.



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

In certain circumstances, however, FTA may determine that it is in the public interest to take only those rights in data identified in the Common Grant Rules.

- (3) Export Control. If data developed in the course of a third party contract is subject directly or indirectly to U.S. Export Control regulations, that data may not be exported to any countries or any foreign persons, without first obtaining the necessary Federal license or licenses and complying with any applicable Department of Commerce, Export Administration Regulations, 15 CFR Part 730.
 - (4) Protection of Human Subjects. A third party contractor providing services involving the use of human subjects must comply with the National Research Act at 42 U.S.C. Sections 289 *et seq.*, and DOT regulations, "Protection of Human Subjects," 49 CFR Part 11.
 - (5) Protection of Animals. A third party contractor providing services involving the use of animals must comply with the Animal Welfare Act, 7 U.S.C. Sections 2131 *et seq.*, and Department of Agriculture regulations, "Animal Welfare," 9 CFR Subchapter A, Parts 1, 2, 3, and 4.
- k. Audit Services. In general, the procedures of this circular apply to the acquisition of audit services financed with FTA assistance. The following considerations, however, are especially important in procurements of audit services:
- (1) Single Audit Act. Each recipient that spends \$500,000 or more in Federal awards in a single year must obtain an audit as required by the Single Audit Act of 1984, as amended, 31 U.S.C. Sections 7501 *et seq.*, and must ensure compliance with OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," as revised.
 - (a) Organizational Conflicts of Interest. The auditor selected must be independent of the recipient.



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- (b) Eligibility of Costs. The recipient may charge the costs for audits required by the Single Audit Act to its project as direct or indirect costs as permitted by applicable Federal Cost Principles. A recipient that spends less than \$500,000 in Federal awards in a single year is not required to obtain this audit. Nor may a recipient spending less than \$500,000 in Federal awards in a single year finance the costs of such an audit with Federal assistance.
- (2) Other Project Audits. Before procuring audit services for a specific contract or project, the recipient should be aware of the following:
- (a) Organizational Conflicts of Interest. In general, the recipient must select an auditor that is independent of the third party contractor to be audited.
 - (b) Verification of Indirect Costs. Federal verification of a contractor's indirect cost rates, such as provisional overhead (burden) and General & Administrative (G&A) rates may be required. To the extent possible, relevant information available through undisputed audits of the contractor by other recipients should be used.
 - (c) Duplication of Services. To prevent duplication and ensure the eligibility of particular audit services for Federal participation, a recipient seeking a third party contract audit should contact FTA before undertaking or contracting for the audit. This is particularly important in connection with the procurement of A&E services, because 49 U.S.C. Section 5325(b)(2) requires that FAR Part 31 cost principles be used to audit A&E contracts. In addition, 49 U.S.C. Section 5325(b)(2) requires the recipient and its A&E contractors and subcontractors to accept indirect cost rates established under FAR cost principles if those rates are not under dispute. Thus, the recipient should not obtain duplicative audits because they are likely to produce disparate indirect cost rates and the costs of those audits may be ineligible for Federal assistance. Accordingly, FTA recommends that the recipient seek guidance from the cognizant Federal auditor or agency that approved the third party contractor's indirect cost rates before entering into contracts for audits.
 - (d) Obtaining Indirect Cost Rates. Recipients and third party contractors may obtain indirect cost rates based on FAR cost principles from the following sources:
 - 1 Governmental Entities. Government entities may obtain indirect cost rates through negotiations with OMB. *See*, OMB Guidance for Grants and Agreements, "Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87)," 2 CFR Part 225, App. E, "State and Local Indirect Cost Rate Proposals."
 - 2 Indian Tribes. Indian tribes may obtain indirect cost rates with the Department of the Interior. *See*, OMB Guidance for Grants and Agreements, "Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87)," 2 CFR Part 225, App. E, "State and Local Indirect Cost Rate Proposals."
 - 3 Educational Institutions. Educational institutions may obtain facilities and administrative rates (indirect cost rates) from the Department of Health and



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Human Services (HHS) or the Department of Defense's Office of Naval Research (DOD), usually depending on which of the two agencies (HHS or DOD) has provided more funds to the educational institution for the most recent three years. *See*, OMB Guidance for Grants and Agreements, “Cost Principles for Educational Institutions (OMB Circular A-21),” 2 CFR Part 220, App. A, “Principles for Determining Costs Applicable to Grants, Contracts, and Other Agreements With Educational Institutions.”

- 4 Non-Profit Entities. Non-profit entities may obtain indirect cost rates from the Federal agency with the largest dollar value of awards with an organization, unless different arrangements are agreed to by the agencies concerned. *See*, OMB Guidance for Grants and Agreements, “Cost Principles for Non-Profit Organizations (OMB Circular A-122),” 2 CFR Part 230, App. A, “General Principles.”
 - 5 Private For-Profit Entities. Private for-profit entities may obtain indirect cost rates from the Defense Contract Audit Agency. *See*, the DCAA Web site: <http://www.dcaa.mil>.
- (e) Eligibility of Costs. Costs of third party contract audits and proposal evaluations are eligible for reimbursement by FTA as a direct or indirect charge as permitted by applicable Federal cost principles. FTA reserves the right to disallow payments for duplicative audit charges.

APPENDIX 4 - THIRD PARTY CONTRACTING CHECKLISTS

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PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER -- MATRICES

A. THIRD PARTY CONTRACT PROVISIONS

(excluding micro-purchases, except Davis-Bacon requirements apply to contracts exceeding \$2,000)

PROVISION	COMMENTS	MASTER AGREEMENT REFERENCE (based on FA MA(17) 10-1-2010)
All FTA Assisted Third Party Contracts and Subcontracts		
No Federal Government Obligations to Third Parties (Use of Disclaimer)		§ 2.f
False or Fraudulent Statements or Claims – Civil and Criminal Fraud		§ 3.f
Access to Third Party Contract Records		§ 15.t
Changes to Federal Requirements		§ 2.c(1)
Civil Rights (Title VI, ADA, EEO (except special DOL construction clause))		§ 12
Disadvantaged Business Enterprises (DBEs)	Contract awarded on the basis of a bid/proposal offering to use DBEs.	§ 12.d
Incorporation of FTA Terms	Per FTA C 4220.1F.	§ 15.a
Awards Exceeding \$10,000		
Terminations	If 49 CFR Part 18 applies.	§ 11 and § 15.a, which incorporate 49 CFR Part 18
Special EEO provision for construction contracts	If 49 CFR Part 18 or Part 19 indicate that the DOL EEOC regulations at 41 C.F.R. Chapter 60 apply.	§ 15.a, which incorporates 49 CFR Part 18 and Part 19
Awards Exceeding \$25,000		
Debarment and Suspension		§ 3.b
Awards Exceeding the Simplified Acquisition Threshold (\$150,000) (As of February 2011, OMB has not to date adopted the FAR clause 2.101 \$150,000 standard for grants.)		
Buy America	When tangible property or construction will be acquired.	§ 14.a
Resolution of Disputes, Breaches, or Other Litigation		§ 56
Awards Exceeding \$150,000 by Statute		
Lobbying	OMB Office of Federal Financial Management has not adopted the FAR clause 2.101 \$150,000 simplified acquisition threshold standard.	§ 3.d
Clean Air		§ 25.b
Clean Water		§ 25.c

PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER — MATRICES

A. THIRD PARTY CONTRACT PROVISIONS (Continued)

(excluding micro-purchases, except Davis-Bacon requirements apply to contracts exceeding \$2,000)

PROVISION	COMMENTS	MASTER AGREEMENT REFERENCE (based on FA MA(17) 10-1-2010)
Transport of Property or Persons		
Cargo Preference	When acquiring property suitable for shipment by ocean vessel.	§ 14.b
Fly America	When property or persons are transported by air between U.S. and foreign destinations, or between foreign locations.	§ 14.c
Construction Activities		
Construction Employee Protections – Davis-Bacon Act	For contracts exceeding \$2,000.	§ 24.a(1)
Construction Employee Protections – Contract Work Hours & Safety Standards Act	For contracts exceeding \$100,000. OMB Office of Federal Financial Management has not adopted the FAR clause 2.101 \$150,000 simplified acquisition threshold standard.	§ 24.a(2)
Construction Employee Protections – Sec. 1 Copeland Anti-Kickback Act – Sec. 2 Copeland Anti-Kickback Act	All contracts All construction contracts exceeding \$2,000.	§ 24.a(3)
Bonding for Construction Activities Exceeding \$100,000	5% bid guarantee bond. 100% performance bond. Payment bond equal to: – 50% for contracts < \$1M. – 40% for contracts > \$1M – < \$5M. – \$2.5M for contracts > \$5M.	§ 15.o(1)
Seismic Safety	Construction contracts for new buildings or for existing buildings.	§ 23.e
Nonconstruction Activities		
Nonconstruction Employee Protection – Contract Work Hours & Safety Standards Act	For all turnkey, rolling stock, and operational contracts (except transportation services contracts and open market contracts) exceeding \$100,000. OMB Office of Federal Financial Management has not adopted the FAR clause 2.101 \$150,000 simplified acquisition threshold standard.	§ 24.b
Transit Operations		
Transit Employee Protective Arrangements		§ 24.d
Charter Bus Operations		§ 28
School Bus Operations		§ 29
Drug Use and Testing	Safety sensitive functions.	§ 32.b
Alcohol Misuse and Testing	Safety sensitive functions.	§ 32.b

PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER—MATRICES

A. THIRD PARTY CONTRACT PROVISIONS (Continued)

(excluding micro-purchases, except Davis-Bacon requirements apply to contracts exceeding \$2,000)

PROVISION	COMMENTS	MASTER AGREEMENT REFERENCE (based on FA MA(17) 10-1-2010)
Planning, Research, Development, and Demonstration Projects		
Patent Rights		§ 17
Rights in Data and Copyrights		§ 18
Special Notification Requirements for States		
Special Notification Requirement for States		§ 38
Miscellaneous Special Requirements		
Energy Conservation		§ 26
Recycled Products	Contracts when procuring \$10,000 or more per year of items designated by EPA.	§ 15.k
Conformance with National ITS Architecture	Contracts and solicitations for ITS projects.	§ 15.m
ADA Access	Contracts for rolling stock or facilities construction/renovation.	§ 12.g
Assignability Clause	Procurements through assignments.	§ 15.a, which incorporates 49 CFR Part18 and 49 CFR Part 19

PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER—MATRICES

B. APPLICABILITY OF THIRD PARTY CONTRACT PROVISIONS

(excluding micro-purchases, except Davis-Bacon requirements apply to contracts exceeding \$2,000)

TYPE OF PROCUREMENT					
PROVISION	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
No Federal Government Obligations to Third Parties (by Use of a Disclaimer)	All	All	All	All	All
False Statements or Claims Civil and Criminal Fraud	All	All	All	All	All
Access to Third Party Contract Records	All	All	All	All	All
Changes to Federal Requirements	All	All	All	All	All
Termination	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.
Civil Rights (Title VI, ADA, EEO except Special DOL EEO clause for construction projects)	All	All	All>\$10,000	All	All
Special DOL EEO clause for construction projects				>\$10,000	
Disadvantaged Business Enterprises (DBEs)	All	All	All	All	All
Incorporation of FTA Terms	All	All	All	All	All
Debarment and Suspension	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000
Buy America			>\$100,000 As of Feb. 2011, FTA has not adopted the FAR 2.101 \$150,000 standard.	>\$100,000 As of Feb. 2011, FTA has not adopted the FAR 2.101 \$150,000 standard.	>\$100,000 As of Feb. 2011, FTA has not adopted the FAR 2.101 \$150,000 standard.
Resolution of Disputes, Breaches, or Other Litigation	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Lobbying	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Air	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Water	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Cargo Preference			Transport by ocean vessel.	Transport by ocean vessel.	Transport by ocean vessel.
Fly America	Foreign air transp. /travel.	Foreign air transp. /travel.	Foreign air transp. /travel.	Foreign air transp. /travel.	Foreign air transp. /travel.

PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER—MATRICES

B. APPLICABILITY OF THIRD PARTY CONTRACT PROVISIONS (Continued)
(excluding micro-purchases, except Davis-Bacon requirements apply to construction contracts exceeding \$2,000)

TYPE OF PROCUREMENT					
PROVISION	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
Davis-Bacon Act				>\$2,000 (also ferries).	
Contract Work Hours and Safety Standards Act		>\$100,000 (transportation services excepted).	>\$100,000	>\$100,000 (also ferries).	
Copeland Anti-Kickback Act Section 1 Section 2				All > \$2,000 (also ferries).	
Bonding				\$100,000	
Seismic Safety	A&E for new buildings & additions.			New buildings & additions.	
Transit Employee Protective Arrangements		Transit operations.			
Charter Service Operations		All			
School Bus Operations		All			
Drug Use and Testing		Transit operations.			
Alcohol Misuse and Testing		Transit operations.			
Patent Rights	R & D				
Rights in Data and Copyrights	R & D				
Energy Conservation	All	All	All	All	All
Recycled Products		EPA-selected items \$10,000 or more annually.		EPA-selected items \$10,000 or more annually.	EPA-selected items \$10,000 or more annually.
Conformance with ITS National Architecture	ITS projects.	ITS projects.	ITS projects.	ITS projects.	ITS projects.
ADA Access	A&E	All	All	All	All
Notification of Federal Participation for States	Limited to States.	Limited to States.	Limited to States.	Limited to States.	Limited to States.

PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER—MATRICES

C. CERTIFICATIONS, REPORTS, AND FORMS

CERTIFICATIONS, REPORTS, AND FORMS	COMMENTS	REGULATORY REFERENCE
Bus Testing Certification	All procurements of new model transit buses and vans and existing models being modified with a major changeover changes.	49 CFR Part 665
TVM Certifications	All rolling stock procurements.	49 CFR Part 26
Buy America Certification	Procurements of steel, iron or manufactured products exceeding \$100,000.	49 CFR Part 661
Preaward Review	FTA Annual Certification for any rolling stock procurement.	49 CFR Part 663
Preaward Buy America Certification	Rolling stock procurements exceeding procurements exceeding \$100,000.	49 CFR Part 663
Preaward Purchaser's Requirement	All rolling stock procurements.	49 CFR Part 663
Post Delivery Review	FTA Annual Certification for any rolling stock procurement.	49 CFR Part 663
Post Delivery Buy America Certification	Rolling stock procurements exceeding procurements exceeding \$100,000.	49 CFR Part 663
Post Delivery Purchaser's Requirement	All rolling stock procurements to the extent required by Federal law and regulations.	49 CFR Part 663
On-Site Inspector's Report	Rolling Stock except for procurements of: -10 or fewer vehicles; - 20 or fewer vehicles serving rural (other than urbanized) areas or urbanized areas or 200,000 people or fewer; - any amount of primary manufactured standard production and unmodified vans that after visual inspection and road testing meet the contract specifications.	49 CFR Part 663
Federal Motor Vehicle Safety Standards Preaward Review and Post Delivery	Motor vehicle procurements (49 CFR 571).	49 CFR Part 663
Lobbying	Procurements exceeding \$100,000.	49 CFR Part 20 OMB Office of Federal Financial Management has not adopted FAR 2.101 \$150,000 simplified acquisition threshold standard.
Standard Form LLL and Quarterly Updates (when required)	Procurements exceeding \$100,000 where contractor engages in lobbying activities.	49 CFR Part 20 OMB Office of Federal Financial Management has not adopted FAR 2.101 \$150,000 simplified acquisition threshold standard.

PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER—MATRICES

D. OTHER MATTERS

OTHER MATTERS	COMMENTS	STATUTORY OR REGULATORY REFERENCES
Contract Administration System		49 CFR § 18.36(b)(2) 49 CFR § 19.47
Record of Procurement History		49 CFR § 18.36(b)(9) 49 CFR § 19.47
Protest Procedures		49 CFR § 18.36(b)(12)
Selection Procedures		49 CFR § 18.36(c)(3)
Cost or Price Analysis		49 CFR § 18.36(f) 49 CFR § 19.45
Justification for Noncompetitive Awards	If Applicable.	49 CFR § 18.36(b)(9) by implication 49 CFR § 19.46(b)
No Excessive Bonding Requirements		49 CFR § 18.36(h) 49 CFR § 19.48(c)(5)
No Exclusionary Specifications		49 U.S.C. § 5325(h)
No Geographic Preferences	Except for A&E Services	49 CFR § 18.36(c)(2)

Note: This Checklist is intended to be used for purchases requiring Sealed Bids/Formal Advertising, Competitive Negotiation and Non-Competitive Negotiation. Small Purchases should be documented with the purchase order procedure set forth in the overview of the policies and procedures.

APPENDIX 5 - GENERAL CONDITIONS

-DRAFT-

INVITATION FOR BIDS

PURCHASE AND INSTALLATION OF A NEW TELECOMMUNICATIONS SYSTEM

The Lehigh and Northampton Transportation Authority (LANTA), is soliciting proposals from qualified bidders for the supply and installation of a new telecommunications system to facilitate both internal and external communications within its two existing office facilities. Services to be provided under this contract include, but are not limited to: system design and engineering, equipment supply, system installation, ongoing service support and user training.

A detailed Invitation for Bids (IFB) is available upon request from LANTA. This procurement will be conducted in a "two-step sealed bidding" format. Bidders are first asked to submit a technical proposal following the format specified in the IFB. One original and three copies of the technical proposal are due at the offices of LANTA, 1060 Lehigh Street, Allentown, PA 18103, Attn: Executive Director, no later than 10:00 AM on Wednesday, August 26, 2010. A pre-proposal meeting is scheduled for Tuesday, August 4 at 2:00 PM at the offices of LANTA, at which time prospective proposers may inspect existing systems and facilities and ask questions concerning this procurement.

Submitted technical proposals should only include technical information on the system being proposed and should not include price information. Upon receipt of these technical proposals, a committee of LANTA staff will evaluate responses according to the following criteria (listed in priority order):

1. Responsiveness of the proposed system to the request for proposals, particularly with regard to proven performance in similar operating environments.
2. Experience of the firm and personnel assigned to the project.
3. Ongoing cost of operating and maintaining the system.
4. Financial viability of the vendor and ability to support the supplied system after sale.
5. Ability to complete the project in a timely manner.
6. DBE Participation.

Upon final evaluation of proposals, all bidders found to be technically acceptable will be asked to submit a bid. A contract will be awarded to the lowest responsive and responsible bidder submitting a bid.

Any questions regarding this procurement should be addressed to Armando V. Greco, Executive Director.

CONTRACT PART I GENERAL CONDITIONS

I. Financial Assistance Grant

The labor and materials described in these specifications are to be purchased with the assistance of a grant from the Federal Government under the Urban Mass Transportation Act of 1964 as amended. The successful bidder and all subcontractors will be required to comply with all terms and conditions prescribed for third party contracts in a grant contract between the United States of America and the purchaser. This grant/contract is available for examination by prospective bidders at the LANTA offices, 1060 Lehigh Street, Allentown, PA 18103.

II. Approval of U.S. Department of Transportation

Where required, the award of a contract will be subject to the concurrence of the United States Department of Transportation (U.S. DOT).

III. Federal Regulations

The contract between the purchaser and the successful bidder shall contain the following provision:

- A. Equal Employment Opportunity. In connection with the carrying out of this project, the contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex (including gender identity, sexual orientation, and pregnancy), age, genetic information, disability, veteran status, medical condition, marital status, citizen status, and any other protected class. The contractor will take affirmative action to insure that applicants are employed, and the employees are treated during employment without regard to their race, color, religion, national origin, sex (including gender identity, sexual orientation, and pregnancy), age, genetic information, disability, veteran status, medical condition, marital status, citizen status, and any other protected class. Such action shall include but not be limited to the following: employment, upgrading, demotion or transfer, recruitment advertising, layoff or termination, rates of pay or other compensation, and selection for training, including apprenticeship.
- B. Prohibited Interest. No member, officer, or employee of the Authority, during his tenure or for one year thereafter, shall have any interest, direct or indirect, in this contract or the proceeds thereof.
- C. Interest of Members or Delegates to Congress. No member of or delegate to the Congress of the United States shall be admitted to any share or part of this contract or receive any benefit arising there from.
- D. Proposed Change. Any proposed change in this contract shall be submitted to the appropriate public body for its prior approval.

E. General

1. It is required that the attached non-collusion affidavit shall be executed and delivered with the bid.
2. Bidders must certify that they are not on the Comptroller General's list of ineligible bidders.
3. The bidder shall comply with all applicable Federal, State and local laws and their respective rules and regulations. This compliance shall be at the contractor's expense.
4. Sealed bid proposals shall be submitted in clearly marked and must be received at the office of the Authority prior to the scheduled time of the proposals opening. Proposals received after the scheduled proposals opening time will not be considered.

