



**Moving Public Transportation
Into the Future**



Integrated **Mobility** Division

N.C. DEPARTMENT OF TRANSPORTATION

NCDOT-IMD Strategic Training FTA Procurement



Session Coverage

- ◆ Procurement Resources
- ◆ New Developments in Procurement Compliance
- ◆ Purchasing Thresholds:
 - Micro Purchases
 - Small Purchases
 - Price Quotes
 - Informal Bids
 - Formal Purchases
- ◆ Non-Competitive Procurements
- ◆ Joint, Cooperative, and “Piggyback” Procurements



Session Coverage Continued

- ◆ Rolling Stock Procurements
- ◆ Rolling Stock Disposition
- ◆ Procurement Policy
- ◆ Common Procurement Findings
- ◆ NCDOT-IMD Procurement Tools

Procurement Resources

- ◆ **FTA Circular 4220.1F** ([link](#))
 - Last updated March 2013; due for revision
- ◆ **Best Practices Procurement Manual** ([link](#))
 - Last updated October 2016; due for revision
- ◆ **FY2023 FTA Contractors Manual** ([link](#))
 - Updated yearly; previously known as the Comprehensive Review Guide
- ◆ **2 CFR 200 “Super Circular”** ([link](#))
- ◆ **FTA Procurement FAQs** ([link](#))
- ◆ **ProcurementPRO** ([link](#))

NCDOT-IMD Procurement Tools

- ◆ Quick-Reference Purchasing Guide ([link](#))
- ◆ Procurement History Checklists (handouts)
 - Price Quotes
 - Informal Written Quotes
 - Formal Bid
- ◆ Procurement History Form (handout)



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New Developments in Procurement Compliance

New Developments: Increases to Procurement Thresholds

- ◆ The Office of Management and Budget (OMB) raised the Federal micro-purchase limit from **\$3,500** to **\$10,000** and the Federal simplified acquisition threshold from **\$150,000** to **\$250,000**, effective June 20, 2018
- ◆ FTA has yet to update most of its procurement guidance to reflect OMB's increases
 - Circular 4220 and the BPPM are due for updates

New Developments: Increases to Procurement Thresholds

- ◆ It is important to note that FTA recipients/subrecipients are free (and often required) to set thresholds lower than those at the Federal level
- ◆ **NCDOT subrecipients may take advantage of the increased micro purchase limit of \$10,000, but must follow more restrictive thresholds for small and formal purchases**



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Micro Purchases



Micro Purchases: Overview

◆ **Micro Purchases (less than \$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 Purchases: Tools

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



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Small Purchases (AKA Simplified Acquisitions)

Small Purchase Thresholds

- ◆ Per current Federal guidance, small purchase procedures should be used for procurements estimated to cost between \$10,000 and \$250,000
- ◆ NCDOT subrecipients, however, are subject to more restrictive small purchase thresholds, which are further split as follows:
 - Price Quotes: for procurements estimated to cost from **\$10,000 to \$29,999.99**, subrecipients must solicit quotes from at least three suppliers/vendors verbally or in writing
 - Informal Bids: for procurements estimated to cost from **\$30,000 to \$89,999.99**, subrecipients must solicit written quotes from at least three suppliers/vendors

Small Purchase Requirements

- ◆ The following requirements apply to both types of NCDOT small purchases (i.e., Price Quotes, Informal Bids):
 - A written procurement history must be maintained for small purchases, commensurate with the size and complexity of the procurement
 - **The award must be made to the lowest responsive and responsible vendor**
 - **Relevant FTA-required contract clauses must be included**
 - **Develop an Independent Cost Estimate (ICE) prior to the receipt of bids or proposals (best practice)**
 - **Conduct a Cost or Price Analysis after the receipt of bids or proposals but prior to the award of a contract (best practice)**



Responsive

- ◆ 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 to be conducted upon receipt of bids/proposals



Responsible

- ◆ Responsible means that the bidder possesses the ability, willingness, and integrity to perform successfully under the terms and conditions of the contract
- ◆ Must determine that bidders/proposers were not excluded or disqualified before entering into a contract. This can be accomplished by:
 - checking SAM Exclusions (at [SAM.gov](https://sam.gov)), or
 - adding a clause or condition to the covered transaction, or
 - collecting a certification



