

APPROVED

FINAL



DeKalb Sycamore Area Transportation Study (DSATS)

Procurement and Grant Management Manual

(adopted April 2008)

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DSATS Grant Management Procedures

Introduction

The DeKalb Sycamore Area Transportation Study (DSATS) is the Metropolitan Planning Organization (MPO) for the DeKalb Urbanized Area. The City of DeKalb provides staffing, office space, and other resources needed to operate the MPO. The City of DeKalb is also the designated recipient of Federal Transit Administration (FTA) grant funds to provide public transportation for the DeKalb region. As DeKalb is a small urbanized area, which was designated as an Urban Area for the first time in the 2000 census, there is only a very small staff to manage all the activities required of the MPO and transportation in general.

DSATS staff includes:

1. MPO Director – Jointly works as Director of Community Development for the City of DeKalb (65%) and Director of DSATS (35%)
2. MPO Coordinator – In charge of all Planning activities for the MPO and Transportation funds management for the City of DeKalb (100%)
3. MPO Intern – Part-time student intern who assists in MPO and transportation planning activities.

DSATS staff responsibilities include:

1. All planning activities for the DSATS MPO including the TIP, LRTP, UPWP, and HSTP management.
2. Management of all FTA and IDOT public transit grants.
3. All public transit procurement activities for the DSATS area and addressing all federal and state statutes regulating those activities.
4. Oversight of all third party contractors providing services related to public transit.
5. Various other activities as required.

With only one full-time staff person available to manage these activities, the amount of time spent in any one area is limited. This document outlines the required responsibilities of staff when managing the grants available for the DSATS region.

Grant Management Activities and Sources

Each year there are Federal and State grant funds available to maintain and upgrade transportation in the region. Many activities must be performed in order to continue to receive these funds. As DSATS Coordinator serves as both the MPO planner and the City Transportation Grant manager, she or he, with the assistance of the Director and intern, is responsible for the following grant management activities:

1. While the Transportation Improvement Program (TIP) is only required to be updated every four years, the number of transportation projects done in the DSATS region is small; therefore DSATS has decided to update its TIP each year. The TIP identifies all transportation projects for the next four years. The TIP is separated into Highway and Transit and managed in the following way:
 - a. Highway TIP: The municipal and county Engineers of the DSATS member organizations develop the highway projects and submit them to the proper state

- b. Transit TIP: DSATS and the City of DeKalb are in charge of initiating all public transit projects in the DeKalb region. DSATS staff is in charge of managing all transit grants and ensuring those funds are identified on the Transit TIP. The following information identifies the process to manage those transit grants.

Public Transit Planning Process

1. DSATS staff works with the public transportation provider, members of the DSATS Technical Advisory Committee (TAC) and other community organizations to identify specific projects such as vehicle procurement, bus stop shelters, building of transit facilities, etc. and possible funding sources for these projects.
2. Once projects are identified, the DSATS Policy Committee is asked to approve the projects.
3. As the City of DeKalb is the designated recipient of all FTA and IDOT funds, each project must be approved by either the DeKalb City Manager or DeKalb City Council, depending upon the cost of the expenditures (projects below \$20,000 only need city manager approval).
4. The City of DeKalb pays for all project expenditures and DSATS staff submits requests for reimbursement from the federal or state grants from which the projects are funded.
5. DSATS staff must also ensure that projects receiving federal funds also be listed on the DSATS TIP.
6. Any projects which do not incur an expenditure of funds (such as development of in-house reports) only have to be approved by the DSATS Policy Committee and do not need to go before the DeKalb City Council or Manager.
7. Once funding is approved, it is the responsibility of DSATS staff to ensure that all federal and state regulations are adhered to during project implementation. These include items such as procurement standards, maintenance regulations, DBE, Buy America, ADA, Drug and Alcohol, and other such regulations required to be addressed in each grant.

Public Transit Grant Sources

There are a number of grants available for use in providing public transit planning and services. DSATS uses the following grants as their main source of revenue for transit projects and services:

1. FTA 5307 Grant: This grant provides funds for public transit capital (reimbursed for 80% of the costs) and operating expenses (50% of the costs). When DSATS was first organized, these grants were mainly used to fund public transit operating costs. IDOT now has a program to support transit operating costs so the grant funds are now used for other projects. Currently these funds are being used to purchase replacement vehicles for VAC, purchasing of transit software, installation of bus shelters, project studies, and in the future it is being looked at to build a new transit facility.
2. PL and 5303 Grants: PL funds come from FHWA and 5303 funds from FTA. These funds are available to support MPO transportation planning. These funds are used to pay

3. 5316 (JARC), 5317 (New Freedom), and other Grants: These are new Federal Grants available to support public transportation to places of employment and to support persons with disabilities with public transit. In order to receive these funds DSATS developed a Human Services Transportation Plan (HSTP) for the region. DSATS has not yet made use of these funds but is looking at future projects to make use of the funds.
4. Illinois Downstate Operating Assistance Program (DOAP): The State of Illinois provides public transit funds to urban areas outside the Chicago Metropolitan Area, to provide public transit operating assistance. Currently 55% of the operating costs of public transit are eligible for reimbursement from the DOAP funding, however, recent changes in the state law have increased that to 65%.

Public Transit Grant Management and Project Procurement

In the section below, the grant management process for each grant is identified. For each grant, the following processes are identified:

1. Grant Overview
2. Grant Application
3. Grant Management
4. Project Implementation
5. Grant Closeout

Section 5307 Grant

1. Grant Overview

The 5307 program (49 U.S.C. 5307) makes Federal resources available to urbanized areas and to Governors for transit capital and operating assistance in urbanized areas and for transportation related planning. An urbanized area is an incorporated area with a population of 50,000 or more that is designated as such by the U.S. Department of Commerce, Bureau of the Census.

Eligible purposes include planning, engineering design and evaluation of transit projects and other technical transportation-related studies; capital investments in bus and bus-related activities such as replacement of buses, overhaul of buses, rebuilding of buses, crime prevention and security equipment and construction of maintenance and passenger facilities; and capital investments in new and existing fixed guideway systems including rolling stock, overhaul and rebuilding of vehicles, track, signals, communications, and computer hardware and software. All preventive maintenance and some Americans with Disabilities Act complementary paratransit service costs are considered capital costs.

Program Summary Fact Sheet

Appropriation: Funded under Formula Grants

Description: Grants to urbanized areas and states for transit-related purposes

Statutory Reference: 49USC5307

Eligible Recipients: Funding is made available to designated recipients that must be public bodies with the legal authority to receive and dispense Federal funds. Governors, responsible local officials and publicly owned operators of transit services are to designate a recipient to apply for, receive, and dispense funds for transportation management areas pursuant to 49USCA5307(a)(2). Generally, a transportation management area is an urbanized area with a population of 200,000 or over. The Governor or Governor's designee is the designated recipient for urbanized areas between 50,000 and 200,000.

Eligible Purposes: Planning, engineering design and evaluation of transit projects and other technical transportation-related studies; capital investments in bus and bus-related activities such as replacement of buses, overhaul of buses, rebuilding of buses, crime prevention and security equipment and construction of maintenance and passenger facilities; and capital investments in new and existing fixed guideway systems including rolling stock, overhaul and rebuilding of vehicles, track, signals, communications, and computer hardware and software. All preventive maintenance and some Americans with Disabilities Act complementary paratransit service are considered capital costs.

Allocation of Funding: Funding is apportioned on the basis of legislative formulas. For areas of 50,000 to 199,999 in population, the formula is based on population and population density. For areas with populations of 200,000 and more, the formula is based on a combination of bus revenue vehicle miles, bus passenger miles, fixed guideway revenue vehicle miles, and fixed guideway route miles as well as population and population density.

Match: The Federal share is not to exceed 80 percent of the net project cost. The Federal share may be 90 percent for the cost of vehicle-related equipment attributable to compliance with the Americans with Disabilities Act and the Clean Air Act. The Federal share may also be 90 percent for projects or portions of projects related to bicycles. The Federal share may not exceed 50 percent of the net project cost of operating assistance.

DSATS Procedures

2. Grant Application:

- (a) Make certain that the projects you are applying for are included in the TIP and the STIP
(*see*

DSATS Transportation Improvement Program (TIP) Procedures in Appendix). The TIP needs to show exactly what you plan on doing with the money – i.e. purchase 4 minivans, upgrade garage doors and locks, etc. It also needs to show the year in which the projects will be undertaken.

- (b) For detailed instructions on submitting a grant see “Section 5307 Grant Application Process” in Appendix.
- (c) Illinois Toll Revenue Credits may be available for use as the local match. See “*How to Apply for and use Illinois Toll Revenue Credits (ITRC)*” in Appendix for more information on their use.

3. Grant Management

- (a) There are a number of Grant Management procedures that need to be followed, including submitting yearly Certifications and Assurances for the grantee, Quarterly updates on active projects, and updating project milestones as needed. More detailed information can be found in: *DSATS FTA 5307 Grant TEAM / ECHO Website Procedures in Appendix*
- (b) In addition to the FTA reporting requirements, monthly and annual reporting of transit statistics is required to be submitted for VAC operations to the National Transit Database (NTD). See *DSATS National Transit Database Reporting Procedures in Appendix* for details.

4. Project Implementation

- (a) All purchasing, except where in conflict with federal and state procurement procedures, are subject to the purchasing procedures set forth by the City of DeKalb (*see City of DeKalb Administrative Policy 002 in Appendix*). The main conflict between federal and city regulations is the “Buy Local” policy. As federal regulations require a competitive bid process, preferences cannot be made for local vendors. In this situation or in any other conflict, the City Manager and City Council should be made aware of the situation, but due to grant requirements, the federal or state regulations shall supersede the city regulations.
- (b) All bus stock vehicle procurements will go through the Illinois State Procurement System administered by IDOT. Should any bus purchases be made through other resources the procurement procedures identified here shall be modified first to identify how the FTA bus rolling stock procedures will be administered.
- (c) All procurements should be made under the guidelines of the city procurement policies and the regulations of the funding agency from which the grant is received. The following are the project cost guidelines:
 - i) Under \$2,500: MPO Director approval; ensure price is fair and reasonable
 - ii) \$2,500-\$10,000: MPO Director approval; competitive bids should be obtained
 - iii) \$10,000-\$20,000: City Manager approval; competitive bids should be obtained
 - iv) \$20,000-\$100,000: City Council approval; some form of RFP process should be used
 - v) Above \$100,000: City Council approval; RFP process used; in case of FTA there are numerous additional regulations to be followed on contracts over \$100,000.
- (d) Any procurements which require the approval of the City Manager or the City Council must first be approved by the DSATS Policy Committee.
- (e) There are several types of RFP processes described in the federal transportation regulations. Before proceeding with any RFP, the most appropriate type of RFP process should be determined based on the procurement circumstances. If it is unclear which

process should be used, the granting agency should be contacted for guidance before proceeding. **REMEMBER:** cost is not the only consideration when procuring services or goods with grant funds. All applicable regulations must be followed.

- (f) See *DSATS / Contractor Oversight Procedures in Appendix* for applicable contract language and oversight procedures on Public Transit Providers and other FTA funded contracts.
- (g) For FTA Grant Contracts, all contracts need to conform to the following FTA Policies and Regulations:
 - i) Title 49—Transportation; Subtitle A--Office of the Secretary of Transportation; PART 18--UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS: http://www.access.gpo.gov/nara/cfr/waisidx_01/49cfr18_01.html
 - ii) Third Party Contracting Requirements; C 4220.1E: see Subject: THIRD PARTY CONTRACTING REQUIREMENTS in appendix
 - iii) The FTA FY2008 Triennial Workshop Workbook available in the DSATS_DOC's files.
 - iv) All contracts must conform to the City of DeKalb Title VI Assurances (see City of DeKalb Title VI Assurance in Appendix)

5. Grant Closeout

- (a) Once all projects within a grant are completed, any remaining funds remaining must be deobligated. Contact the FTA representatives to find out what is involved in deobligating funds.
- (b) Once the funds are deobligated, they can be reobligated to a new project. Please note, however, that once funds are deobligated for the first time, the new grant using the deobligated funds, will no longer be eligible to use Illinois Toll Revenue Credits for the local match.
- (c) Grants remain open for three (3) fiscal years after the grant is awarded. Grant funds do not expire, however, should the grant go past three (3) years and not be used, funds can no longer be deobligated and used for other projects as the funds will no longer be available for use if deobligated.

MPO Planning Funds

1. Grant Overview

DSATS uses FHWA PL and FTA 5303 Planning funds for transportation planning activities. These funds are used to pay the MPO staff salaries, special transportation projects and studies, to assist VAC in transit planning, and other day-to-day expenses involved in the transportation process.

Program Descriptions

These programs provide funding to support cooperative, continuous, and comprehensive planning for making transportation investment decisions in metropolitan areas and statewide.

Eligible Recipients

Metropolitan Planning Organizations (MPO)

Eligible Purposes

For planning activities that (A) support the economic vitality of the metropolitan area, especially by enabling global competitiveness, productivity, and efficiency; (B) increase the safety of the transportation system for motorized and non-motorized users; (C) increase the security of the transportation system for motorized and non-motorized users; (D) increase the accessibility and mobility of people and for freight; (E) protect and enhance the environment, promote energy conservation, improve the quality of life, and promote consistency between transportation improvements and State and local planned growth and economic development patterns; (F) enhance the integration and connectivity of the transportation system, across and between modes, for people and freight; (G) promote efficient system management and operation; and (H) emphasize the preservation of the existing transportation system.

Funding Allocation

Funds are apportioned by a complex formula to states that includes consideration of each state's urbanized area population in proportion to the urbanized area population for the entire nation, as well as other factors. States can receive no less than .5 percent of the amount apportioned. These funds, in turn, are sub-allocated by states to MPOs by a formula that considers each MPO's urbanized area population, their individual planning needs, and a minimum distribution.

Federal/Local Share

The federal share is 80 percent and the local share is 20 percent.

DSATS Procedures

2. Grant Application

- (a) Each year the MPO will be notified of the funding available for MPO planning via the PL and 5303 funds.
- (b) DSATS is required to develop a Unified Planning Work Program (UPWP) for the following Fiscal Year. This document identifies the projects, studies, administrative costs, and other transportation related activities that will be done with the allocated funds. *(Examples of previous years UPWP available on website at: <http://www.cityofdekalb.com/ComDev/DSATSupwp.htm>)*

3. Grant Management

- (a) DSATS staff is required to keep detailed account of every expenditure made by the MPO. Staff submits all expenses to the City of DeKalb finance department for payment. Copies of all the invoices, receipts and payment reports should be kept and filed for future reference. A quarterly expense report is submitted to IDOT and the City is issued a check to reimburse them for 80% of the costs relating to the MPO expenses. See DSATS PL / 5303 Invoicing in Appendix for more detailed information.

4. Project Implementation

- (a) All purchasing, except where in conflict with federal and state procurement procedures, are subject to the purchasing procedures set forth by the City of DeKalb (*see City of DeKalb Administrative Policy 002 in Appendix*). The main conflict between federal and city regulations is the “Buy Local” policy. As federal regulations require a competitive bid process, preferences cannot be made for local vendors. In this situation or in any other conflict, the City Manager and City Council should be made aware of the situation, but due to grant requirements, the federal or state regulations shall supersede the city regulations.
- (b) All procurements should be made under the guidelines of the city procurement policies and the regulations of the funding agency from which the grant is received. The following are the project cost guidelines:
 - i) Under \$2,500: MPO Director approval; ensure price is fair and reasonable
 - ii) \$2,500-\$10,000: MPO Director approval; competitive bids should be obtained
 - iii) \$10,000-\$20,000: City Manager approval; competitive bids should be obtained
 - iv) \$20,000-\$100,000: City Council approval; some form of RFP process should be used
 - v) Above \$100,000: City Council approval; RFP process used; in case of FTA there are numerous additional regulations to be followed on contracts over \$100,000.
- (c) Any procurements which require the approval of the City Manager or the City Council must first be approved by the DSATS Policy Committee.
- (d) There are several types of RFP processes described in the federal transportation regulations. Before proceeding with any RFP, the most appropriate type of RFP process should be determined based on the procurement circumstances. If it is unclear which process should be used, the granting agency should be contacted for guidance before proceeding. **REMEMBER**: cost is not the only consideration when procuring services or goods with grant funds. All applicable regulations must be followed.

- (e) See *DSATS / Contractor Oversight Procedures in Appendix* for applicable contract language and oversight procedures on Public Transit Providers and other FTA funded contracts.
- (f) For FTA Grant Contracts, all contracts need to conform to the following FTA Policies and Regulations:
 - i) Title 49—Transportation; Subtitle A--Office of the Secretary of Transportation; PART 18--UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS: http://www.access.gpo.gov/nara/cfr/waisidx_01/49cfr18_01.html
 - ii) Third Party Contracting Requirements; C 4220.1E: see Subject: THIRD PARTY CONTRACTING REQUIREMENTS in appendix
 - iii) The FTA FY2008 Triennial Workshop Workbook available in the DSATS_DOC's files.
- (g) All contracts must conform to the City of DeKalb Title VI Assurances (see City of DeKalb Title VI Assurance in Appendix)

5. Grant Closeout

- (a) As these funds are renewed each year, there are no closeout procedures. However, funds which are unused usually do not carry over into the next fiscal year, therefore if there are funds remaining, staff and Policy Committee members should look for uses the funds should be used for.

Other Specialized Funding Sources

1. Grant Overview

The 5316 and 5317 funding sources are available to create better public transportation access in the DeKalb area. These funds are mainly oriented towards providing transportation for lower-income persons to employment sites, and to provide funds for projects to assist persons with disabilities that go beyond the Americans with Disabilities Act. The SRTS funds are available to improve walking and bicycle access for children traveling to school. There are also Federal Transportation Enhancement (TE) grants, although the federal government has put a hold on implementing any new TE projects in the near future. For small urban MPO's such as DSATS, access to these funds is on a needs assessment basis. IDOT usually opens a period of time each year when applicants can submit grant proposals. The local MPO's then review the applications in their region and prioritizes them based on the Human Services Transportation Plan (HSTP) priorities (this process is for 5316 & 5317 funds, SRTP & TE are not reviewed by MPO). These applications are then submitted to IDOT for their review, and IDOT chooses which projects it deems provide the greatest benefits.

5316 Job Access and Reverse Commute Grant

The goal of the Job Access and Reverse Commute program (JARC) is to improve access to transportation services to employment and employment related activities for welfare recipients and eligible low-income individuals and to transport residents of urbanized areas and non-urbanized areas to suburban employment opportunities. Toward this goal, the Federal Transit Administration provides financial assistance for transportation services planned, designed, and carried out to meet the transportation needs of eligible low-income individuals, and of reverse commuters regardless of income. The program requires coordination of Federally-assisted programs and services in order to make the most efficient use of Federal resources. For additional information, please contact the FTA Office of Transit Programs at (202) 366-2053.

5317 New Freedom Grant

The New Freedom formula grant program aims to provide additional tools to overcome existing barriers facing Americans with disabilities seeking integration into the work force and full participation in society. Lack of adequate transportation is a primary barrier to work for individuals with disabilities. The 2000 Census showed that only 60 percent of people between the ages of 16 and 64 with disabilities are employed. The New Freedom formula grant program seeks to reduce barriers to transportation services and expand the transportation mobility options available to people with disabilities beyond the requirements of the Americans with Disabilities Act (ADA) of 1990.

SRTS Safe Routes to School Program

The Illinois Safe Routes to School Program (SRTS) is administered by the Illinois Department of Transportation (IDOT). SRTS uses a multidisciplinary approach to improve conditions for students who walk or bike to school. The program has three main goals:

1. To enable and encourage children, including those with disabilities, to walk and bicycle to school.
2. To make bicycling and walking to school a safer and more appealing transportation alternative, thereby encouraging a healthy and active lifestyle from an early age; and
3. To facilitate the planning, development, and implementation of projects and activities that will improve safety and reduce traffic, fuel consumption, and air pollution in the vicinity (within 2 miles) of both public and private primary and middle schools (grades K-8).

Transportation Enhancements Program

Illinois Transportation Enhancement Program (ITEP) activities offer funding opportunities to help expand transportation choices and enhance the transportation experience through 12 eligible TE activities, related to surface transportation, including pedestrian and bicycle infrastructure and safety programs, scenic and historic highway programs, landscaping and scenic beautification, historic preservation, and environmental mitigation. TE investments benefit communities through rehabilitation of historic facilities related to transportation, renovated streetscapes, rail-trails and other transportation trails, transportation museums, and scenic and historic highway program visitor centers. The funds are available through the Federal Transportation Enhancements program, but ITEP staff administer the program.

DSATS Procedures

2. Grant Application

- (a) IDOT should send a notification to all eligible grant recipients when the next window of opportunity to submit applications for each of these grants.
- (b) For 5316 and 5317 grants, DSATS staff should make sure that the existing HSTP plan has satisfied the requirements set forth by IDOT and FTA. If they do not, staff should ensure steps are taken to ensure the plan is in compliance of the regulations.
- (c) Examples of previous applications:
 - i) 5316: ..\Grant Forms\JobAccessANDReverseCommuteApplication_07.doc
 - ii) 5317: ..\Grant Forms\NewFreedomApplication_07.doc
 - iii) SRTS: ..\Grant Forms\DSATS_FY07_SRTS_TravelPlan.pdf
 - iv) ITEP: <L:\PLANNING\2008\DSATS08\DSATS147-08.doc>

3. Grant Management

- (a) DSATS Staff should ensure that all regulations set forth in any grant agreement are completed.
- (b) Should DSATS ever receive any of these grants, more detail procedures should be set forth at that time.

4. Project Implementation

- (a) All purchasing, except where in conflict with federal and state procurement procedures, are subject to the purchasing procedures set forth by the City of DeKalb (*see City of DeKalb Administrative Policy 002 in Appendix*). The main conflict between federal and

city regulations is the “Buy Local” policy. As federal regulations require a competitive bid process, preferences cannot be made for local vendors. In this situation or in any other conflict, the City Manager and City Council should be made aware of the situation, but due to grant requirements, the federal or state regulations shall supersede the city regulations.

- (b) All bus stock vehicle procurements will go through the Illinois State Procurement System administered by IDOT. Should any bus purchases be made through other resources the procurement procedures identified here shall be modified first to identify how the FTA bus rolling stock procedures will be administered.
- (c) All procurements should be made under the guidelines of the city procurement policies and the regulations of the funding agency from which the grant is received. The following are the project cost guidelines:
 - i) Under \$2,500: MPO Director approval; ensure price is fair and reasonable
 - ii) \$2,500-\$10,000: MPO Director approval; competitive bids should be obtained
 - iii) \$10,000-\$20,000: City Manager approval; competitive bids should be obtained
 - iv) \$20,000-\$100,000: City Council approval; some form of RFP process should be used
 - v) Above \$100,000: City Council approval; RFP process used; in case of FTA there are numerous additional regulations to be followed on contracts over \$100,000.
- (d) Any procurements which require the approval of the City Manager or the City Council must first be approved by the DSATS Policy Committee.
- (e) There are several types of RFP processes described in the federal transportation regulations. Before proceeding with any RFP, the most appropriate type of RFP process should be determined based on the procurement circumstances. If it is unclear which process should be used, the granting agency should be contacted for guidance before proceeding. REMEMBER: cost is not the only consideration when procuring services or goods with grant funds. All applicable regulations must be followed.
- (f) See *DSATS / Contractor Oversight Procedures in Appendix* for applicable contract language and oversight procedures on Public Transit Providers and other FTA funded contracts.
- (g) For FTA Grant Contracts, all contracts need to conform to the following FTA Policies and Regulations:
 - i) Title 49—Transportation; Subtitle A--Office of the Secretary of Transportation; PART 18--UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS: http://www.access.gpo.gov/nara/cfr/waisidx_01/49cfr18_01.html
 - ii) Third Party Contracting Requirements; C 4220.1E: see Subject: THIRD PARTY CONTRACTING REQUIREMENTS in appendix
 - iii) The FTA FY2008 Triennial Workshop Workbook available in the DSATS_DOC’s files.
 - i) All contracts must conform to the City of DeKalb Title VI Assurances (see City of DeKalb Title VI Assurance in Appendix)

5. Grant Closeout

- (a) Should DSATS ever receive any of these grants, more detail procedures on grant closeout procedures will be developed at that time

Illinois Downstate Operating Assistance Program

1. Grant Overview

Down State Operating Assistance (DOAP): The City of DeKalb annually is eligible to receive Downstate Operating Assistance (DOAP) funds, a state grant program that reimburses eligible transit operating expenses for Metropolitan Planning Organizations in the State. The City was designated as the recipient of the funds for the DeKalb-Sycamore area. The City of DeKalb has received grant funds from DOAP in FY06, FY07, FY08, and recently signed a contract to receive funds in FY09. The State of Illinois offers DOAP funding in an amount up to eighty percent (80%) of 3/32nd of sales tax. In FY 2008, the City of DeKalb/DSATS received DOAP funding in the amount of \$1.54 million dollars.

DSATS Procedures:

2. Grant Application

- (a) Each year DSATS must submit an application for transit operating assistance for the next fiscal year.
- (b) IDOT usually asks the MPOs to submit the applications in April, but keep in touch with the IDOT personnel to ensure the applications are submitted before the deadlines.
- (c) Once the State completes writing up the contract and sends it back to DSATS:
 - i) Send a copy to the City Legal Department for their review.
 - ii) Submit a resolution to the City Council to authorize the Mayor to enter into an agreement with the State of Illinois to receive transit operating funds.
 - iii) Have Mayor sign the document and get it back to IDOT (keep copy for DSATS records), for prompt processing.

3. Grant Management

- (a) DSATS Staff should ensure that all regulations set forth in any grant agreement are completed.
- (b) According to IDOT, the City must provide an Audit of both the City budget as well as the budget of VAC and send the Single Audit Report and a required DOAP from to IDOT within 120 of the end of the completed Fiscal Year.

4. Project Implementation

- (a) See IDOT DOAP Procedures in Appendix for specific details on submitting for DOAP reimbursements.

5. Grant Closeout

- (a) As the contracts are renewed each year, there are no specific closeout procedures.

Policy Approval:

1. DSATS Grant Management Procedures and supporting documentation approved by DSATS Policy Committee of Directors 4/23/08.