F. Title VI of the Civil Rights Act of 1964. During the performance of this contract, LANTA, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. Compliance with Regulations. The Contractor shall comply with the regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation (hereinafter "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
2. Nondiscrimination. The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
3. Solicitations for Subcontracts, including Procurements of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, sex or national origin.
4. Information and Reports. The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by LANTA or the Federal Transit Administration (FTA) to be

pertinent to ascertain compliance with such regulations, orders, and instructions. Where any information is required or a contract is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to LANTA or the Federal Transit Administration, as appropriate, and shall set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance. In the event of contractor noncompliance with the nondiscrimination provisions of this contract, LANTA shall impose such contract sanctions as it or the Federal Transit Administration may determine to be appropriate including, but not limited to:
 - i. Withholding of payments to the contractor under the contract until the contractor complies; and/or
 - ii. Cancellation, termination, or suspension of the contract, in whole or in part.
6. Incorporation of Provisions. The Contractor shall include the provisions of paragraphs (1) through (5) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the Recipient of the Federal Transit Administration may direct as a means of enforcing such provisions, including sanctions for noncompliance: provided, however, that in the event a contractor becomes involved in, or is threatened with litigation with a sub-contractor or supplier as a result of such direction, the contractor may request LANTA to enter into such litigation to protect the interest of the United States.

- G. 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 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. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j) (2) (C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 65 percent domestic content for deliveries in 2018 and 2019 and for fiscal year 2020 and beyond it is more than 70 percent.

IV. Intent of Specifications

Only products produced by manufacturers who have demonstrated experience in this field will be considered. The products offered shall be of high grade. The proposal shall include a complete description of each product to be furnished.

V. Compliance with Specifications

In all cases, materials must be furnished as specified, but where brand names are used, consider the terms "approved equal" to follow; however, written approval for any proposed "equal" must be received in writing before the scheduled bid opening.

All bids received shall remain in effect for 30 days after bid opening.

VI. Minority Participations

It is federal and state policy to award a fair share of contracts to disadvantaged business firms. Accordingly, affirmative steps must be taken to assure that disadvantaged businesses are utilized to meet DBE goals and objectives as outlined in the Grant Agreement. It is hereby declared to be the public policy of LANTA to solicit and encourage participation of certified Disadvantaged Business Enterprise (DBE) firms as well as Veteran's Administration (VA) certified Veteran Owned Small Businesses (VOSB) and Service Disabled Veteran Owned Businesses (SDVOB). DBE's and VA certified VOSB's and SDVOB's will be afforded full consideration of their responses. No percentage goal is set for this contract. However, it should be noted that a "good faith effort" should be made to involve such enterprises in any contract/subcontract work that is part of the scope set forth.

1. "Disadvantaged Business Enterprises" as defined in Section 8 (d) of the Small Business Act, is a small business concern owned and controlled by socially and economically disadvantaged individuals. The term "owned" means that at least fifty percent (50%) of the business is owned by disadvantaged group members, or in case of publicly owned business, at least fifty one percent (51%) of the stock of which is owned by disadvantaged group members.
2. The LANTA's stated goal for DBE participation is ten percent (5.5%). DBE firms are encouraged to participate in this offering. Firms who are certified as DBE should submit documentation of such with their bids. Firms that believe they may qualify for DBE status should contact LANTA for further information.
3. A copy of LANTA's Disadvantaged Business Enterprises plan is available for inspection at LANTA office during normal business hours. Joint ventures, especially those which foster DBE participation, are encouraged for this offering, as well as VA certified VOSB or SDVOB participation and Certified Small Businesses.

VII. Conditional Proposals

Conditional proposals, or those that take exceptions to the specifications, will be considered non-responsive and will be rejected.

VIII. Due Date

Written proposals must be received in the administrative offices of the Lehigh and Northampton Transportation Authority, 1060 Lehigh Street, Allentown, PA 18103, on or before August 26, 2010 at 10:00 A.M. local time to be considered. Proposals received after this date and time will be considered unresponsive and returned unopened. Proposals must be sealed and clearly marked Telecommunications System Proposal."

IX. Rejection of Proposals

The LANTA reserves the right to reject any and all proposals received as a result of the RFP, and to cancel this solicitation for reasons determined to be in LANTA's best interest.

X. Bid Forms

Bids must be submitted on forms provided. Bids submitted in any other form will be considered non-responsive and will be rejected. The enclosed affidavit of non-collusion and Buy-America Form must be completed and submitted with the proposal.

XI. Changes

1. LANTA reserves the right to postpone this bid opening for its own convenience and to reject any or all bids. This contract may be awarded without further discussion or notification of any party.
2. Changes to the specifications will be made by written addendum only and distributed to all interested parties via United States Postal Service First Class service.
3. Prime contractors and subcontractors may make appointments to discuss these specifications. This, however, does not relieve them from reducing the request to writing and providing full written documentation for the request.

XII. Definition of Terms

The term "manufacturer/proposer" used in this specification means the concern or its duly authorized representative accepting the order to furnish and deliver materials and/or services covered by this specification. The term "purchaser" refers to LANTA.

XIII. Errors and Omissions

Proposers will not be allowed to take advantage of any errors or omissions in this specification. Full instructions will be given to all requestors as an addendum, should errors or omissions be called to the attention of LANTA. All addenda must be acknowledged by signature within the proposal. The LANTA will not be liable for errors and omissions in any of the documents.

XIV. Proposal Evaluation

Technical proposals will be evaluated using the following criteria:

1. Responsiveness of the proposed system to the Request for Proposals, particularly as it relates to the proven performance of the system in similar operating environments - 40%.
2. Experience of the firm and personnel assigned to the project - 30%.
3. Ongoing cost of operating and maintaining the system - 15%.
4. Financial viability of the vendor and ability to support the system after the sale - 10%
5. Ability to complete the project in a timely manner - 5%.

Proposals will be evaluated by a committee made up of the following individuals within the LANTA organization: Executive Director, Director of Finance & Administration, Director - Maintenance/Materials, Supervisor – Maintenance/Materials. During the evaluation process, proposers may be asked to set up appointments with this group to explain their proposal in more detail.

XV. Award of Contract

1. Based on the evaluation described in Section XIII above, LANTA shall determine which bidders fall within a competitive range (ie: those whose proposed systems adequately address the technical requirements outlined in the scope of services).
2. Price proposals will be solicited from all bidders who are found to be technically acceptable. A contract award will be made to the lowest responsive and responsible bidder asked to submit a bid.
3. In arriving at the purchase price, LANTA must determine that the offer price is "fair and reasonable." In so doing, LANTA may conduct a price analysis that accounts for such factors as the price quoted for similar systems in a competitive bidding environment and/or other factors that determine the cost of such systems.
4. Contractors will be expected to supply pricing data as needed by LANTA to conduct pricing determinations.

- END OF CONTRACT PART I -

APPENDIX 6 - INSTRUCTIONS TO BIDDERS

CONTRACT PART I -INSTRUCTIONS TO BIDDERS AND GENERAL CONDITIONS

1.0 Quote Submission and Due Date

1.1 All quotes will be due at the offices of the Lehigh and Northampton Transportation Authority, 1060 Lehigh Street, Allentown, PA 18103, Attn: Executive Director. Bids must be received no later than Day of Week, Month, Day, Year at Time. An original proposal and number (X) copy must be supplied and must contain the signature of an official of the proposer who is authorized to enter into contracts on behalf of the proposer.

1.2 At the time, date and place described above, all quotes will be publicly opened and read aloud. A contract award will be made to the lowest responsive and responsible bidder.

1.3 Bids will not be accepted from a firm under the following conditions:

- a. That firm is on the Comptroller General's List of Ineligible Contractors
- b. The materials and services proposed to be supplied do not meet the minimum performance criteria as described in the technical specifications.

1.4 The Lehigh and Northampton Transportation Authority (LANta) reserves the right to reject any and/or all bids if the price proposed by the bidder is greater than the amount of funding available for the project.

1.5 All quotes shall include completed and executed copies of the contract forms contained in Section III of this solicitation along with a copy of these specification documents and any addenda. These forms include an executed non-collusion affidavit and price proposal.

1.5.1 The quotes shall be submitted in envelopes clearly marked "Quotation – Project Name" and must be received at the office of LANTA prior to the scheduled time of the opening. Quotations received after the scheduled time of the opening will not be considered. The LANTA will not be responsible for the failure of any delivery company to properly deliver a quote.

1.5.2 Quotes must be submitted on forms provided. Bids submitted in any other form may be considered non-responsive and may be rejected.

1.6 The LANTA reserves the right to postpone quotation opening for its own convenience.

1.7 Changes to the specifications will be made by addendum.

1.8 All contractors will be held to have examined these documents and the site in making their proposals.

2.0 Project Completion

2.1 All work undertaken as a result of this procurement will be completed within thirty (30) calendar days of issuance of a Notice to Proceed. The Contractor is responsible for assuring that all concrete poured cures properly given existing weather conditions at the time the work is completed. If the Contractor anticipates problems with cold weather or any other environmental condition during this timeframe, the price shall include those measures which will insure proper curing.

2.2 The Contractor is responsible for instructing LANTA in proper short term and long term maintenance of the installed concrete including, but not limited to, curing time before use and any application of annual sealing compounds. If a sealing compound is required, the Contractor will be responsible for its initial application and shall include such in its quotation.

2.3 Award of Contract

The award of contract will be made to the responsive and responsible low bidder whose bid conforms to the specification documents. In determining the successful bidder consideration will be given to price, responsiveness to the specifications and experience of the bidder in providing the goods and services required. The LANTA reserves the right to accept or reject any or all bids. The bid may be awarded without any further discussion.

2.4 Term of Payment

The Contractor shall submit an invoice for all contracted goods and services at the completion of installation. Payment by the Lehigh and Northampton Transportation Authority will be made within thirty (30) days of receipt of an approved invoice.

2.5 Taxes

The Lehigh and Northampton Transportation Authority is exempt from payment of all federal, state and local taxes in connection with this purchase and said taxes shall not be included in the bid price. The LANTA will provide necessary tax-exempt certificates to the supplier upon request.

APPENDIX 7 - BID PROTEST PROCEDURES

PROTESTED SOLICITATIONS AND AWARDS

LANTA BID/PROPOSAL PROTEST PROCEDURE

1.0 PURPOSE

1.1 The policies and procedures governing the receipt and resolution of protests in connection with an Invitation for Bid (IFB) or Request for Proposal (RFP) are outlined below. This procedure is applicable to all IFBs or RFPs

2.0 DEFINITIONS

2.1 "Interested Party" means any bidders/proposers.

2.2 "days" means business days.

2.3 "Filed" means the date of receipt by The Office of the Executive Director or his/her designee.

2.4 "Federal/State Law or Regulation" means any valid requirement imposed by Federal, State, or other Statute or regulation.

