

Keys to Compliance: Procurement

3:15 – 4:15

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Session Coverage

- Overview of GDOT and FTA procurement resources
- Micro purchase requirements
- Small purchase requirements
- Formal purchase requirements
 - Scenario: RFP vs IFB
 - Scenario: single bid situations
 - Scenario: sole source procurements
- Disposing of FTA rolling stock
 - Scenario: disposition before the end of useful life
 - Scenario: disposition after useful life

Procurement Resources

- GDOT Procurement Checklists
- GDOT Procurement Policy Tool
- FTA Circular 4220.1F ([link](#))
 - *Last updated March 2013; new revision expected “soon”*
- Best Practices Procurement Manual ([link](#))
 - *Last updated October 2016; due for revision*
- FY2020 FTA Contractors Manual ([link](#))
 - *Updated yearly; previously know as the Comprehensive Review Guide*
- 2 CFR 200 “Super Circular” ([link](#))

Micro Purchases: Overview

Micro Purchases (up to \$10,000)

- FTA's only documentation requirement for micro purchases is a determination that the price is fair and reasonable as well as a basis for this determination
- To the extent practicable, recipients must distribute micro purchases equitably among qualified suppliers
- Recipients may not divide or reduce the size of procurements to avoid the additional procurement requirements applicable to larger acquisitions (this is also applicable to small purchases)

Micro Purchase “Stamp”

Micro Purchase Stamp (Purchases Up to \$10,000)

The price is considered fair and reasonable based on:

- Personal knowledge of item procured
- Current catalog or price list
- Commercial market advertisement
- Other (specify): _____

- Effort was made to distribute purchases equitably
- Purchase was not divided merely to become a micro purchase

Name

Date

GDOT Micro Purchase Checklist

PROCUREMENT CHECKLIST FOR GDOT SUBRECIPIENTS

MICRO-PURCHASES: Up to \$10,000

Procurement procedures at the Micro level apply to purchases of \$10,000 or less. Micro purchases should be distributed equitably among qualified local suppliers to the degree feasible. Splitting of procurements to avoid larger-threshold procedures is prohibited. A Fair & Reasonable Price Documentation Form must be submitted to GDOT along with the other required documents and the signed checklist when submitting requests for reimbursement. The Davis-Bacon Act applies to construction contracts over \$2,000. In addition to following FTA regulations, subrecipients are responsible for following the procurement policies of their governing entity and all applicable state and local regulations.

Date	Task
	Fair & Reasonable Price Documentation Form
	Davis-Bacon Clause (Construction Only \$2,000+)
	Invoice
	Delivery Receipt (Capital Items Only)
	P.O.

Small Purchases: Overview

Small Purchases (\$10,000.01 - \$250,000)

- Recipients must obtain price quotations from an adequate number of qualified sources (i.e., at least two)
 - Develop an Independent Cost Estimate (ICE) prior to the receipt of bids or proposals
 - The award must be made to the lowest responsive and responsible vendor
 - Relevant FTA-required contract clauses must be included
 - Conduct a Cost or Price Analysis after the receipt of bids or proposals but prior to the award of a contract

Independent Cost Estimate (ICE)

- An ICE is a recipient's estimate of what an item or service "should" cost
- An ICE can range from a simple budgetary estimate to a complex estimate
- Available data points for developing an ICE include: published price lists, historical pricing information from contracts awarded by the recipient's agency, comparable purchases by other agencies, and independent third party estimates

Independent Cost Estimate (ICE)

- The word “independent” does not imply that it must be performed by someone other than the recipient, although this may be the case for complex procurements
 - The ICE must be conducted prior to the receipt of bids or proposals, and is therefore “independent” from any pricing information received in response to the solicitation

Sample ICE Form

Sample: INDEPENDENT COST ESTIMATE SUMMARY FORM

Requisition Number: _____ Date of Estimate: _____

Description of Goods/Services:

___ New Procurement ___ Contract Modification (Change Order)
___ Exercise of Option

Method of Obtaining Estimate:

Attach additional documentation such as previous pricing documentation, emails, internet screen shots, estimates on letterhead, etc.