General Procedures Applicable to All Grant Management

As part of the process of managing the MPO and the associated grants used to improve the transportation systems of the region, there are a number of activities that the MPO staff should be performing. The following activities should be performed as part of this process:

1. All federally funded transportation projects are required to be on the MPO Transportation Improvement Program (TIP). See

- DSATS Transportation Improvement Program (TIP) Procedures in Appendix for a description of how to maintain and update the TIP.
2. The MPO is required to have a Public Participation Plan which guides the MPO planning process and grant management (see http://www.cityofdekalb.com/ComDev/DSATS_Docs/PI/DSATS_FY09_PIP.pdf for details. For specific information on advertising public processes see DSATS PUBLIC REVIEW PROCEDURES in appendix for details.
 3. For FTA Grants, a yearly Disadvantaged Business Enterprise Goals memo should be submitted to FTA (see DBE GOALS (DBE = Disadvantaged Business Enterprise) in appendix for more details)

Appendix

City of DeKalb Administrative Policy 002

Administrative Policy 002

Subject: Purchasing Manual

Prepared By: Linda Wiggins, Assistant City Manager

Susan Willey, Human Resources Director

Issued By: Mark Biernacki, City Manager

Signed:

Applies To: All Employees

Date: February 5, 2007

This supersedes policy issued on January 1, 2000.

DEFINITION OF TERMS

Account Category: The City's annual budget is prepared and organized within seven different categories of expenditures, each identified by a numerical reference: 1) 8100 - Personal Services; 2) 8200 - Commodities; 3) Contractual Services; 4) 8400 - Other Services/Expenses; 5) 8500 - Equipment; 6) 8600 - Permanent Improvements; 7) 9000 - Transfers. Each of these is referred to as an Account Category

Account Line Item: Contained within each Account Category are individual and specific accounts from which expenditures are made and which are referred to as account line items, each with its own specific numerical reference. For example, "8515" refers to the account line item to which expenditures for purchases of EDP equipment are credited.

Budget Amendment: From time to time, it is necessary to exceed authorized budget amounts within an Account Category as a whole and/or less frequently, within a specific account line item. When this occurs, the City Council must formally approve the new budget amount. This is referred to as a "budget amendment." Amendments are completed on a fund, departmental, or divisional basis. They are required to be made whenever A) expenditures within an account category as a whole exceed ten percent of the budgeted amount and/or B) when a particular account line item exceeds its budget by \$50,000 or more.

Budget Encumbrance: Occasionally at the close of the City's fiscal year, departments find where particular items of furniture, equipment, etc. have been ordered but not yet received. So as to prevent a budget overrun in the new fiscal year about to begin, departments request to have monies "carried over" from the year about to end. This is referred to as a budget encumbrance. Encumbrances are completed for capital purchases only and not on a programmatic basis. For example, a department may request monies be encumbered for purchase of a new computer printer but cannot request that the unspent monies in its overtime budget be carried over. Encumbrances are generally not accepted if their total dollar amount is under \$500.

Chart of Accounts: The complete listing of all account line items, by Account Category.

Check Request: This document is prepared for payment of goods or services actually received. It must contain the vendor's name and mailing address, total amount owed, a description of the good or service purchased, and have documentation verifying this information (e.g., an invoice). It is to be signed by the authorized department or division head and shall indicate the program or fund and the specific account line item to which the bill is to be charged.

Fiscal Year: The City's operating or fiscal year is July 1 to June 30. The budget year is the same as the City's fiscal year.

Program: Activities of departments that are of a continuing and on-going nature are referred to as programs and are assigned specific numerical references within the budget for payment of bills. For example, the Patrol Services Program of the Police Department is #543.

Project: Activities of departments that result in permanent improvements and/or are of a temporary nature are referred to as projects. Permanent improvements include such items as the reconstruction of specific streets, construction of a new parking lot, and similar type initiatives. An example of a project of a temporary nature would be completion of a design study.

Purchase Order Requisition: This document is prepared to order goods and services and is submitted to the Finance Division for processing. In so doing, monthly budget reports for the effected account line item(s) will show these monies as being obligated, thus preventing account line items being inadvertently overspent.

Related to this, there are a variety of items (both goods and services) that the City uses substantial quantities of during the course of year (e.g., major vehicle repairs and maintenance). To expedite the purchasing process, "open" purchase orders are established with different vendors who in turn bill the City on a pre-established basis -- similar to a line of credit.

ORGANIZATIONAL DUTIES & RESPONSIBILITIES

Standards of Conduct

No person may engage in any purchasing transaction except as provided under the terms of this policy and the procedures established by the DeKalb City Council. City of DeKalb employees authorized to make purchases with municipal funds shall refrain from any personal or business activity that could conflict with the proper execution of the policies contained herein, or that could impair their ability to make impartial decisions. Employees failing to meet or follow these standards shall be subject to discipline, up to and including dismissal and criminal prosecution.

City Manager

The DeKalb Municipal Code designates the City Manager as its Chief Financial Officer, ultimately responsible for all aspects of the community's financial administration. (S)He shall be accountable for all transactions undertaken and shall establish a system of controls to regulate the activities of subordinate officials.

All contracts for goods or services of \$20,000 or more must be approved by the City Council. The City Manager must be the signatory to any purchase requisition, check request or related document pertaining to these contracts. For contracts of \$19,999 or less, the Manager has the authority to enter into agreements directly without any additional City Council approval, provided these contracts pertain to work previously authorized and/or within the approved annual budget.

Additionally, in the event of an emergency posing an immediate threat to the public health, safety or welfare, the City Manager may authorize expenditures in excess of \$20,000 without competitive bidding or prior City Council approval, and/or may authorize expenditures in excess of the approved budget provided that these expenditures are necessary to meet the emergency situation. The City Manager shall submit a full report and accounting of any such emergency expenditure to the City Council at the next regularly scheduled City Council meeting.

Assistant City Manager

The Assistant City Manager is responsible for the preparation and administration of the City's annual budget; property tax levy; five year financial, capital, and staffing plans; debt issuance and management; and the financial management of the City's various development and intergovernmental agreements.

Comptroller/Treasurer

The Comptroller/Treasurer is responsible for the overall administration of the City's purchasing policies and is authorized to establish accounting procedures necessary for their effective implementation. The Comptroller/Treasurer oversees all cash management activities of the City, including bank account cash balances, transfers of cash, and the accounting of all revenues and expenditures. (S)He coordinates completion of the annual audit, preparation of required financial reports, and oversees investment activities.

GENERAL PURCHASING GUIDELINES

Purchasing Cycle

General municipal operations are administered through eight different departments: 1) Administrative Services (Administration, Human Resources, Finance, Information & Technology, Economic Development and Legal Services); 2) Police (Administration, Patrol, Communications and Investigation); 3) Fire (Administration and Fire Services); 4) Community Development (Administration, Planning & Development, Building & Code Enforcement); 6) Public Works (Administration, Street, Water, and Airport); 7) Engineering; and 8) Developmental Services. Functions of elected officials are administered through the Legislative Department and Office of the City Clerk.

The activities of each of these departments are performed on a "programmatic basis." Programs are the lowest organizational level within the City's budgeting system and it is on this basis that daily municipal operations are funded and their costs tracked. A separate annual budget is prepared each year for these programs. Thereafter, as costs are incurred, they are credited directly to the individual programs and not to the Department in general. In this manner it is

possible to calculate the actual cost of a particular municipal service which, in tight economic times, becomes important.

A department's true "purchasing cycle" begins with annual budget preparation and concludes at year's end when the audit is performed. The cycle that concerns most employees, however, is the one that is initiated (and usually completed) almost every working day: the need for some particular good or service is identified; price quotes or bids may be solicited; an order is placed; the goods are received; the proper program account line items are credited; and the cycle is ended.

This section establishes certain general procedures to be followed by employees purchasing goods and/or services for the City. To understand the reasoning behind them, it is necessary to begin with an understanding of the annual budget process.

Annual Budget Process

The City's fiscal, or operational, year runs July 1 to June 30. By law and prior to the start of each fiscal year, the City Council must formally approve a budget which a) estimates the amount and sources of revenues the City anticipates receiving over the next twelve month period, and b) allocates these monies for the general operation of the City's different departments and/or for specific projects and programs to be undertaken during the course of the year. The "General Revenue Fund" is roughly half the budget, receiving revenues from miscellaneous fees, taxes, and fines and finances the general operational expenses of the various City departments. The balance of the budget is comprised of miscellaneous special and/or capital funds which have been established to serve specific purposes and receive monies through alternative sources.

The City employs a modified accrual basis of accounting in tracking its revenues and expenditures. In very general terms, this means that expenditures are credited on the date they are incurred – not necessarily on the date the bill is paid. Revenues, however, are credited on the date they are actually received.

To help ensure that departments do not inadvertently exceed their annual appropriation limits, the Finance Division prepares and distributes monthly status reports to each department. These reports detail what expenditures were made in the previous 30 days by the department, and to which fund(s) and account line item(s) the purchases were credited. It is the department head's responsibility to review these monthly reports on a timely basis and to notify the Finance Services Division of any possible irregularities or errors.

Budget Amendments: From time to time it is necessary to exceed authorized budget amounts within a General Fund Account Category as a whole and/or less frequently, within a specific account line item.

When this occurs, the City Council must formally approve the new budget amount. This is referred to as a "budget amendment."

Unlike the initial budgeting process which is done by program, amendments are completed on a fund, departmental, or divisional basis only. They are required to be made whenever

expenditures within an account category as a whole exceed ten percent of the total budgeted amount. Thus, if one account line item within the category can be reduced to offset the overage in another, an amendment is not required.

For example, the Police Department administers four separate programs. The budgets for each of these individual programs are combined to form the Department's annual budget. It is when an account category within the Department's overall budget exceeds its appropriation by ten percent or more that a budget amendment will be required. Individual programs wherein an account category may exceed ten percent do not require this action.

Amendments are also required when a particular account line item exceeds its budget by \$50,000 or more (a very rare occurrence). This is true regardless if the Account Category as a whole is within its budgeted amount.

With the exception of capital improvement projects (which frequently require contract change orders to be authorized "in the field"), it is the department head's responsibility to notify the City Manager when monies are to be reallocated to other line items within an Account Category, and/or when a budget amendment will be required, prior to actually completing the purchase. For capital projects, it is the department head's responsibility to notify the Manager/Assistant City Manager as soon as possible following authorization of any change order that will require monies to be reallocated.

Encumbrances: Occasionally at the close of the City's fiscal year, departments find where particular items of furniture, equipment, etc. have been ordered but not yet received. So as to prevent a budget overrun in the new fiscal year about to begin, departments may request to have monies "carried over" from the year about to end.

Encumbrances are completed for capital purchases only and not on a programmatic basis. For example, a department may request monies to be encumbered for purchase of a new computer workstation but cannot request that the unspent monies in its overtime budget be carried over. Additionally, encumbrances are generally not accepted if their total dollar amount is under \$500.

Year End Close Out: As they begin to prepare the next fiscal year's budget, departments also begin the process of "closing out the books" near the end of the current operational year. As accurately as possible, they calculate estimates of the final expenditures for each account line item within each program they administer for inclusion in the budget document. It is noted that expenditures are charged in the budget year in which work is completed and/or goods are received, regardless if the bill is not received until after the start of the new fiscal year. For example, the remodeling of an employee's office that is finished in June but not billed until after July 1 will be credited to the previous fiscal year's budget.

Purchase Order Requisitions

Purchase Order Requisitions actually order goods from vendors. They are prepared by the individual departments and forwarded to the Finance Division for processing within five (5) working days of ordering. Requisitions are to include the vendor's complete name and address,

description of goods to be purchased, estimated cost, and the appropriate account codes to which the purchase is to be credited.

Departments are to forward the original requisition form, signed and completed, and retain the carbon copy for their own internal records.

The amount of any purchase order requisition made by a department will appear in all budget and financial reports for that department as being obligated monies. In this manner, it will help protect departments from inadvertently exceeding budget allocations.

Upon receipt and acceptance of ordered goods, departments are required to forward to the Finance Division the packing slip and/or invoice that will be included with the order. The Finance Division will then issue a check to the vendor. It is the department head's responsibility to notify the Finance Division if there has been any change in the amount due the vendor between the time the goods were ordered and the time they were received, and/or in the account coding to which the purchase is to be credited.

Given the special nature of certain goods and services which department may order, it is at times necessary and appropriate that partial payment of purchase orders be made prior to receipt of a complete order. It is the department head's responsibility to notify the Finance Division whenever this situation may apply.

Open Purchase Orders: In addition to standard purchase order requisitions, the City also maintains a limited number of "open purchase orders" with various vendors for the purchase of goods and materials on an on-going basis. Use of these is restricted to certain vendors and employees. Persons seeking additional information and/or authorization to use this method of purchasing should consult their department head and/or supervisor.

Check Requests

Check requests are completed either for goods that have been received, or as may be required by the vendor for purchase of some particular good or service. As with purchase order requisitions, check requests are to include the complete name and address of the vendor, a description of the goods purchased, the total amount due the vendor, and the appropriate account coding to which payment is to be credited. Attached to the check request must be documentation which verifies this information (e.g., invoice).

Check requests are to be submitted not later than 5:00 p.m. on Friday for payment the following Friday.

Departments are to forward the original request, signed and completed, to the Finance Division for processing and retain the carbon copy for their own internal records. The Finance Division will directly mail payment to the noted vendor, unless at the discretion of the department head, it is clearly noted on the face of the check request that the check is to be returned to the requesting department.

For single payment purchases of \$100 or less, and/or for bills received from vendors with open purchase orders, a formal check request is not required to be completed, provided the Department Head writes on the face of the invoice the account code to which payment is to be credited and initializes the information.

Petty Cash

The City's Petty Cash Fund is intended to pay for small purchases such as tolls, postage, minor supplies, parking, etc. In situations where open purchase orders are established, they are to be utilized rather than petty cash.

Employees may request either an advance or reimbursement from petty cash up to \$50 on their single signature, or \$100.00 with their department head's approval, on forms provided by the Finance Division for this purposes. Completed forms must describe the good or service (to be purchased, indicate to which fund and account line item the amount is to be credited, and be signed by an authorized departmental employee (as so designated by the Department Head). For both advances and reimbursements, receipts indicating the cost of the good or service must be submitted to the Finance Division upon completion of the transaction, unless this requirement is otherwise waived by the Assistant City Manager or Comptroller/Treasurer.

Recycled/Recyclable Goods Preference

Wherever possible, departments are expected to use goods and materials that are recycled and/or of recyclable content, and are encouraged to patronize vendors who employ environmentally sound practices in their business operations. As a general rule, recycled/recyclable goods and materials whose purchase price is within five (5) percent of the lowest bid should be selected, provided they are of the same quality and provide the same level of service as non-recycled/recyclable goods and materials.

PURCHASING & BIDDING PROCEDURES

Department heads are responsible for all purchases made within their respective departments. Subordinate employees may be authorized to make purchases, with the prior approval of the department head and appropriate notification given to the Finance Division.

The following sections detail the procedures to be followed when making purchases of goods for the different amounts discussed, as well as those procedures to be followed when contracting for professional services.

Purchases of \$10,000 or Less

Purchases that total \$10000 or less may be made without undertaking a formal or informal bid process, provided that reasonable efforts are made to procure the best product at the lowest price. It is recognized that certain purchases are for relatively small amounts (as defined by the department head) and/or are uniquely specialized as only one vendor may be available. As such, while it is recommended, it is not required that two price quotes be obtained prior to authorizing a particular purchase.

Purchase Order Requisitions or Check Requests may be used with these types of purchases, at the discretion of the department head and/or as the vendor may require. Regardless of which

method is used, the Finance Division must be provided with the name and mailing address of the vendor, a description of the goods (to be) purchased, their total cost, the fund and account line item to be credited with the purchase, and all appropriate documentation verifying this information (e.g., an invoice or packing slip).

Purchases of \$10,001 - \$19,999

Purchases for all goods and materials, but excluding professional services, which total between \$10,001 and \$19,999 shall require an informal bidding process to be followed, unless otherwise waived by the City Manager. This process shall consist of solicitation of two price quotes from at least two qualified vendors, with the contract to be awarded to the lowest responsible quote.

Purchase Order Requisitions or Check Requests may be used with these types of purchases, at the discretion of the department head and/or as the vendor may require. Regardless of which method is used, the Finance Division must be provided with the name and mailing address of the vendor, a description of the goods (to be) purchased, their total cost, the fund and account line item to be credited with the purchase, and all appropriate documentation verifying this information (e.g., an invoice or packing slip).

Purchases of \$20, 000 or More

Purchases of goods and services in excess of \$20,000, as well as contractual services agreements of an equal or greater amount, are considered to be "capital expenditures." These are purchases which relate to the completion of permanent, or "capital," improvements and/or due to their cost, the provision of municipal services. This includes such items as street salt, the specialized paint used to mark parking spaces, police squad cars, fire engines, etc. It does not include office supplies, desk chairs, computer software, and those items of an impermanent and/or less costly nature. "Capital improvements" would include street reconstruction projects, public building improvements, watermain extensions, and similar type activities.

Formal bidding procedures must be followed when making capital expenditures equal to or greater than \$20,000 in value, and when authorizing contractual services equal to or greater than \$20,000 in value for completion of capital improvements. Departments are required to have all bid documents reviewed by the Legal Services Division prior to distribution and/or publication to ensure they remain in compliance with all applicable local, state and federal regulations.

It is the responsibility of the effected department to prepare all bid specifications and documents for a particular project. At a minimum, bids shall be solicited through advertising in the local daily newspaper at least once, with the advertisement being published not less than five (5) days nor more than 30 days prior to the established bid opening date. Bids may also be solicited through other means and sources, as deemed appropriate by the department head.

Bids are to be submitted in sealed envelopes to the requesting department (or the Finance Division if the requesting department so chooses). Unless extraordinary and documentable reasons exist to do otherwise and the City Manager so authorizes, bids received after the due date and time are to be returned unopened to the bidder, with a cover letter stating the reasons why

the bid was rejected. In the event of a sealed bid being opened prior to the established date and time for such opening, the department shall immediately submit a written report to the Assistant City Manager stating the time of the premature opening and the circumstances causing such action, and stating what information contained in the bid documents may have been disclosed to the public, any potential bidder, or to any other City employee. The prematurely opened bid shall be sent with the written report to the Assistant City Manager, who shall notify the effected bidder of the situation. The bidder may, at his/her option, have the bid returned for placement in another sealed envelope, or, (s) he may authorize the Assistant City Manager to reseal the envelope. In the case of resealing the envelope, the Assistant City Manager shall note on the envelope the name of the person as agent of the bidder who authorized the action, attach the written report to the envelope, and direct the department to retain all materials within the bid file for public inspection. All bid deposits that may be received are to be submitted to the Finance Division for safekeeping. The Division will return these monies to the proper parties upon notification from the requesting department that the deposits may be released.

Bids awards are made by the City Council. Generally, contracts shall be awarded to the lowest responsible bidder. However, the Council may waive this requirement upon a two-thirds vote. Further, in the event a local bidder (as defined by the City Municipal Code) submits a bid within five percent of the lowest bid, said local bidder shall be given the opportunity to meet the lowest bid submitted and receive the contract award.

Professional Services

Professional services, where factors beyond price warrant serious consideration, shall typically be procured through a "Request for Proposal" (RFP) system rather than a competitive bidding process (although should the City have an existing and satisfactory relationship with a firm, contractually present or not, this provision may be waived upon City Manager approval). This would include such services as auditing, engineering, planning, legal, appraising, architectural, medical, psychological, marketing, developmental, risk management, bond issuance, and similar type services. Contracts in an amount equal to or greater than \$20,000 shall require prior City Council approval; contracts in an amount less than \$20,000 may be authorized by the City Manager.

The development of a Request for Proposal (or similar type request) shall be the responsibility of the department head. At a minimum, it shall contain and/or solicit the following information:

1. A complete and specific description of the project to be undertaken, its timeline and the services being requested.
2. Name, title, address and phone number of the City's project manager (e.g., the department head), who shall serve as the primary contact for the project from proposal solicitation to actual completion.
3. Names, titles, addresses, phone numbers and resumes of all members of the responding firm who shall provide services to the City, should the contract be awarded to same. This shall include a specific description of the services to be provided by each individual, as well as the designation of one person as the firm's project manager.

4. Descriptions, with references included, of other projects completed by the responding firm that is similar in nature to that being requested by the City.
5. Where permitted by law, complete and specific fee structure for the firm, and the total cost of services to the City. For clarification of where this clause applies, employees are to contact the Legal Services Division.
6. The date by which proposals are to be submitted, along with the number of copies to be provided to the City for review. Any proposal received after the published date is to be disqualified, unless extraordinary and documentable circumstances exist and the City Manager waives this requirement.

As when they undertake formal bidding procedures, departments are required to have all RFP documents reviewed by the Legal Services Division prior to distribution and/or publication to ensure they remain in compliance with all applicable local, state and federal regulations.

The City's project manager shall retain a list of all firms or persons to whom an RFP document was distributed. Upon receipt of proposals, the project manager shall review all of those received on a timely basis and shall forward a recommendation on same to the City Manager, with final approval/denial to be granted by the City Council.

Special Considerations

As noted earlier, certain goods and services are of such a unique character (e.g., traffic control devices) that only one vendor may be available. Similarly, the City from time to time cooperates with other agencies or organizations in completion of certain projects (e.g., Illinois Department of Transportation) and is not the lead agency in contractor selection. In these and other circumstances of like nature, standard bidding procedures may be waived upon authorization by the City Council.

Contract Administration

Each contract for service that is entered into by the City of DeKalb shall have a designated "Contract Administrator" who shall be responsible for its proper oversight and management. The Contract Administrator shall ensure that the provisions of the contract are met on a timely, complete basis; that all payments made to the contractor are done in accordance with contract provisions; and that adequate record keeping systems are in place to verify the contractor fully meets its obligations.

The Contract Administrator shall immediately notify the City Manager, Assistant City Manager, or Comptroller/Treasurer in the event the contractor is unable or unwilling to meet its obligations or if there is any suspicion of criminal activity or intent.

State Purchasing

Employees shall seek to utilize the State Purchasing Program, joint intergovernmental purchasing and bulk purchasing to the greatest extent possible. The Finance Division maintains an inventory of such programs and available products, and will work with each department in pursuing the use of these purchasing methods.

It is noted that procurement of goods and equipment through the State Purchasing Program satisfies the requirement for formal bidding even if the purchasing may be in excess of \$10,000. However, City Manager approval and Council authorization of the expenditure is still required.

DSATS Transportation Improvement Program (TIP) Procedures

File Locations:

- Current TIP:
http://www.cityofdekalb.com/ComDev/DSATS_Docs/TIP/DSATS_FY09_13_TIP.pdf for example
- Notice of Public Review: *DSATS PUBLIC REVIEW PROCEDURES in appendix*

Description:

The Transportation Improvement Program is a 4-year listing of budgeted projects. Projects must be in the TIP if they include federal or state funding. It is DSATS Policy to include all projects, even 100% local funded projects.

A primary goal of the TIP is to program STU funds. Under SAFETEA-LU (good to FY09), the DSATS area receives \$555,000. Projects that include federal funds cannot begin their projects until the project is included in the TIP (road and transit projects).

The TIP is not required to be updated annually, but it saves a lot of work in amendments and makes it much easier to keep track of. The updated TIP is due to State of Illinois by **June 30** of each year if it is updated. Your IDOT OPP rep (Carl Mikyska) processes the paperwork to amend the State TIP to reflect the most recent DSATS TIP. Make sure to ask for copies of the letters that are sent to FHWA and FTA. (see FY07-10 TIP file for samples.)

DSATS Procedures:

1. Email current spreadsheets to the Engineers of each jurisdiction. Ask them for information on completed projects (completion dates & total cost), new projects, updated project schedules. They will generally require 1-2 months to complete this process. Current Contacts:
 - a. DeKalb County: Bill Lorence
 - b. City of DeKalb: Joel Maurer
 - c. City of Sycamore: John Laskowski
 - d. Town of Cortland: Tom Simmons
 - e. NIU: Ken Pugh / Rena Cotsones
2. Also email the transit spreadsheet to Tom Zucker at the Voluntary Action Center for his comments. (tzvac@aol.com, 758-3932.) Note that for transit projects, you must identify the fiscal year of the funds and the year in which the project will be undertaken/funds will be spent.
3. Send revised spreadsheets to entire TAC for initial review. When the spreadsheets are revised, all of the TIP projects receive a new TIP number

(far left column). To keep the document from being too long, limit information on completed projects to 2 or so years prior.

4. Make updates to text of the TIP.
5. Ask I&T (Doug Eaton) to update the TIP maps for you. The best way to that is to give him copies of the old maps, with the new information that you want displayed.
6. Once completed, combine into one .pdf document. Every page needs to be numbered, including the spreadsheets and maps.
7. Email those involved in the development of the TIP:
 - a. TAC members
 - b. Policy Committee members
 - c. Bill Wheeler or Vanessa Adams at FTA. (bill.wheeler@fta.dot.gov or Vanessa.adams@fta.dot.gov.) They won't always provide comment, but it's worth sending it to them.
 - d. DSATS IDOT Representative (Curtis Jones Curtis.Jones@illinois.gov)
8. The TIP must be available for public review for 45 days before it can be adopted by the Policy Committee (see DSATS PUBLIC REVIEW PROCEDURES in appendix). Notice of availability of the TIP for public review must be published in the Daily Chronicle. The Planning Division secretary (Patty Raih) can do this for you. Retain proof of publication in the TIP file. Bill the legal notice to account #61-8373. Also ask I&T (Jeff Birtell) to post on website or Channel 14. Retain a copy in TIP file.
9. Send one hard copy of the TIP to each public review site. See Page 22 of the TIP. Enclose a copy of the legal notice (word doc is fine) and note the date that they can dispose of the draft document. Make all draft hard copies are stamped as such (either use actual stamp or the header/footer feature.)
10. The Technical Committee and Policy Committee need to review the TIP during at least two meetings. I generally send it out by email in draft form in April, put it on the agenda for discussion in May, and approval in June.
11. Choose a different color cover for each year – it makes it easier to distinguish. Used: gray in 07-09 and cream in 07-10.
12. Once approved, send to:
 - a. IDOT Office of Planning & Programming (Carl Mikyska) (5 copies). The address is: 2300 S. Dirksen Parkway, Springfield, IL 62703. IDOT is responsible for distributing to FHWA and FTA.
 - b. Mail hard copies to anyone who requests them, as well as the public review sites.