2.5 "Presumptive Contractor" means the bidder/proposer that is in line for award of the contract in the event that the protest is denied.

2.6 "Protestant" is an Interested Party who is aggrieved in connection with the solicitation or award of a contract and who files a protest.

3.0 TYPES OF PROTESTS/ TIME LIMITS

3.1 Pre-Bid/Proposal Protest is based upon alleged restrictive specifications or alleged improprieties in LANTA's procurement process. A Protestant must file a pre-bid/proposal protest no later than five (5) days prior to bid opening date by 4:30 p.m. Allentown, Pennsylvania prevailing time.

3.2 Pre-Award Protest is based upon alleged improprieties of a Bid/Proposal. A Protestant must file a pre-award protest no later than five (5) days after the Protestant knows or should have known of the facts giving rise thereto by 4:30 p.m. Allentown, Pennsylvania prevailing time.

3.3 Post-Award Protest is based upon the award of a contract. A Protestant must file a post-award protest no later than five (5) days after the notification to the unsuccessful firms of LANTA's intent to award, or no later than five (5) days after an unsuccessful firm becomes aware of LANTA's intent to award a contract, whichever comes first, by 4:30 p.m. Allentown, Pennsylvania prevailing time.

4.0 CONTENTS OF PROTEST

4.1 Protests must be in writing, and filed directly with the Office of the Executive Director at:
Executive Director
Lehigh and Northampton Transportation Authority
1060 Lehigh Street
Allentown, PA 18103

and must contain the following information:

- a. The name, address and telephone number of the Protester; and
- b. Identity of the IFB or RFP (by number and description); and
- c. A detailed factual statement of the grounds for protest; and
- d. The desired relief, action or ruling.

5.0 ACTION BY LANTA

5.1 Procurement Process Status

Upon timely receipt of a protest, LANTA will delay the opening of bids until after resolution of the protest for protests filed prior to the bid opening, or withhold award until after resolution of the protest for protests filed after bid opening. However, LANTA may open bids or award a contract whenever LANTA, at its sole discretion, determines that:

- a. The items or work to be procured are urgently required; or
 - b. Delivery or performance will be unduly delayed by failure to make the award promptly; or
 - c. Failure to make prompt award will otherwise cause undue harm to LANTA or a funding source.
- If the protest is filed before the award of the contract, LANTA will advise the Presumptive Contractor of the pending protest.

5.2 If deemed appropriate, LANTA may conduct an informal conference on the merits of the protest with all Interested Parties invited to attend.

5.3 Response to the Protest

LANTA's Executive Director will respond in detail to each substantive issue raised in the protest within a reasonable time after the protest is filed. LANTA's response shall address only the issues raised originally by the Protester. When, on its face a protest does not state a valid basis for protest or is untimely, the Executive Director may summarily dismiss the protest without requiring a detailed response.

5.4 Rebuttal to LANTA Response

The Protester may submit a written rebuttal to LANTA's response, addressed to the Executive Director, but must do so within five (5) days after receipt of the original LANTA response. LANTA will not address new issues raised in the rebuttal. After receipt of the Protester's rebuttal, the Executive Director will review the protest and notify the Protester of his/her final decision.

5.5 Request for Additional Information

Failure of the Protester to comply with a request for information as specified by LANTA may result in determination of the protest without consideration of the additional information if subsequently produced. If any Interested Party requests information from another Interested Party, the request shall be made to LANTA's Executive Director, and, if LANTA so directs, shall be complied with by the other party within five (5) days.

5.6 Request for Reconsideration

If data becomes available that was not previously known, or there has been an error of law, a Protester may submit a request for reconsideration of the protest. LANTA's Executive Director will again review

the protest considering all currently available information. The Executive Director's determination will be made within a reasonable period of time, and his/her decision will be considered final.

5.7 Decision

Upon review and consideration of all relevant information the determination as issued by LANTA will be final.

6.0 CONFIDENTIALITY OF PROTEST

Material submitted by a Protester will not be withheld from any Interested Party, except to the extent that the withholding of information is permitted or required by law or regulation. If the Protester considers that the protest contains proprietary material which should be withheld, a statement advising of this fact must be affixed to the front page of the protest submission and the allegedly protected information must be so identified whenever it appears.

7.0 FEDERAL TRANSIT ADMINISTRATION (FTA) INVOLVEMENT

Where procurements are funded by the FTA, LANTA will notify the Regional Office of any known or pending protests. LANTA will notify FTA again within five (5) business days from receipt of LANTA's final decision, the Protester may file a protest with the FTA only where the protest alleges that LANTA failed to have or failed to adhere to its protest procedures or there was a violation of Federal Law or Regulation. Any protest to the FTA must be filed in accordance with FTA Circular 4220.1F.

APPENDIX 8 - BEST PRACTICES PROCUREMENT MANUAL

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

APPENDIX 9 – CODE OF ETHICS STATEMENT

LEHIGH AND NORTHAMPTON TRANSPORTATION AUTHORITY CODE OF ETHICS STATEMENT

The Lehigh and Northampton Transportation Authority (“LANTA,” or the “Authority”) establishes this code of ethics that all employees, members of the Board of Directors and agents are required to adhere to and advocate throughout the organization and community.

1. Act with honesty and integrity, avoiding actual or apparent conflicts of interest in personal and professional relationships.
2. Provide information that is accurate, complete, objective, relevant, timely, and understandable.
3. Comply with rules, regulations, and laws of federal, state, and local governments, as well as with other appropriate private and public regulatory agencies.
4. Act in good faith; responsibly; and with due care, competence and diligence, without misrepresenting material facts or allowing one’s independent judgment to be subordinated.
5. Respect the confidentiality of information acquired in the course of one’s work except when authorized or otherwise legally obligated to disclose. Confidential information acquired in the course of one’s work must not be used for personal advantage.
6. Share knowledge and maintain skills important and relevant to the Lehigh and Northampton Transportation Authority’s needs.
7. Proactively promote ethical behavior as a responsible person among peers – in the work environment and in the community.
8. Responsibly use, maintain, secure and control assets and resources employed or entrusted.

APPENDIX 10 – CODE OF CONDUCT POLICY

LEHIGH AND NORTHAMPTON TRANSPORTATION AUTHORITY CODE OF CONDUCT POLICY

The Lehigh and Northampton Transportation Authority (“LANTA” or “Authority”) will be intolerant of unethical and fraudulent acts committed by any employee, member of the Board of Directors or agent of the Authority. The following Code of Conduct policy outlines many areas where unacceptable practices could occur; however, this policy is not limited only to the outlined areas. Employees, Officers, Agents, Board Members, and immediate family members are also encouraged to report any suspected unethical or fraudulent acts according to the process contained within this policy.

Organizational Code of Conduct

The Authority, its employees, officers, agents, board members, and immediate family members must comply at all times with all applicable laws and regulations. LANTA will not condone the activities of employees, Board members or agents who achieve results through violation of the law or unethical business dealings. This includes any payments for illegal acts, indirect contributions, rebates, or bribery. LANTA does not permit any activity that fails to withstand the closest possible public scrutiny. Penalties, sanctions, or other disciplinary action for violation of such standards by LANTA’s employees, officers, agents, board members, and immediate family members or by contractors or their agents, will be invoked in accordance with State or Local law or regulations, up to and including termination.

All business conduct should be well above the minimum standards required by law. Accordingly, employees, Board members and agents must ensure that their actions cannot be interpreted as being, in any way, in contravention of the laws and regulations governing LANTA’s operations.

Employees uncertain about the application or interpretation of any laws or regulatory requirements should refer the matter to their supervisor, who, if necessary, should seek the advice of the Executive Director, the solicitor, or a regulatory representative.

General Conduct

LANTA expects its employees, officers, agents, Board members and immediate family members to conduct themselves in a businesslike manner. Unprofessional behavior or activities are strictly prohibited while on the job.

Conflict of Interest

LANTA expects that its employees, officers, agents, board members, and immediate family members will perform their duties conscientiously, honestly and in accordance with the best interests of LANTA. Employees, officers, agents, and board members must not use their positions or the knowledge gained as a result of their positions for private or personal advantage. Regardless of the circumstances, if employees, officers, agents, and board members sense that a course of action they have pursued, are presently pursuing, or are contemplating pursuing may involve them in a conflict of interest—real or apparent—with LANTA, they should immediately communicate all the facts to their supervisor and/or the Executive Director.

Outside Activities, Employment, and Directorships

All employees and Board members share a serious responsibility for LANTA's good public relations, especially at the community level. Their readiness to help with religious, charitable, educational, and civic activities brings credit to LANTA and is encouraged. Employees and board members, however, must avoid acquiring any business interest or participating in any other activity outside LANTA that would or would appear to:

- Create an excessive demand upon their time and attention, thus depriving LANTA of their best efforts on the job.
- Create a conflict of interest – an obligation, interest, or distraction – that may interfere with the independent exercise of judgment in LANTA's best interest.

Relationships with Clients and Suppliers

Employees, officers, agents, board members, and immediate family members should avoid investing in or acquiring a financial interest for their own accounts in any business organization that has a contractual relationship with LANTA or that provides goods or services or both to LANTA, if such investment or interest could influence or create the impression of influencing their decisions in the performance of their duties on behalf of LANTA.

Employees, officers, agents, board members, and immediate family members, who are employed by organizations that have contractual relationships with LANTA, or provide goods and/or services to LANTA, must remove themselves from any contractual or procurement deliberations related to their employers.

Gifts, Entertainment and Favors

Employees, Board members and agents must not accept entertainment, gifts or personal favors that could, in any way, influence or appear to influence business decisions in favor of any person or organization with whom or with which LANTA has or is likely to have business dealings. Similarly, employees, Board members and agents must not accept any other preferential treatment under these circumstances because their position with LANTA might be inclined to or be perceived to place them under obligation.

Kickbacks and Secret Commissions

Regarding LANTA's business activities, employees, officers, agents, board members, and immediate family members may not receive payment or compensation of any kind, except as authorized under LANTA's remuneration policies. In particular, LANTA strictly prohibits the acceptance of kickbacks and secret commissions from suppliers or others. Any breach of this rule will result in disciplinary action, up to and including immediate termination with prosecution to the fullest extent of the law.

LANTA Funds and Other Assets

Employees, officers, agents, board members, and immediate family members who have access to LANTA funds in any form must follow the prescribed procedures for recording, handling and protecting money. LANTA imposes strict standards to prevent fraud and dishonesty. If employees, officers, agents, or board members become aware of any evidence of fraud and dishonesty, they should immediately advise their supervisor or the Executive Director so a prompt investigation can commence.