Responsible

- ◆ For procurements over \$25,000, a written **responsibility determination** must be made for each successful contractor prior to award, with consideration was given to matters such as:
 - contractor integrity
 - compliance with public policy
 - record of past performance, and
 - financial and technical resources

FTA-required Third Party Contract Clauses

- ◆ Recipients must include specific required clauses in FTA-funded solicitations and 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 slides ([link](#) to complete table on FTA's website)

FTA-required Clauses

B. APPLICABILITY OF THIRD PARTY CONTRACT PROVISIONS

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

PROVISION	TYPE OF PROCUREMENT				
	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
No Federal Government Obligations to Third Parties (by Use of a Disclaimer)	All	All	All	All	All
False Statements or Claims Civil and Criminal Fraud	All	All	All	All	All
Access to Third Party Contract Records	All	All	All	All	All
Changes to Federal Requirements	All	All	All	All	All
Termination	>\$10,000	>\$10,000	>\$10,000	>\$10,000	>\$10,000
Equal Employment Opportunity except Special DOL EEO clause for construction projects)	All	All	All	All	All
Special DOL EEO clause for construction projects				>\$10,000	
Disadvantaged Business Enterprises (DBEs)	All	All	All	All	All
Incorporation of FTA Terms	All	All	All	All	All
Debarment and Suspension	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000
Buy America			>\$150,000	>\$150,000	>\$150,000
Resolution of Disputes, Breaches, or Other Litigation	>\$250,000	>\$250,000	>\$250,000	>\$250,000	>\$250,000
Lobbying	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Air	>\$150,000	>\$150,000	>\$150,000	>\$150,000	>\$150,000
Clean Water	>\$150,000	>\$150,000	>\$150,000	>\$150,000	>\$150,000
Cargo Preference			Transport by ocean vessel.	Transport by ocean vessel.	Transport by ocean vessel.
Fly America	Foreign air transp. /travel.	Foreign air transp. /travel.	Foreign air transp. /travel.	Foreign air transp. /travel.	Foreign air transp. /travel.
Notice to FTA and U.S. DOT Inspector General of Information Related to Fraud, Waste, etc.	\$25,000 or More. Prime and Subs	\$25,000 or More. Prime and Subs	\$25,000 or More. Prime and Subs	\$25,000 or More. Prime and Subs	\$25,000 or More. Prime and Subs
Prompt Payment	All	All	All	All	All

FTA-required Clauses

TYPE OF PROCUREMENT					
PROVISION	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
Davis-Bacon Act				>\$2,000 (also ferries).	
Veterans Preference				>\$150,000	
Contract Work Hours and Safety Standards Act		>\$250,000 (transportation services excepted).	>\$250,000	>\$250,000 (also ferries).	
Copeland Anti-Kickback Act Section 1 Section 2				All > \$2,000 (also ferries).	
Bonding				>\$250,000	
Seismic Safety	A&E for new buildings & additions.			New buildings & additions.	
Transit Employee Protective Arrangements		Transit operations.			
Charter Service Operations		All			
School Bus Operations		All			
Drug Use and Testing		Transit operations.			
Alcohol Misuse and Testing		Transit operations.			
Patent Rights	R & D				
Rights in Data and Copyrights	R & D				
Energy Conservation	All	All	All	All	All
Recycled Products		EPA-selected items \$10,000 or more annually.		EPA-selected items \$10,000 or more annually.	EPA-selected items \$10,000 or more annually.
Seat Belt Use	All	All	All	All	All
Distracted Driving	All	All	All	All	All
Conformance with ITS National Architecture	ITS projects.	ITS projects.	ITS projects.	ITS projects.	ITS projects.
ADA Access	A&E	All	All	All	All
Notification of Federal Participation for States	Limited to States.	Limited to States.	Limited to States.	Limited to States.	Limited to States.
Prohibition on Certain Telecommunications Equipment	All	All	All	All	All

