

INTRODUCTION

The Mississippi Department of Transportation (MDOT) oversees procurement procedures for federal and state public transportation grant funds. This includes vehicles, equipment, real property, and other goods and service.

MDOT has developed a decentralized method of overseeing and monitoring the procurement activities of our sub-recipients customer transit agencies. In this role, MDOT does not attempt to substitute its judgment for that of the transit agency in any decision-making that occurs in the procurement process. Instead, MDOT's role is to ensure that the agency's procurement actions are internally-supported by the agency's own written procedures and that they are in full compliance with state laws and federal guidance.

Any serious compliance issues will be discussed with the MDOT Procurement Division and our legal Counsel, as necessary.

AUTHORIZATION

Federal Authority

Procurement standards must meet or exceed the requirements of the *Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments* as found in 49 CFR Section 18.36 or the *Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations* found in 49 CFR Sections 19.40 – 19.48.

The requirements for the pre-award and post-delivery audits of vehicles are contained in 49 CFR Part 663.

The requirements for the (Altoona) testing of bus models are contained in 49 CFR Part 665.

The requirements for the Disadvantaged Business Enterprises Program (DBE) as defined by the U.S. Department of Transportation (U.S.DOT) are found in 49 CFR Part 26.

49 CFR Part 28 relates to nondiscrimination on the basis of handicap in U.S. DOT programs and focuses on facilities. Requirements for transportation services for persons with disabilities are contained in 49 CFR Part 37.

All vehicles shall comply with the vehicle accessibility guidelines contained in 36 CFR 1192

Procedures for procuring architectural and engineering services are found in 40 USC Chapter 10, Subchapter VI.

State Authority

For a description of MDOT's policies regarding standard federal requirements, the State Management Plan.

For a description of MDOT's rules regarding contracting and procurement requirements specific to public transit projects, see the project agreement.

See the department's Disadvantaged Business Enterprise program for complaint procedures.

Other agency procurement requirements are contained in the _____.

Federal Transit Administration Guidance

Federal Transit Administration (FTA) guidance for using third party contracts is found in Circular 4220.1F.

Guidelines and management procedures for capital purchases are covered in FTA Circular 5010.1D, Grant Management Guidelines. Of particular interest for this manual chapter is circular Chapter II, "Management of Real Property, Equipment and Supplies" which also includes guidance on using property as non-federal match.

Additionally, individual program circulars have a section on procurement. A complete listing of FTA circulars is available on-line at FTA's web site.

The FTA Best Practices Procurement Manual provides suggestions and sample documents covering every phase of procurement.

ADMINISTRATIVE STANDARDS

Introduction

Transit agencies are required to have processes in place to ensure procurement activities follow all applicable laws and regulations and promote free and open competition.

The standards, policies and procedures must be adopted by the sub-recipients governing board.

Standards

Standards should include but are not limited to:

- Procurement procedures that reflect applicable federal, state and local laws and regulations
- Contract administration that ensures contractor performance in accordance with terms, conditions, and specifications of the contracts or purchase orders

- Written code of standards of conduct
- Review procedures that avoid purchase of unnecessary or duplicative items
- Written procurement history record
- Written procedures to handle and resolve protests
- Written procurement selection procedures
- Use of intergovernmental agreements, federal excess and surplus property, and value engineering wherever possible
- Rolling stock/replacement parts procurements that do not exceed five years inclusive of options
- Cost or price analysis for procurement actions.

SPECIAL CONSIDERATIONS

Real Property

Special requirements pertain to the purchase of real property. FTA Circular 5010.1C *Grant Management guidelines* covers the acquisition of real property. (Note: Where MDOT is the designated recipient of funds – as in the Section 5311 Nonurbanized Area Program – all direct contact with FTA flows through the PTD.)