When an employee's position requires spending LANTA funds or incurring any reimbursable personal expenses, that individual must use good judgment on LANTA's behalf to ensure that good value is received for every expenditure.

LANTA funds and all other assets are for LANTA purposes only and not for personal benefit. This includes the personal use of LANTA assets, such as vehicles, computers, software, or e-mail.

LANTA Records and Communications

Accurate and reliable records of many kinds are necessary to meet LANTA's legal and financial obligations and to manage the affairs of LANTA. LANTA's books and records must reflect in an accurate and timely manner all business transactions. The employees responsible for accounting and recordkeeping must fully disclose and record all assets, liabilities, or both, and must exercise diligence in enforcing these requirements.

Employees must not make or engage in any false record or communication of any kind, whether internal or external, including but not limited to:

- False expense, attendance, ridership, financial or similar reports and statements; and,
- False advertising, deceptive marketing practices, or other misleading representations.

Dealing With Outside People and Organizations

Employees, Board members and agents must take care to separate their personal roles from their LANTA positions when communicating on matters not involving LANTA business. Employees, officers, agents, and board members must not use LANTA identification, stationery, supplies, or equipment for personal or political matters.

When communicating publicly on matters that involve LANTA business, employees, officers, agents, and board members must not presume to speak for LANTA on any topic, unless they are certain that the views they express are those of LANTA and it is LANTA's desire that such views be publicly disseminated.

When dealing with anyone outside LANTA, including public officials, employees, officers, agents, and board members must take care not to compromise the integrity or damage the reputation of either LANTA or any outside individual, business, or government body.

Prompt Communications

In all matters relevant to customers, suppliers, government authorities, the public and other organizations, all employees, officers, agents, and board members must make every effort to achieve complete, accurate, and timely communications—responding promptly and courteously to all proper requests for information and to all complaints.

Privacy and Confidentiality

When handling financial and personal information about customers or others with whom LANTA has dealings, employees, officers, agents, and board members must observe the following principles:

- Collect, use and retain only the personal information necessary for LANTA's business. Whenever possible, obtain any relevant information directly from the person concerned. Use only reputable and reliable sources to supplement this information.
- Retain information only for as long as necessary or as required by law. Protect the physical security of this information.
- Limit internal access to personal information to those with a legitimate business reason for seeking that information. Use only personal information for the purposes for which it was originally obtained. Obtain the consent of the person concerned before externally disclosing any personal information, unless legal process or contractual obligation provides otherwise.

Fraudulent and Unethical Acts Reporting Process and Protections

Each member of management and the Board of Directors is responsible for creating a supportive atmosphere for all employees, free of discrimination or fear and encouraging ethical behavior. Further, employees and agents are responsible for respecting the rights of their coworkers and for acting honestly.

Any employee, supervisor, officer, or Board member who believes they have knowledge of or a concern about an activity or act that they consider illegal, dishonest, fraudulent, or in violation of this or other policies should immediately inform their supervisor, the Executive Director or the Board Chairperson.

Sound judgment must be exercised to avoid baseless allegations. An employee who intentionally files a false report of wrongdoing could be subject to discipline up to and including termination.

The confidentiality of anyone reporting an activity believed to be illegal or dishonest will, insofar as possible, be maintained. However, their identity may have to be disclosed in order to conduct a thorough investigation, to comply with the law or to provide accused individuals their legal rights of defense. LANTA will not retaliate against the person reporting the activity. This includes, but is not limited to, protection from retaliation in the form of an adverse employment action such as termination, compensation decreases, poor work assignments, or threats of physical harm. Anyone who believes they are being retaliated against must contact their supervisor, the Executive Director or the Board Chairperson immediately. The right of anyone reporting an activity for protection against retaliation does not include immunity for any personal wrongdoing that is alleged and investigated.

APPENDIX 11 – SAMPLE FORMS

PROCUREMENT DOCUMENTATION CHECKLIST

Procurement Identification: _____

Account Reference(s) _____ Date _____

Where appropriate, the procurement documentation file shall contain the following items.

No	File Item Identification	Included	Verified
1	Purchase request, Acquisition Plans, Other Pre-solicitation Documents		
2	Evidence of Available Funds		
3	List of Sources Solicited		
4	Fair and Reasonable Price Determination		
5	Method of Procurement Decision Matrix		
6	Independent Cost Estimate		
7	Clear, Accurate, Complete Specifications		
8	Price Quotations		
9	Cost or Price Analysis		
10	Written Selection Procedures (Included in Solicitation)		
11	Emails to Potential Vendors, Proof of Publication		
12	Bid Opening Sheet/Record of Proposals Submitted		
13	Responsiveness Determination		
14	Bid/Proposal Rejection Explanation (if any)		
15	Responsibility Determination		
16	Bid Tabulation/Selection of Lowest Price		
17	Evaluation Rating Sheets and Summary		
18	Sole Source Justification		
19	Sound and Complete Agreement (Signed Contract)		
20	Clauses (In Solicitation and Contract)		
21	Written Record of Procurement History		
22	Awarded Supplier's Proposal		
23	Required Insurance Documents		
24	Notice To Proceed		

MICRO-PURCHASE FAIR AND REASONABLE PRICE DETERMINATION FORM

Micro-Purchase

Fair and Reasonable Price Determination

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

Check one or more:

- Found reasonable on recent purchase.
- Obtained from current price list.
- Obtained from current catalog.
- Commercial market sales price from advertisements.
- Similar in related industry.
- Personal knowledge of item procured.
- Regulated rate (utility).
- Other.

Comments:

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

METHOD OF PROCUREMENT DECISION MATRIX

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

Micro Purchase

- Amount <\$3,500
- Multiple Sources

Small Purchase

 Amount <\$150,000 (<\$100,00 if executed prior to Super Circular)

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

Sole Source

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

Competitive Procurement

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

Selection of Contract Type

- Fixed Price
- Firm Fixed Unit Prices
- Cost Plus Fixed Fee
- Time and Materials (T&M) – Must Provide Justification for T&M Contract if Selected.
- Blanket Purchase Order
- Indefinite Delivery Indefinite Quantity (IDIQ)
- No Contract Necessary

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

(>\$100,000 if executed prior to Super Circular)

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

Competitive Proposals (RFP) >\$150,000 (>\$100,000 if executed prior to Super Circular)

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

Employee Signature: _____ Date: _____

Employee Title: _____ Approval: _____

INDEPENDENT COST ESTIMATE

Independent Cost Estimate

Contract Type: _____ Date of Estimate: _____

Description of Goods / Service: _____

Method of Obtaining the Estimate:

- I have obtained the following estimate from....
- Published Price List / Past pricing (date) _____
- Engineering or technical estimate
- Independent Third Party estimate
- Other (specify) _____

Cost Estimate Details:

Through the method stated above it has been determined that the total cost of the goods/services is expected to be: \$ _____. Details are shown below.

A: Cost of Standard Items

Product	Cost (\$/ea)		Notes / Data Source
	Delivered	No Freight	

B: Cost of Services, Repairs, or Non-Standard Items

Item / Task:							
Materials	Other Direct Costs	Labor (rate, hours)	Labor Class	Allocated overhead	SG&A	Profit	Total

The preceding cost estimate was prepared by:

_____ Signature _____ Date

For complex items or tasks, attach detailed spreadsheet(s) explaining rationale.

RESPONSIVENESS CHECKLIST

This checklist is to be reviewed at bid opening to ensure that all bids received meet the requirements advertised in the solicitation in terms of information requested and submission of certifications or other additional data.

SOLICITATION (NAME or #) _____ Opening Date: _____

DESCRIPTION: _____

CONTRACT ADMINISTRATOR: _____

CONTRACTOR / NAME OF BIDDER: _____

SOLICITATION REQUIREMENTS:

REQUIREMENT	YES	NO	N/A	COMMENTS
1. Bid received on time, in sealed envelope				
2. Proposal Form completed, properly executed, includes total bid price				
3. Non-Collusion documentation included and complete				
4. PA Non-Discrimination form signed and attached				
5. Debarment/Suspension form signed and attached				
6. DBE Documentation included and complete				
7. Lobbying Certification signed and attached				
8. Signature of Company Officer to the bid /offer present				
9. Addenda Acknowledgement with signatures present				
10. Bond/Bid Security Received (\$_____)				
11. Insurance documentation included				
12. No exceptions to terms, instructions, or other solicitation language				
13. Other required (attach detail)_____				

Non-responsive bids are to be noted on the bid opening sheet and reviewed with a supervisor.

Non-responsive bids will not be considered for award.

RESPONSIBILITY DETERMINATION FORM

Bid/RFP Project Name		
Contractor:		
Date:		
<p>For each of the areas described below, check that the appropriate research has been accomplished and provide a short description of the research and the results.</p>		
	Evaluated or Reviewed as part of Technical Evaluation	Comments/Documentation (ATTACH)
1. Appropriate and adequate financial, equipment, facility, and personnel	<input type="checkbox"/> Yes <input type="checkbox"/> No	
2. Ability to meet the delivery schedule	<input type="checkbox"/> Yes <input type="checkbox"/> No	
3. Satisfactory period of performance	<input type="checkbox"/> Yes <input type="checkbox"/> No	
4. Satisfactory record of integrity, not suspended or debarred	<input type="checkbox"/> Yes <input type="checkbox"/> No	
5. Ability to get bonding and insurance	<input type="checkbox"/> Yes <input type="checkbox"/> No	

Completed By:	
Signature:	

SINGLE SOURCE ANALYSIS FORM

Bid/RFP Project Name	
Contractor:	
Date:	

Single Source Analysis

Solicitation: _____

Product/ Services to be Procured:

Bid or Proposal Due Date: _____

Number of Solicitations Requested: _____

Number of Bids Received: _____

Reasons for lack of Competition
(based on Supplier Contacts)

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

Action to Plan

Award Contract Basis:

Extend Deadline (modify solicitation)

New Due Date: _____

Re-procure:

New Solicitation Due to be
Completed: _____

Projected Due Date: _____

Signed: _____

Title: _____

Date: _____

COST ANALYSIS FORM

PAGE OF

COST ANALYSIS SUMMARY (See Instructions below)	
SOLICITATION NAME/# <hr/> PREPARER'S NAME, DEPARTMENT, TITLE, PHONE	SUPPLIES AND/OR SERVICES TO BE FURNISHED
LOCATION(S) WHERE WORK IS TO BE PERFORMED	APPROVAL SIGNATURE

DETAIL DESCRIPTION OF COST ELEMENTS				
1. DIRECT MATERIAL	Vendor A Proposal	Vendor B Proposal	Independent Estimate	Analysis
A. PURCHASED PARTS				
B. SUBCONTRACTED ITEMS				
C. OTHER - (1) RAW MATERIAL				
(2) STANDARD COMMERCIAL ITEMS				
<i>TOTAL DIRECT MATERIAL</i>				
2. MATERIAL OVERHEAD (RATE % x \$ BASE *)				