Dealing with the FTA Clauses Requirement

- ◆ **The Takeaway:** There's a large number of FTA-required clauses and determining their applicability can be complicated. But worry not...
- ◆ One solution is National RTAP's ProcurementPRO, a free web-based procurement tool that guides recipients through FTA procurement procedures. ProcurementPRO is available at: www.nationalrtap.org/Web-Apps/ProcurementPRO



Dealing with the FTA Clauses Requirement

- ◆ The best practice is to include clauses in the solicitation as well as the resulting contract
 - Makes potential proposers aware prior to negotiating contract
 - Solicitation documents often incorporated into contract by reference
 - Unlikely that auditors will miss the clauses

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, 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



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**
 - 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



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Formal Purchases



Formal Purchases: Overview

- ◆ Per current Federal guidance, formal purchase procedures should be used for procurements estimated to cost more than \$250,000
- ◆ For NCDOT subrecipients, however, formal purchase procedures must be used for procurements estimated to cost **\$90,000 or more**
 - Typically involves purchase through use of sealed bids (IFBs) or competitive proposals (RFPs)
 - Still requires ICE, cost or price analysis, and applicable FTA contract clauses
 - Written procurement history is critical for formal purchases



Formal Purchases: Written Procurement History

- ◆ Formal purchases also require a written procurement history containing the following elements:
 - 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)
- ◆ Procurement history is expected to be commensurate with the size and complexity of the purchase

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



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Non-Competitive Procurements

A background map showing a street grid with several colored overlays: a red outline on the left, a yellow line running diagonally, and an orange outline on the right.

Non-Competitive Procurements

- ◆ Non-competitive procurements represent red flags for FTA reviewers/auditors
- ◆ Common issue: conflation of single bid and sole source procurements

Non-Competitive Procurements: Sole Source

- ◆ 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

Non-Competitive Procurements: Sole Source

- ◆ In order to conduct a sole source procurement, the recipient 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

Non-Competitive Procurements: Single Bid

- ◆ 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
- ◆ If the reason for receiving a single bid is out of the recipient's control, then competition can be considered adequate and the award will be valid provided that the price is reasonable in light of the cost analysis



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Joint, Cooperative, and “Piggyback” Procurements



Joint Procurements

- ◆ The joint procurement method involves two or more purchasers that agree to use a single solicitation document and enter into a single contract
- ◆ Unlike a cooperative procurement (sometimes called a state purchasing schedule or contract), a joint procurement is not drafted for the purpose of accommodating additional purchasers that subsequently choose to participate in the contract

Cooperative Procurements

- ◆ Under the FAST Act, FTA grant recipients can potentially purchase **rolling stock and related equipment** from any State's cooperative procurement contract or schedule. Under prior law, FTA referred to these types of State contracts as "State purchasing schedules" and, as such, were only available to grant recipients within that State
- ◆ The initial contract term for a cooperative procurement may be for no more than two years, with three optional one-year extensions available
- ◆ The lead procurement agency or lead nonprofit entity in a cooperative procurement may charge participants no more than one percent of their total order placed on the contract



Cooperative Procurements

- ◆ Grant recipients wishing to participate in cooperative procurements or state purchasing schedules must confirm that the underlying procurement was solicited and awarded in compliance with FTA requirements and includes all relevant clauses and certifications (including Buy America)
- ◆ If NCDOT performed the underlying procurement, it is likely that FTA requirements were followed. If the underlying procurement was performed by another state agency, this should not be assumed

“Piggyback” Procurements

- ◆ For reasons of economy, FTA permits the assignment of unneeded contract rights or options. This practice is sometimes called “piggybacking”
- ◆ FTA discourages the assignment of another recipient’s contract rights as a substitute for a stand-alone procurement. Assignments are intended to be used only when a recipient has inadvertently acquired contract rights in excess of its needs due to changed circumstances or honest mistakes
- ◆ Intentionally procuring excessive quantities using Federal money is a violation of Federal regulations



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Rolling Stock Procurements

A faint, stylized map of a city or town grid is visible in the background, with various colored lines representing streets and boundaries.