Section 5307 Grant Application Process

1. Make certain that the projects you are applying for are included in the TIP and the STIP.
2. Verify appropriation and amount of funds available. This is done by calling Linda Glover at 312-353-3853. She will need to know what Fiscal Year you are asking about.
3. Get a project number assigned. This is also from Linda. She will usually have to call or email you back, it shouldn't take more than a day to get this.
4. Using TEAM, enter info into application – go to “Applications” on left side column, using either “new project” or “copy project” if you're doing the same type of application as before. Do not attempt to “submit” it yet. Start a project folder for this grant. (See *DSATS PL / 5303 Invoicing in Appendix* for specific instructions on using TEAM.)
5. Fill out OMB Form 424, 424A, and 424B. For question 10, the grant number is 20-507, the title is “Federal Transit Formula Grants.” For #11, use “49 USC 5307 Urbanized Area Formula funds for transit [operating assistance/capital/whatever the grant is being used for] in DeKalb, IL urbanized area.” For #15, enter amounts of federal funds and local match (“Applicant”). For #16, circle “a. Yes”. This form required the Assistant City Manager's signature. (See any of the previous grant files for an example. An original of 424 is included in this binder.)
6. Fax the Form 424 and the printed application to: Ms. Roukaya McCaffrey – DCEO Grant Clearinghouse, FAX: (217) 558-0473. Save fax confirmation sheet.

In response to the form faxed to DCEO, you will eventually get a letter from the “Single Point of Contact Illinois State Clearinghouse” indicating whether the state agrees with your request. This is a formality – I don't think we're doing anything that the state would disagree with. Make sure to save this letter. If you don't receive this letter within 120 days of faxing form, follow-up with Roukaya.
7. Go to the TEAM application and enter the date on the fax confirmation sheet for the field to the right of “Executed” on the “Project Details” screen (DCEO is considered to be “notified” once the form is faxed to them).
8. When everything else is entered, contact Linda Glover (FTA) for informal FTA review – they look over the application before a formal submittal.
9. Linda G. will notify you once the FTA has completed their review – when OK, use Linda Wiggins' PIN to submit the application.

10. It takes 4-8 weeks for the application to be approved – when approved, Linda G. will let you know it's ready for execution. If you don't hear anything within 8 weeks, give Linda a call.
11. Contact Nancy Stowra (IDOT-DPT) to ask her to PIN the application to be executed. She typically needs a week's notice to get the approval she needs to use the PIN.

This is because DeKalb MPO is under 200,000 population - IDOT is the "recipient" and DeKalb is the "subrecipient". IDOT needs to approve the agreement with their PIN before DeKalb can approve the subrecipient agreement.
12. Once Nancy enters IDOT's PIN, she will let you know that the Subrecipient Agreement is ready to be approved. Using TEAM, go to "Execute Award" on left side column. Go to "Award Agreement" tab – at bottom, enter Linda Wiggins' PIN and click the Execute button.
13. Funds are made available 72 hours after the award is executed.
14. Use ECHO to draw down funds. See *DSATS PL / 5303 Invoicing in Appendix* for further instructions.

How to Apply for and use Illinois Toll Revenue Credits (ITRC)

In many situations, it can be difficult for local grant applicants to come up with the 20% local match for most FTA grants. The FTA does allow some projects to use Illinois Toll Revenue Credits in Lieu of the 20% local match. IDOT officials, however, do encourage grantees to make an effort to find local sources of funding before requesting the use of Toll Revenue Credits.

It should be noted, that should ITRCs be used, the funds that would normally be available for use from the local match will not be available, therefore the total reimbursement on the project will be reduced.

Below are the procedures to apply for ITRCs:

1. Get permanent grant number assigned by Linda Glover.
2. Complete application in TEAM.
3. In the Project Information menu, in the Project Description box, type the following “*This grant will utilize \$_____ (insert amount) of State of Illinois Toll Revenue Credits in lieu of the required match”.
 - a. How to calculate the amount of TRC’s: Divide total amount of expenditures by 5. TRC’s are equivalent to 1/5 of the total expenditure. Do not need to show TRC amount in control totals.
 - b. Example: Total federal amount and the amount of all purchases equals \$258,397. The TRC amount is $258,397 / 5 = 51,679.40$. If the amount is even \$0.01 more than even dollar amount, round up to ensure the full and sufficient match.
 - c. How to demonstrate TRC’s In TEAM:
 - i. In the project details, make the following statement, “This line item will utilize \$_____ in State of Illinois Toll Revenue Credits in lieu of the required match, per letter from IDOT dated _____.”
 - ii. Also, in the user description of the Project budget, add an asterisk in the activity line item description box. Then in the “details” box, write “This project will utilize \$_____ State of Illinois Toll Revenue Credits in the lieu of the required match. (See Grant x534 for example.)
4. Draft a letter to Nancy Stwora on City letterhead requesting the use of the exact amount of Toll Revenue Credits. Include a brief project description. This letter should be signed by the Mayor.
5. Print off a copy of the 5307 application in TEAM.
6. Send letter and application to Nancy Stwora at IDOT-DPIT.

300 West Adams, 2nd floor
Chicago, IL 60606
(312) 793-2018

7. The granted request comes in the form of a letter that is sent to the Mayor and to the FTA. Neither staff nor Nancy S. generally gets a copy. TRC's are supposed to take 2-4 weeks to process.

What is a Toll Revenue Credit anyways? The State of Illinois receives credit for the money that it spends on Toll roads. This money can be applied in lieu of the local match on transit projects. It's kind of like funny math, because no money actually changes hands. In essence, the TRC allows federal funds to be used at 100%. This program has been around for a little more than a year, and we have no way of knowing how long it will be available.

DSATS FTA 5307 Grant TEAM / ECHO Website Procedures

All FTA 5307 Grant management is handled online. The TEAM website is used to submit grant requests and update information about each grant. The TEAM website is used to submit requests to draw down funds from 5307 grants. Below is the procedures for using the websites:

TEAM Website Procedures

This system monitors 5307 grants. Grants can be created, modified, and executed through this program. Any questions, call Joyce Taylor.

TEAM Website: <http://ftateamweb.fta.dot.gov/fta-flash2b.html>

TEAM Website Accounts

One of the very **first things** you should do is submit a GRANTEE USER REQUEST Form. Completed forms from previous years are located in the ECHO/TEAM white user binder. This form should be sent to (by mail or fax):

Oscar Waller
200 West Adams St. Suite 320
Chicago, IL 60606
Fax: 312-886-0351

Once you have been granted a user ID, you should use the same form to “Delete User.” That form is also sent over to Oscar. Oscar is your contact for any Tech Support issues with TEAM.

Current IDs and PINS (check with current or previous MPO Coordinator for passwords and PINS):

1. MPO Coordinator (Administer Grant information, submit reports)
 - a. Name: Brian Dickson
 - b. User ID: DICKSONB
2. Assistant City Manager (submit and execute grants)
 - a. Name: Rudy Espiritu
 - b. User ID: ESPIRITUR
3. City Attorney (Submits annual Certifications and Assurances)
 - a. Name: Norma Guess
 - b. User ID: GUESSN00R
 - c. (The City of DeKalb is required to agree annually to the Certifications and Assurances before any federal grant money can be accessed. Norma and Rudy are the only users who are authorized to sign off on these Cert & Assurances. Rudy must PIN first and Norman PINs second. You can just email Norma with the TEAM link, let her know the date you would like it to be done by and she will enter her PIN to sign off.)

TEAM Grant Submission Procedures

1. Grants must be submitted using the Assistant City Manager User ID.
2. Start with instructions found above in this manual.
3. Main Menu – click applications, then submit query, then highlight the application you are working with.
4. In the menu, click on “Modify Application”. These are all the categories you need to fill in.
5. PROJECT INFORMATION tab:
 - a. Project: You create your own description. Look at past grants for examples.
 - b. FTA Project Manager: [should display name of FTA Project Manager when grant submitted]
 - c. Est. Start/End: Fill in the dates that you expect the project to take place over. (correlates to milestones.)
 - d. E/O Review: check N/A
 - e. Rev Date: The date you send OMG 424 to State
 - f. Planning grant: Check yes if there is any element of planning, no matter what the percentage of total.
 - g. Program Date: The date the MPO adopted the TIP that the projects are found in.
 - h. Program Page: The page of the TIP that lists the projects.
 - i. (When the application is ready for Linda Glovers informal review, you must fax her the appropriate page of the TIP and the cover.)
 - i. Application Type: Elect
 - j. Supplemental Agreement: YES (double check this, it will hold you up if you accidentally put NO!)
 - k. Project Description: Here you need to summarize the items that are included in the grant. If vehicles are included, be sure to state if they are paratransit vehicles. If Toll Revenue Credits are being used, make sure to include the statement, “State of Illinois Toll Revenue Credits are being used in lieu of the required local match, in the amount of \$XX, per letter from IDOT dated (insert date), (if you don’t have the letter yet, that’s okay – go back and fill this in when you get it.) Also need to include a statement about what funds you are applying for, ie FY07 funds in the amount of \$790,000.
6. BUDGET tab
 - a. Click “add”. An open set of lines will appear.
 - b. Click in the box underneath of “Scope”.
 - c. Click on the magnifying glass to search scopes and Activity Line Item Codes. (Scopes end in 00, ALI’s end in numbers).

- d. Type the amount budgeted into both the FTA amount and Total Eligible Cost.
 - e. In the quantity box, put a number of items; if a number is not appropriate then enter 1.
 - f. In the details box, describe the items and number being purchased.
 - g. Also, need to be sure to put the language, "State of Illinois Toll Revenue Credits are being used in lieu of the local match." This needs to be stated in the details of every budget line item if TRC's are being used.
7. Milestones: For most projects, TEAM will fill in the blanks of what the milestones are. All you have to do is insert the dates. Just go with your best guess, this doesn't seem to be that important for projects of our size.
 8. Environmental Findings
 - a. Each ALI needs to have an environmental finding.
 - b. Click on the ALI and then click on "add".
 - c. Scopes do not get findings. Class IIC: Type 17 is the code for vehicles.
 - d. Class IIC: Type 19 is the code for security upgrades and computer equipment.
 9. Fleet Status: As long as we are only purchasing paratransit vehicles, we do **not** need to fill out this section. Make sure it is clearly stated in the project description that they are paratransit vehicles to avoid being asked to fill this section out.
 10. Application Reviewer: This will tell you if there are errors.
 11. Comments: Linda may enter comments here, but she will usually call you with them as well.

TEAM – Grant Maintenance

1. Quarterly Grant Reporting
 - a. In January, April, July, and October, you need to submit an online quarterly report
 - i. In TEAM, go to "Project Management" and enter info (based on the milestones you defined in the application) for the previous 3-month period.
 - ii. Use the fiscal year date (e.g. "1st quarter FY 05, 2nd quarter FY 05, etc.) that you are currently in, regardless of the FY that your grant came from (e.g. if you're spending FY 04 funds in Oct., Nov. and Dec. 2004, the report you submit in January 2005 would be called "1st quarter FY 05).
 - b. If you have not drawn down any funds in that quarter, you do not need to file a report.
 - c. If you miss a report, don't worry about it. You can include the information in the next report.

2. Yearly Certifications and Assurances
 - a. Each year in January, the FTA wishes grant recipients to renew their Certifications and Assurances, verifying all the recipient information is up to date.

ECHO Website Procedures

This system is used to drawdown 5307 funds.

1. Website: <https://ftaecho.fta.dot.gov/>
2. Applicant ID: 6299
3. User ID:
 - a. MPO Coordinator: Brian Dickson
 - b. User ID: DICKSONBW200R
 - c. ECN: 69085181

DSATS PL / 5303 Invoicing

The MPO Coordinator must keep track of all expenditures associated with transportation planning for DSATS. The City of DeKalb, as the designated recipient of all DSATS planning funds, pays the expenditures from its budget and then quarterly, the MPO coordinator submits an expense report to IDOT to request reimbursement for those expenditures. Each expenditure is split between PL and 5303 funds based on the percentage of yearly allocated funds between PL and 5303 funds. Generally, the annual distribution of funds has been 85% in PL funds and 15% in 5303 funds. Below are the procedures for submitting quarterly reimbursement requests:

1. The PL 5303 Expense Register is located under the current Fiscal Year Budget subdirectory (DSATS_{xx}\FY 20_{xx} Budget\FY_{xx} PL 5303\FY_{xx} PL 5303.xls).
2. On the “Reg Q_x” (where x is the quarter #) enter the information on each expenditure. Fill in the City of DeKalb Expenditure Information, a short but detailed description of the expenditure, the City Budget Code, the MPO Budget Code, and the Total Expenditure. The spreadsheet will calculate the amounts allocated towards PL, 5303, and local match funds.
3. At the end of the quarter enter the quarterly payroll information on each staff member. The DeKalb Financial Director (Ted Kozinski) should send a report each quarter for each staff member).
4. Tabs are present to create the Quarterly Expense breakdown report submitted to IDOT.
5. This spreadsheet is used to create the quarterly reports, which are sent to IDOT. In addition to entering this information in the excel spreadsheet, each transaction that occurs for Fund 61 should also be entered into the Quicken Financial Register.
6. The invoice documents can be found in the “MPO forms and docs” folder. Use the previous quarter’s “FORM C13 FY 20_{xx}...” as the template. A separate report should be submitted for 5303 and PL and put the Quarter number in the file name.

It is important that a separate invoice is submitted for PL funds and 5303 funds.

The invoices (along with the DSATS budget detail tracking sheet) are submitted to:

Illinois Department of Transportation
Bureau of Business Services
Attn: Juanita Akers
2300 South Dirksen Parkway, Room 302
Springfield, IL 62764

IDOT DOAP Procedures

The Illinois Downstate Operating Assistance Program (DOAP) evaluates and administers capital and operating grant programs for downstate urban and rural transit systems; and administers the Statewide Consolidated Vehicle Procurement Program.

Transit Operating Program:

1. The contact at IDOT is Karen Strell and she is very helpful. Her email is karen.strell@illinois.gov. If new to the job, it will be extremely helpful to make a trip to Chicago and visit the IDOT Public Transit and FTA Region 5 representatives. The major items to be concerned about:
2. Advances:
 - a. DSATS can ask for money ahead of time. To do so, staff submits DOAP forms OP-10A, B, and D. Tom Zucker will provide the OP-10B form, which estimates the expenses for the coming quarter. You will fill those numbers into the excel spreadsheet, (located under the FYxx Budget/DOAP subdirectory and called FYxx DOAP.xls), to determine the amount of money to be requested. Use these numbers to fill out OP-10A.
3. Actuals:
 - a. Actual expenses are documented on OP-10C. Tom Zucker will provide this form. Using 10-C, fill in OP-10D (use again FYxx Budget subdirectory and called FYxx DOAP.xls), and transfer the information to OP-10A.
 - b. You'll want to check VAC's addition on the OP-10C. Just make sure it all adds up to the totals they have listed.
4. OP-10A and D are signed by the Assistant City Manager. OP-10B and C can be signed by Tom Zucker or MPO Coordinator. IDOT always gets original signatures. Try to have everyone use blue pen, it is easier for IDOT to tell they are originals. Save a copy of all submitted forms and any vouchers and invoices from the City Finance office. If running late on a deadline, fax the worksheets to Karen at (312)793-1251 and then FedEx the originals. Otherwise, US Mail is fine. Don't fold them; send them in a large envelope.
5. Record payment requests and payments received in the current Excel register and in the Quicken database. Email Ted Kozinski and let him know the amount to expect in payment, and request he sends you a photocopy of the check to keep in the DSATS files.

DSATS National Transit Database Reporting Procedures

Introduction:

The National Transit Database (NTD) is the Federal Transit Administration's (FTA's) primary national database for statistics on the transit industry. Recipients of FTA Urbanized Area Formula Program (§ 5307) and Nonurbanized Area Formula Program (§ 5311) are required by statute to submit data to the NTD. Over 650 transit agencies and authorities file annual reports to FTA through the internet-based reporting system. Each year, NTD performance data are used to apportion over \$4 billion of FTA funds to transit agencies in urbanized areas (UZAs). Annual NTD reports are submitted to Congress summarizing transit service and safety data.

The NTD is the system through which FTA collects uniform data needed by the Secretary of Transportation to administer department programs. The data consist of selected financial and operating data that describe public transportation characteristics. The legislative requirement for the NTD is found in Title 49 U.S.C. 5335(a):

Section 5335

- (a) NATIONAL TRANSIT DATABASE - To help meet the needs of individual public transportation systems, the United States Government, State and local governments, and the public for information on which to base public transportation service planning, the Secretary of Transportation shall maintain a reporting system, using uniform categories to accumulate public transportation financial and operating information and using a uniform system of accounts. The reporting and uniform systems shall contain appropriate information to help any level of government make a public sector investment decision. The Secretary may request and receive appropriate information from any source.
- (b) REPORTING AND UNIFORM SYSTEMS - The Secretary may award a grant under § 5307 or § 5311 only if the applicant, and any person that will receive benefits directly from the grant, are subject to the reporting and uniform systems.

New Funding for Agencies Serving Urbanized Areas under 200,000 Population

The NTD data are also used in the formula allocations of Federal transit funds. Prior to the Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), only NTD data for urbanized areas with populations of 200,000 or more were used. With the passage of SAFETEA-LU, NTD data for urbanized areas with fewer than 200,000 population are also used in the allocation of Federal transit funding.

SAFETEA-LU directs that there be a one percent takedown from the funds made available under § 5307. This takedown amount will be for apportionment under the new Small Transit Intensive Cities (STIC) formula. Under the formula for STIC, funds are apportioned to UZAs with a population less than 200,000 that meet or exceed the average level of service for all UZAs with populations between 200,000 and 1,000,000.

SAFETEA-LU also establishes new Growing States and High Density States formula factors (§ 5340) to distribute funds to the § 5307 and § 5311 programs. One-half of the funds are made available under the Growing States factors and are apportioned by a formula based on State population forecasts for 15 years beyond the most recent Census. Amounts apportioned for each State are then distributed between UZAs and nonurbanized areas based on the ratio of urbanized / nonurbanized population within each State. The High Density States factors distribute the other half of the funds to States with population densities in excess of 370 persons per square mile. These funds are apportioned only to UZAs within those States.

For more information on SAFETEA-LU, contact your regional administrator or go to <http://www.fta.dot.gov>.

NTD Website Reporting:

As a recipient of FTA grant funds, DSATS is required to submit monthly and annual reports to the National Transit Database. All reporting is done online. As the Voluntary Action Center provides the transit for the DSATS region, they are responsible for providing all the data to DSATS. DSATS staff is then required to input that information on the website and submit it.

- Website: <http://www.ntdprogram.gov/ntdprogram/>
- City of DeKalb User ID: 5176
- NTD Website instruction booklet located in DSATS office
- If you are new, contact the FTA at:
 - Federal Transit Administration; National Transit Database; PO Box 457; Merrifield, VA 22116-0457
 - Copies of the request form are available in the instruction booklet.
 - It is highly recommended to attend an NTD training session for anyone that does reporting. Contact DeKalb's NTD rep for more information.
- Use CEO5176 User Account for all report submissions (contact previous reporter for password)
- If you have any questions about NTD Reporting, please contact Melissa Norquist at 703-205-2475, ext. 2479 (Validation Specialist with the NTD).

Monthly Reporting:

NTD requires monthly reporting for two reports

- Monthly Ridership Statistics:
 - DSATS staff is required to submit monthly ridership statistics report.
 - Monthly figures must be submitted before the end of the next month (i. e. December ridership figures must be submitted before the end of January).
 - VAC will provide the monthly ridership figures (contact VAC is the end of the month is nearing and the figures have yet to be provided).
- Monthly Safety Report
 - Mr. Zucker from VAC has an account where he can submit the VAC monthly Safety and Security report.
 - It is a good idea to check that this report has been submitted each month, and notify Mr. Zucker if you notice report has not been submitted.

- A full safety report, submitted by DSATS staff, is usually due on April 30 of each year.

Annual Reporting:

Each year DSATS must report all the financial activity for transit operations that occurred in the most recently expired Fiscal Year. The deadline to report activity is usually the end of October of the current year. Your local representative will contact you as to when the due date is.

There are several forms which must be filled out each year. Mr. Tom Zucker at the Voluntary Action Center keeps track of all the required information. About a month before the Annual Report is due, contact Mr. Zucker to start filling out the reports for the most recent fiscal year. More information about the reports can be found at:

http://www.ntdprogram.gov/ntdprogram/forms_overview.htm.

Failure to report, on time, can result in the suspension of federal funds.

DSATS / Contractor Oversight Procedures

DSATS and the City of DeKalb shall monitor all contracts and contractors when federal FTA funds are used. In addition, as these grants benefit the Public Transit provider, the activities of the public transit provider, in this case the Voluntary Action Center (VAC), must also be monitored. Below is a list of monitoring responsibilities that the City of DeKalb is expected to enforce. Please note that some of these regulations are specific to the public transit provider and others are applicable to all grant contracts and will be noted on here. Also note that these are the requirements for all FTA funded contracts over \$100,000. For contracts less than that, the federal transportation regulations should be reviewed as some of the requirements may not be required in such cases.

PUBLIC TRANSIT PROVIDER – VOLUNTARY ACTION CENTER (VAC)

VAC and the City of DeKalb entered into an agreement for VAC to provide public transportation for the DeKalb region. The current contract was put into effect on October 1, 2006, will be automatically renewed on October 1, 2008 unless terminated by either party and will expire on September 30, 2011.

VAC has been providing public transportation for all of DeKalb County for over 30 years. In the past they have received many Federal grants via the State of Illinois rural grant funds program and as a result, they have had first hand experience in dealing with all the federal and state regulations dealing with public transit. Given VAC's long history with the City of DeKalb, the DeKalb region, IDOT, and the FTA, the City of DeKalb and DSATS have afforded VAC some leeway in the daily oversight procedures that would not be afforded a new contractor in the area.

The City of DeKalb provides oversight of VAC and their transportation in the following ways:

1. The Transportation Planner / MPO Coordinator reviews all the ridership figures and requests for funding submitted by VAC. These figures are reviewed to ensure that no anomalies are showing up in the reported information.
2. DSATS staff make routine visits to the VAC facilities to inspect that the facilities, vehicles, and maintenance shop are in working order.
3. DSATS staff has a policy of attending training courses on FTA and State regulations to keep up to date on regulations. Staff then reviews all the policies at VAC to ensure they are complying with all the latest regulations.
4. All FTA regulations required of all transit providers have been written into the contract with VAC. If VAC does not comply with all the regulations stated below, the City of DeKalb could terminate their contract with VAC. Should questions arise about VAC not satisfying any of their contractual obligations, it is the responsibility of VAC to provide proof they have followed all the following regulations as set for in the contract between VAC and the City of DeKalb:

SECTION 2. CONTRACTOR'S GENERAL OBLIGATIONS *(Public Transit Provider Specific)*

The Contractor shall furnish the following management tasks in order to provide an efficient transit system.

1. **Transportation Operation including:**
 - a. Supervision of all transit personnel employed by the Contractor.

- b. Securing all insurance coverage required and handling all matters with insurance carriers.
 - c. Direction and supervision of all accounting, bookkeeping, auditing and purchasing related to this agreement and attached Service Plan.
2. **Schedule Operations including:**
- a. Studying and recommending changes in operating schedules, headway frequencies, transfer methods, and other related transit operations.
3. **Employee Selection, Safety and Training including:**
- a. Direction and supervision of the selection of all transit personnel employed by the Contractor.
 - b. Direction and supervision of said employees' training as needed.
 - c. Direction and supervision of safety programs, safety meetings, and campaigns and use of safety equipment for the Contractor's personnel.

Payment (*Public Transit Provider Specific*)

- 1. Payment shall be made to the Contractor following the end of each calendar month, upon receipt of an itemized bill, including documentation of hours of service provided. Invoices shall be submitted by mail or fax, and must be received by 4:00 p.m. on the last Friday of the month for payment for services in the previous month. Payment will be issued on the Friday following the Friday on which the invoice is received by the City of DeKalb.
- 2. Payments for service in June must be submitted by July 25 or the following business day. As DOAP funds lapse at the end of each year, failure to submit the final FY invoice prior to July 25 or the next business day will be construed as a forfeit of payment.
- 3. Payment will be reimbursed at the rate of fifty five percent (55%) of the per hour vehicle cost. Vehicle costs will be allowed as follows:

<u>Existing Core Services:</u>	negotiated each year
<u>Green Line Expansion:</u>	negotiated each year
<u>Service to Sycamore:</u>	negotiated each year
<u>Elburn Shuttle:</u>	negotiated each year

- 4. **Subsequent Years.** VAC may seek up to a maximum of a 10% increase per vehicle hour for each subsequent year. If funds are not available, VAC may seek the percent increase available according to actual funding, and must seek City of DeKalb permission to reduce levels of service if existing funding is insufficient to maintain existing levels of service. The contractor must provide a written request and justification for the increase to the City. Vehicle hour costs will be set by the City Manager on July 1 of each year of the contract.

Taxes (*applicable to all contracts*)

- 1. The City shall not assume any liability for any federal, state, or municipal taxes.

Grant Funds

1. The contract is contingent upon availability of funds received by the City pursuant to grants under Federal Section 5307 Public Transportation Program and the State of Illinois Downstate Operating Assistance Program. *(applicable to all contracts)*
2. REIMBURSEMENT TO THE CONTRACTOR IS LIMITED TO THE MAXIMUM AMOUNT OF FEDERAL SECTION 5307 TRANSIT GRANT FUNDS AND STATE OF ILLINOIS DOWNSTATE TRANSIT OPERATING GRANT FUNDS MADE AVAILABLE TO THE CITY OF DEKALB OVER THE LIFE OF THE CONTRACT, LESS THE AMOUNT OF FEDERAL OR STATE TRANSIT FUNDS REQUIRED BY THE CITY TO RECOUP ITS EXPENSES ASSOCIATED WITH ADMINISTERING SAID GRANT OR OBLIGATED BY THE CITY THROUGH OTHER CONTRACTS. IN THE EVENT THAT SAID FUNDS ARE NOT MADE AVAILABLE FROM THE FEDERAL GOVERNMENT OR THE STATE OF ILLINOIS, THE CONTRACTOR SHALL NOT LOOK TO THE CITY TO RECOVER ANY LOSS OR COST INCURRED. *(applicable to all contracts)*
3. The City Manager will set an estimate of the maximum contract amount as of July 1 each year. The contractor will be notified quarterly as to the balance of the contract. *(Public Transit Provider Specific)*

Indemnification *(applicable to all contracts)*

1. The Contractor shall indemnify and hold harmless the State of Illinois, the Federal Government, the City, its City Council and members, employees, officers, agents, and representatives from and against any and all claims, demands, lawsuits, losses, damages, injuries, and liabilities, including attorneys' fees, costs and expenses, incurred by the City in connection with the performance of the contract awarded hereunder, whether or not caused or contributed to, by, or on account of any acts or omissions on the part of the contractor, or its officers, employees, agents or servants.
2. City hereby covenants and agrees to hold the Contractor harmless from and against any and all such costs, expenses, damages, liabilities, losses and claims which are the obligation and responsibility of the City or which may arise or result by reason of the negligence of the City.