3. DIRECT LABOR	ESTIMATED HOURS	RATE/HOUR	Vendor A (\$)	Vendor B (\$)	Independent Estimate	Variance
<i>TOTAL DIRECT LABOR</i>						

4. LABOR OVERHEAD			Vendor A (\$)	Vendor B (\$)	Independent Estimate	Variance
OH Rate						
X BASE (labor total above)						
<i>TOTAL LABOR OVERHEAD</i>						

5. OTHER DIRECT COSTS	Vendor A (\$)	Vendor B (\$)	Independent Estimate	Variance
A. SPECIAL TOOLING/EQUIPMENT				
<i>TOTAL SPECIAL TOOLING/EQUIPMENT</i>				
B. TRAVEL				
(1) TRANSPORTATION				
(2) PER DIEM OR SUBSISTENCE				
<i>TOTAL TRAVEL</i>				

DETAIL DESCRIPTION OF COST ELEMENTS (continued)	Vendor A (\$)	Vendor B (\$)	Independent Estimate	Variance
C. INDIVIDUAL CONSULTANT SERVICES				
<i>TOTAL INDIVIDUAL CONSULTANT SERVICES</i>				
D. OTHER				
<i>TOTAL OTHER</i>				
<i>E. SUBTOTAL DIRECT COST AND OVERHEAD</i>				
6. GENERAL AND ADMINISTRATIVE (G&A) RATE %				
X \$ BASE (Use 5.E above)				
7. ROYALTIES (if any)				
8. SUBTOTAL ESTIMATED COST				
9. CONTRACT FACILITIES CAPITAL AND COST OF MONEY				
10. SUBTOTAL ESTIMATED COST				
11. FEE OR PROFIT				
12. TOTAL ESTIMATED COST AND FEE OR PROFIT				
13. Discounts				
14. Option Costs (specify)				
15. ADJUSTED COST				

ANALYSIS GUIDELINES

1. DIRECT MATERIAL

- a. Analyze Purchased Parts: Provide a consolidated price analysis of material quantities included in the various tasks, orders, or contract line items being proposed and the basis for pricing (vendor quotes, invoice prices, etc.).
- b. Subcontracted Items: Analyze the total cost of subcontract effort and supporting written quotations from the prospective subcontractors
- c. Other:
 - i. Raw Material: Review any materials in a form or state that requires further processing. Analyze priced quantities of items required for the proposal. Consider alternatives and total cost impact.
 - ii. Standard Commercial Items: Analyze proposed items that the offeror will provide, in whole or in part, and review the basis for pricing. Consider whether these could be provided at lower cost from another source.

2. MATERIAL OVERHEAD

Verify that this cost is not computed as part of labor overhead (item 4) or General and Administrative (G&A) (Item 6).

3. DIRECT LABOR

Analyze the hourly rate and the total hours for each individual (if known) and discipline of direct labor proposed. Determine whether actual rates or escalated rates are used. If escalation is included, analyze the degree (percent) and rationale used. Compare percentage of total that labor represents for each bid.

4. LABOR OVERHEAD

Analyze comparative rates and ensure these costs are not computed as part of G&A. Determine if Government Audited rates are available,

5. OTHER DIRECT COSTS

- a. Special Tooling/Equipment. Analyze price and necessity of specific equipment and unit prices.
- b. Travel. Analyze each trip proposed and the persons (or disciplines) designated to make each trip. Compare and check costs.
- c. Individual Consultant Services. Analyze the proposed contemplated consulting. Compare to independent estimate of the amount of services estimated to be required and match the consultants' quoted daily or hourly rate to known benchmarks.
- d. Other Costs. Review all other direct charge costs not otherwise included in the categories described above (e.g., services of specialized trades, computer services, preservation, packaging and packing, leasing of equipment and provide bases for pricing. Scan for duplication or omissions.

6. GENERAL AND ADMINISTRATIVE EXPENSE

See notes on labor overhead above and check whether the base has been approved by a Government audit agency for use in proposals.

7. ROYALTIES

If more than \$250, analyze the following information for each separate royalty or license fee; name and address of licensor; date of license agreement; patent numbers, patent application serial numbers, or other basis on which the royalty is payable; brief description (including any part of model numbers or each contract item or component on which the royalty is payable); percentage or dollar rate of royalty per unit; unit price of contract item; number of units; and total dollar amount of royalties,

8. SUBTOTAL ESTIMATED COST

Compare the total of all direct and indirect costs excluding Cost of Money and Fee or Profit. Note reasons for differences.

9. CONTRACT FACILITIES CAPITAL AND COST OF MONEY

Analyze the offeror's supporting calculations and compare to known standards.

10. SUBTOTAL ESTIMATED COST

This is the total of all proposed costs excluding Fee or Profit. Determine the competitive range. Question outliers.

11. FEE OR PROFIT

Review the total of all proposed Fees or Profit. Remember that the FTA prohibits cost plus percentage of cost contracting.

12. TOTAL ESTIMATED COST AND FEE OR PROFIT

Analyze the range of total estimated costs including Fee or Profit, and explain variance to independent estimate. Identify areas for negotiation or areas to be challenged. Explain your conclusions regarding fair and reasonable pricing.

13. DISCOUNTS

Review basis for Discounts and range between offers.

ATTACH NARRATIVE COST ANALYSIS MEMO ADDRESSING ITEMS AS INSTRUCTED ABOVE. MAKE SURE ALL RELEVANT DOCUMENTATION IS ATTACHED TO COST ANALYSIS FORM FOR REVIEW AND ANALYSIS.



PURCHASE/PROCUREMENT REQUEST FORM

Submitted by: _____

Signature: _____

Date: _____

Please describe the item or service to be procured as well as quantity:

If you know the funding source to be used for this procurement, please list it. If not, please leave blank.

Initial estimate of total cost of procurement (to be completed by Admin Services Specialist):

Justification for purchase:

Concurrence on Capital Grant Use		Concurrence on Op Budget Use		Approval to proceed to procurement process		
DFA		DFA		Estimate \$3,500-\$24,999	DFA	
DPD				Estimate over \$25,000	ED	

Approved by: _____ Date: _____

APPENDIX 12 - SUBRECIPIENT AND CONTRACTOR OVERSIGHT PROCEDURES

Purpose

The purpose of these Contractor and Subrecipient Oversight Procedures is to:

- Ensure that all technical specifications and contract requirements are met by contractors
- Monitor compliance with FTA requirements for FTA-funded vehicles or facilities that are maintained by subrecipients, leased to service providers, or maintained under contract by other than the LANTA employees
- Identify performance issues and address them in a timely manner
- Track information regarding performance quality for the purposes of evaluating contractors for future procurements
- Ensure that all construction is performed in accordance with the design intent agreed upon in the original contract or through an approved change order or modification.

These procedures explain methods of monitoring, persons responsible, frequency, and expected deliverables associated with managing performance and compliance monitoring systems for rolling stock, construction, ADA paratransit, and fixed route services. Performance and compliance monitoring for third-party contractors is distinguished from compliance monitoring of subrecipients and public entities operating federally-funded services, rolling stock, and facilities.

Scope and Applicability

This Procedure applies to monitoring performance and compliance for the following types of projects/programs:

- Construction
- ADA Paratransit, and/or Fixed Route, Services
- Professional Services

The frequency and type of monitoring will be based upon the following: a) size of the grant or contract, b) associated risks, c) service complexity, d) type of grant or contract, and e) use of subcontractors.

References to Legislative and Regulatory Documents

- FTA Circular 4220.1F, "Third Party Contracting Guidance"
- FTA Circular 4702.1B, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients"
- FTA Circular 4704.1A, "Equal Employment Opportunity (EEO) Requirements and Guidelines for Federal Transit Administration Recipients"
- FTA Circular 4710.1, "Americans with Disabilities Act (ADA): Guidance"
- 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments."
- 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs."
- 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards."
- OMB Circular A-133 Compliance Supplement 2013
- Pennsylvania Municipal Authorities Act

Definitions

- **Contractor Performance Monitoring:** The process by which LANTA oversees and tracks contractor performance to ensure that the performance and quality assurance standards set forth in the contract/solicitation are met. Performance requirements are specified in solicitations such as Request for Proposals and are included in contracts. Performance measures typically relate to scheduling/timeliness, customer service, and nonconformance. Performance data is also considered in the evaluation of a particular contractor for participation in future projects.
- **Contractor Compliance Monitoring:** When federally-funded services, rolling stock, and facilities are operated by a contractor other than LANTA, they must be subject to regular reviews by the LANTA to ensure compliance with FTA requirements.
- **Subrecipient Compliance Monitoring:** When federally-funded services, rolling stock, and facilities are operated by a subrecipient or public entity other than LANTA, they must be subject to regular reviews by the LANTA to ensure compliance with FTA requirements.

General Oversight Procedures for Services Providers

▪ Title VI Monitoring Procedures

The subrecipient or third-party contractor must ensure that no person shall, on the grounds of race, color, or national origin, be excluded from participating in, or be denied the benefits of, or be subject to discrimination under any program, or activity receiving Federal financial assistance. The subrecipient must ensure compliance with LANTA's Title VI program to ensure that federally supported transit services and related benefits are distributed in an equitable manner. Subrecipients and third-party contractors are responsible for ensuring that they comply with LANTA's Title VI program requirements such as; notifying customers of their rights under Title VI; notifying customer of LANTA's Title VI complaint procedures; taking reasonable steps to ensure access to Limited English Proficiency (LEP) populations; and seeking out the viewpoints of minority, low-income and LEP populations when conducting public outreach and involvement activities if performed by the subcontractor. LANTA should be informed of any Title VI complaints received by its subrecipients or third-party contractors.

Key Requirement:

- Subrecipients and third-party contractors delivering transportation services with FTA funds must notify LANTA immediately (within 48 hours) of any complaints received.
- LANTA will provide revisions to Title VI Plans to all subrecipients and contractors. Subrecipients and contractors must acknowledge receipt of revisions and assure compliance within 30 days of receipt.

▪ Drug and Alcohol

LANTA requires its contractors to maintain records on Drug and Alcohol program administration and the test results of individuals for whom it has testing responsibility. LANTA must take the following measures to monitor compliance with FTA requirements, 49 CFR Part 655 Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations, as amended, and 49 CFR Part 40 Procedures for Transportation Workplace Drug and Alcohol Testing Programs, as amended.