Rolling Stock Procurements

- ◆ Many NCDOT subrecipients will purchase rolling stock from the general state fleet contract
 - Note that NCDOT-IMD aims to deliver a future training session regarding its vehicle ordering and disposition processes
- ◆ NCDOT subrecipients may also acquire rolling stock by conducting a local procurement that reflects FTA's requirements

Rolling Stock Procurements

- ◆ A recipient purchasing revenue service rolling stock with FTA funds must conduct pre-award and post-delivery audits
- ◆ Certifications at the pre-award stage:
 - Buy America
 - Purchaser's Requirements
- ◆ Certifications at the post-award stage:
 - Buy America
 - Purchaser's Requirements
 - Federal Motor Vehicle Safety Standards (FMVSS)

Rolling Stock Procurements

- ◆ Recipients must have in their possession the Altoona Bus Testing Report for the **vehicle model** before final acceptance of the first vehicle
 - <http://altoonabustest.psu.edu/>
- ◆ Since November 2014, **direct recipients of FTA funds** have been required to submit, within 30 days of making an award for rolling stock, the name of the successful bidder and the total dollar value of the contract. Only eligible TVMs (that have submitted an approved DBE goal methodology to FTA) may bid on FTA-assisted transit vehicle procurements
 - <https://www.surveymonkey.com/r/vehicleawardreportsurvey>



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Disposition of FTA-funded Vehicles

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 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 \$4,000.***

Disposition After the End of Useful Life

- ◆ Grant recipients may deduct and retain from the Federal share \$500 or ten percent of the proceeds, whichever is less, for selling and handling expenses
- ◆ Note that selling vehicles after the end of their useful lives is just one option. Grant recipients may also:
 - Retain and use vehicles for other transit projects or programs
 - Transfer vehicles to a local governmental authority, non-profit organization, or other third-party entity if, among other factors, it will be used for transit-oriented development (prior FTA approval is required)



Disposition Before the End of Useful Life

- ◆ *Any disposition of project property before the end of its useful life requires prior FTA 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*



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Procurement Policy



Procurement Policy

- ◆ FTA now requires that the following be contained in your written procurement policy:
 - Solicitations must include a clear and accurate description of the technical requirements for the material, product, or service to be procured (2 CFR Part 200.319(d)(1))
 - Solicitations must identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals (2 CFR Part 200.319(d)(2))



Procurement Policy

- ◆ The following should also be contained in your procurement policy:
 - Contract administration
 - Written standards of conduct
 - Avoidance of unnecessary or duplicative items
 - Contracting with responsible contractors
 - Maintenance of written procurement history
 - Use of time and materials contracts
 - Written protest procedures
 - Promotion of full and open competition



Procurement Policy

◆ Continued:

- Prohibition on geographic preference
- Prequalification lists, if applicable
- Methods of procurement (micro, small and formal purchases; RFP and IFB)
- Cost and price analysis
- Independent cost estimate
- Prohibition of cost plus percentage of cost contracts
- Inclusion of required contract clauses
- Bonding requirements
- Prohibition of exclusionary specifications
- Buy America



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Common Procurement Findings and How to Avoid Them