Insurance *(applicable to all contracts – coverage requirements negotiable)*

1. The Contractor shall purchase and maintain continuously, throughout the term of the contract, insurance coverage meeting all the following requirements.
 - a. Worker's Compensation and Employer's Liability: Statutory Limits
 - b. General Liability: \$1,000,000.00 per occurrence Combined Single Limit (Bodily Injury & Property Damage), \$2,000,000.00 aggregate, including Contractual Liability specifically referencing this contract.
 - c. Automobile Liability: \$1,000,000.00 per occurrence Combined Single Limit (Bodily Injury & Property Damage), \$2,000,000.00 aggregate, including Hired and Non-Owned Autos Coverage and Medical Payments Coverage of \$10,000.00 per person, \$50,000.00 per occurrence. The Provider agrees that it will maintain or cause to be maintained, for the duration of the Agreement, such

2. Each of the above coverages shall be written by a company with a minimum rating of “A” by the Best’s Insurance Rating Guide. All coverages must be written by companies that are admitted, licensed carriers in the State of Illinois.
3. The City of DeKalb City Council, the State of Illinois, and the Federal Government shall be named as an Additional Insured on each of the above policies.
4. A Certificate of Insurance evidencing the required coverages and this Additional Insured Endorsement shall be furnished to the City prior to the first day of service. Such insurance shall be cancelable or modifiable only on written notice by registered mail to the City at least thirty (30) days in advance of any changes. The City reserves the right to require the Contractor to furnish a copy of its insurance policy for examination prior to the first day of service.

Disadvantaged Business Enterprise *(applicable to all contracts)*

1. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements will be considered a material breach of the contract award pursuant to this solicitation which may result in the termination of the contract or such other remedy as the City deems appropriate.

Compliance with State and Federal Laws *(applicable to all contracts)*

1. This contract is subject to all requirements associated with the receipt of Federal financial assistance from the Federal Transit Administration and the Illinois Department of Transportation. This procurement hereby incorporates, by reference, all standard terms and conditions associated with financial assistance contracts award by either agency.
2. The following provisions include, in part, certain Standard Terms and Conditions required by the Illinois Department of Transportation (IDOT), whether or not expressly set forth in the contract provisions found herein.
3. All contractual provisions required by IDOT, as set forth in the FTA Circular 4220.1E, dated June 19, 2003, are hereby incorporated by reference. Anything to the contrary notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in any Agreement arising from this solicitation.
4. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any City of DeKalb request that would cause the City to be in violation of the FTA terms and conditions.
5. The Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation to those listed directly or by reference herein, as they may be amended or promulgated from this time during the term of this contract. The contractor’s failure to so comply shall constitute a material breach of this contract.
6. In addition, the contractor shall adopt and enforce a drug-free policy as outlined below. The purpose of this policy is to assure worker fitness for duty and to protect our employees, passengers, and the public from the risks posted by the misuse of alcohol and use of prohibited drugs. This policy is also intended to comply with all applicable Federal regulations governing workplace anti-drug and alcohol programs in the transit

7. The contractor acknowledges and affirms that they will comply with the provision of all applicable state and federal laws, including but not limited to Section 2-105A of the Illinois Human Rights Act.

SECTION 3: DESCRIPTION OF SERVICES

Overview (Public Transit Specific)

1. Services will be provided with City of DeKalb vehicles, which are leased to the provider. The provider is subject to all terms of the (separate) lease agreement. The provider is responsible for providing storage and maintenance space for these vehicles.

Description of Services (Public Transit Specific)

1. Flexible Routes
 - a. Green Line Bus Route
 - i. The Contractor shall operate the Green Line Bus Route in DeKalb. The route begins at 7:00 a.m. and finishes at 9:00 p.m., Monday through Friday. The vehicle travels east on Bethany Road, from Health Services Drive, then South on Sycamore Rd. It travels West on Hillcrest and then South on First St. It winds through Third, Locust, and Seventh Streets before heading East on Lincoln Hwy. and South on Tenth St. The vehicle travels through the southern neighborhoods of DeKalb before heading north on Taylor Street and Annie Glidden Road to DeKalb County Health Dept. and the Nursing and Rehabilitation Center. The vehicle turns around at the Rehabilitation Center and travels east on Hillcrest Drive and then North on Sycamore Road to return to Health Services Drive. The route takes one (1) hour. The route is intended to make minor deviations to accommodate client demand. Such deviations are made at the Contractor's discretion, accounting for balancing schedules and the needs of all clients. Changes to the route must be submitted to the City of DeKalb.
 - b. Kishwaukee College-DeKalb Area Bus Route
 - i. The Contractor shall operate the Kishwaukee College-DeKalb Area Bus Route, as shown in Exhibit III.3. The route schedule is designed so that students may arrive for 8:00 or 9:00 a.m. classes. The run with arrival for 8:00 a.m. classes begins at 7:07 a.m. at Taylor-Riverside Apartments. It travels north to Lincoln Highway, then south on Fourth Street to Karen Drive. Then the vehicle travels north along South Seventh Street and Tenth Street, to Ridge Drive. Finally, it heads south on Annie Glidden Road to Gideon

2. Demand Response Service
 - a. The majority of passenger trips are provided in demand response mode.
 - b. The Contractor shall operate a minimum of ten demand response runs, Monday through Friday.
 - c. The Contractor shall periodically operate group trips in demand response mode. These trips will generally provide a social outing for a special/sponsored group (many-to-one type demand response). Provision of this type of trip is at the Contractors discretion.
3. Med-VAC Service
 - a. The contractor shall operate MedVAC, the medical transportation program.

Description of Planned Services (*Public Transit Specific*)

Planning efforts over 2004-2005 have identified possible service expansions. These services are proposed, and there is no timeline for implementation. The Contractor may be asked to provide these services at some point during the contract.

1. Green Line expansion: Service on the existing deviated- route Green Line would be expanded by adding additional service hours, including running from 5 a.m. to 11 p.m. Monday-Friday, and from 7:00 a.m. to 6:00 p.m. on Saturdays and Sundays. Unless operated as deviated route service, paratransit service would also need to be available during these hours.
2. Service to Sycamore: This route is currently in developmental stages. It is envisioned to be a one-hour, or less, route from a point on Sycamore Road (i.e. Northland Plaza) in DeKalb to points within Sycamore. Timing of this route will need to be coordinated with the Green Line schedule to allow easy transfer for passengers. Hours of operation are anticipated to be 7:00 a.m. to 6:00 p.m., Monday through Saturday.
3. Elburn Shuttle: This route would provide four daily trips (seven days a week) to and from the Metra Station in Elburn, Illinois. The trip is anticipated to be fifteen miles in each direction. A 14-passenger vehicle will be provided for this service.

Persons with Disabilities (*Public Transit Specific, however all regulations should be reviewed to see if they may be applicable to other contracts*)

1. The contractor shall conform to all requirements of the Americans with Disabilities Act and the U.S. Department of regulations pursuant thereto in the provision of service. (*applicable to all contracts*)
2. The contractor shall ensure that no person, on the basis of disability, is denied access to BITS services.
3. The contractor shall transport all special needs clients, including persons with disabilities, provided the client uses a "common wheelchair" pursuant to the definition contained in the U.S. Department of Transportation regulations (49 CFR part 37.3).
4. The contractor shall use securement systems and any other safety means necessary to ensure that all common wheelchairs transported are properly secured.

5. The contractor may contact the passenger or their representative and request to provide technical advice as to whether the device conforms to ADA guidelines.
6. If a mobility device does not meet common wheelchair guidelines, the Contractor may refuse to transport the device. The Contractor shall immediately notify the City in the event of a refusal of service due to non-common chair, and in its monthly report to the City, identify the passenger and non-conforming specification.
7. Pursuant to 49 CFR part 37, the contractor may request, but cannot require, the passenger transfer from a non-common chair, to a chair provided by the contractor for boarding/alighting. The contractor may request, but cannot require, the passenger transfer from non-common or common wheelchair to a regular passenger seat for transit.
8. The contractor may be asked to provide ADA-Complementary paratransit in the event that the City of DeKalb or its partners provide fixed route service.

Trip Reservations and Scheduling (*Public Transit Specific*)

1. Reservations for demand response trips will be accepted from 8:00 A.M. until 4:00 P.M., Monday through Friday. The contractor will schedule trips on a "next-day" basis, meaning that a reservation placed any time prior to 4:00 P.M. the day before travel will be accepted.
2. The contractor is not obligated to accept same day reservations. However, in the event of vehicle availability, and in consideration of adverse impacts on existing scheduled clients, the contractor may periodically accept same day reservations if there is system capacity and the same day trip will not unduly impact the travel time and schedule of existing clients.
3. Reservations will be accepted up to 30 days in advance of the day of requested travel. The contractor shall be permitted to accept reservations more than 30 days in advance of the day of travel if, for example, scheduling software permits such practices or it is within the general business practices of the contractor to do so.
4. In making reservations, patrons will be asked about special needs required for transit use (e.g., wheelchair, child restraint seats, etc.), and the contractor shall ensure that a properly equipped vehicle is available to meet the patron's special needs at the time of reservation confirmation.
5. The contractor will schedule demand response trips on a first-requested, first scheduled basis without regard to trip purpose priorities. The contractor will keep the City informed of capacity concerns in demand response service provision.
6. The contractor may negotiate pick-up times with a client whose trip request cannot be accommodated at the requested time.
7. To assist the City evaluate long-range service planning and to assure that services provided by the City is comparable to persons with disabilities as it is to persons without disabilities, the contractor shall maintain written trip denial lists. The list shall include the name of the client, date and time of the trip request, disability status of the client, and the reason for the trip denial. A report showing these denials will be submitted to the City of DeKalb on a quarterly basis.
8. Subscription trips, or standing orders, are permissible. The contractor will keep data and statistics on the extent of subscription trips and any adverse impact on scheduling that subscription trips may cause in the availability of services to casual use clients.
9. The contractor shall not schedule trips or dispatch vehicles with standees. No standees shall be permitted on-board any system vehicle.

Dispatching (Public Transit Specific)

1. The selected contractor shall maintain a base of operations at 1606 Bethany Rd. in Sycamore, IL or at another approved location for project administration, maintenance of system vehicles, and as the location for dispatching.
2. The contractor will maintain two-way communication with all system vehicles.
3. Dispatching staff and vehicle operators shall be trained in radio communication protocols consistent with FCC and industry standards.
4. A driver's handbook shall be provided by the contractor to each driver indicating specific road procedures, accident and incident procedures, and instruction to drivers on how to communicate no-shows, late pick-ups, and situations where a client must be entrusted to the care of a guardian and the designated guardian is not at home for the afternoon or return trip drop-off.
5. Drivers will be required to maintain vehicle logs for each day of service. Logs will include scheduled and actual tour completion times, total number of passengers on each vehicle trip/tour, daily vehicle mileage, vehicle utilized, passengers (by name) transported, and fares collected and other pertinent information deemed necessary by the City.
6. Driver logs shall be signed each day by the driver.
7. The contractor shall retain driver logs throughout the period of performance under this contract and shall permit the City to inspect these logs at any time.

On-Time Performance (Public Transit Specific)

1. In order to be considered "on-time" in demand response operation, a scheduled vehicle will be at the pickup point from between 5 minutes prior to 15 minutes after the scheduled pickup time promised to the client. Clients must be ready, therefore, throughout this 20-minute "ready" period.
2. The contractor will maintain data on the percent of all trips in demand response mode provided "on-time."
3. In the event that a client is not at the scheduled pickup point between the designated ready times, the driver shall be required to wait at least five (5) minutes before departing the location. Drivers shall radio dispatch and have dispatch call the client's home (or other location) to attempt to verify the client's plans to make the trip. In the event that a patron does not make their intent known to the driver within the five-minute period, the driver shall assume a no-show has occurred and the trip will be treated in accordance with the no-show policy. In the event that a driver reaches a no-show determination, the driver must inform the dispatch staff of the no-show occurrence immediately.

Complaints (Public Transit, and where applicable in other contracts)

1. The contractor will institute a complaint/incident monitoring system.
2. In order for complaints to be considered valid, the name, address and telephone number of the complaining party must be provided. Generally, anonymous complaints will be dismissed, however, investigations may be warranted based upon anonymous complaints, at the complete discretion of the contractor. The City and Contractor's staff shall hold all complaints received in strict confidence.

3. The contractor's staff will investigate and resolve all complaints. A written response will be provided to the complainant. The written response will contain the following information as appropriate:
 - a. A copy of the initial complaint;
 - b. If the problem has been resolved, a description of the resolution;
 - c. If the issue is still being investigated, an estimate of the additional time needed for further investigation;
 - d. If the issue cannot be resolved, documentation must be provided as to why the issue cannot be resolved;
 - e. If the investigation reveals that the complaint has no merit, documentation must be provided.
4. A record of complaints shall be maintained and submitted to the City monthly.

Contractor Staff (Public Transit Specific)

1. General Manager
 - a. The contractor shall designate a Resident Manager who shall oversee the day-to-day operation of the service. This position shall be a full-time, 1.0 FTE position, within the contractor's organization.
 - b. The selected Contractor shall be free to assign other non-project related duties to the Resident Manager during his tenure on the project. These duties, however, shall be secondary to the principal role of managing this service and shall not interfere in any manner with the duties of managing the scope of services described herein.
 - c. During periods of personal leave (*e.g.*, vacation leave, sick leave, etc.), the contractor shall designate other personnel who will perform the duties of the Resident Manager in his/her absence.
2. Dispatch and office staff
 - a. The Contractor shall supply a sufficient number of employees to staff the office at all required times and perform all necessary tasks associated with the service. The Contractor will be responsible for training these employees and making sure that all program policies and procedures are understood and followed.
 - b. During all times when vehicles are on the road providing service under this contract, the Contractor will staff the office with at least one person trained to perform radio dispatching functions, answer telephones, and respond to emergency situations.
3. Driver Qualifications and Training
 - a. The Contractor agrees that it will not allow any person to drive a vehicle whose moral character is not of the highest level, or whose conduct might in any way expose any client to any impropriety of work or conduct whatsoever, nor shall the Contractor allow any person to drive a vehicle who is not at the time in a condition of mental and emotional stability. The responsibility for hiring and discharging personnel in respect to all of the foregoing shall rest entirely upon the contractor, and the contractor agrees that it shall not enter into agreement or arrangement with any employees, persons, groups or organizations which may in any way interfere with the contractor's ability to comply with this requirement.
 - b. The selected Contractor shall screen all driver candidates to ensure that the following qualifications are met:
 - i. no more than one (1) moving violation during the last three (3) years prior to application for this program;
 - ii. no moving violations within the last 12 months;

- iii. if license has ever been suspended, applicant must have five (5) subsequent years with no violations;
 - iv. if license has ever been revoked, applicant shall not be eligible for employment;
 - v. under no condition will an applicant be accepted as a driver for this program if (1) he/she has been convicted of a felony, or (2) and/or has been convicted of a drug or alcohol offense.
- c. Nothing in these Contract Documents shall inhibit the Contractor's right to negotiate alternative employment conditions.
 - d. All drivers must receive the following initial training through programs approved by the City and show proof of successful completion of the following training:
 - i. first aid and CPR;
 - ii. passenger assistance techniques (PAT);
 - iii. bloodborne pathogen/biohazard handling;
 - iv. behind the wheel (defensive driving) training – minimum 12 hours, including classroom instruction; and
 - v. sensitivity training – minimum 8 hours classroom and 4 hours "hands-on" (including passenger assistance, loading, and tie-down training).
 - e. Drivers will receive ongoing training in areas such as defensive driving, rider satisfaction, sensitivity training, etc. on a recurring basis.
- 4. All staff employed by the contractor in fulfilling this agreement shall be considered employees of the contractor and not the agents, servants or employees of the City.

Reporting Requirements (Public Transit Specific)

- 1. The selected contractor will be responsible for implementing a record keeping and reporting system. This system will be compliant with National Transit Database and IDOT reporting requirements. The Contractor will be responsible for providing any information required to the City. With permission of the City of DeKalb, the Contractor may file reports directly with the oversight agency, but will still need to provide copies to the City.
- 2. The Contractor will be responsible for properly maintaining separate records and summaries for this service as deemed necessary by the City. Monthly invoices shall be supported by a report detailing the following:
 - a. Total one-way passenger trips;
 - i. Total route deviation passenger trips
 - ii. Total demand response trips;
 - b. Total no-shows;
 - c. Total vehicle miles;
 - d. Total vehicle hours;
 - e. Total vehicle revenue miles;
 - f. Total vehicle revenue hours;
 - g. Number days of service;
 - h. Total accidents;
 - i. Total breakdowns;
 - j. Number of and nature of complaints
 - k. Trip denials to ADA certified individuals
 - l. Other Reporting Statistics that may be required by ILDOT, FTA.

SECTION 4: GENERAL TERMS AND CONDITIONS APPLICABLE TO THIS CONTRACT

Access to Record Pertaining to this Project *(applicable to all contracts)*

1. The Contractor shall agree to give FTA, the Comptroller General of the United States, and IDOT, through any authorized representative, access to and the right to examine all records, books, papers or documents related to this contract; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

Air Quality *(applicable to all contracts)*

1. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §7401 et seq.

Assignment *(applicable to all contracts)*

1. The contract shall not be sublet except with the written consent of the City.
2. No such consent shall be construed as making the City a party to such subcontract, or subject the City to liability of any kind to any subcontractor. No subcontract shall, under any circumstances, relieve the Contractor of his liability and obligation under this contract, and all transactions with BITS must be through the Contractor.

Buy America *(applicable to all contracts – on contracts over \$100,000)*

1. Any goods to be purchased with this contract must meet all applicable laws, rules and regulations related to Buy America requirements.
2. In accordance with the Surface Transportation and Uniform Relocation Assistance Act (STURAA) of 1987, Parts 660-662, and implementing guidelines and regulations; all steel and cement used in connection with this contract shall be produced and assembled in the United States.
 - a. Exceptions to the general requirements include instances in which:
 - i. Buy America provisions run counter to public interest.
 - ii. Materials are not produced in sufficient quantities or satisfactory quality in the United States.
 - iii. The inclusion of domestic material will increase the cost of end products as defined in the STURAA by more than:
 - Ten percent (10%) for rolling stock (vehicle) acquisitions.
 - Twenty five percent (25%) for each item being purchase in contracts other than rolling stock.
 - This requirement will also not apply to transit rolling stock if domestic components represent more than sixty percent (60%) of the cost of all components (documentable) and final assembly takes place in the United States.
 - iv. The bidder/Contractor shall complete the Buy-America Certification which is attached and made part of these specifications, and certify that each end product used in connection with this contract will comply with the

- v. A false certification is a criminal act and violation of 18 U.S.C. 1001. Willful refusal to comply with the certification by a Contractor may lead to initiation of debarment proceedings under 49 CFR Part 29.

Changes (applicable to all contracts)

1. Change orders must be approved by the City in writing.

Changed Conditions of Performance (Including Litigation) (applicable to all contracts)

1. The bidder/Contractor agrees to notify the City immediately of any change in law, conditions, or any other event that may significantly affect the Contractor's ability to perform the project in accordance with the terms of the Contract.
2. In addition, the Contractor agrees to notify the City immediately of any decision pertaining to the Contractor's conduct of litigation that may affect the City interests in the Project. Before the Contractor may name the City as a party to litigation for any reason, in any forum, the Contractor agrees to inform the City.

Debarment (applicable to all contracts)

1. As required by USDOT regulations on Governmentwide Debarment and Suspension (Nonprocurement) at 49 CFR 29.510:
 - a. The Contractor certifies to the best of its knowledge and belief, that it and its principals:
 - i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from coverage transactions by any Federal department or agency;
 - ii. Have not within a three-year period preceding this certification been convicted or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state or local) transaction or contract under a public transaction; violation of Federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - iii. Are not presently indicated for or otherwise criminally or civilly charged by a governmental entity (Federal, state or local) with commission of any of the offenses listed in paragraph (1)(b) of this certification; and
 - iv. Have not within a three-year period preceding this certification had one or more public transactions (Federal, state or local) terminated for cause or default.
 - b. The Contractor also certifies that if, later, it becomes aware of any information contradicting the statements of paragraphs (i) through (iv) above, it will promptly provide that information to FTA.
 - c. If the Contractor is unable to certify to the statements within paragraphs a and b above, it shall indicate so on its Signature Page and provide a written explanation to FTA.

Disadvantaged Business Enterprise *(applicable to all contracts)*

1. In accordance with 49 CFR 26.13 (a), the Contractor assures that it shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any third party contract, or subagreement supported with Federal assistance derived from the U.S. DOT or in the administration of its DBE program or the requirements of 49 CFR part 26. The Contractor assures that it shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of all third party contracts and subagreements approved by U.S. DOT, is incorporated by reference and part of the grant agreement between the City and IDOT. Implementation of this DBE program is a legal obligation, and failure to carry out its terms shall be treated as a violation of the grant agreement. Upon notification by IDOT and/or FTA to the Contractor of its failure to implement its approved DBE program, the IDOT and U.S. DOT may impose sanctions as provided for under 49 CFR part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001, and/or the Program Fraud Civil Remedies Act, 31 U.S.C. 3801 et seq.

Drug Free Workplace *(applicable to all contracts)*

1. As required by U.S. DOT regulations on Drug-Free Workplace Requirements (Grants) at 49 CFR 29, Subpart F, as modified by 41 U.S.C. 702, the Contractor certifies that it will provide a drug-free workplace by:
 - a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
 - b. Establishing an ongoing drug-free awareness program to inform its employees about:
 - i. The dangers of drug abuse in the workplace;
 - ii. The Contractor's policy of maintaining a drug-free workplace;
 - iii. Any available drug counseling, rehabilitation, and employee assistance programs; and,
 - iv. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
 - c. Making it a requirement that each of its employees be engaged in the performance of the grant or cooperative agreement be given a copy of the statement required by paragraph a;
 - d. Notifying each of its employees in the statement required by paragraph (a) that, as a condition of employment financed with Federal assistance provided by the grant or cooperative agreement, the employee will:
 - i. Abide by the terms of the statement, and
 - ii. Notify the employer (Contractor) in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction;
 - e. Notifying IDOT and FTA in writing, within ten (10) calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every project officer or other designee on whose project activity the convicted employee was working. Notice shall include the identification number(s) of each affected grant or cooperative agreement.

- f. Taking one of the following actions, within thirty (30) calendar days of receiving notice under paragraph dii, with respect to any employee who is so convicted:
 - i. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
 - ii. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, state, or local health, law enforcement, or other appropriate agency;
- g. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs a, b, c, d, e, and f. The Contractor agrees to maintain a list identifying its headquarters location and each workplace it maintains in which project activities supported by FTA are conducted and make that list readily accessible to IDOT and FTA.

Drug and Alcohol Testing (*applicable to all contracts*)

1. Consistent with the requirements of 49 CFR part 655.3, the Contract shall establish an anti-drug and alcohol misuse program that shall include the following:
 - a. A statement describing the employer's policy on prohibited drug use and alcohol misuse in the workplace, including the consequences associated with prohibited drug use and alcohol misuse. This policy statement shall include all of the elements specified in 49 CFR part 655.15. Each employer shall disseminate the policy consistent with the provisions of 49 CFR part 655.16.
 - b. An education and training program which meets the requirements of 49 CFR part 655.14.
 - c. A testing program, as described in Subparts C and D of this 49 CFR part 655, which meets the requirements of this part and 49 CFR Part 40.
 - d. Procedures for referring a covered employee who has a verified positive drug test result or an alcohol concentration of 0.04 or greater to a Substance Abuse Professional, consistent with 49 CFR part 40.

Environmental Resource, Conservation and Energy (*applicable to all contracts*)

1. The Contractor will comply with environmental standards that may be prescribed to implement the following Federal laws and executive orders:
 - a. Institution of environmental quality control measures under the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 *et seq.*, and Executive Order No. 11514, as amended, 42 U.S.C. 4321;
 - b. Notification of violating facilities pursuant to Executive Order No. 11738, 42 U.S.C. 7606;
 - c. Protection of wetlands pursuant to Executive Order No. 11990, 42 U.S.C. 4321;
 - d. Evaluation of flood hazards in floodplains in accordance with Executive Order 11988, 42 U.S.C. 4321;
 - e. Assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act 1972, as amended, 16 U.S.C. 1451 *et seq.*;
 - f. Conformity of Federal actions to State (Clean Air) Implementation Plans under section 176(c) if the Clean Air Act of 1955, as amended, 42 U.S.C. 7401 *et seq.*;
 - g. Protection of underground source of drinking water under the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. 300h *et seq.*;

- h. Protection of endangered species under the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*;
- i. Environmental protections for Federal transit programs, including, but not limited to protections for a park, recreation area, or wildlife or waterfowl refuge of national, state or local significance or land from a historic site of national, state or local significance used in a transit project as required by 49 U.S.C. 303;
- j. Wild and Scenic Rivers Act of 1968, as amended, 15 U.S.C. 1271 *et seq.*, relating to protecting components of the national wild and scenic rivers systems;
- k. The Contractor will assist the City and FTA in assuring compliance with section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470f, Executive Order No. 11593 (identification and protection of historic properties), 16 U.S.C. 470 note, and the Archaeological and Historic Preservation Act of 1974, as amended, 16 U.S.C. 469a-1 *et seq.*;
- l. Lead- Based Paint Poisoning Prevention Act, 42 U.S.C. 4801, which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

Equal Employment Opportunity (*applicable to all contracts*)

1. The Contractor agrees to comply, and assures the compliance of each third party contractor at any tier and each subrecipient at any tier, with all requirements of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and 49 U.S.C. § 5332 and any implementing requirements FTA may issue. Those equal employment opportunity (EEO) requirements include, but are not limited to, the following:
 - a. General Requirements. The Contractor agrees as follows:
 - i. The Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. 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, sex, disability, age, or national origin. Such action shall include, but not be limited to, 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. The Contractor also agrees to comply with any implementing requirements FTA may issue.
 - ii. If the Contractor is required to submit and obtain Federal Government approval of its EEO program, that EEO program approved by the Federal Government is incorporated by reference and made part of the Contract. Failure by the Contractor to carry out the terms of that EEO program shall be treated as a violation of the Contract. Upon notification to the Contractor of its failure to carry out the approved EEO program, the Federal Government may impose such remedies as it considers appropriate, including termination of Federal financial assistance in accordance its agreement with IDOT, or other measures that may affect the Contractor's eligibility to obtain future Federal financial assistance for transportation projects.
 - iii. Equal Employment Opportunity Requirements for Construction Activities. With respect to construction, the Contractor agrees to comply, and assures the compliance of each third party contractor at any tier and each subrecipient at any tier, with all applicable EEO requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of

False or Fraudulent Statements and Claims *(applicable to all contracts)*

1. The Contractor recognizes that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 49 U.S.C. Sections 3801 et seq. and U.S. Department of Transportation Regulations, "Program Fraud Civil Remedies," 49 CFR part 31 applies to its actions pertaining to the Contract. Accordingly, by signing the Contract submissions, the bidder/Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it make, or it may make pertaining to the project. In addition to other penalties that may be applicable, the bidder/Contractor also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on the bidder/Contractor to the extent the Federal Government deems appropriate.