- LANTA will maintain Drug and Alcohol program records in a secure location for a minimum of up to five (5) years.
- LANTA will provide technical assistance in understanding and meeting the program requirements, and overseeing the drug and alcohol programs of third-party contractors with safety-sensitive employees.
- LANTA will review third-party contractor programs using standardized compliance checklists to ensure that all required elements are present and that the right type of testing is conducted, the proper forms are used and completed correctly, and records are stored in a secure location and maintained for the required amount of time.

- LANTA will ensure the quality of testing services by establishing a written contract with each testing provider and verifying that the vendor is HHS certified.
- LANTA will hold annual site visits, investigate reports of flawed procedures, and document training aimed at correcting any deficiencies.

▪ **Equal Employment Opportunity (EEO):**

The Lehigh and Northampton Transportation Authority (LANTA) has a strong commitment to the community we serve and our employees. As an equal opportunity employer, we strive to have a workforce that reflects the community we serve. No person is unlawfully excluded from employment opportunities based on race, color, religion, national origin, sex (including gender identity, sexual orientation, and pregnancy), age, genetic information, disability, veteran status, ancestry, medical condition, marital status, citizenship status, and any other protected class. LANTA’s Equal Employment Opportunity (EEO) policy applies to all employment actions, including but not limited to, recruitment, hiring, selection for training, promotion, transfer, demotion, layoff, termination, rates of pay, or other forms of compensation.

Subrecipients and third-party contractors must ensure that no person in the United States shall on the grounds of race, color, religion, national origin, sex (including gender identity, sexual orientation, and pregnancy), age, genetic information, disability, veteran status, or any other basis prohibited by local, state, or federal law, or to be excluded from participation in, or denied the benefits of, or be subject to discrimination under any project, program, or activity funded, in whole or in part, through federal financial assistance under the Federal transit laws. (Note: EEOC’s regulation only identifies/recognizes religion and not creed as one of the protected groups.) Subrecipients and contractors that receive capital or operating assistance in excess of \$1 million or planning assistance in excess of \$250,000 and employ 50 or more transit related employees must submit to LANTA for review an EEO Program Plan. Program updates are due every four years. LANTA’s EEO Officer meets semi-annually with the Human Resources Coordinator and the Executive Director to review each department’s progress in relation to the agency’s goals and on contractor and vendor compliance.

▪ **Compliance Record Keeping**

LANTA must fully document all compliance monitoring efforts conducted on subrecipients and third-party contractors. A “Compliance Monitoring File” should be created and maintained for each organization, which includes the following items:

- Pre-award assessment checklist
- Telephone contact report
- Corrective action plan
- Annual review checklist
- Copies of e-mail, memos, or other written correspondence, including notification informing subrecipient or third-party contractor of the results of monitoring

In addition, LANTA maintains evidence that vendors and contractors are being monitored to ensure they perform in accordance with the terms, conditions and specifications contained in their contracts or purchase orders. All records of inspections and approvals, deliverables provided or services performed are kept for evidence that LANTA is making sure vendors and contractors adhere to contract requirements. The correspondence between Transit Agency and its contractors is stored for evidence of ongoing contract administration. Once an issue is discovered, LANTA follows up with its contractor to ensure that corrective action is taken. Efforts, including the follow-up on findings, are documented.

▪ **Customer Complaint Procedures**

Customer complaint management is critical to successful program implementation. LANTA must elicit customer feedback to increase customer satisfaction and ensure that subrecipients and third-party contractors are meeting the needs of the public. The following methods will be used to track customer satisfaction:

- Conduct an annual review of customer satisfaction data collected by subrecipients and third-party contractors operating transit services.
- Post complaint forms on the LANTA website allowing customers to submit their complaints online, and offer a toll-free number for customers to call to submit complaints on issues such as driver courtesy, on-time performance, passenger safety and other service standards. Responses to customer complaints must be delivered within 3-10 days of the complaint.
- Maintain a formal complaint procedure that is shared with subrecipients and third-party contractors providing transit services.

▪ **Final Financial and Program Reports Closeout**

The final financial and program reports must be submitted within 90 days of project completion or expiration of funding. All expenditure obligations must be paid prior to filing the final reports. The close out reports should be clearly identified as final. They must show that all activities and expenditures associated with the grant are completed and the grant is ready to close. The final program report should include a detailed description of the project with a focus on program outcomes.

The program report should include quantitative data regarding the effectiveness of the program, if applicable. The program report will detail how the program met the identified needs and the specific intentions of the grant award. If the subrecipient is unable to use all funds in a grant, LANTA will reconcile and de-obligate remaining funds in the grant and will return the remaining funds to the FTA or other applicable grant making body.

The subrecipient and contractor will be required to maintain all books, documents, payroll documentation, accounting records, and other evidence pertaining to costs incurred under a federal grant awards during the period of the grant and for three years thereafter. These records must be available for inspection by any authorized representatives of LANTA or the Federal Government.

Construction Oversight Procedures

Construction oversight is designed to ensure that the project is progressing in accordance with specifications, special provisions and plans, and methods and practices specified in construction manuals.

▪ **Contract Administration and Performance Monitoring**

LANTA will implement the following Quality Assurance controls in the contract administration and monitoring of construction contractors:

- **Labor Compliance:** Spot-checked construction logs/diaries against certified payrolls for **Davis-Bacon** compliance. (Check 3 months after start of construction and quarterly for QA.)
- **Measurement and Payment:** Monitor that source documents supporting progress payments made to the contractor are available. (Spot-check after second progress payment to the contractor.)
- **EEO/Wage Rate Posters:** Observe the construction site, the contractor's office at the contractor office, or another central gathering point to verify that posters are visible for every worker to see. (Check one month after start of construction.)
- **Buy America:** Review the construction area and the contractor's on-site yard, quarterly, and check to make sure foreign iron and steel products are not being incorporated into the project without resident engineer's approval or a FTA waiver.

▪ **Disadvantaged Business Enterprise (DBE) Monitoring**

Third-party contractors must comply with 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. Written DBE programs are required of FTA subrecipients of planning, capital, and/or operating assistance that will have contracting opportunities (excluding transit vehicle purchases) exceeding \$250,000 with those funds in a Federal fiscal year. Subrecipients are required to follow their approved DBE programs, and such programs need to be updated when significant changes occur.

LANTA's DBE Program requires prime contractors to pay subcontractors for satisfactory performance of their contract work no later than 15 days from receipt of payment for such work from LANTA. LANTA will review invoices from and proof of payment to subcontractors to ensure prompt payment has occurred. Prime contractors must have a process to monitor subcontractors for compliance with applicable DBE requirements. Contractors and subcontractors must cooperate with LANTA in the generation of FTA Semi-Annual DBE reports. LANTA on-site monitors will confirm that the Primes and Subs noted in the contract are actually providing the type of work for which they are certified and that employees performing the contracted work are employed by the contractor and/or subcontractor of record.

ADA Paratransit, Fixed Route, and Charter Services Oversight Procedures

In prohibiting discrimination in the provision of transportation services against persons with disabilities, the Americans with Disabilities Act of 1990 requires that vehicles purchased or leased after August 25, 1990, and new and altered facilities designed and constructed (as marked by the notice to proceed) after January 25, 1992, must comply with the applicable standards of accessibility in 49 CFR parts 37 and 38 (42 USC 12101-12213). LANTA must ensure that subrecipients and third-party contractors with these standards of accessibility, including the provision of equivalent services.

▪ ADA Compliance Monitoring Procedures

Subrecipients and third-party contractors are required to follow titles II and III of the Americans with Disabilities Act (ADA) of 1990. ADA provides that no organization shall discriminate against an individual with a disability in connection with the provision of transportation service. The law sets forth specific requirements for a subrecipient's vehicle and facility accessibility and the provision of service, including complementary paratransit service.

LANTA must utilize the following monitoring methods to ensure that third-party contractors or subrecipients operating ADA Paratransit services are in compliance:

1. Review the third-party contractor or subrecipient's ADA-related policies and monitor compliance with the policies.
2. Inform subrecipients and third-party contractors of the ADA requirements via training. This training is required to ensure that personnel operate vehicles and equipment safely, assist passengers properly, and treat persons with disabilities who use the service in a respectful and courteous way, with appropriate attention to the differences among persons with disabilities. All contracts for the operation of ADA Paratransit service must include mandatory driver training requirements. Training provisions must include requirements regarding curriculum, length of training period, resources, and assurances. Contracts must call for initial driver training and annual refresher trainings. Training programs must also include passenger assistance techniques and disability sensitivity modules.
3. Employ surveys, checklists and interview forms, as well as follow-up correspondence to effectively document compliance. All documentation reflecting monitoring results is maintained as evidence of oversight.
4. Maintain a record keeping system for monitoring on-time performance and tracking these indicators of capacity constraints. At any given time, LANTA should be able to demonstrate that the denials it does have, as well as the missed trips, late pickups, etc., are not an operational pattern or practice that significantly limits the availability of ADA paratransit service.
5. Track ADA-eligible trips separately from non-eligible trips. Periodic reservation line calls must be conducted at various times of the day to determine if a caller can reach a reservation agent. If third-party contractors or subrecipients have communication systems that provide data on average call wait time, number of missed calls, call abandonment rates, and other indicators of performance, such data must be collected and reviewed to determine compliance.
6. Monitor service capacity constraints and reviews no-show policies.
7. Ensure that all subrecipient and third-party contractor vehicle accessibility features, such as wheelchair lifts, ramps, securement devices, signs, and communication equipment for persons with disabilities, be maintained and operational.

▪ Fixed Route Service Monitoring

For a contractor's or subrecipient's fixed route service supported with Section 5307 assistance, fares charged elderly persons, persons with disabilities or an individual presenting a Medicare card during off peak hours will not be more than half the peak hour fare. The contractors and subrecipients are responsible for ensuring that contractors and lessees that operate services to which the half fare requirement applies follow applicable guidelines.

- **Subrecipient Maintenance Monitoring**

Subrecipients must keep Federally-funded equipment and facilities in good operating order and maintain ADA accessibility features.

- Subrecipients are required to have a current written maintenance program for FTA-funded rolling stock that documents the maintenance plan. The subrecipient must follow its maintenance program for facilities and equipment.
- The subrecipient's FTA-funded vehicles and facilities must be maintained regardless of who operates and maintains them. Third-party contractors and lessees "stand in the shoes" of the subrecipient and LANTA as far as FTA maintenance requirements are concerned
- If the subrecipient or contractor has equipment under warranty, FTA requires that the subrecipient or contractor have a system for identifying warranty claims, recording claims, and enforcing claims with the manufacturers.