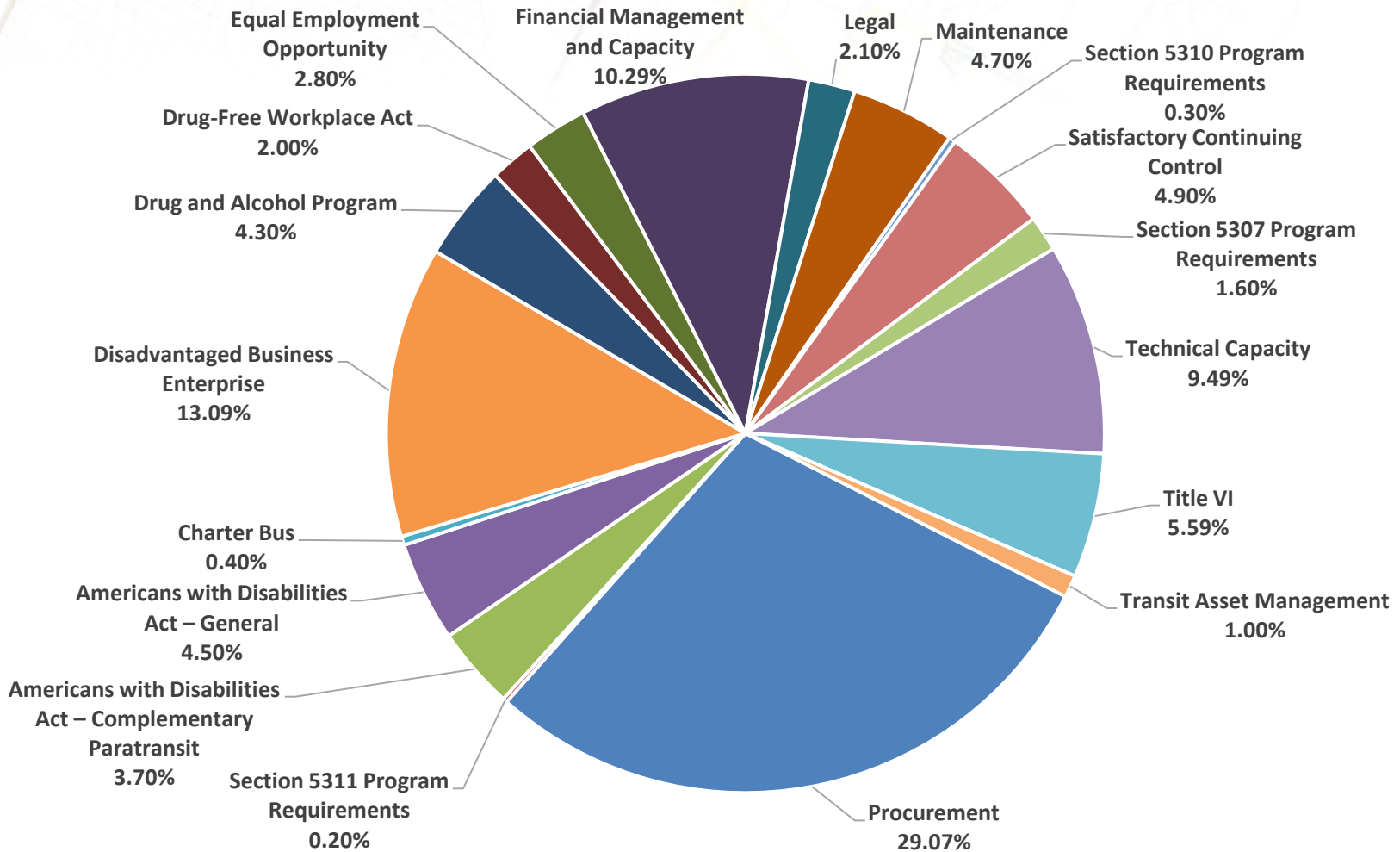
FTA Comprehensive Reviews

- ◆ FTA's Triennial and State Management Reviews take a broad look at compliance with program requirements across a range of topic areas
- ◆ The Triennial Review was mandated by Congress in 1982 for each recipient of Section 5307 funds
- ◆ The State Management Review focuses on state DOTs and their subrecipients, including those who receive 5310 and 5311 funds. These reviews also occur every three years and use a format and process similar to the Triennial Review