Financial Assistance Grant *(applicable to all contracts)*

1. The service described in this Request for Proposals are to be purchased, in part, with the assistance of monies from the Illinois Department of Transportation and/or the Federal Transit Administration (FTA) of the U.S. Department of Transportation (USDOT). The Contractor and all subcontractors will be required to comply with all terms and conditions prescribed for third party contracts in a grant contract between the Illinois Department of Transportation, the Federal Transit Administration, and the City.

Governing Law *(applicable to all contracts)*

1. Each and every provision contract agreement shall be construed in accordance with and governed by Illinois law. The parties acknowledge that this contract is executed in DeKalb County, Illinois and that the contract is to be performed in DeKalb County, Illinois.
2. Each party hereby consents to the local court's sole jurisdiction over any dispute that may arise as a result of the execution or performance of this agreement, and each party hereby waives any and all objections to venue in the local courts.

Indemnification *(applicable to all contracts)*

1. The Contractor agrees it shall indemnify and hold harmless the City, its employees, and members of the City Council, from and against all claims, losses, damages, liabilities, causes of action, suits, judgments, including but not limited to attorney fees, costs and related expenses, arising out of personal injury, death or property damage for which the bidder/Contractor, its agents, subcontractors or employees shall be held legally responsible.

Intent of Contract Documents *(applicable to all contracts)*

1. The intent of this contract document is to require the Contractor to deliver the products and/or services of the type described.
2. The technical specifications or scope of services included in this contract indicate the minimum requirements unless otherwise indicated.

Interest of Members or Delegates to Congress *(applicable to all contracts)*

1. 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.

Labor Provisions – Non-Construction Projects *(applicable to all contracts)*

1. In accordance with Section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. Sections 327 through 332, the Contractor agrees and assures that, for the Project, the wages of every mechanic and laborer will be computed on the basis of a standard work week of 40 hours, and that each worker will be compensated for work exceeding the standard work week at a rate of not less than 1.5 times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The Contractor agrees that determinations pertaining to these requirements will be made in accordance with applicable U.S. Department of Labor regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 CFR Part 5.
2. The requirements of this Section do not apply to a third party contract for the purchase of supplies, materials, or articles ordinarily available on the open market.

Nondiscrimination *(applicable to all contracts)*

1. Title VI
 - a. As required by 49 U.S.C. 5332 (which prohibits discrimination on the basis of race, color, creed, national origin, sex or age and prohibits discrimination in employment or business opportunities) and Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d and U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act," at 49 CFR 21 at 21.7, the Contractor assures that it will comply with all requirements pursuant to 49 CFR part 21; FTA Circular 4702.1 "Title VI Program Guidelines for Federal Transit Administration Recipients"; and other applicable directives, so that no person in the United States, on the basis of race, color, national origin, creed, sex, or age will be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any program or activity (particularly in the level and quality of mass transportation services and mass transportation-related benefits) for which the City receives Federal financial assistance from the U.S. DOT or FTA as follows:
 - i. The Contractor assures that each project will be conducted, property acquisitions will be undertaken, and project facilities will be operated in compliance with all requirements of 49 U.S.C. 5332 and 49 CFR part 21, and understands that this assurance extends to its entire facility and to facilities operated in connection with the project.

- ii. The Contractor assures that it will take appropriate action to ensure that any transferee receiving property financed with Federal assistance derived from FTA will comply with the applicable requirements of 49 U.S.C. 5332 and 49 CFR part 21.
 - iii. The Contractor assures that it will promptly take the necessary actions to effectuate this assurance, including notifying the public that complaints of discrimination in the provision of transportation-related services or benefits may be filed with U.S. DOT or FTA. Upon request by the City, IDOT, USDOT or FTA, the Contractor assures that it will submit the required information pertaining to its compliance with these requirements.
 - iv. The Contractor assures that it will make any changes in its 49 U.S.C. 5332 and Title VI implementing procedures as U.S. DOT or FTA may request.
 - v. As required by 49 CFR 21.7 (a), the Contractor will include clauses in each third party contract or subagreement to impose the requirements of 49 U.S.C. 5332 and 49 CFR part 21, and include appropriate provisions imposing those requirements in deeds and instruments recording the transfer of real property, structures, and improvements.
- b. Other Applicable Nondiscrimination Clauses
- i. The Contractor agrees that it will also comply with the provisions of other applicable nondiscrimination terms, as follows:
 - Title IX of the Education Amendments of 1972, as amended 20 U.S.C. 1681, 1683, and 1685 through 1687, which prohibits discrimination on the basis of sex;
 - Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of handicaps;
 - The Age Discrimination Act of 1975, as amended, 42 U.S. 6101 through 6107, which prohibits discrimination on the basis of age;
 - The Drug Abuse Office and Treatment Act of 1972, Pub. L. 92-255, March 21, 1972, and amendments thereto, relating to nondiscrimination on the basis of drug abuse;
 - The Comprehensive Alcohol Abuse and Alcoholism Prevention Act of 1970, Pub. L.91-616, December 31, 1970, and amendments thereto, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
 - The Public Health Service Act of 1912, as amended, 42 U.S.C. 290dd-3 and 290ee-3, related to confidentiality of alcohol and drug abuse patient records;
 - Title VIII of the Civil Rights Act, 42 U.S.C. 3601 et seq., relating to nondiscrimination in the sale, rental or financing of housing;
 - Any other nondiscrimination provisions in the specific statutes under which Federal assistance for the project may be provided including, but not limited to Section 1101(b) of the Transportation Equity Act for the 21st Century, 23 U.S.C. 101 note, which provides for participation of disadvantaged business enterprises in FTA programs; and
 - The requirements of any other nondiscrimination statute(s) that may apply to this project.

Nondiscrimination on the Basis of Disability (*applicable to all contracts*)

1. As required by U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49

Privacy (applicable to all contracts)

1. To the extent the Contractor or any subcontractor or their employees administers any system of records on behalf of the City, IL, or Federal Government, the Contractor agrees to comply with, and assures the compliance of each affected subcontractor at any tier, and their employees with the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. Section 552 (the Privacy Act).
2. Client records and information obtained by the Contractor shall not be subject to the Freedom of Information Act and requests made to the City of DeKalb under the FOIA.

Prohibited Interest (applicable to all contracts)

1. No member, officer, or employee of the City or any of its member agencies during his or her tenure or for one year thereafter, shall have an interest, direct or indirect, in this contract or the proceeds thereof.

Restrictions on Lobbying (applicable to all contracts)

1. As required by U.S. DOT regulations, "New Restrictions on Lobbying," at 49 CFR part 20.110, the Contractor's authorized representative certifies to the best of his or her knowledge and belief that for each contract, financed with Federal assistance exceeding \$100,000:
 - a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal assistance or the extension, continuation, renewal, amendment, or modification of any Federal assistance agreement.
 - b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any application to FTA for Federal assistance, the Contractor assures that it will complete and submit the Standard

2. The Contractor understands that this certification is a material representation of fact upon which reliance is placed and that submission of this certification is a prerequisite for providing Federal assistance for a transaction covered by 31 U.S.C. 1352. The Contractor also understands that any person who fails to file a required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Termination of Contract *(applicable to all contracts)*

1. Termination for Convenience
 - a. The City may, at any time upon 30 days written notice to the Contractor, terminate the whole or any portion of the work for the convenience of the City. Said termination shall be without prejudice to any right or remedy of the City provided herein. In addition, in the event this agreement has been terminated due to the default of the Contractor, and if it is later determined that the Contractor was not in default pursuant to the provisions of this agreement at the time of termination, then such termination shall be considered a termination for convenience pursuant to this paragraph.
 - b. Payment
 - i. In the event that the City terminates this agreement for the convenience of the City, the City shall only be liable to the Contractor for those costs reimbursable to the Contractor plus a mark-up of ten percent on the actual fully accounted cost recovered pursuant to this paragraph. In the event that it appears that the Contractor would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed hereunder and an appropriate adjustment shall be made reducing the amount of settlement to reflect the indicated rate of loss. In the event of termination for the convenience of the City, the City shall pay the Contractor the following amounts determined by the City Council:
 - An amount for supplies, services, or property accepted by the City for which payment has not previously been made. The price to be paid for these items shall be equivalent to the aggregate price for such supplies or services computed in accordance with the price specified in this agreement appropriately adjusted for any saving of freight or other charges; and
 - The total of:
 - The costs incurred in the performance of the work terminated, including initial costs and preparatory expenses allocable thereto, but exclusive of any costs attributable to supplies or services previously paid;
 - The costs of settling and paying claims arising pursuant to the termination of the work under said contracts or orders which are properly chargeable to the terminated portion of the contract (exclusive of the amounts paid or payable on account of completed items or equipment delivered or services furnished by a subcontractor or vendor prior to the effective date of the notice of

- o The reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonable and necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to this agreement.
 - c. Payment Limitations
 - i. In the event of termination for the convenience of the City, the total sum to be paid to the Contractor shall not exceed the contract price as reduced by the amount of payments otherwise made, by the contract price for work not terminated, and as otherwise permitted by the contract. Except for normal spoilage, and except to the extent that the City shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor the fair value, as determined by the City Planner, of property which is destroyed, lost, stolen or damaged so as to become undeliverable to the City.
- 2. Cost to Cure
 - a. If the City terminates the whole or any part of the work pursuant to this Agreement, then the City may procure upon such terms and in such manner as the City Council may deem appropriate, supplies or services similar to those so terminated, and the Contractor shall be liable to the City for any excess costs for such similar supplies or services. The Contractor shall continue the performance of this agreement to the extent not terminated hereunder.
- 3. Attorney's Fees
 - a. Should the Contractor default pursuant to any of the provisions of this Agreement, the Contractor and its surety shall pay to the City of DeKalb such reasonable attorney's fees as the City of DeKalb may expend as a result thereof and all costs, expenses, and filing fees incidental thereto.
- 4. Contractor Responsibilities Under Termination
 - a. After receipt of a notice of termination including the end of the agreed upon contract period from the City and except as otherwise directed by the DSATS Director, the Contractor shall:
 - i. Stop work under the contract on the date and to the extent specified in the notice of termination;
 - ii. Place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the work under the agreement as is not terminated;
 - iii. Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the notice of termination;
 - iv. Assign to the City in the manner, at the times, and to the extent directed by the DSATS Director, all of the rights, title and interest of the Contractor under the orders and subcontracts so terminated, in which case the City of DeKalb shall have the right, at its discretion, to settle or pay any and all claims arising out of the termination of such orders or subcontracts;
 - v. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the DSATS

- vi. Transfer title and deliver to the entity or entities designated by the City, in the manner, at the times, and to the extent, if any, directed by the DSATS Director, and to the extent specifically produced or specifically acquired by the Contractor for the performance of such portion of the work as has been terminated:
 - The fabricated or unfabricated parts, work, and progress, partially completed supplies, and equipment, materials, parts, tools, dyes, jigs, and other fixtures, completed work, supplies, and other material produced as a part of or acquired in connection with the performance of the work terminated by the notice of termination; and
 - The completed or partially completed plans, drawings, information, and other property to the work.
- vii. Use its best efforts to sell in the manner, at the times, to the extent, and at the prices directed or authorized by the DSATS Director, any property described in Section vi of this paragraph, provided, however, that the Contractor shall not be required to extend credit to any buyer and further provided that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the City to the Contractor pursuant to this agreement.
- viii. Complete performance of such part of the work as shall not have been terminated by the notice of termination;
- ix. Take such action as may be necessary, or as the DSATS Director may direct, for the protection and preservation of the property related to the agreement which is in the possession of the Contractor and in which the City has or may acquire an interest.
- x. Return all equipment and software belonging to the City in the manner, at the times and to the extent directed by the DSATS Director and to return equipment in good working and mechanical condition, reasonable wear and tear excepted.

Policy Approval:

1. DSATS/VAC Public Transit Provider Oversight Procedures approved by DSATS Policy Committee of Directors 03/26/08

DSATS PUBLIC REVIEW PROCEDURES

Any time an official DSATS Plan is updated or adopted (i.e. TIP Update, UPWP Update, LRTP Update, etc.) or public transit policies are updated (i.e. fare change, route alteration / discontinuation, etc.); a 45-day public comment period must be initiated to accept comments. In order to meet the requirements, DSATS has set up the following procedures.

1. When developing the plan or implementing a change, it is advisable to develop a Task Force, which guides the development of the plan, study, policy etc. This Task Force advises on if project should be done in-house or hires a consultant, develops a project scope of work, and other issues as identified.
2. When first developing the document, policy, etc., DSATS Staff and/or hired contractors should hold public meetings to get input from as many different kinds of stakeholders as possible. Examples of the types of outreach possible can be found in the DSATS Public Participation Plan.
3. Once the Plan is developed, it should be presented to the DSATS Technical Advisory Committee for their comments.
4. A 45-day public comment period should then be started. A public meeting should be held immediately prior to the DSATS Policy Committee Meeting where adoption of the plan, policy, etc., will be considered. It is advisable that the public comment period end at least a week before the DSATS Policy Committee meets, as each comment needs to be addressed before the plan is officially adopted.
 - a. In the case of any proposed fare or service changes, a public hearing must also be held and it must be advertised at least 14 days prior to meeting.
5. The Public Comment Period must be advertised in the Legal section of the DeKalb Daily Chronicle. Make sure to request the paper send a proof of publication letter, as this proof will be required by the Federal Government.
6. Examples of Legal Public Notices are available below.
7. All comments received during the public review period and at the public meeting must be noted and written documentation must be provided as to how the comment can be addressed.
8. The DSATS Policy Committee shall adopt the plan. The Plan should be signed by the DSATS Chairman and the date the plan was officially adopted should be put on the plan. Any plan, policy, change that affects VAC operations should also be signed by the VAC Executive Director.
 - a. In the case of VAC fare or service changes, the VAC Board of Directors must also officially adopt the changes.
9. If the item being adopted is an official MPO planning document, no further action is necessary. If it includes entering into an agreement with an entity or organization, it must also be approved by the City of DeKalb. It is the responsibility of DSATS staff to ensure any resolutions, recommendations, or other documents needed, be signed and implemented by the proper City of DeKalb officials.
 - a. For any changes that VAC must implement or act upon, it will be the responsibility of the VAC Executive Director to ensure all requirements are implemented at VAC.

Policy Approval:

1. DSATS Public Review Procedures approved by DSATS Policy Committee of Directors 4/23/08.

Legal Notice Examples:

**NOTICE OF PUBLIC REVIEW OF THE DEKALB SYCAMORE AREA
TRANSPORTATION STUDY'S (DSATS) TRANSPORTATION IMPROVEMENT
PROGRAM (TIP) FY **xx-xx** UPDATE**

The DeKalb-Sycamore Area Transportation Study is the metropolitan planning organization for all or portions of the City of DeKalb, the City of Sycamore, the Town of Cortland, and DeKalb County. The DSATS Transportation Improvement Program (TIP) FY **xx-xx** Update will be available for public review and comment from [**dates of public review period**]. The TIP represents planned transportation improvements for Fiscal Years 2008-2011. The TIP is a short-range capital improvements program outlining a 4-year schedule of projects that have been locally approved by DSATS to receive federal funding. The DSATS TIP also includes some of the projects funded (or expected to be funded) by the Illinois Department of Transportation, local jurisdictions, and other funding sources. Local funds can include funding from municipalities, counties, and transportation providers. The public involvement procedures used in the development of the TIP satisfy the program-of-project requirements of Section 5307.

The TIP is available at the following locations: DeKalb County Planning & Zoning Office, The City of Sycamore, the City of DeKalb Community Development Offices, and the Town of Cortland's clerk's office. A copy is also available on the DSATS website:
<http://www.cityofdekalb.com/comdev/dsats.htm>.

The DSATS Policy Committee will consider the adoption of the TIP at a public meeting on [**date and time of meeting**] at the DeKalb Municipal Annex Building in the large conference room, 223 S. Fourth St., Suite A, DeKalb, IL 60115.

All comments, written or oral, should be directed to:

Attn: Brian Dickson
DSATS/City of DeKalb
223 S. 4th St. Suite A
DeKalb, IL 60115
(815) 748-2367
Brian.dickson@cityofdekalb.com

All comments received by [**date of last day of public review period**] at 4:00 p.m. at the City of DeKalb Community Development Offices, will be duly noted and considered prior to final adoption of the plan by the DSATS Policy Committee at 3:00 p.m. on [**day and date of PC meeting**].

**NOTICE OF PUBLIC REVIEW OF THE DEKALB SYCAMORE AREA
TRANSPORTATION STUDY'S (DSATS) UNIFIED PLANNING WORK PROGRAM
(UPWP) for FY^{xx}**

The DeKalb-Sycamore Area Transportation Study is the metropolitan planning organization for all or portions of the City of DeKalb, the City of Sycamore, the Town of Cortland, and DeKalb County. The DSATS Unified Planning Work Program (UPWP) for FY^{xx} will be available for public review and comment from [dates of public review period]. The purpose of the UPWP is to establish the activities and planning projects that the DeKalb-Sycamore Area Transportation Study (DSATS) intends to accomplish during the specified fiscal year. The public involvement procedures used in the development of the UPWP satisfy the program-of-project requirements of Section 5307.

The UPWP is available at the following locations: DeKalb County Planning & Zoning Office, The City of Sycamore, the City of DeKalb Community Development, and the Town of Cortland's clerk's office. A copy is also available on the DSATS website:
<http://www.cityofdekalb.com/comdev/dsats.htm>.

The DSATS Policy Committee will consider the adoption of the UPWP at a public meeting on [date and time of meeting] at the DeKalb Municipal Annex Building in the large conference room, 223 S. Fourth St., Suite A, DeKalb, IL 60115.

All comments, written or oral, should be directed to:

Attn: Brian Dickson
DSATS/City of DeKalb
223 S. 4th St. Suite A
DeKalb, IL 60115
(815) 748-2367
Brian.dickson@cityofdekalb.com

All comments received by [date of last day of public review period] at 4:00 p.m. at the City of DeKalb Community Development Offices, will be duly noted and considered prior to final adoption of the plan by the DSATS Policy Committee at 3:00 p.m. on [day and date of PC meeting].

**NOTICE OF PUBLIC REVIEW OF THE DEKALB SYCAMORE AREA
TRANSPORTATION STUDY'S (DSATS) PUBLIC PARTICIPATION PLAN for FY^{xx}**

The DeKalb-Sycamore Area Transportation Study is the metropolitan planning organization for all or portions of the City of DeKalb, the City of Sycamore, the Town of Cortland, and DeKalb County. The DSATS Public Participation Plan (PPP) for FY^{xx} will be available for public review and comment from [dates of public review period]. The Public Participation Plan ensures an equitable public participation process and outlines specific public participation policies and procedures for the DeKalb-Sycamore Area Transportation Study. The public involvement procedures used in the development of the PPP satisfy the program-of-project requirements of Section 5307.

The PPP is available at the following locations: DeKalb County Planning & Zoning Office, The City of Sycamore, the City of DeKalb Community Development, and the Town of Cortland's clerk's office. A copy is also available on the DSATS website:
<http://www.cityofdekalb.com/comdev/dsats.htm>.

The DSATS Policy Committee will consider the adoption of the UPWP at a public meeting on [date and time of meeting] at the DeKalb Municipal Annex Building in the large conference room, 223 S. Fourth St., Suite A, DeKalb, IL 60115.

All comments, written or oral, should be directed to:

Attn: Brian Dickson
DSATS/City of DeKalb
223 S. 4th St. Suite A
DeKalb, IL 60115
(815) 748-2367
Brian.dickson@cityofdekalb.com

All comments received by [date of last day of public review period] at 4:00 p.m. at the City of DeKalb Community Development Offices, will be duly noted and considered prior to final adoption of the plan by the DSATS Policy Committee at 3:00 p.m. on [day and date of PC meeting].

**NOTICE OF PUBLIC REVIEW OF THE DEKALB SYCAMORE AREA
TRANSPORTATION STUDY'S (DSATS) XXXX LONG RANGE TRANSPORTATION
PLAN**

The DeKalb-Sycamore Area Transportation Study is the metropolitan planning organization for all or portions of the City of DeKalb, the City of Sycamore, the Town of Cortland, and DeKalb County. The DSATS XXXX Long Range Transportation Plan (LRTP) will be available for public review and comment from [dates of public review period]. The DSATS Long Range Transportation Plan is the statement of the ways the region intends to invest in the transportation system. The plan, which has time horizon of twenty years, includes the long and short-range program strategies/actions that will lead to the development of an integrated intermodal transportation system that facilitates the efficient movement of people and goods. The public involvement procedures used in the development of the LRTP satisfy the program-of-project requirements of Section 5307.

The LRTP is available at the following locations: DeKalb County Planning & Zoning Office, The City of Sycamore, the City of DeKalb Community Development, and the Town of Cortland's clerk's office. A copy is also available on the DSATS website:
<http://www.cityofdekalb.com/comdev/dsats.htm>.

The DSATS Policy Committee will consider the adoption of the UPWP at a public meeting on [date and time of meeting] at the DeKalb Municipal Annex Building in the large conference room, 223 S. Fourth St., Suite A, DeKalb, IL 60115.

All comments, written or oral, should be directed to:

Attn: Brian Dickson
DSATS/City of DeKalb
223 S. 4th St. Suite A
DeKalb, IL 60115
(815) 748-2367
Brian.dickson@cityofdekalb.com

All comments received by [date of last day of public review period] at 4:00 p.m. at the City of DeKalb Community Development Offices, will be duly noted and considered prior to final adoption of the plan by the DSATS Policy Committee at 3:00 p.m. on [day and date of PC meeting].

NOTICE OF [FARE INCREASE / CHANGE IN SERVICE] FOR THE VOLUNTARY ACTION CENTER'S (VAC) TRANSVAC PUBLIC TRANSPORTATION SYSTEM

The Voluntary Action Center (VAC), through its TransVAC program, is the official provider of public transportation for the DeKalb-Sycamore Metropolitan Region. The DeKalb-Sycamore Area Transportation Study is the metropolitan planning organization for all or portions of the City of DeKalb, the City of Sycamore, the Town of Cortland, and DeKalb County. VAC and DSATS are announcing a proposed [description of change] on or about [date of proposed change]. A public meeting will be held at [location of meeting] on [date and time of meeting] to provide information on the proposed changes and to take public comments. A copy of the description of the proposed changes will be available for public review and comment from [dates of public review period]. The public involvement procedures used in [description of change] satisfy the program-of-project requirements of Section 5307.

The [proposed changes] proposal is available at the following locations: Voluntary Action Center (VAC) Office, DeKalb County Planning & Zoning Office, The City of Sycamore, the City of DeKalb Community Development, and the Town of Cortland's clerk's office. A copy is also available on the DSATS website: <http://www.cityofdekalb.com/comdev/dsats.htm>.

The VAC Board of Directors will consider the adoption of the [proposed changes] on [date, time] at the [meeting location]. The DSATS Policy Committee will consider the adoption of the [proposed changes] on [date and time of meeting] at the DeKalb Municipal Annex Building in the large conference room, 223 S. Fourth St., Suite A, DeKalb, IL 60115.

All comments, written or oral, should be directed to:

Attn: Tom Zucker, Executive Director
Voluntary Action Center
1606 Bethany Rd.
Sycamore, IL 60178
(815) 758-3932
tzvac@aol.com

All comments received by [date of last day of public review period] at 4:00 p.m. at the Voluntary Action Center and at the public hearing, will be duly noted and considered prior implementation of [proposed changes].

Legal Notice Procedures

1. Legal notice should appear in the DeKalb Daily Chronicle Legal Notice section on the day the public review period begins.
2. The DSATS website should also contain the public notice as well as a pdf of the document on the day public review begins.
3. Ensure that a copy of the document is available at the following places (starting the day of the public review period):
 - a. DeKalb County Planning & Zoning Office
 - b. The City of Sycamore
 - c. The City of DeKalb Community Development Offices
 - d. Town of Cortland's clerk's office
 - e. Contact NIU to see if they wish to provide a copy
 - f. If there is a proposed fare or service change, a copy should also be available at the VAC Office.
4. Public Meeting date is considered date of the Policy Committee will consider adoption of the document.
5. All comments received should be made available in the appendix of the document, as well as the DSATS response or action taken in regards to each comment.
6. At any public meetings, two sign in sheets should be made available:
 - a. One sign in sheet for all DSATS members present (and VAC representatives if applicable), along with their addresses and member organization affiliation.
 - b. Second sign in sheet for members of the public attending the public meeting. Should no members of the public attend, that should be noted on the sign in sheet, along with the signature of the person noting there were no members of the public present.
 - c. A copy of both sign in sheets should be placed in the appendix of the document.
7. In the case of service or fare changes at VAC:
 - a. A public hearing must be held and an announcement should be put in the legal notices section at least 14 days prior to meeting.
 - b. The proposed service or fare changes should be approved by both the VAC Board of Directors and the DSATS Policy Committee.
 - c. VAC should receive all public comments rather than DSATS staff.