- **Frequency of Performance Reviews and Oversight**

- At a minimum, formal performance reviews should be completed quarterly, with documented corrective actions, for larger and more complex projects.
- For contractors with multi-year contracts, a formal review every 12 months is necessary to assist in determining whether the contract should be extended.

Lehigh and Northampton Transportation Authority

Contractor Monitoring Checklist

Review to be conducted annually by Director of Finance & Administration, Director of Operations,
Director of Paratransit Services and/or Director of Facilities & Fleet Maintenance

Name of Vendor Organization:

Postal Address:

Email Address:

Persons Interviewed:

Fiscal Year of Review:

Date of Review:

The vendor is fully prepared with all reports, files, and other supporting documentation required to complete the "on-site" portion of the Compliance Monitoring.

Initial and Date:

Initial and Date:

Initial and Date:

Initial and Date:

GENERAL QUESTIONS

ALL VENDORS MUST ANSWER BELOW:

Compliance Questions:	Compliance?		Notes
	Yes	No	
<p>1. The vendor has evidence of any specific licensure that qualifies them to perform contract services for the LANTA.</p> <p>Please identify specific licensure(s) indicating professional qualifications:</p>	<input type="checkbox"/>	<input type="checkbox"/>	List licensing type and licensing authority: Obtain copy.
<p>2. The vendor has evidence of standard procedures for compiling data regarding units of service and clients served which is then submitted to the LANTA as an invoice for reimbursement. (How is the invoice prepared?)</p>	<input type="checkbox"/>	<input type="checkbox"/>	Have vendor outline their invoice processing policy. Note below:
<p>3. The vendor can track and report on ADA eligible trips separately from non-ADA eligible trips?</p>	<input type="checkbox"/>	<input type="checkbox"/>	
<p>4. The vendor has evidence that an audit is performed annually in accordance with contract requirements.</p>	<input type="checkbox"/>	<input type="checkbox"/>	Get copy of most recent audit report.
<p>5. Are invoices prepared and submitted by the deadlines for submission?</p> <p>Do invoices contain all the required information?</p> <p>If no to either question above, explain why? (explain in detail)</p>	<input type="checkbox"/>	<input type="checkbox"/>	Verify invoices submitted by 10th day of the month, following services:
<p>6. The vendor complies with Insurance Requirements.</p>	<input type="checkbox"/>	<input type="checkbox"/>	Provide copy of insurance coverage and amounts.
<p>7. The vendor has performance outcome measures specific to the services and programs funded by their contract with Lehigh County.</p>	<input type="checkbox"/>	<input type="checkbox"/>	Provide a copy of performance outcome measures.
<p>8. The vendor has complied (agrees to comply) with LANTA policy which provides for appeals and fair hearings as required by PDA, DHS and other funding sources.</p>	<input type="checkbox"/>	<input type="checkbox"/>	
<p>9. The vendor maintains acceptable written documentation to record all complaints; which documents all steps taken to resolve complaints and the response to the recommended resolution by the parties to the complaint.</p> <p>The vendor has written evidence located in the employee file of corrective actions regarding family, consumer, and/or LANTA complaints regarding vendor employee.</p>	<input type="checkbox"/>	<input type="checkbox"/>	Review complain resolution process and note. In addition, review selected files for evidence.

Compliance Questions	Compliance?		Notes
	Yes	No	
10. The vendor has evidence that they have, and enforce, a written policy that prohibits their employees from accepting gifts from their consumers of service.	<input type="checkbox"/>	<input type="checkbox"/>	Review policy, secure a copy.
11. Vendor has evidence contained in their personnel records that employees of the vendor agency are citizens of the United States of America, or are legal aliens.	<input type="checkbox"/>	<input type="checkbox"/>	Review personnel records for I-9 form.
12. The vendor has evidence contained in their personnel records that a criminal record check has been done with the proper authorities, and reviewed and determined acceptable as a condition of, and prior to hiring and placed in a capacity of service provision, for any consumer of LANTA services.	<input type="checkbox"/>	<input type="checkbox"/>	Review personnel records for criminal record checks.
13. Vendor has written procedures for medical emergencies, weather emergencies/disasters, incident reports, and staff coverage?	<input type="checkbox"/>	<input type="checkbox"/>	
14. The vendor further agrees that staff meet the qualifications for employment established by LANTA or funding source regulations. All positions have clear job descriptions and accountabilities. Job descriptions are updated to reflect current duties and assignments.	<input type="checkbox"/>	<input type="checkbox"/>	Explain.
15. The vendor orients and trains all employees and follows LANTA or its funding sources training guidelines including ADA related training.	<input type="checkbox"/>	<input type="checkbox"/>	
16. Does the vendor's management staff (supervisors, program directors, fiscal officer) meet? How frequently?	<input type="checkbox"/>	<input type="checkbox"/>	If response is no, please explain.

Compliance Questions	Compliance?		Notes
	Yes	No	
17. Vendor maintains a signed Release of information from the client when sharing information with another source.	<input type="checkbox"/>	<input type="checkbox"/>	Review Release of Information and obtain copy.
18. Vendor permit access of files to Federal authorities, the Commonwealth, the Department, the County Commissioners or County Executive or their authorized agents.	<input type="checkbox"/>	<input type="checkbox"/>	
19. Vendor contacts LANTA when a client no longer needs a service or level of service or the client's uncooperative behavior or misuse of the service warrants termination.	<input type="checkbox"/>	<input type="checkbox"/>	
20. Vendor maintains records for the required four years for audit/program purposes.	<input type="checkbox"/>	<input type="checkbox"/>	
21. The vendor has evidence of written contractual agreements if they fund independently operated, non-coordinated transportation programs or services.	<input type="checkbox"/>	<input type="checkbox"/>	
22. Vendor has evidence that transportation services financed by LANTA include an effective dispatching mechanism, effective vehicle operation method, and acceptable vehicle shared use.	<input type="checkbox"/>	<input type="checkbox"/>	
23. Vendor has evidence that the provision of exclusive ride services is limited and only available on a supplemental basis, and only when it was demonstrated as the only possible method of providing service to the consumer.	<input type="checkbox"/>	<input type="checkbox"/>	
24. The vendor has evidence that all vehicles ordered or purchased with LANTA funds for passenger transportation comply with all safety and accessibility standards set by governmental regulation.	<input type="checkbox"/>	<input type="checkbox"/>	
25. The vendor has evidence that it has access to at least one vehicle for transporting clients confined to wheelchairs or having mobility problems, if applicable..	<input type="checkbox"/>	<input type="checkbox"/>	
26. The vendor has evidence that all vehicles are equipped with a first aid kit, emergency flags for flares, 5 lb. dry chemical fire extinguisher, and emergency exits.	<input type="checkbox"/>	<input type="checkbox"/>	
27. The vendor has evidence that all vehicles are maintained in a safe operating condition through the use of a systematic preventative maintenance program.	<input type="checkbox"/>	<input type="checkbox"/>	

28. The vendor has a system to identify warranty claims, recording claims, and enforcing claims with vehicle/equipment manufacturers.	<input type="checkbox"/>	<input type="checkbox"/>	
29. The vendor has evidence that all vehicles in the fleet have current Pennsylvania Motor Vehicle Inspections.	<input type="checkbox"/>	<input type="checkbox"/>	
30. The vendor has evidence that appropriate insurance is provided for vehicles furnishing passenger transportation services. All vehicles have valid current insurance cards.	<input type="checkbox"/>	<input type="checkbox"/>	
31. The vendor has evidence that all drivers providing transportation services purchased or operated with LANTA funds meet the following minimum requirements: Drivers must be at least 18 years of age; a medical examination once every two years which includes a vision test; and, a valid Pennsylvania Operators license.	<input type="checkbox"/>	<input type="checkbox"/>	
32. The vendor has evidence that all information about a consumer gathered during the process of service provision is held in confidence and released to other professionals and agencies only with the consumer's written permission.	<input type="checkbox"/>	<input type="checkbox"/>	
33. The vendor has evidence that preventive maintenance is performed at required intervals.	<input type="checkbox"/>	<input type="checkbox"/>	
34. The vendor has a current EEO plan.	<input type="checkbox"/>	<input type="checkbox"/>	
35. The vendor has complied with 49 CFR Part 655 and has produced records showing compliance.	<input type="checkbox"/>	<input type="checkbox"/>	
36. The vendor makes timely repairs as soon as issues are identified. The vendor notifies LANTA if a vehicle will be out of service and provides a plan for timely repair.	<input type="checkbox"/>	<input type="checkbox"/>	
37. The vendor makes repairs to ADA equipment within 48 hours of occurrence.	<input type="checkbox"/>	<input type="checkbox"/>	
38. The vendor monitors compliance with service standards (on-time performance, length of trip, missed trips, etc.) and provides reports to LANTA.	<input type="checkbox"/>	<input type="checkbox"/>	
39. Results of calls to reservation line. Is time to speak to agent in line with performance standards?	<input type="checkbox"/>	<input type="checkbox"/>	

40. The vendor monitors capacity constraints and makes appropriate service adjustments?	<input type="checkbox"/>	<input type="checkbox"/>	
41. The vendor tracks and reports no-shows in a manner which allows for policy enforcement?	<input type="checkbox"/>	<input type="checkbox"/>	
42. Vendor acknowledges receipt of LANTA Title VI program and assures compliance?	<input type="checkbox"/>	<input type="checkbox"/>	
43. Vendor posts LANTA Title VI Notice in vendor's facility?	<input type="checkbox"/>	<input type="checkbox"/>	
44. Vendor reported any Title VI complaints submitted to vendor to LANTA within 48 hours of receipt?	<input type="checkbox"/>	<input type="checkbox"/>	
45. Vendor has provided documentation confirming their certification as a DBE, if applicable?	<input type="checkbox"/>	<input type="checkbox"/>	
46. Vendor has demonstrated prompt payment of any subcontractors, including making available for review invoices from any subcontractors and proof of payment?	<input type="checkbox"/>	<input type="checkbox"/>	
48. Payments made to the vendor and any subcontractors during the review period have been verified for use by the Semi-Annual DBE Report?	<input type="checkbox"/>	<input type="checkbox"/>	
49. On Site Monitors have confirmed that employees performing the contracted work are employed by the contractor and/or subcontractor of record?	<input type="checkbox"/>	<input type="checkbox"/>	
50. On-Site Monitors have confirmed that the Primes and Subs noted in the contract are actually providing the type of work for which they are certified?	<input type="checkbox"/>	<input type="checkbox"/>	

For LANTA Use Only:

Areas of Non-Compliance (corrective action needed/time frame for action):

List of Attachments:

On Site Monitors' Name(s)	Date of On-Site Visit
1.	
2.	
3.	
4.	