- ___ Published Price List (attach source and date)
- ___ Historical Pricing (attach copy of documentation from previous PO/Contract)
- ___ Comparable Purchases by Other Agencies (attach email correspondence)
- ___ Engineering or Technical Estimate (attach)
- ___ Independent Third-Party Estimate (attach)
- ___ Other (specify) _____ (attach

documentation) _____ Pre-established pricing resulting from competition
(Contract Modification only)

Through the method(s) stated above, it has been determined the estimated total cost of the goods/services is \$_____.

The preceding independent cost estimate was prepared by:

Name

Signature

Date

Responsive and Responsible

- Responsive means the bidder conforms in all material aspects to the requirements of the solicitation at the scheduled time of submission
 - “Material” means affecting the substance of the bid (e.g., price, quantity, quality, timeline)
 - Responsiveness determination
- Responsible means that the bidder possesses the ability, willingness, and integrity to perform successfully under the terms and conditions of the contract
 - Responsibility determination: check for exclusions at [SAM.gov](https://www.sam.gov)

FTA-Required Third Party Contract Clauses

- Recipients must include specific required clauses in FTA-funded contracts
- Not all clauses apply to every contract. The applicability of clauses depends on the size and type of the procurement as illustrated on the following slide...

FTA-Required Third Party Contract Clauses

CLAUSE	TYPE OF PROCUREMENT				
	Professional Services/A&E	Operations/ Management/ Subrecipient	Rolling Stock Purchase	Construction	Materials & Supplies
No Federal government obligations to third-parties by use of a disclaimer	All	All	All	All	All
Program fraud and false or fraudulent statements and related	All	All	All	All	All
Access to Records	All	All	All	All	All
Federal Changes	All	All	All	All	All
Civil Rights (EEO, Title VI & ADA)	All	All	All	All	All
Incorporation of FTA Terms	All	All	All	All	All
Energy Conservation	All	All	All	All	All
Termination Provisions (not required of states)	>\$10,000	>\$10,000	>\$10,000	>\$10,000	>\$10,000
Debarment and Suspension	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000
Buy America			>\$150,000	>\$150,000	>\$150,000
Provisions for resolution of disputes, breaches, or other litigation	>\$250,000	>\$250,000	>\$250,000	>\$250,000	>\$250,000
Lobbying	>\$250,000	>\$250,000	>\$250,000	>\$250,000	>\$250,000
Clean Air	>\$250,000	>\$250,000	>\$250,000	>\$250,000	>\$250,000
Clean Water	>\$250,000	>\$250,000	>\$250,000	>\$250,000	>\$250,000
Cargo Preference			Involving property that may be transported by ocean vessel	Involving property that may be transported by ocean vessel	Involving property that may be transported by ocean vessel
Fly America	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air

CLAUSE	TYPE OF PROCUREMENT					CLAUSE	TYPE OF PROCUREMENT				
	Professional Services/A&E	Operations/ Management/ Subrecipient	Rolling Stock Purchase	Construction	Materials & Supplies		Professional Services/A&E	Operations/ Management/ Subrecipient	Rolling Stock Purchase	Construction	Materials & Supplies
Davis Bacon Act				>\$2,000 (including ferry)							
Copeland Anti-Kickback Act Section 2				All >\$2,000 (including ferry vessels)							
Contract Work Hours & Safety Standards Act		>\$250,000	>\$250,000	>\$250,000 (including ferry vessels)							
Bonding (not required of states)				>\$250,000 (including ferry vessels)							
Seismic Safety	A&E for new buildings & additions				New buildings & additions						
Transit Employee Protective Arrangements		Transit operations funded with Section 5307, 5309, 5311 or 5316 funds			Recycled Products						
Charter Service Operations		All			ADA Access						
School Bus Operations		All									
Drug and Alcohol Testing		Transit operations funded with Section 5307, 5309 or 5311 funds									
Patent Rights	Research & development										
Rights in Data and Copyrights requirements	Research & development										
Special DOL EEO clause for construction projects					>\$10,000						
Disadvantaged Business Enterprises (DBEs)	All	All	All	All	All						
Prompt Payment	All if threshold for DBE program met	All if threshold for DBE program met	All if threshold for DBE program met	All if threshold for DBE program met	All if threshold for DBE program met						

Dealing with the FTA Clauses Requirement

The Takeaway: there is a large number of FTA-required clauses and determining their applicability can be complicated. But worry not...