DBE GOALS (DBE = Disadvantaged Business Enterprise)

On or before July 31 **annually**, DSATS needs to submit a letter detailing the City of DeKalb's DBE goal for the coming year. Check previous years letters for examples on how to format the letter. This letter is submitted to:

Dwight Sinks
200 West Adams, #320
Chicago, IL 60606
Dwight.sinks@fta.dot.gov
312-886-0351 FAX

(Dwight is the Civil Rights officer and can help you with any DBE, EJ, or ADA questions.)

Currently there are no DBE's in DeKalb County. We have decided the best effort is to identify those DBE's in the surrounding region from Rockford to the Chicago Metropolitan area. It would be our policy to try to give preference to those nearer the DeKalb area if possible.

The term the FTA uses for our situation is "under the threshold".

DeKalb City Manager
CEO

City Clerk Office
DBE Officer Alternate
Title VI Officer Alternate
EEO Officer Alternate

DeKalb Sycamore Area
Transportation Study (DSATS)
Policy Committee
|
Technical Advisory Committee

Assistant City Manager
DBE Officer
Title VI Officer
EEO Officer

- DSATS / Engineering Staff
- DSATS / Engineering Director
 - Transportation Planner / DSATS Coordinator
 - Procurement Officer
 - DBE, Title VI, & EEO Coordinator
 - DSATS Assistant

Lobbying and Ethics Regulations



Administrative Policy 016

Subject: ETHICS POLICY

Prepared By: Norma Guess, City Attorney
Susan Willey, Human Resources Director
Mark Biernacki, City Manager

Issued By:

A handwritten signature in black ink, appearing to read "M. Biernacki".

Signed:

Applies To: All Employees

Date: October 15, 2004

This policy is being issued to address the State Officials and Employees Ethics Act, 5 ILCS, 430/1-1 which was adopted by City Council in May, 2004. This supercedes the policy issued on October 8, 2004, with new effective date of October 15, 2004.

ADOPTION

The regulations of Sections 5-15 (5 ILCS 430/5-15) and Article 10 (5 ILCS 430/10-10 through 10-40) of the State Officials and Employees Ethics Act, 5 ILCS 430/1-1 et se ., (hereinafter referred to as the "Act" in this Chapter) are hereby adopted by reference and made applicable to the officers and employees of the City of DeKalb to the extent required by 5 ILCS 430/70-5.

DEFINITIONS

For purposes of this Chapter, the terms "officer" and "employee" shall be defined as set forth in 5 ILCS 430/70-5(c).

GIFT BAN

The solicitation or acceptance of gifts prohibited to be solicited or accepted under the Act, by any officer or any employee of the City of DeKalb, is hereby prohibited.

The offering or making of gifts prohibited to be offered or made to an officer or employee of the City of DeKalb under the Act, is hereby prohibited.

Administrative Policy 016, Ethics Policy

Page 1 - REVISED: 10/15/04

PROHIBITED POLITICAL ACTIVITIES

The participation in political activities prohibited under the Act, by any officer or employee of the City of DeKalb, is hereby prohibited.

ETHICS ADVISOR.

The City Manager shall serve as the "ethics advisor" of the City of DeKalb.

The Ethics Advisor shall provide guidance to the officers and employees of the City of DeKalb concerning the interpretation of and compliance with the provisions of this Chapter and State ethics laws. The Ethics Advisor shall perform such other duties as may be delegated by the City Council.

PENALTIES.

The penalties for violations of this Chapter shall be the same as those penalties set forth in 5 ILCS 430/50-5 for similar violations of the Act.

AMENDMENTS.

This policy does not repeal or otherwise amend or modify any existing ordinances or policies which regulate the conduct of City of DeKalb officers and employees. To the extent that any such existing ordinances or policies are less restrictive than this Chapter, however, the provisions of this Chapter shall prevail in accordance with the provisions of 5 ILCS 430/70-5(a). b) Any amendment to the Act that becomes effective after the effective date of this Chapter shall be incorporated into this Chapter by reference and shall be applicable to the solicitation, acceptance, offering and making of gifts and to prohibited political activities. However, any amendment that makes its provisions optional for adoption by municipalities shall not be incorporated into this Chapter by reference without formal action by the corporate authorities of the City of DeKalb.

SEVERABILITY.

a) If the Illinois Supreme Court declares the Act unconstitutional in its entirety, then this Chapter shall be repealed as of the date that the Illinois Supreme Court's decision becomes final and not subject to any further appeals or rehearings. This Chapter shall be deemed repealed without further action by the Corporate Authorities of the City of DeKalb if the Act is found unconstitutional by the Illinois Supreme Court. b) If the Illinois Supreme Court declares part of the Act unconstitutional but upholds the constitutionality of the remainder of the Act, or does not address the remainder of the Act, then the remainder of the Act as adopted by this Chapter shall remain in full force and effect; however, that part of this Chapter relating to the part of the Act found unconstitutional shall be deemed repealed without further action by the Corporate Authorities of the City of DeKalb."

A copy of the current State Ethics Act will be kept on file in Human Resources and Legal Division, for your review.

City of DeKalb Title VI Assurance

DATA COLLECTION AND REPORTING REQUIREMENTS

GENERAL REPORTING REQUIREMENTS. All applicants, recipients, and subrecipients are required to maintain and provide to UMTA the information outlined in this section. The information is required under DOJ regulation and must be submitted prior to the approval of any grant application. Recipients and subrecipients should provide updated information as conditions warrant. Updates must at a minimum be provided every 3 years. Information previously submitted under the General Reporting Requirements may be referenced in subsequent submissions, as appropriate.

All applicants, recipients, and subrecipients shall maintain and submit the following general requirements:

- (a) There are no active lawsuits or complaints naming the City of DeKalb, which allege discrimination on the basis of race, color, or national origin with respect to service or other transit benefits.
- (b) The City of DeKalb is receiving financial assistance through the Federal Transit Administration, Section 5307 grant program.
- (c) There are no current civil rights compliance review activities and there were none in the past three years.
- (d) Attached is a signed UMTA Civil Rights Assurance that all of the records and other information required under this circular have been or will be compiled, as appropriate, and maintained by the applicant, recipient, or subrecipient. In the case of State administered programs, this assurance should be provided by the primary and subrecipient **[see APPENDIX A below]**.
- (e) Attached is a signed standard DOT Title VI Assurance. This assurance will be maintained as part of the UMTA "One-Time Submission" file **[see APPENDIX B below]**.
- (f) There are no construction projects currently planned.

APPENDIX A

URBAN MASS TRANSPORTATION ADMINISTRATION CIVIL RIGHTS ASSURANCE

The City of DeKalb HEREBY CERTIFIES THAT, as a condition of receiving federal financial assistance under the Urban Mass Transportation Act of 1964, as amended, it will ensure that:

1. No person on the basis of race, color, or national origin will be subjected to discrimination in the level and quality of transportation services and transit-related benefits.

2. The City of DeKalb will compile, maintain, and submit in a timely manner Title VI information required by UMTA Circular 4702.1 and in compliance with the Department of Transportation's Title VI regulation, 49 CFR Part 21.9.
3. The City of DeKalb will make it known to the public that those person or persons alleging discrimination on the basis of race, color, or national origin as it relates to the provision of transportation services and transit-related benefits may file a complaint with the Urban Mass Transportation Administration and/or the U.S. Department of Transportation.

APPENDIX B

DEPARTMENT OF TRANSPORTATION TITLE VI ASSURANCE

The City of DeKalb (hereinafter referred to as the "Recipient") HEREBY AGREES THAT as a condition to receiving any Federal financial assistance from the Department of Transportation it will comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d-42 U.S.C. 2000d-4 (hereinafter referred to as the Act), and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation Subtitle A, Office of the Secretary, Part 21, Nondiscrimination Federally Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964 (hereinafter referred as the Regulations) and other pertinent directives, to the end that in accordance with the Act, Regulations, and other pertinent directives, 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 be otherwise subjected to discrimination under any program or activity for which the Recipient receives Federal financial assistance from the Department of Transportation, including the Federal Transit Administration, and HEREBY GIVES ASSURANCE THAT it will promptly take any measures necessary to effectuate this agreement. This assurance is required by subsection 21.7(a) of the Regulations.

More specifically and without limiting the above general assurance, the Recipient hereby gives the following specific assurances with respect to its Section 5307 Grant Program:

1. That the Recipient agrees that each "program" and each "facility" as defined in subsections 21.23(e) and 21 .23(b) of the Regulations, will be (with regard to a "program") conducted, or will be (with regard to a "facility") operated in compliance with all requirements imposed by, or pursuant to, the Regulations.
2. That the Recipient shall insert the following notification in all solicitations for bids for work or material subject to the Regulations and made in connection with all Section 5307 Grant Program and, in adapted form in all proposals for negotiated agreements:
 - The City of DeKalb, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally - Assisted Programs of the Department of Transportation issued

3. That the Recipient shall insert the clauses of Appendix A of this assurance in every contract subject to this Act and the Regulations.
4. That the Recipient shall insert the clauses of Appendix B of this assurance, as a covenant running with the Land, in any deed from the United States effecting a transfer of real property, structures, or improvements thereon or Interest therein.
5. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the assurance shall extend to the entire facility and facilities operated in connection therewith.
6. That where the Recipient receives Federal financial assistance In the form, or for the acquisition of real property or an interest in real property, the assurance shall extend to rights to space on, over, or under such property.
7. That the Recipient shall include the appropriate clauses set forth in Appendix C of this assurance, as a covenant running with the land, in any future deeds, leases, permits, licenses, and similar agreements entered into by the Recipient with other parties: (a) for the subsequent transfer of real property acquired or improved under Section 5307 and (b) for the construction or use or access to space on, over, or under real property acquired, or improved under Section 5307.
8. That this assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is In the form of, personal property, or real property or interest therein or structures or improvements thereon, in which case the assurance obligates the Recipient or any transferee for the longer of the following periods: (a) the period during which the property Is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the Recipient retains ownership or possession of the property.
9. The Recipient shall provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, subgrantees, contractors, subcontractors, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Act, the Regulations and this assurance.
10. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Act, the Regulations and this assurance.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other racial financial assistance extended after the date hereof to the Recipient by the Department of Transportation under the Section 5307 and is binding on it, other recipients, subgrantees, contractors, subcontractors, transferees, successors in interest and other participants In the Section 5307. The person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Recipient.

(APPENDIX A TO TITLE VI ASSURANCE)

During the performance of this contract, the contractor, 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, 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, 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 the City of DeKalb or the Federal Transit Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this Information the contractor shall so certify to the City of DeKalb, 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 the contractor’s noncompliance with nondiscrimination provisions of this contract, the City of DeKalb shall

impose contract sanctions as it or the Federal Transit Administration may determine to be appropriate, including, but not limited to:

- (a) withholding of payments to the contractor under the contract until the contractor complies; and/or
- (b) 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 (6) 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 City of DeKalb or 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 subcontractor or supplier as a result of such direction, the contractor may request the City of DeKalb to enter into such litigation to protect the interests of the City of DeKalb, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

(APPENDIX B TO TITLE VI ASSURANCE)

The following clauses shall be included in any and all deeds effecting or recording the transfer of real property, structures or improvements thereon, or interest therein from the United States.

(GRANTING CLAUSE)

NOW, THEREFORE, the Department of Transportation, as authorized by law, and upon the condition that the City of DeKalb will accept title to the lands and maintain the project constructed thereon, in accordance with SAFETEA-LU, Public Law 109-59, 119 Stat. 1144, the Regulations for the Administration of Section 5307 and the policies and procedures prescribed by the Federal Transit Administration of the Department of Transportation and, also in accordance with and in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally- Assisted Programs of the Department of Transportation (hereinafter referred to as the Regulations) pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the City of DeKalb all the right, title and interest of the Department of Transportation in and to said lands described in Exhibit "A" attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto City of DeKalb and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in

The City of DeKalb, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over or under such lands hereby conveyed[,] [and]* (2) that the City of DeKalb shall use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21.

Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended, and (3) that in the event of breach if any of the above-mentioned nondiscrimination conditions, the Department shall have a right to re-enter said lands and facilities on said land, and the above described land and facilities shall thereon revert to and vest in and become the absolute property of the Department of Transportation and its assigns as such interest existed prior to this instruction.*

* Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.

(APPENDIX C TO TITLE VI ASSURANCE)

The following clauses shall be included in all deeds, licenses, leases, or similar instruments entered into by the City of DeKalb pursuant to the provisions of Assurance 6(a).

The grantee, licensee, lessee, permittee, etc., as appropriate) for himself/himself, his/her heirs, personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add "as a covenant running with the land"] that in the event that facilities are constructed, maintained, or otherwise operated on the said property described in this (deed, license, lease, permit, etc.) for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee lessee, permittee, etc.) shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination of

[Include in licenses, leases, permits, etc.]*

That in the event of breach of any of the above nondiscrimination covenants, City of DeKalb shall have the right to terminate the (license, lease, permit, etc.) and to re-enter and repossess said lands and facilities thereon, and hold the same as if said [licenses, lease, permit, etc.] had never been made or issued.

[Include in deeds]*

That in the event of breach of any of the above nondiscrimination covenants, City of DeKalb shall have the right to re-enter said lands and facilities thereon, and the above described lands and facilities shall thereupon revert to and vest in and become the absolute property of City of DeKalb and its assigns.

The following shall be included in all deeds, licenses, leases, permits, or similar agreements entered into by City of DeKalb pursuant to the provisions of Assurance 7(b).

The grantee licensee, lessee, permittee, etc., as appropriate) for herself/himself, his/her personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in case of deeds, and leases add "as a covenant running with the land") that (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over or under such land and the furnishing services thereon, no person on the grounds of race, color, or national origin shall be excluded from the participation in, be denied the benefits of, or be otherwise subjected to discrimination, and (3) that the (grantee, licensee, lessee, permittee, etc.) shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally--Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

[Include in licenses, leases, permits, etc.]*

That in the event of breach of any of the above nondiscrimination covenants City of DeKalb shall have the right to terminate the (license, lease, lease, permit, etc.) and to re-enter and repossess said land and the facilities thereon, and hold the same as if said [license, lease, permit, etc.] had never been made or issued.

[Include in deeds]*

That in the event of breach of any of the above nondiscrimination covenants, City of DeKalb shall have the right to re-enter said land and facilities thereon, and the above described lands and facilities shall thereupon revert to and vest in and become the absolute property of City of DeKalb and its assigns.

* Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purpose of Title VI of the Civil Rights Act of 1964.



Subject: THIRD PARTY CONTRACTING REQUIREMENTS

1. **PURPOSE.** This circular sets forth the requirements a grantee must adhere to in the solicitation, award and administration of its third party contracts. These requirements are based on the common grant rules, Federal statutes, Executive Orders and their implementing regulations, and FTA policy.¹
2. **CANCELLATION.** This circular cancels FTA Circular 4220.1D "Third Party Contracting Requirements," dated 4-15-96.
3. **REFERENCES.**
 - a. Federal Transit Laws, 49 U.S.C. Chapter 53.
 - b. Transportation Equity Act for the 21st Century 1998 (TEA-21), P.L. 105-178 as amended, TEA-21 Restoration Act 1998, P.L. 105-206.
 - c. Sections 4001 and 1555 of the Federal Acquisition Streamlining Act of 1994, 41 U.S.C. § 403(11) and 40 U.S.C. § 481(b), respectively,
 - d. 49 C.F.R. part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

¹ FTA's purpose in re-issuing Circular 4220.1 is to incorporate policy updates contained in several Dear Colleague letters issued since 1996. At the same time, we have attempted to ease unnecessary requirements applied in our grantees' procurement processes while remaining consistent with applicable law and regulations, particularly the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 49 CFR Part 18 (the Common Grant Rule). We believe many of these 'requirements' have evolved from earlier versions of the circular through varying interpretations or as unintended consequences of the language as it was drafted. To help avoid this, we have compiled these interpretive comments to better explain what FTA believes the law and regulations conveyed through the circular actually require of our grantees. As applicable laws, regulations, and contracting practices evolve, we will use these interpretive comments to continue conveying our views to our grantees and the transit industry as a whole.

- e. 49 C.F.R. part 19, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations.
- f. Executive Order 12612, "Federalism," dated 10-26-87.
- g. FTA Circular 5010.1C, "Grant Management Guidelines," dated 10-1-98.
- h. FTA Master Agreement.
- i. Appendix D, Best Practices Procurement Manual.

- 4. APPLICABILITY.** This circular applies to all FTA grantees and subgrantees that contract with outside sources under FTA assistance programs. FTA grant recipients who utilize FTA formula funds for operating assistance are required to follow the requirements of this circular for all operating contracts. These requirements do not apply to procurements undertaken in support of capital projects completely accomplished without FTA funds or to those operating and planning contracts awarded by grantees that do not receive FTA operating and planning assistance.²

Congestion Mitigation and Air Quality (CMAQ) and Job Access/Reverse Commute (JARC) project funds may be used for operations. Although grantees must follow circular requirements for any specific contracts that utilize CMAQ or JARC funds, the use of CMAQ and JARC funds for operations does not trigger the applicability of the circular to all other operating contracts.³

² As a general rule, the circular, along with the underlying requirements in the Federal transit laws and regulations, applies whenever Federal funds are involved.

Those grantees authorized to use formula funds for operating assistance must apply the circular to all operating contracts – even if they are able to administratively segregate the federal funds to non-contract operating expenses. The ability to use formula funds for operating assistance hinges upon a grantee's total operating expenses and the portion of those expenses not offset by operating income. Since the entire range of operating expenses is considered in this calculation, each segment of those operating expenses must be subject to Federal standards.

Grantees that are not authorized to use formula funds for operating assistance are not required to apply the circular to their operating contracts.

FTA also applies the requirements of this Circular to recipients of cooperative agreements through provisions of those agreements.

³ Congestion Mitigation and Air Quality (CMAQ) and Job Access/Reverse Commute (JARC) funds may be used for operations by all grantees. The circular must be applied to all contracts that are funded, in part, by CMAQ or JARC funds. Using CMAQ or JARC funds for a specific operating contract or contracts does not trigger the requirement to apply the circular to other operating contracts. This is because the calculation required to use formula funds for operations contracts is not required as a prerequisite to using CMAQ or JARC funds for operating contracts.

Grantees that utilize formula capital funds for preventive maintenance contracts are subject to the following requirements of the circular: If FTA formula capital funds are fully allocated to discrete preventive maintenance contracts, then the requirements of this circular will apply only to those discrete contracts and must be identified and tracked by the grantee. If the FTA formula funds are not allocated to discrete contracts then all preventive maintenance contracts are subject to the requirements of the circular.⁴

- a. States. When procuring property and services under a grant, a State will follow the same procurement policies and procedures that it uses for acquisitions that are not paid for with Federal funds. States must, at a minimum, comply with the requirements of paragraphs 7m, 8a and b, and 9e of this circular and ensure that every purchase order and contract executed by it using Federal funds includes all clauses required by Federal statutes and executive orders and their implementing regulations.⁵
- b. All Other Recipients. Subgrantees of states and all other FTA grantees (to include regional transit authorities) will administer contracts in accordance with this circular.

⁴ Grantees who use formula capital funds for preventative maintenance contracts must apply the circular to those contracts. If, through their accounting procedures, these grantees are able to allocate the Federal funds to discrete maintenance contracts, only those discrete contracts must adhere to the circular. If unable to allocate federal funds to discrete maintenance contracts, the circular applies to all maintenance contracts.

Capital projects that don't include Federal funding are not required to conform to the circular.

Procurements of real property and art are beyond the scope of Circular 4220.1E and covered in separate guidance. [*added October 2003* – Real property acquisition is covered in 49 CFR, Part 24. FTA Circular 9400.1A discusses art in transit projects. The Best Practices Procurement Manual includes extensive non-binding guidelines for applying C.9400.1A and related requirements.]

[*added February 2004* – Grants under the Rural Transportation Accessibility Incentive Program, section 3038, Pub.L. 105-178, as amended, are subject to the standards described at 67 FR 16799 (April 8, 2002).]

⁵ The language of this paragraph was adjusted to comport with the Common Grant Rule. FTA believes that only States – not their sub-grantees, regional transit authorities, local agencies, or any other grantees or sub-grantees – are free to apply only limited portions of the circular to their procurements.

All other grantees and sub-grantees are obligated to apply the circular to their procurements as described above.

5. **POLICY.** FTA's role in grantee procurements is reflective of Executive Order 12612, Federalism. The executive order directs Federal agencies to refrain from substituting their judgment for that of their recipients unless the matter is primarily a Federal concern and to defer, to the maximum extent feasible, to the States to establish standards rather than setting national standards.

In 1996, FTA reduced its role in grantee third party procurement activity in several important respects. To ensure compliance with Federal procurement requirements, FTA will continue to provide guidance and technical assistance to its grantees consistent with its Federal oversight responsibilities.

- a. **Grantee Self-Certification.** Recognizing that most FTA grantees have experience with the third party contracting requirements of the "common grant rules" (49 C.F.R. parts 18 and 19), FTA will rely primarily on grantees' "self-certifications" that their procurement system meets FTA requirements and that a grantee has the technical capacity to comply with Federal procurement requirements. All grantees must "self certify" as part of the Annual Certification/Assurance Process.⁶

FTA will monitor compliance with this circular as part of its routine oversight responsibilities. If FTA becomes aware of circumstances that might invalidate a grantee's self-certification, FTA will investigate and recommend appropriate measures to correct whatever deficiency may exist.

- b. **FTA Review of Third Party Contracts.** FTA relies on the validity of each grantee's self-certification rather than on a pre-award review of third party contracts. Accordingly, FTA will rely on periodic, post-grant reviews to ensure that grantees comply with Federal requirements and standards. Grantees are still free to request FTA's pre-award review of their procurements as part of FTA's technical assistance program. Conversely, if FTA requests to review the record of a particular procurement, grantees must make their procurement documents available for FTA's pre-award (or post-award) review.
- c. **Procurement System Reviews.** FTA is required by 49 U.S.C. §5307 to perform reviews and evaluations of grant programs and to perform a full review and evaluation of the performance of grantees in carrying out grant programs with specific reference to their compliance with statutory and administrative requirements. Accordingly, FTA will perform procurement system reviews as part of its on-going oversight responsibility. FTA may recommend "best practices" in order to assist the grantee in improving its procurement practices. In such cases, FTA will identify such recommendations as "advisory."

⁶ To preclude unnecessary delay in grantee procurements, FTA does not, as a general rule, conduct pre-award reviews of third party contracts as envisioned in the Common Grant Rule. Instead, we have chosen to rely heavily on our grantees' self-certification of their procurement systems.

- d. FTA Procurement Technical Assistance. FTA provides procurement training and technical assistance at both regional and national levels by offering various instructional courses, by conducting regional technical assistance conferences, by providing assistance by a contractor on an as-needed basis, and by updating and revising the FTA "Best Practices Procurement Manual." The manual contains procurement guidance and "best practices" that grantees may choose to follow in performing their procurement functions.
- e. Contract Clauses and Provisions. The Master Agreement, issued annually, lists many but not all FTA and other crosscutting Federal requirements applicable to FTA grantees. Many of these requirements are related to grantee procurements. Further guidance and suggested wording for contract clauses and provisions is provided in the "Best Practices Procurement Manual."
- f. Use of GSA Schedules is restricted to those transit properties with specific legislative authority to use them.⁷

6. DEFINITIONS. All definitions in 49 U.S.C. §5302 are applicable to this circular. The following definitions are provided:

- a. "Grantee" means the public or private entity to which a grant or cooperative agreement is awarded by FTA. The grantee is the entire legal entity even if only a particular component of the entity is designated in the assistance award document.⁸

For the purposes of this circular, "grantee" also includes any subgrantee of the grantee. Furthermore, a grantee is responsible for assuring that its subgrantees comply with the requirements and standards of this circular, and that subgrantees are aware of requirements imposed upon them by Federal statutes and regulations.

- b. "State" means any of the several states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local

⁷ Within FTA's knowledge, the only grantee with full access to the GSA schedules is the Washington Metropolitan Area Transit Authority. GSA issued initial guidance implementing a program to allow state and local governments to use the GSA information technology schedule in May 2003. [~~deleted October 2003 - and FTA will update this section as more information becomes available.~~] [*added October 2003 - Directions for using the GSA information technology schedule are available at <http://www.gsa.gov/Portal/gsa/ep/contentView.do?P=FCIM&contentId=8273&contentType=GS>* [A OVERVIEW](#)]

⁸ This definition was changed to comport with the Common Grant Rule.

governments. "State" does not include any public and Indian housing agency under the United States Housing Act of 1937.

- c. "FTA" refers to the Federal Transit Administration.
- d. "Third party contract" refers to any purchase order or contract awarded by a grantee to a vendor or contractor using Federal financial assistance awarded by FTA.
- e. "Piggybacking" is an assignment of existing contract rights to purchase supplies, equipment, or services.⁹
- f. "Tag-on" is defined as the addition of work (supplies, equipment or services) that is beyond the scope of the original contract that amounts to a cardinal change as generally interpreted in Federal practice by the various Boards of Contract Appeals. "In scope" changes are not tag-ons.¹⁰

⁹ FTA has introduced a limited definition of 'piggybacking' and, to differentiate vastly different practices, has separated this practice of assigning contractual rights among grantees from joint procurements or other intergovernmental agreements. Paragraph 7.e. further explains these different practices. Our intent was to eliminate some of the confusion that has grown around this term.

¹⁰ We have similarly attempted to limit the definition of 'tag-on' and align it with the concept of a 'cardinal change' or 'out-of-scope change.' FTA believes that earlier attempts to categorize virtually any change in quantity, for example, as a forbidden 'tag-on' failed to account for the realities of the marketplace and unnecessarily limited grantees from exercising reasonable freedom to make those minor adjustments "fairly and reasonably within the contemplation of the parties when the contract was entered into." *Freund v. United States*, 260 U.S. 60 (1922).