Appraisals. To establish the value of the property, the Federal Transit Administration requires one appraisal and a review appraisal. FTA’s prior approval is required when the transit agency’s recommended offer of just compensation exceeds \$250,000, or when a property appraised at \$250,000 or more must be condemned. This process must be followed to purchase real property using FTA funds. For guidance on using property as local match, see FTA C 5010.1C, Chapter II, 2.a.(5), “In-Kind Contributions.”

There is an alternate procedure for a transit agency with a fully staffed real estate department that permits higher dollar thresholds before FTA prior concurrence is needed. To do this, an FTA real estate specialist must review and approve the processes used in acquiring and clearing real estate. Transit agencies may request a review through the MDOT Office. Refer to FTA C 5010.1C, Chapter II, 2.a.(3)(b) for additional information.

Environmental Factors: There are also environmental factors involved in the procurement of land or facilities. FTA must accept the documentation in support of a categorical exclusion, environmental assessment or environmental impact statement before property can be purchased. (Link to the Environmental Chapter when published.)

Purchase and Titling: The MDOT sub-recipient, not its contractor, must be the recorded owner of real property purchased with funds provided by the department.

The services of a titling company ensure that the transit agency is receiving a good title when it buys real property and that MDOT will have a valid lien against the property. The latter occurs by the transit agency signing a deed of trust in favor of the Mississippi Department of Transportation. PTD is the office of record for the deed of trust.

PTD and the Office of General Council will provide technical assistance for all real estate transactions.

Procurement of Architectural and Engineering Services

A qualifications-based, competitive proposal procedure (i.e., Brooks Act procedures) must be used when procuring architectural and engineering (A&E) services. Services subject to this requirement are program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, and related services.

Prior to selecting an architect or engineer, a “Request for Qualifications” should be advertised in a publication with national circulation. Alternative, a transit agency could compile a central bidders list from discussions with other agencies that have awarded contracts for similar work.

Upon receipt of various statements of qualifications, the prospective bidders are ranked and price negotiations may begin with the next ranked candidate.

The Best practices Procurement Manual (Chapter 6.5) provides excellent and detailed information about retaining A&E firms.

PTD and the Contract Administration or LPA Division Services can augment local expertise in this area.

Construction

This subheading includes:

- Pre-construction meetings
- Facility accessibility

Pre-Construction Meeting. A pre-construction meeting must be held between the transit agency, the construction company, and the architect or overseer of the construction phase. Knowledgeable district staff should attend also. The agenda for the meeting should include:

- Construction milestones
- Billing processes
- Contingencies

Transportation Facility Accessibility: Public entities constructing new facilities or altering existing facilities to be used for the provision of public transportation service must make the facility or alterations readily accessible to and useable by individuals with

disabilities. The facility accessibility regulations are contained in (49 CFR Part 37). Appendix D to Part 37.215 contains an explanation of the regulations.

Private entities must comply with the regulations of the Department of Justice that implement Title III of the Americans with Disabilities Act in constructing and altering transit facilities (49 CFR Part 28).

Subcontracts

Before awarding a third party contract in excess of \$25,000, the transit agency must allow the MDOT to review and approve the contract documents. These contracts shall contain all required provisions required by state or federal law. These requirements flow down to all third party contractors and their contracts at every tier. All relevant clauses contained in the transit agency's most current grant agreement with MDOT should be copied into a transit agency's subcontracts.

Transit agencies must be prepared to monitor the successful contractor for compliance with these requirements. Additionally, the solicitation document and resulting contract should include "performance measures" by which the transit agency can judge the contractor's fulfillment of the contract requirements. Non-performance penalties/remedies are another topic to consider.

Such contracts often include clauses for renewal. Sound business practice dictates that before exercising such options, transit agencies should consider the contractor's performance and if the terms, conditions and price are still favorable to the agency.

Monitoring

PTD monitoring of procurement takes place in two different time frames. The Procurement Checklist Form and other documentation activities are tied to a specific purchase of an asset, piece of equipment or service. This information is retained in the PTD office.

During the annual transit agency compliance review, the monitor will look at policies and procedures a transit agency used to guide its procurements, as well as the written history documentation the transit agency maintains on-site.