- GDOT has created a tool for its subrecipients that clearly indicates the applicability and the clause language
- An additional resource is National RTAP's [ProcurementPRO](#)

Cost/Price Analysis

- The purpose of a cost or price analysis is to ensure the recipient does not pay unreasonably high prices to third party contractors
- A cost or price analysis is performed after the receipt of bids or proposals but prior to the award of a contract
- While “cost/price analysis” is often used as a combined phrase, cost analysis and price analysis are distinguishable concepts

Price Analysis vs Cost Analysis

- When contracting on a fixed price basis, a comparison of the proposed prices will normally satisfy the requirement to perform a price analysis
- When price competition is inadequate, such as in a single bid or sole source procurement, the recipient must develop a cost analysis
 - A cost analysis is the review and evaluation of the separate cost elements and profit in an offeror's proposal and the application of judgment to determine how well the proposed costs represent what the cost should be assuming reasonable economy and efficiency
 - A cost analysis can also involve comparison between the offeror's price and the independent cost estimate (ICE) to establish reasonableness

GDOT Small Purchase Checklist

PROCUREMENT CHECKLIST FOR GDOT SUBRECIPIENTS	
SMALL PURCHASES: \$10,000.01 to \$250,000.00	
<p>FTA procurement procedures at the Small/Simplified Acquisition level apply to purchases greater than \$10,000 through \$250,000. Note that consultation with a GDOT representative for all purchases over \$10,000 is required prior to engaging in procurement activity. All required documentation along with the signed procurement checklist must be completed and submitted to GDOT with request for reimbursement. In addition to following FTA regulations, subrecipients are responsible for following the procurement policies of their governing entity and all applicable state and local regulations.</p>	
Date	Task
	GDOT Pre-Approval Prior to Purchase
	Independent Cost Estimate (ICE)
	Complete Specifications w/ Required FTA Clauses
	Price Quotations
	Price Analysis
	SAM Search
	Responsible Vendor Determination
	Awarded Vendor's Proposal
	P.O. with Applicable FTA Clauses
	Invoice from Vendor
	Delivery Receipt (Capital Items Only)
	Procurement Overview & Summary Form
	DBE Form
	Notice of Contract Claims & Resolutions (If applicable)
	Notice of Protests & Resolutions (If applicable)
	Davis Bacon (Construction Only)

Formal Purchases: Overview

Formal Purchases (above \$250,000)

- Typically involves purchase through use of sealed bids (IFBs) or competitive proposals (RFPs)
- Requires an ICE, a cost or price analysis, and applicable FTA contract clauses
- Also requires a written procurement history including:
 - the rationale for the method of procurement (*e.g., IFB, RFP*)
 - selection of contract type (*e.g., fixed price, cost reimbursement*)
 - contractor selection or rejection (*e.g., responsiveness and responsibility determinations, proposal evaluations*)
 - the basis for the contract price (*e.g., ICE, price or cost analysis*)

Formal Purchases: RFP vs IFB

- **Request for Proposals (RFP):** Using this method, proposals are publicly solicited from an adequate number of sources and the award is made to the responsive and responsible proposer whose offer is most advantageous to the recipient, with price and other factors considered
- **Invitation for Bid (IFB):** Using this method, bids are publicly solicited and a firm fixed price contract is awarded to the lowest responsive and responsible bidder. Unlike RFPs, the IFB procurement method does not allow recipients to evaluate the merits of technical proposals and pay more for a higher quality product representing the best value

Formal Purchases: RFP Requirements

- The RFP must identify all evaluation factors and their relative importance
- Recipients may use a number of methods to rate the proposals received, including adjectival ratings, numerical weights, and ordinal rankings
 - Whatever the method, a statement of the relative strengths, weaknesses, deficiencies, and risks supporting the proposal ratings must be documented and included in the contract file