In applying the concept of 'cardinal change' to third party contracts, FTA recognizes that this is a difficult concept, not easily reduced to a percentage, dollar value, number of changes, or other objective measure that would apply to all cases. We also recognize that the various Boards of Contract Appeals, Federal courts, and Comptroller General have wrestled with these issues over many years and built an extensive array of case law differentiating in-scope from out-of-scope or cardinal changes. We do not imply that the Boards of Contract Appeals cases are controlling, only that we will look to their collective wisdom in judging where changes in grantee contracts fall along the broad spectrum between clearly in-scope and clearly out-of-scope changes. It is our intent to monitor our grantees and oversight contractors to ensure this concept is well understood and uniformly applied, and to issue additional guidance as necessary to assist our grantees in exercising this authority.

Before attempting any change in quantity of major items (e.g., buses, rail cars), grantees should review their contract clauses to ensure they allow for such changes. For instance, in Federal practice, the 'changes' clause from the Federal Acquisition Regulation has been interpreted not to allow changes in quantity of major items. Federal contracting officers use additional clauses

- g. "Best Value" is a selection process in which proposals contain both price and qualitative components, and award is based upon a combination of price and qualitative considerations. Qualitative considerations may include technical design, technical approach, quality of proposed personnel, and/or management plan. The award selection is based upon consideration of a combination of technical and price factors to determine {or derive} the offer deemed most advantageous and of the greatest value to the procuring agency.¹¹
- h. "Design-Bid-Build" refers to the project delivery approach where the grantee commissions an architect or engineer to prepare drawings and specifications under a design services contract, and separately contracts for at-risk construction, by engaging the services of a contractor through sealed bidding or competitive negotiations.¹²
- i. "Design-Build" refers to a system of contracting under which one entity performs both architectural/engineering and construction under one contract.¹³

7. GENERAL PROCUREMENT STANDARDS APPLICABLE TO THIRD-PARTY PROCUREMENTS.

- a. Conformance with State and Local Law. Grantees and subgrantees shall use their own procurement procedures that reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law, including the requirements and standards identified in this circular. If there is no State law on a particular aspect of procurement, then Federal contract law principles will apply.
- b. Contract Administration System. Grantees shall maintain a contract administration system that ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
- c. Written Standards of Conduct. Grantees shall maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer, agent,

specific to this desired flexibility when they anticipate that there may be a need to add quantities of these major items. [added February 2004 – As an example, where a contract, as originally competed and issued, allowed a transit agency to purchase X number of 40' buses and Y number of 45' buses, a contract change that substituted a provision that would instead allow the transit agency to buy X+Y buses in any combination of 40' and 45' models would be a cardinal change since it would allow a substitution of major end items not contemplated in the original competition and contract. If the 'any combination' language was part of the original competition, it would not be objectionable.]

¹¹ This new definition was intended to recognize the concept of best value. The language is intended neither to limit nor dictate qualitative measures grantees may employ.

¹² This definition was added only to acknowledge this method of construction contracting.

¹³ This definition was added only to acknowledge this method of construction contracting.

immediate family member, or Board member of the grantee shall participate in the selection, award, or administration of a contract supported by FTA funds if a conflict of interest, real or apparent, would be involved.

Such a conflict would arise when any of the following has a financial or other interest in the firm selected for award:

- (1) The employee, officer, agent, or Board member,
- (2) Any member of his/her immediate family,
- (3) His or her partner, or
- (4) An organization that employs, or is about to employ, any of the above.

The grantee's officers, employees, agents, or Board members will neither solicit nor accept gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantees may set minimum rules when the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by state or local law or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary action for violation of such standards by the grantee's officers, employees, or agents, or by contractors or their agents.

- d. Ensuring Most Efficient and Economic Purchase. Grantee procedures shall provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase.

Where appropriate, an analysis will be made of lease versus purchase alternatives and any other appropriate analysis to determine the most economical approach.

- e. Intergovernmental Procurement Agreements.
 - (1) Grantees are encouraged to utilize available state and local intergovernmental agreements for procurement or use of common goods and services. When obtaining goods or services in this manner, grantees must ensure all federal requirements, required clauses, and certifications (including Buy America) are properly followed and included, whether in the master intergovernmental contract or in the grantee's purchase document.¹⁴

¹⁴ Sub-paragraph (1) looks primarily to State government contracts that allow subordinate government agencies to buy from established schedules akin to the GSA schedules in Federal practice. FTA believes grantees may buy through these contracts provided all parties agree to append the required Federal clauses in the purchase order or other document that effects the grantee's procurement. When buying from these schedule contracts, grantees should obtain Buy

- (2) Grantees are also encouraged to jointly procure goods and services with other grantees. When obtaining goods or services in this manner, grantees must ensure all federal requirements, required clauses, and certifications are properly followed and included in the resulting joint solicitation and contract documents.¹⁵
 - (3) Grantees may assign contractual rights to purchase goods and services to other grantees if the original contract contains appropriate assignability provisions. Grantees who obtain these contractual rights (commonly known as 'piggybacking') may exercise them after first determining the contract price remains fair and reasonable.¹⁶
- f. Use of Excess Or Surplus Federal Property. Grantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property, whenever such use is feasible and reduces project costs.
 - g. Use of Value Engineering in Construction Contracts. Grantees are encouraged to use value engineering clauses in contracts for construction projects. FTA cannot approve a New Starts grant application for final design funding or a full funding grant agreement until value engineering is complete (see FTA Circular 5010.1C).¹⁷

America certification before entering into the purchase order. Where the product to be purchased is Buy America compliant, there is no problem. Where the product is not Buy America compliant, the grantee will still have to obtain a waiver from FTA before proceeding.

¹⁵ Sub-paragraph (2) reflects FTA's belief that grantees should consider combining efforts in their procurements to obtain better pricing through larger purchases. Joint procurements offer the additional advantage of being able to obtain goods and services that exactly match each cooperating grantee's requirements. We believe this is superior to the practice of 'piggybacking' since 'piggybacking' does not combine buying power at the pricing stage and may limit a grantee's choices to those products excess to another grantee's needs.

¹⁶ Sub-paragraph (3) reflects grantees' continuing ability to assign contractual rights to others – 'piggybacking.' FTA believes it is extremely important that grantees ensure they contract only for their reasonably anticipated needs and do not add quantities or options to contracts solely to allow them to assign these quantities or options at a later date.

¹⁷ The first sentence in this paragraph was drawn from the Common Grant Rule and reflects FTA's encouragement of value engineering. It is important to note that some contractual arrangements (e.g., design-build contracts) may inherently include value engineering concepts and principles. Where this is the case, FTA does not require separate value engineering proposals, change orders, or other processes. From a procurement view, the concept of value engineering is more important than the form it takes.

- h. Awards to Responsible Contractors. Grantees shall make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.
- i. Written Record of Procurement History. Grantees shall maintain records detailing the history of each procurement. At a minimum, these records shall include:
 - (1) the rationale for the method of procurement,
 - (2) selection of contract type,
 - (3) reasons for contractor selection or rejection, and
 - (4) the basis for the contract price.¹⁸
- j. Use of Time and Materials Type Contracts. Grantees will use time and material type contracts only:
 - (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.
- k. Responsibility for Settlement of Contract Issues/Disputes. Grantees alone will be responsible in accordance with good administrative practice and sound business judgment for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the grantee of any contractual responsibility under its contracts.

FTA will not substitute its judgment for that of the grantee or subgrantee, unless the matter is primarily a Federal concern. Violations of the law will be referred to the local, State, or Federal authority having proper jurisdiction.

¹⁸ This paragraph is taken from the Common Grant Rule. FTA recognizes that these written records will vary greatly for different procurements. For a \$100 credit card purchase from a lumberyard, all of the required information may be able to be inferred from the receipt and/or bill itself. More substantial procurements may include voluminous analysis. FTA believes the rule of reason must be applied to this requirement and the documents comprising a procurement history should be commensurate with the size and complexity of the procurement itself.

- I. Written Protest Procedures. Grantees shall have written protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding protests to FTA.¹⁹ All protest decisions must be in writing. A protester must exhaust all administrative remedies with the grantee before pursuing a protest with FTA.

Reviews of protests by FTA will be limited to:

- (1) a grantee's failure to have or follow its protest procedures, or its failure to review a complaint or protest; or
- (2) violations of Federal law or regulation.²⁰

An appeal to FTA must be received by the cognizant FTA regional or Headquarters Office within five (5) working days of the date the protester learned or should have learned of an adverse decision by the grantee or other basis of appeal to FTA.²¹

- m. Contract Term Limitation. Grantees shall not enter into any contract for rolling stock or replacement parts with a period of performance exceeding five (5) years

¹⁹ Prior versions of the circular contained the language in this paragraph related to “disclos[ing] information regarding protests to FTA.” We noted that this provision allowed for widely differing interpretations but found ourselves bound by the Common Grant Rule. FTA believes this provision requires grantees to, at a minimum, informally notify their FTA regional offices when they receive a protest related to a contract required to comply with the circular and to similarly keep their regional offices apprised of the status of those protests. Regional offices may require grantees to forward copies of particular protests or all protests for information or review purposes at any time.

²⁰ This paragraph has been aligned with the Common Grant Rule and practice by adding “violations of Federal law or regulation” to the basis of FTA protest jurisdiction. FTA will continue to limit its review of grantee protest decisions and will read this Common Grant Rule provision in conjunction with the provisions that express our intent to avoid substituting FTA’s judgment for those of its grantees. FTA will not consider each and every appeal of grantees’ protest decisions simply because a federal law or regulation may be involved. Instead, FTA will exercise discretionary jurisdiction over those cases deemed to involve issues important to the overall third party contracting program. [added February 2004 – Any decision by FTA to decline jurisdiction over a protest does not imply approval of or agreement with the grantee’s determination or that FTA has determined the contract is eligible for Federal participation but only that FTA does not believe the issues presented are important to the overall program.]

²¹ Additionally, we have noted that requiring an appeal to be filed within five days of ‘the violation’ yet also requiring protesters to extinguish their local remedies before filing with FTA led to some confusion. We have attempted to clarify this standard by starting the protestor’s clock when it receives actual or constructive notice of an adverse decision or that a grantee failed to have or follow its procedures or review a complaint.

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. Grantees are 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 justification²²

- n. Revenue Contracts. Revenue contracts are those third party contracts whose primary purpose is to either generate revenues in connection with a transit related activity, or to create business opportunities utilizing an FTA funded asset. FTA requires these contracts to be awarded utilizing competitive selection procedures and principles. The extent of and type of competition required is within the discretionary judgment of the grantee.²³

²² Although the ‘five-year rule’ has been eliminated for all but rolling stock and replacement part contracts (i.e., those for which the rule is statutorily required), FTA expects grantees to be judicious about the terms of their contracts. Sound business judgment should underlie any decision on contract term, whether or not it exceeds five years. This sound business judgment should be evident in the procurement files. In keeping with the general tone of the new circular, contract extensions will be viewed with an eye to whether they are in-scope and out-of-scope contract changes. Out-of-scope changes will, of course, be regarded as new procurements and the normal sole source rules will apply. [*inserted October 2003* Regarding rolling stock, this provision is intended only to reflect the statutory five-year rule and not in any way to limit grantees beyond the statute. FTA interprets this five-year period as the *requirements* from day one of the contract to those at the end of the fifth year. In determining what a requirement for today is, we look at the date a piece of equipment is needed, then back the date off to offset the necessary lead time for delivery. If it takes 18 months to deliver a product and it is *needed* 18 months from now, it is a *requirement* today. If (assuming the same 18 month lead time) the transit agency enters into a contract on January 1st, year 1 and needs a piece of equipment delivered in March of year 7, it is a requirement in September of year 5 (March of year 7 minus 18 months) and can be ordered then under the contract. If the transit needs a piece of equipment in January of year 8, it is a requirement of July of year 6 and the transit agency could not order it under this contract since it is a requirement beyond the five-year limitation. As this example shows, the five-year rule does not mean delivery, acceptance, or even fabrication must be completed in five years – only that a contract is limited to purchasing five years of requirements.

²³ When addressing revenue contracts, FTA allows grantees broad latitude in determining what level of competition is appropriate for a particular contract. As an example, where a grantee wishes to enter into a contract to allow advertising on the sides of buses and there are several potential competitors for that limited space, a competitive process would be required to allow interested parties an equal chance at obtaining this limited opportunity. Where a grantee wishes to enter into a contract to allow a private utility to run cable through subway tunnels and is willing to grant similar contracts/licenses to others similarly situated (since there is room for a

- o. Tag-ons. The use of tag-ons is prohibited and applies to the original buyer as well as to others as defined in paragraph 6f.
- p. Piggybacking. Piggybacking is permissible when the solicitation document and resultant contract contain an assignability clause that provides for the assignment of all or a portion of the specified deliverables as originally advertised, competed, evaluated, and awarded. If the supplies were solicited, competed and awarded through the use of an indefinite-delivery-indefinite-quantity (IDIQ) contract, then both the solicitation and contract award must contain both a minimum and maximum quantity that represent the reasonably foreseeable needs of the party(s) to the solicitation and contract. If two or more parties jointly solicit and award an IDIQ contract, then there must be a total minimum and maximum.²⁴
- q. E-Commerce. E-Commerce is an allowable means to conduct procurements. If a grantee chooses to utilize E-Commerce, written procedures need to be

substantial number of such cables without interfering with transit operations), no competition would be required since the opportunity is open to all.

Another example where competition may be limited is in the area of leveraged leasing. Many grantees are taking advantage of the opportunities to obtain a portion of the tax benefits available to private sector investors who lease or buy grantee assets through innovative financing techniques that keep possession and continuing control of the assets in the grantee's hands while transferring ownership for tax purposes. As grantees seek arrangers to construct these transactions, they should use some competitive procedure (but note that since these contracts are not Federally funded and involve no Federally-funded assets, the contract with the arranger need not comply with the circular) process. When the grantee's arranger constructs the actual transaction (a contract that will involve Federally-funded assets so FTA must approve of the transaction), competition is limited by securities regulations.

An emerging area that combines aspects of Federally funded construction and revenue contracting is that of joint development. Certainly the circular has to apply to the Federally funded construction aspects of joint development but revenue contracting aspects make for difficult procurement practice decisions. FTA will work with grantees on a case-by-case basis to craft approaches that satisfy the statutory and regulatory requirements while preserving the benefits of this innovative contracting strategy to the maximum possible extent.

²⁴ As discussed above, 'piggybacking' is still allowable. Given the opportunities for joint procurements, inter-governmental procurements, and other innovative means of obtaining goods and services, grantees should pay renewed attention to their procurement practices to ensure they contract only for their reasonably anticipated requirements and do not build excess capacity into their contracts simply to assign rights to others at a later date.

developed and in place prior to solicitation and all requirements for full and open competition must be met in accordance with this circular.²⁵

8. COMPETITION.

- a. Full and Open Competition. All procurement transactions will be conducted in a manner providing full and open competition. Some situations considered to be restrictive of competition include, but are not limited to:²⁶
- (1) Unreasonable requirements placed on firms in order for them to qualify to do business;
 - (2) Unnecessary experience and excessive bonding requirements;
 - (3) Noncompetitive pricing practices between firms or between affiliated companies;
 - (4) Noncompetitive awards to any person or firm on retainer contracts;
 - (5) 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;
 - (6) Specifying only a "brand name" product instead of allowing "an equal" product to be offered without listing its' salient characteristics.

Grantees may define the salient characteristics in language similar to the following:

- (a) 'Original Equipment Manufacturer (OEM) part #123 or approved equal that complies with the original equipment manufacturer's requirements or specifications and will not compromise any OEM warranties'; or

²⁵ This paragraph was added to recognize that a well-structured e-commerce procurement system is acceptable.

²⁶ Grantees have expressed frustration when attempting to capture the salient characteristics of common parts and items that must be precisely engineered to be useful and for which simple notations (such as original equipment manufacturer's part numbers) describe, in a practical sense, the requirements. Sub-paragraph (6) was annotated to demonstrate two potential (although not required) means by which grantees can meet the Common Grant Rule's requirement to list salient characteristics when using a 'brand name or equal' specification without attempting to reverse-engineer a complicated part to discern precise measurements or specifications.

- (b) 'Original Equipment Manufacturer part #123 or approved equal that is appropriate for use with and fits properly in [describe the bus, engine, or other component the part must be compatible with] and will not compromise any OEM warranties'²⁷; and
 - (c) Any arbitrary action in the procurement process.^{27.5}
- b. Prohibition Against Geographic Preferences. Grantees shall conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. 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.
- c. Written Procurement Selection Procedures. Grantees shall have written selection procedures for procurement transactions. All solicitations shall:
 - (1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, 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 at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient characteristics of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated.
 - (2) Identify all requirements that offerors must fulfill and all other factors to be used in evaluating bids or proposals.
- d. Prequalification Criteria. Grantees shall 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.

²⁷ This is meant only as an example of how a grantee might define salient characteristics, not as an exclusive means of doing so. Other examples can be found in the Best Practices Procurement Manual.

^{27.5} [added February 2004 - This provision was intended as paragraph 8.a.(7) and is not intended to be a portion of paragraph 8.a.(6).]

Also, grantees shall not preclude potential bidders from qualifying during the solicitation period, which is from the issuance of the solicitation to its closing date.²⁸

9. METHODS OF PROCUREMENT. The following methods of procurement may be used as appropriate:

- a. Procurement by Micro-Purchases. Micro-purchases are those purchases under \$2,500. Purchases below that threshold may be made without obtaining competitive quotations. Such purchases are exempt from Buy America requirements. There should be equitable distribution among qualified suppliers and no splitting of procurements to avoid competition. The Davis-Bacon Act applies to construction contracts between \$2,000 and \$2,500. Minimum documentation is required: A determination that the price is fair and reasonable and how this determination was derived. The other requirements of paragraph 7(i) do not apply to micro-purchases.²⁹
- b. Procurement by Small Purchase Procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services,

²⁸ Prequalification and the Common Grant Rule's requirement to allow potential bidders to qualify throughout solicitation periods has led to substantial confusion among some grantees. Prequalification lists are most common in recurring requirements for goods that take some period of time to evaluate to determine if they satisfy the grantee's standards. In those cases, grantees must accept submissions for evaluation, even during ongoing procurement actions. Evaluation need not be accelerated or truncated and FTA does not believe a particular solicitation must be held open to accommodate a potential bidder who submits a person, firm, or product for approval before or during that solicitation.

Additionally, some procurement methods may include preliminary steps that should not be confused with prequalification. For instance, in Federal practice, 41 USC 253m allows for a two-phase selection procedure for large design-build projects and FTA believes grantees may also use that procedure. Essentially, the two-phase selection procedure allows the contracting officer to solicit proposals for design-build projects in two steps, the first a review of technical qualifications and technical approach to the project and the second a complete proposal. This allows the contracting officer to narrow the competitive range in the first step without a requirement for extensive proposal review on the government's part or expensive proposal drafting on potential contractors' parts. This two-phase selection procedure is separate and distinct from prequalification and is but one method grantees may use in their procurements.

²⁹ Determination of fair and reasonable pricing for micro-purchases (usually credit card purchases) has been seen as a burden by some grantees. FTA believes that determination may be done quickly and efficiently in several ways. One possible method would be for the official tasked to review and authorize payment of a credit card bill to annotate (by stapling a preprinted sheet to the bill, stamping the bill with a rubber stamp, or even asking the credit card provider to print an appropriate statement on each bill) a finding such as 'I have examined the expenditures reflected on this bill and determined that each reflects a reasonable price based on market prices offered by the vendors to the general public.'

supplies, or other property that cost more than \$2,500 but do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. § 403(11) (currently set at \$100,000). If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.³⁰

- c. Procurement By Sealed Bids/Invitation For Bid (IFB). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest in price.
 - (1) In order for sealed bidding to be feasible, the following conditions should be present:
 - (a) A complete, adequate, and realistic specification or purchase description is available;
 - (b) Two or more responsible bidders are willing and able to compete effectively for the business;
 - (c) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price; and
 - (d) No discussion with bidders is needed.
 - (2) If this procurement method is used, the following requirements apply:
 - (a) 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;
 - (b) 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;
 - (c) All bids will be publicly opened at the time and place prescribed in the invitation for bids;
 - (d) 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;

³⁰ This is not intended to imply that any purchase under \$2,500 must be treated as a micro-purchase or that any purchase under \$100,000 must be treated as a small purchase. Grantees remain free to set lower thresholds as they deem fit for either or both of these procurement methods.

Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

- (e) Any or all bids may be rejected if there is a sound documented business reason.
- (3) The sealed bid method is the preferred method for procuring construction if the conditions in paragraph 9c(1) above apply.
- d. Procurement By Competitive Proposal/Request for Proposals (RFP). The competitive proposal method of procurement is normally conducted with more than one source submitting an offer, i.e., proposal. Either a fixed price or cost reimbursement type contract is awarded. This method of procurement is generally used when conditions are not appropriate for the use of sealed bids. If this procurement method is used the following requirements apply:
 - (1) Requests for proposals will be publicized. All evaluation factors will be identified along with their relative importance;
 - (2) Proposals will be solicited from an adequate number of qualified sources;
 - (3) Grantees will have a method in place for conducting technical evaluations of the proposals received and for selecting awardees;
 - (4) Awards will be made to the responsible firm whose proposal is most advantageous to the grantee's program with price and other factors considered; and
 - (5) In determining which proposals is most advantageous, grantees may award (if consistent with State law) to the proposer whose proposals offer the greatest business value to the Agency based upon an analysis of a tradeoff of qualitative technical factors and price/cost to derive which proposal represents the "best value" to the Procuring Agency as defined in Section 6, Definitions. If the grantee elects to use the best value selection method as the basis for award, however, the solicitation must contain language which establishes that an award will be made on a "best value" basis.³¹
- e. Procurement Of Architectural and Engineering Services (A&E). Grantees shall use 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.

³¹ Sub-paragraph (5), like paragraph 6.g., recognizes the concept of best value. Once again, FTA does not wish to dictate any particular factors or analytic process. Solicitations must, of course, tell potential competitors for the contract what the basis for award will be.

§5325(d).^{31.5} Services subject to this requirement are program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, and related services.³²

Qualifications-based competitive proposal procedures require that:

- (1) An offeror's qualifications be evaluated;
- (2) Price be excluded as an evaluation factor;
- (3) Negotiations be conducted with only the most qualified offeror; and
- (4) Failing agreement on price, negotiations with the next most qualified offeror be conducted until a contract award can be made to the most qualified offeror 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 grantee's State adopts or has adopted by statute a formal procedure for the procurement of these services.

- f. Procurement of Design-Bid-Build. Grantees may procure design-bid-build services through means of sealed bidding or competitive negotiations. These services must be procured in a manner that conforms to applicable state and local law, the requirements of this Circular relative to the method of procurement used and all other applicable federal requirements.
- g. Procurement of Design-Build. Grantees must procure design-build services through means of qualifications-based competitive proposal procedures based on the Brooks Act as set forth in Section 9e when the preponderance of the work to be performed is considered to be for architectural and engineering (A&E) services as defined in Section 9e, Qualifications-based competitive proposal procedures should not be used to procure design-build services when the

^{31.5} [added February 2004 - The Brooks Act has been re-codified and is now found at 40 U.S.C. §1102. The provision in 49 U.S.C. §5325 has been redesignated as subsection 5325(b).]

³² FTA has expanded this section to better explain the breadth of this statutorily prescribed procurement method. FTA recognizes that most of the services listed (e.g., surveying) are not performed by architectural or engineering services companies. Qualifications-based competitive proposals (i.e., Brooks Act procedures) still must be applied to these procurements because of the statutory directive in 49 U.S.C. 5325(d).

preponderance of the work to be performed is not of an A&E nature as defined in Section 9e, unless required by State law.³³

- h. Procurement By Noncompetitive Proposals (Sole Source). 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 subparagraph.³⁴
- (1) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and at least one of the following circumstances applies:
 - (a) The item is available only from a single source;
 - (b) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
 - (c) FTA authorizes noncompetitive negotiations—e.g., if FTA provides a joint procurement grant or a research project grant with a particular firm or combination of firms, the grant agreement is the sole source approval;^{34.5}

³³ This paragraph was added to explain the requirements that apply to design-build procurements because they involve significant architectural, engineering, or other services that normally require qualifications-based competitive proposals but also include significant work that does not require this extraordinary procurement method. Grantees should determine which portion of the work is predominant and follow the method for that type of procurement. We would normally expect the construction portion of a design-build procurement to be predominant and, in that case, normal procurement methods can be used in lieu of qualification-based competitive proposals (the Brooks Act method).

³⁴ This paragraph was changed from prior versions of the circular to eliminate the phrase “or acceptance” of a single proposal when discussing what constitutes a sole source procurement. FTA believes that, upon receiving a single bid (or proposal) in response to a solicitation, the grantee should determine if competition was adequate. This determination may include a review of the specifications to determine if they were unduly restrictive or contacting sources that chose not to submit a bid or solicitation. It is only if the grantee determines that competition was inadequate that the procurement should proceed as a sole source procurement. The mere fact that only one bid or proposal was received does not automatically mean competition was inadequate since many unrelated factors could cause potential sources not to submit a bid or proposal.

^{34.5} [Added October 2003 - This list of justifications is copied from the Common Grant Rule, 49 CFR 18.36(d)(4) which includes authority to use a sole source procurement when the “awarding

- (d) After solicitation of a number of sources, competition is determined inadequate; or
 - (e) The item is an associated capital maintenance item as defined in 49 U.S.C. §5307(a)(1) that is procured directly from the original manufacturer or supplier of the item to be replaced. The grantee must first certify in writing to FTA:
 - 1 that such manufacturer or supplier is the only source for such item; and
 - 2 that the price of such item is no higher than the price paid for such item by like customers.
- (2) A cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required.
- i. Options. Grantees may include options in contracts. An option is a unilateral right in a contract by which, for a specified time, a grantee 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 a grantee chooses 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) A grantee 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 the grantee has 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.

10. CONTRACT COST AND PRICE ANALYSIS FOR EVERY PROCUREMENT

ACTION. Grantees must perform a cost or price analysis in connection with every procurement action, including contract modifications. The method and degree of analysis is

agency [FTA] authorizes noncompetitive proposals.” To ensure grantees have flexibility equal to that of Federal contracting officers, FTA authorizes procurement by noncompetitive proposals in all of the circumstances described in Part 6.3 of the Federal Acquisition Regulations, even if it is not specifically mentioned in this list of justifications.]

dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals.³⁵

- a. **Cost Analysis.** A cost analysis must be performed when the offeror 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.).