Formal Purchase Checklist

PROCUREMENT CHECKLIST FOR GDOT SUBRECIPIENTS	
LARGE PURCHASES (IFBs/RFPs): Above \$250,000	
<p>Procurement procedures at the Large level apply to purchases greater than \$250,000. Large purchases are generally procured through either Invitations For Bid (IFBs) or Requests For Proposals (RFPs). Purchases at this level must be discussed with a GDOT Rep prior to engaging in procurement activity. Concurrence by GDOT is required at 3 steps in the procurement process:</p> <ol style="list-style-type: none"> 1) Approval of bid/proposal package; 2) Approval of vendor recommendation; 3) Approval of contract documents. <p>GDOT's oversight of large procurements provides guidance throughout the process and ensures that FTA requirements are followed. In addition to following FTA regulations, subrecipients are responsible for following the procurement policies of their governing entity and all applicable state and local regulations.</p>	
Date	Task
	Discuss procurement with GDOT Rep
	Independent Cost Estimate
	Complete Specifications
	Written Selection Procedures (included in solicitation)
	Complete Solicitation Package with Applicable FTA Clauses Included
	Advertisement & Public Notice
	GDOT Concurrence on Bid/Proposal Package and Process
	Emails to Potential Vendors & Proof of Advertisement Publication
	Bid Opening Form/Record of Proposals Submitted
	Responsiveness Determination
	Price/Cost Analysis
	Bid/Proposal Rejection Explanation (if any)
	SAM Search
	Responsible Vendor Determination
	Bid Tabulation/Selection of Lowest Price (IFB)
	Evaluation Rating Sheets & Summary (RFP)
	Recommended Vendor's Proposal
	GDOT Concurrence on Recommended Vendor

Single Bid Situations

- If only one bid is received in response to a solicitation, the recipient must determine whether or not competition was adequate. This may include reviewing the specification to determine if it was unduly restrictive, determining if the solicitation was adequately disseminated, and asking potential bidders why they did not respond to the solicitation
 - Generally, follow-up with any firms that decided against submitting a bid will serve as strong evidence that the “no bid” decisions were based on specific business considerations (e.g., lack of capacity or capability for the work, location, budget)

Single Bid Situations

- If the reason for receiving a single bid is out of the FTA recipient's control, then competition can be considered adequate and the award will be valid
- A cost analysis will also be required to determine the reasonableness of the price

Single Bid vs Sole Source Procurements

- A recipient can make a sole source award in limited circumstances when the items or services sought are available only from a single source. Items or services are considered to be available from a single source if one of the following conditions is present:
 - **A unique or innovative concept, the details of which are confidential, patented, or copyrighted**
 - **Patent or data rights restrictions preclude competition**
 - Award to another contractor would result in substantial duplication of costs that are not expected to be recovered through competition
 - Award to another contractor would result in unacceptable delays in fulfilling the recipient's needs

Sole Source Procurements

- In order to conduct a sole source procurement, you must prepare a written sole source justification that articulates why the item or service is available only from a single source. The sole source justification must be maintained as part of the procurement history
- A cost analysis will also be required to determine the reasonableness of the price

Disposition of FTA-funded Vehicles

FTA disposition requirements apply to vehicles that have met their useful lives as well as vehicles withdrawn from service before the end of their useful lives

In many situations, FTA retains financial interest in disposed vehicles and it must be reimbursed. Specifically, FTA is entitled to its share of the remaining Federal interest upon disposition of:

- *FTA-funded vehicles before the end of their useful lives*
- *FTA-funded vehicles that have met their useful lives but still have a current market value of more than \$5,000 per unit*

Threshold Question: Has the vehicle met its useful life?

Determining the Useful Life

The following table defines the useful life of several typical FTA-funded items (based on FTA Circular 5010.1E)

Vehicle	FTA-Defined Useful Life
35-40' heavy duty bus and articulated transit buses	12 years or 500,000 miles
30' heavy duty transit bus	10 years or 350,000 miles
30' medium-duty transit bus	7 years or 200,000 miles
25-35' light duty transit bus (body on chassis vehicles)	5 years or 150,000 miles
Other vehicles (e.g., small buses, vans, sedans)	4 years or 100,000 miles

Disposition After the End of Useful Life

Vehicles with a current fair market value of \$5,000 or less per unit may be retained, sold, or otherwise disposed of (in accordance with GDOT's procedures) with no further obligation to reimburse FTA

For vehicles valued at more than \$5,000 that have met their useful lives, FTA is entitled to the amount calculated by multiplying the current fair market value (or proceeds from sale) by FTA's percentage of participation in the cost of the original purchase

- ***For example, a vehicle acquired with 80% FTA funding that is valued at \$10,000 at the time of disposition would require reimbursement to FTA in the amount of \$8,000***

Disposition Before the End of Useful Life

Any disposition of project property before the end of its useful life requires prior FTA (and GDOT) approval

FTA also requires that a Rolling Stock Status Report accompany the request for early disposition, which will be used to verify the remaining Federal interest in each vehicle (example on next slide)

The Federal interest that must be returned is FTA's share of the unamortized value of the remaining useful life per unit (based on either miles or years) using straight line depreciation from the original purchase price

Disposition Before the End of Useful Life

Example: Rolling Stock Status Report

TransAmerica Buses

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
Veh #	Vehicle Year	Make/Model or Vehicle Description	Date in Service	Out of Service	Fed Useful Life (yr)	Actual Service (yr)	Remaining yrs	Remaining % based on yrs	Actual Mileage	Minimum Useful Life Mileage	Remaining % based on miles	Total Federal Share	Remaining Fed Share based on yrs	Remaining Fed Share based on miles
151	2000	30' New Flyers	9/1/00	9/1/07	7	7	0	-0.04%	200,000	200,000	0.00%	\$120,000	-	-
152	2000	30' New Flyers	9/1/00	9/3/07	7	7	-0.01	-0.12%	200,000	200,000	0.00%	\$120,000	-	-
154	2000	30' New Flyers	9/1/00	9/2/07	7	7	-0.01	-0.08%	210,000	200,000	-5.00%	\$120,000	-	-
155	2000	30' New Flyers	9/1/00	9/2/07	7	7	-0.01	-0.08%	205,000	200,000	-2.50%	\$120,000	-	-
156	2000	30' New Flyers	3/1/01	3/1/06	7	5	2	28.53%	140,851	200,000	29.57%	\$120,000	\$34,239	\$35,489
157	2000	30' New Flyers	3/1/01	3/1/06	7	5	2	28.53%	154,649	200,000	22.68%	\$120,000	\$34,239	\$27,211
158	2000	35' Flexible	3/1/01	6/3/06	10	5.3	4.74	47.40%	200,000	350,000	42.86%	\$120,000	\$56,877	\$51,429
159	2001	35' Flexible	3/1/01	6/3/06	10	5.3	4.74	47.40%	300,000	350,000	14.29%	\$195,000	\$92,425	\$27,857
160	2001	35' Flexible	3/1/01	11/2/07	10	6.7	3.32	33.23%	300,000	350,000	14.29%	\$195,000	\$64,804	\$27,857
161	2001	35' Flexible	3/1/01	7/2/07	10	6.3	3.66	36.60%	325,000	350,000	7.14%	\$195,000	\$71,375	\$13,929
163	2001	35' Flexible	3/1/01	11/2/07	10	6.7	3.32	33.23%	325,000	350,000	7.14%	\$195,000	\$64,804	\$13,929
164	1996	40' Buses	3/21/96	4/3/06	12	10	1.96	16.32%	425,000	500,000	15.00%	\$295,000	\$48,156	\$44,250
165	1996	40' Buses	6/19/96	4/3/07	12	10.8	1.21	10.05%	435,000	500,000	13.00%	\$295,000	\$29,635	\$38,350
166	1996	40' Buses	6/19/96	4/3/07	12	10.8	1.21	10.05%	450,000	500,000	10.00%	\$295,000	\$29,635	\$29,500
167	1996	40' Buses	6/20/96	6/2/07	12	11	1.04	8.70%	450,000	500,000	10.00%	\$295,000	\$25,661	\$29,500
168	1996	40' Buses	6/23/96	6/2/07	12	10.9	1.05	8.77%	450,000	500,000	10.00%	\$295,000	\$25,863	\$29,500

Disposition Before the End of Useful Life

Remember: the Federal interest that must be returned is FTA's share of the unamortized value of the remaining useful life per unit (based on either miles or years) using straight line depreciation from the original purchase price

- **For example, if a vehicle has a 12-year/500,000-mile minimum useful life, its value decreases by 1/12th of the original purchase price each year OR it decreases by 1/500,000th for each mile driven**
 - *The recipient can calculate the straight line depreciation based on either years or miles, whichever is more advantageous to the recipient. It should be noted that periods of extended removal from service (generally more than six months) and non-revenue miles do not count towards useful life, so adjustments would need to be made in such cases*

Questions?

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