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.

- b. **Price Analysis.** A price analysis may be used in all other instances to determine the reasonableness of the proposed contract price.
- c. **Profit.** Grantees will negotiate profit 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.
- d. **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. Grantees may reference their own cost principles that comply with applicable Federal cost principles.

³⁵ **Cost and Price Analysis.** Cost or price analysis has proven difficult for grantees in some cases. FTA believes price analysis for micro-purchases may be conducted on a limited basis as discussed above (paragraph 9a). Similarly, an abbreviated price analysis may be used for small purchases in most cases. One method to record this analysis is through use of a preprinted form on which a contracting officer (or other responsible person) can annotate a finding of fair and reasonable pricing and check off the most common reasons why this would be so such as catalog or market prices offered in substantial quantities to the general public, regulated prices (e.g., for many utilities purchases), or comparison with recent prices for similar goods and services

Where cost analysis is required, some grantees have found difficulty obtaining the information necessary to conduct a proper cost analysis. The requirements for cost analysis are based in the Common Grant Rule and require action beyond FTA or DOT's authority to change. FTA continues to seek an equitable, practical solution to this problem consistent with the flexibility Federal contracting officers enjoy under the Federal Acquisition Regulation.

- e. 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.

11. BONDING REQUIREMENTS. For those construction or facility improvement contracts or subcontracts exceeding \$100,000, FTA may accept the bonding policy and requirements of the grantee, provided FTA determined that the policy and requirements adequately protect the Federal interest. FTA has determined that grantee policies and requirements that meet the following minimum criteria adequately protect the Federal interest:³⁶

- a. A bid guarantee from each bidder equivalent to five (5) percent 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;
- b. A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract; and
- c. 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:
 - (1) Fifty percent of the contract price if the contract price is not more than \$1 million;
 - (2) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
 - (3) Two and a half million dollars if the contract price is more than \$5 million.
- d. A Grantee may seek FTA approval of its bonding policy and requirements if they do not comply with these criteria.

³⁶ The language in this section has been amended from prior versions of the circular to better explain that FTA will accept a local bonding policy that meets the minimums of paragraphs a, b, and c but that a policy that does not meet these minimums still may be accepted where the local policy adequately protects the Federal interest. Grantees who wish to adopt less stringent bonding requirements generally, for a specific class of projects, or for a particular project may submit the policy and rationale to their regional office for approval. [*added October 2003* – There is no FTA approval required for more stringent bonding requirements. Additionally, FTA does *not* require bonds for rolling stock, services, maintenance, operations, or any other contracts – only for construction.]

12. PAYMENT PROVISIONS IN THIRD PARTY CONTRACTS.

- a. Advance Payments. FTA does not authorize and will not participate in funding payments to a contractor prior to the incurrence of costs by the contractor unless prior written concurrence is obtained from FTA. There is no prohibition on a grant recipient's use of local match funds for advance payments. However, advance payments made with local funds before a grant has been awarded, or before the issuance of a letter of no prejudice or other pre-award authority, are ineligible for reimbursement.³⁷
- b. Progress Payments. Grantees may use progress payments provided the following requirements are followed:³⁸
 - (1) Progress payments are only made to the contractor for costs incurred in the performance of the contract.^{38.2}
 - (2) The grantee must obtain adequate security for progress payments. Adequate security may include taking title, letter of credit or equivalent means to protect the grantee's interest in the progress payment.^{38.5}

³⁷ The language in this section has been amended from previous versions of the circular to explain that grantees may make advance payments from local share funds. Where grantees wish to make advance payments with FTA funds, they should contact their regional office to obtain FTA concurrence. FTA believes there are various sound business reasons for providing advance payments under a number of circumstances and, where we find adequate security for the advance payment combined with a sound business reason to grant the advance payment, will normally grant the required concurrence. These advance payments may be in the nature of mobilization payments, start-up costs, or other advances backed by sound business judgment and adequate security. [*added October 2003* – Additionally, grantees may make advance payments with either local match or FTA funds for those purchases where advance payment is customary in the commercial marketplace such as utility services and subscriptions. FTA concurrence in these circumstances is only required where the advance payment or payments exceed \$100,000.]

³⁸ We have re-drafted the paragraph related to progress payments to account for the practical reality that taking title to work in progress may not be desirable in some cases.

^{38.2} [*added February 2004* – Progress payments in construction contracts may be made on a percentage of completion method in accordance with 49 CFR 18.21(d). This payment method may not be used in non-construction contracts.]

^{38.5} [*added October 2003* – “Adequate security” should reflect the practical realities of different procurement scenarios and factual circumstances. For example, adequate security may consist of taking title to work in progress in a rolling stock procurement, receiving a draft document in a consulting contract, or receiving some portion of recurring services under a services contract. Grantees should always consider the costs associated with this security (e.g., bonds or letters of credit must be purchased in the commercial marketplace) and the impact those costs have on the

- 13. LIQUIDATED DAMAGES PROVISIONS.** A grantee may use liquidated damages if it may reasonably expect to suffer damages and the extent or amount of such damages would be difficult or impossible to determine.

The assessment for damages shall be at a specific rate per day for each day of overrun in contract time; and the rate must be specified in the third party contract. Any liquidated damages recovered shall be credited to the project account involved unless the FTA permits otherwise.³⁹

- 14. CONTRACT AWARD ANNOUNCEMENT.** If a grantee announces contract awards with respect to any procurement for goods and services (including construction services) having an aggregate value of \$500,000 or more, the grantee shall:
- a. Specify the amount of Federal funds that will be used to finance the acquisition in any announcement of the contract award for such goods or services; and
 - b. Express the said amount as a percentage of the total costs of the planned acquisition.
- 15. CONTRACT PROVISIONS.** All contracts shall include provisions to define a sound and complete agreement. In addition, contracts and subcontracts shall contain contractual provisions or conditions that allow for:
- a. 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.)
 - b. Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000.)

- 16. STATUTORY AND REGULATORY REQUIREMENTS.** A current but not all inclusive and comprehensive list of statutory and regulatory requirements applicable to grantee procurements (such as Davis-Bacon Act, Disadvantaged Business Enterprise, Clean Air, and Buy America) is contained in the FTA Master Agreement. Grantees are responsible for evaluating these requirements for relevance and applicability to each procurement. For example, procurements involving the purchase of iron, steel and manufactured goods will be subject to the "Buy America" requirements in 49 C.F.R. Part 661. Further guidance concerning these requirements and suggested wording for contract clauses may be found in FTA's Best Practices Procurement Manual.

contract price, as well as the consequences of incomplete performance as they consider what constitutes adequate security for a given procurement.]

³⁹ The measurement period for liquidated damages may be something other than a day, where some other measuring period is appropriate.

For specific guidance concerning the crosscutting requirements of other Federal agencies, grantees are advised to contact those agencies.

Jennifer L. Dorn
Administrator

1 - FTA's purpose in re-issuing Circular 4220.1 is to incorporate policy updates contained in several Dear Colleague letters issued since 1996. At the same time, we have attempted to ease unnecessary requirements applied in our grantees' procurement processes while remaining consistent with applicable law and regulations, particularly the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 49 CFR Part 18 (the Common Grant Rule). We believe many of these 'requirements' have evolved from earlier versions of the circular through varying interpretations or as unintended consequences of the language as it was drafted. To help avoid this, we have compiled these interpretive comments to better explain what FTA believes the law and regulations conveyed through the circular actually require of our grantees. As applicable laws, regulations, and contracting practices evolve, we will use these interpretive comments to continue conveying our views to our grantees and the transit industry as a whole.

2 - As a general rule, the circular, along with the underlying requirements in the Federal transit laws and regulations, applies whenever Federal funds are involved.

Those grantees authorized to use formula funds for operating assistance must apply the circular to all operating contracts – even if they are able to administratively segregate the federal funds to non-contract operating expenses. The ability to use formula funds for operating assistance hinges upon a grantee's total operating expenses and the portion of those expenses not offset by operating income. Since the entire range of operating expenses is considered in this calculation, each segment of those operating expenses must be subject to Federal standards.

Grantees that are not authorized to use formula funds for operating assistance are not required to apply the circular to their operating contracts.

FTA also applies the requirements of this Circular to recipients of cooperative agreements through provisions of those agreements.

3 - Congestion Mitigation and Air Quality (CMAQ) and Job Access/Reverse Commute (JARC) funds may be used for operations by all grantees. The circular must be applied to all contracts that are funded, in part, by CMAQ or JARC funds. Using CMAQ or JARC funds for a specific operating contract or contracts does not trigger the requirement to apply the circular to other operating contracts. This is because the calculation required to use formula funds for operations contracts is not required as a prerequisite to using CMAQ or JARC funds for operating contracts.

4 - Grantees who use formula capital funds for preventative maintenance contracts must apply the circular to those contracts. If, through their accounting procedures, these grantees are able to allocate the Federal funds to discrete maintenance contracts, only those discrete contracts must adhere to the circular. If

unable to allocate federal funds to discrete maintenance contracts, the circular applies to all maintenance contracts.

Capital projects that don't include Federal funding are not required to conform to the circular.

Procurements of real property and art are beyond the scope of Circular 4220.1E and covered in separate guidance. [*added October 2003* – Real property acquisition is covered in 49 CFR, Part 24. FTA Circular 9400.1A discusses art in transit projects. The Best Practices Procurement Manual includes extensive non-binding guidelines for applying C.9400.1A and related requirements.]

5 - The language of this paragraph was adjusted to comport with the Common Grant Rule. FTA believes that only States – not their sub-grantees, regional transit authorities, local agencies, or any other grantees or sub-grantees – are free to apply only limited portions of the circular to their procurements.

All other grantees and sub-grantees are obligated to apply the circular to their procurements as described above.

6 - To preclude unnecessary delay in grantee procurements, FTA does not, as a general rule, conduct pre-award reviews of third party contracts as envisioned in the Common Grant Rule. Instead, we have chosen to rely heavily on our grantees' self-certification of their procurement systems.

7 - Within FTA's knowledge, the only grantee with full access to the GSA schedules is the Washington Metropolitan Area Transit Authority. GSA issued initial guidance implementing a program to allow state and local governments to use the GSA information technology schedule in May 2003. [~~added October 2003 - and FTA will update this section as more information becomes available.~~] [*added October 2003* – Directions for using the GSA information technology schedule are available at <http://www.gsa.gov/Portal/gsa/ep/channelView.do?pageTypeld=8199&channelPage=%2Fep%2Fchannel%2FgsaOverview.jsp&channelld=-13463>

8 - This definition was changed to comport with the Common Grant Rule.

9 - FTA has introduced a limited definition of 'piggybacking' and, to differentiate vastly different practices, has separated this practice of assigning contractual rights among grantees from joint procurements or other intergovernmental agreements. Paragraph 7.e. further explains these different practices. Our intent was to eliminate some of the confusion that has grown around this term.

10 - We have similarly attempted to limit the definition of 'tag-on' and align it with the concept of a 'cardinal change' or 'out-of-scope change.' FTA believes that earlier attempts to categorize virtually any change in quantity, for example, as a forbidden 'tag-on' failed to account for the realities of the marketplace and unnecessarily limited grantees from exercising reasonable freedom to make those minor adjustments "fairly and reasonably within the contemplation of the parties when the contract was entered into." *Freund v. United States*, 260 U.S. 60 (1922).

In applying the concept of 'cardinal change' to third party contracts, FTA recognizes that this is a difficult concept, not easily reduced to a percentage, dollar value, number of changes, or other objective measure that would apply to all cases. We also recognize that the various Boards of Contract Appeals, Federal courts, and Comptroller General have wrestled with these issues over many years and built an extensive array of case law differentiating in-scope from out-of-scope or cardinal changes. We do not imply that the Boards of Contract Appeals cases are controlling, only that we will look to their collective wisdom in judging where changes in grantee contracts fall along the broad spectrum between clearly in-scope and

clearly out-of-scope changes. It is our intent to monitor our grantees and oversight contractors to ensure this concept is well understood and uniformly applied, and to issue additional guidance as necessary to assist our grantees in exercising this authority.

Before attempting any change in quantity of major items (e.g., buses, rail cars), grantees should review their contract clauses to ensure they allow for such changes. For instance, in Federal practice, the 'changes' clause from the Federal Acquisition Regulation has been interpreted not to allow changes in quantity of major items. Federal contracting officers use additional clauses specific to this desired flexibility when they anticipate that there may be a need to add quantities of these major items.

11 - This new definition was intended to recognize the concept of best value. The language is intended neither to limit nor dictate qualitative measures grantees may employ.

12 - This definition was added only to acknowledge this method of construction contracting.

13 - This definition was added only to acknowledge this method of construction contracting.

14 - Sub-paragraph (1) looks primarily to State government contracts that allow subordinate government agencies to buy from established schedules akin to the GSA schedules in Federal practice. FTA believes grantees may buy through these contracts provided all parties agree to append the required Federal clauses in the purchase order or other document that effects the grantee's procurement. When buying from these schedule contracts, grantees should obtain Buy America certification before entering into the purchase order. Where the product to be purchased is Buy America compliant, there is no problem. Where the product is not Buy America compliant, the grantee will still have to obtain a waiver from FTA before proceeding.

Sub-paragraph (2) reflects FTA's belief that grantees should consider combining efforts in their procurements to obtain better pricing through larger purchases. Joint procurements offer the additional advantage of being able to obtain goods and services that exactly match each cooperating grantee's requirements. We believe this is superior to the practice of 'piggybacking' since 'piggybacking' does not combine buying power at the pricing stage and may limit a grantee's choices to those products excess to another grantee's needs.

16 - Sub-paragraph (3) reflects grantees' continuing ability to assign contractual rights to others – 'piggybacking.' FTA believes it is extremely important that grantees ensure they contract only for their reasonably anticipated needs and do not add quantities or options to contracts solely to allow them to assign these quantities or options at a later date.

17 - The first sentence in this paragraph was drawn from the Common Grant Rule and reflects FTA's encouragement of value engineering. It is important to note that some contractual arrangements (e.g., design-build contracts) may inherently include value engineering concepts and principles. Where this is the case, FTA does not require separate value engineering proposals, change orders, or other processes. From a procurement view, the concept of value engineering is more important than the form it takes.

18 - This paragraph is taken from the Common Grant Rule. FTA recognizes that these written records will vary greatly for different procurements. For a \$100 credit card purchase from a lumberyard, all of the required information may be able to be inferred from the receipt and/or bill itself. More substantial procurements may include voluminous analysis. FTA believes the rule of reason must be applied to this requirement and the documents comprising a procurement history should be commensurate with the size and complexity of the procurement itself.

19 - Prior versions of the circular contained the language in this paragraph related to “disclos[ing] information regarding protests to FTA.” We noted that this provision allowed for widely differing interpretations but found ourselves bound by the Common Grant Rule. FTA believes this provision requires grantees to, at a minimum, informally notify their FTA regional offices when they receive a protest related to a contract required to comply with the circular and to similarly keep their regional offices apprised of the status of those protests. Regional offices may require grantees to forward copies of particular protests or all protests for information or review purposes at any time.

20 - This paragraph has been aligned with the Common Grant Rule and practice by adding “violations of Federal law or regulation” to the basis of FTA protest jurisdiction. FTA will continue to limit its review of grantee protest decisions and will read this Common Grant Rule provision in conjunction with the provisions that express our intent to avoid substituting FTA’s judgment for those of its grantees. FTA will not consider each and every appeal of grantees’ protest decisions simply because a federal law or regulation may be involved. Instead, FTA will exercise discretionary jurisdiction over those cases deemed to involve issues important to the overall third party contracting program.

21 - Additionally, we have noted that requiring an appeal to be filed within five days of ‘the violation’ yet also requiring protestors to extinguish their local remedies before filing with FTA led to some confusion. We have attempted to clarify this standard by starting the protestor’s clock when it receives actual or constructive notice of an adverse decision or that a grantee failed to have or follow its procedures or review a complaint.

22 - Although the ‘five-year rule’ has been eliminated for all but rolling stock and replacement part contracts (i.e., those for which the rule is statutorily required), FTA expects grantees to be judicious about the terms of their contracts. Sound business judgment should underlie any decision on contract term, whether or not it exceeds five years. This sound business judgment should be evident in the procurement files. In keeping with the general tone of the new circular, contract extensions will be viewed with an eye to whether they are in-scope and out-of-scope contract changes. Out-of-scope changes will, of course, be regarded as new procurements and the normal sole source rules will apply. *[inserted October 2003* Regarding rolling stock, this provision is intended only to reflect the statutory five-year rule and not in any way to limit grantees beyond the statute. FTA interprets this five-year period as the *requirements* from day one of the contract to those at the end of the fifth year. In determining what a requirement for today is, we look at the date a piece of equipment is needed, then back the date off to offset the necessary lead time for delivery. If it takes 18 months to deliver a product and it is *needed* 18 months from now, it is a *requirement* today. If (assuming the same 18 month lead time) the transit agency enters into a contract on January 1st, year 1 and needs a piece of equipment delivered in March of year 7, it is a requirement in September of year 5 (March of year 7 minus 18 months) and can be ordered then under the contract. If the transit needs a piece of equipment in January of year 8, it is a requirement of July of year 6 and the transit agency could not order it under this contract since it is a requirement beyond the five-year limitation. As this example shows, the five-year rule does not mean delivery, acceptance, or even fabrication must be completed in five years – only that a contract is limited to purchasing five years of requirements.

23 - When addressing revenue contracts, FTA allows grantees broad latitude in determining what level of competition is appropriate for a particular contract. As an example, where a grantee wishes to enter into a contract to allow advertising on the sides of buses and there are several potential competitors for that limited space, a competitive process would be required to allow interested parties an equal chance at obtaining this limited opportunity. Where a grantee wishes to enter into a contract to allow a private

utility to run cable through subway tunnels and is willing to grant similar contracts/licenses to others similarly situated (since there is room for a substantial number of such cables without interfering with transit operations), no competition would be required since the opportunity is open to all.

Another example where competition may be limited is in the area of leveraged leasing. Many grantees are taking advantage of the opportunities to obtain a portion of the tax benefits available to private sector investors who lease or buy grantee assets through innovative financing techniques that keep possession and continuing control of the assets in the grantee's hands while transferring ownership for tax purposes. As grantees seek arrangers to construct these transactions, they should use some competitive procedure (but note that since these contracts are not Federally funded and involve no Federally-funded assets, the contract with the arranger need not comply with the circular) process. When the grantee's arranger constructs the actual transaction (a contract that will involve Federally-funded assets so FTA must approve of the transaction), competition is limited by securities regulations.

An emerging area that combines aspects of Federally funded construction and revenue contracting is that of joint development. Certainly the circular has to apply to the Federally funded construction aspects of joint development but revenue contracting aspects make for difficult procurement practice decisions. FTA will work with grantees on a case-by-case basis to craft approaches that satisfy the statutory and regulatory requirements while preserving the benefits of this innovative contracting strategy to the maximum possible extent.

24 - As discussed above, 'piggybacking' is still allowable. Given the opportunities for joint procurements, inter-governmental procurements, and other innovative means of obtaining goods and services, grantees should pay renewed attention to their procurement practices to ensure they contract only for their reasonably anticipated requirements and do not build excess capacity into their contracts simply to assign rights to others at a later date.

25 - This paragraph was added to recognize that a well-structured e-commerce procurement system is acceptable.

26 - Grantees have expressed frustration when attempting to capture the salient characteristics of common parts and items that must be precisely engineered to be useful and for which simple notations (such as original equipment manufacturer's part numbers) describe, in a practical sense, the requirements. Sub-paragraph (6) was annotated to demonstrate two potential (although not required) means by which grantees can meet the Common Grant Rule's requirement to list salient characteristics when using a 'brand name or equal' specification without attempting to reverse-engineer a complicated part to discern precise measurements or specifications.

27 - This is meant only as an example of how a grantee might define salient characteristics, not as an exclusive means of doing so. Other examples can be found in the Best Practices Procurement Manual.

28 - Prequalification and the Common Grant Rule's requirement to allow potential bidders to qualify throughout solicitation periods has led to substantial confusion among some grantees. Prequalification lists are most common in recurring requirements for goods that take some period of time to evaluate to determine if they satisfy the grantee's standards. In those cases, grantees must accept submissions for evaluation, even during ongoing procurement actions. Evaluation need not be accelerated or truncated and FTA does not believe a particular solicitation must be held open to accommodate a potential bidder who submits a person, firm, or product for approval before or during that solicitation.

Additionally, some procurement methods may include preliminary steps that should not be confused with prequalification. For instance, in Federal practice, 41 USC 253m allows for a two-phase selection procedure for large design-build projects and FTA believes grantees may also use that procedure. Essentially, the two-phase selection procedure allows the contracting officer to solicit proposals for design-build projects in two steps, the first a review of technical qualifications and technical approach to the project and the second a complete proposal. This allows the contracting officer to narrow the competitive range in the first step without a requirement for extensive proposal review on the government's part or expensive proposal drafting on potential contractors' parts. This two-phase selection procedure is separate and distinct from prequalification and is but one method grantees may use in their procurements.

29 - Determination of fair and reasonable pricing for micro-purchases (usually credit card purchases) has been seen as a burden by some grantees. FTA believes that determination may be done quickly and efficiently in several ways. One possible method would be for the official tasked to review and authorize payment of a credit card bill to annotate (by stapling a preprinted sheet to the bill, stamping the bill with a rubber stamp, or even asking the credit card provider to print an appropriate statement on each bill) a finding such as ' I have examined the expenditures reflected on this bill and determined that each reflects a reasonable price based on market prices offered by the vendors to the general public.'

30 - This is not intended to imply that any purchase under \$2,500 must be treated as a micro-purchase or that any purchase under \$100,000 must be treated as a small purchase. Grantees remain free to set lower thresholds as they deem fit for either or both of these procurement methods.

31 - Sub-paragraph (5), like paragraph 6.g., recognizes the concept of best value. Once again, FTA does not wish to dictate any particular factors or analytic process. Solicitations must, of course, tell potential competitors for the contract what the basis for award will be.

32 - FTA has expanded this section to better explain the breadth of this statutorily prescribed procurement method. FTA recognizes that most of the services listed (e.g., surveying) are not performed by architectural or engineering services companies. Qualifications-based competitive proposals (i.e., Brooks Act procedures) still must be applied to these procurements because of the statutory directive in 49 U.S.C. 5325(d).

33 - This paragraph was added to explain the requirements that apply to design-build procurements because they involve significant architectural, engineering, or other services that normally require qualifications-based competitive proposals but also include significant work that does not require this extraordinary procurement method. Grantees should determine which portion of the work is predominant and follow the method for that type of procurement. We would normally expect the construction portion of a design-build procurement to be predominant and, in that case, normal procurement methods can be used in lieu of qualification-based competitive proposals (the Brooks Act method).

34 - This paragraph was changed from prior versions of the circular to eliminate the phrase "or acceptance" of a single proposal when discussing what constitutes a sole source procurement. FTA believes that, upon receiving a single bid (or proposal) in response to a solicitation, the grantee should determine if competition was adequate. This determination may include a review of the specifications to determine if they were unduly restrictive or contacting sources that chose not to submit a bid or solicitation. It is only if the grantee determines that competition was inadequate that the procurement should proceed as a sole source procurement. The mere fact that only one bid or proposal was received does not automatically mean competition was inadequate since many unrelated factors could cause potential sources not to submit a bid or proposal.

34.5 - *Added October 2003* - This list of justifications is copied from the Common Grant Rule, 49 CFR 18.36(d)(4) which includes authority to use a sole source procurement when the “awarding agency [FTA] authorizes noncompetitive proposals.” To ensure grantees have flexibility equal to that of Federal contracting officers, FTA authorizes procurement by noncompetitive proposals in all of the circumstances described in Part 6.3 of the Federal Acquisition Regulations, even if it is not specifically mentioned in this list of justifications.

35 - Cost and Price Analysis. Cost or price analysis has proven difficult for grantees in some cases. FTA believes price analysis for micro-purchases may be conducted on a limited basis as discussed above (paragraph 9a). Similarly, an abbreviated price analysis may be used for small purchases in most cases. One method to record this analysis is through use of a preprinted form on which a contracting officer (or other responsible person) can annotate a finding of fair and reasonable pricing and check off the most common reasons why this would be so such as catalog or market prices offered in substantial quantities to the general public, regulated prices (e.g., for many utilities purchases), or comparison with recent prices for similar goods and services.

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36 - The language in this section has been amended from prior versions of the circular to better explain that FTA will accept a local bonding policy that meets the minimums of paragraphs a, b, and c but that a policy that does not meet these minimums still may be accepted where the local policy adequately protects the Federal interest. Grantees who wish to adopt less stringent bonding requirements generally, for a specific class of projects, or for a particular project may submit the policy and rationale to their regional office for approval. [*added October 2003* – There is no FTA approval required for more stringent bonding requirements. Additionally, FTA does *not* require bonds for rolling stock, services, maintenance, operations, or any other contracts – only for construction.]

37 - The language in this section has been amended from previous versions of the circular to explain that grantees may make advance payments from local share funds. Where grantees wish to make advance payments with FTA funds, they should contact their regional office to obtain FTA concurrence. FTA believes there are various sound business reasons for providing advance payments under a number of circumstances and, where we find adequate security for the advance payment combined with a sound business reason to grant the advance payment, will normally grant the required concurrence. These advance payments may be in the nature of mobilization payments, start-up costs, or other advances backed by sound business judgment and adequate security. [*added October 2003* – Additionally, grantees may make advance payments with either local match or FTA funds for those purchases where advance payment is customary in the commercial marketplace such as utility services and subscriptions. FTA concurrence in these circumstances is only required where the advance payment or payments exceed \$100,000.]

38 - We have re-drafted the paragraph related to progress payments to account for the practical reality that taking title to work in progress may not be desirable in some cases.

38.5 - [*added October 2003* – “Adequate security” should reflect the practical realities of different procurement scenarios and factual circumstances. For example, adequate security may consist of

taking title to work in progress in a rolling stock procurement, receiving a draft document in a consulting contract, or receiving some portion of recurring services under a services contract. Grantees should always consider the costs associated with this security (e.g., bonds or letters of credit must be purchased in the commercial marketplace) and the impact those costs have on the contract price, as well as the consequences of incomplete performance as they consider what constitutes adequate security for a given procurement.]

39 - The measurement period for liquidated damages may be something other than a day, where some other measuring period is appropriate.