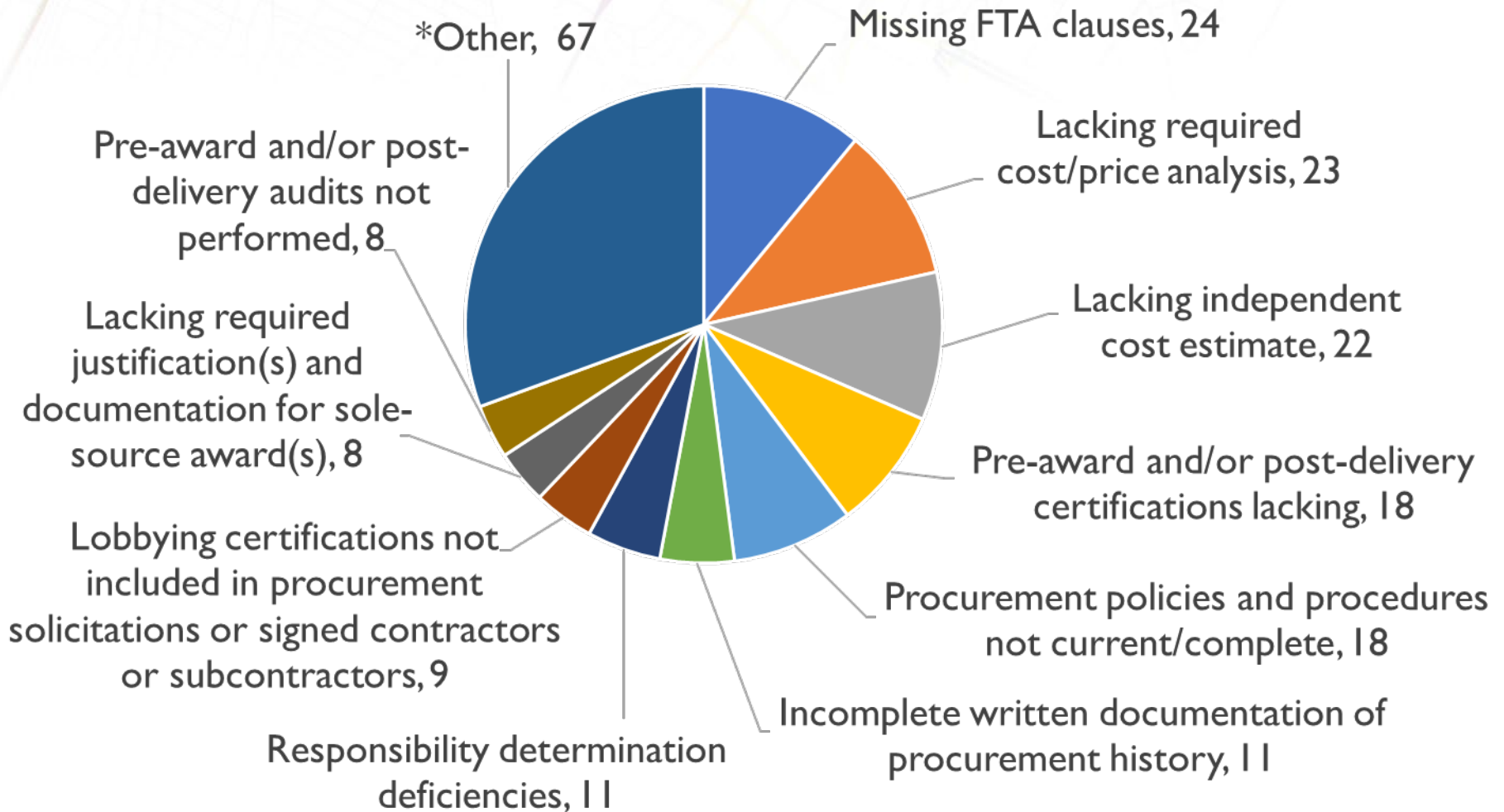
Comprehensive Review Areas

- ◆ Financial Management and Capacity
- ◆ Technical Capacity
- ◆ Maintenance
- ◆ Americans with Disabilities Act (ADA)
- ◆ Title VI
- ◆ Procurement
- ◆ Disadvantaged Business Enterprise (DBE)
- ◆ Legal
- ◆ Satisfactory Continuing Control
- ◆ Charter Bus
- ◆ School Bus
- ◆ Drug-Free Workplace and Drug and Alcohol Program
- ◆ Equal Employment Opportunity (EEO)
- ◆ Transit Asset Management (TAM)
- ◆ Section 5307, 5310, and 5311
- ◆ Public Transportation Agency Safety Plan
- ◆ Cybersecurity

FY21 FTA Triennial Review Findings



FY21 Procurement Findings





Federal Clauses

- ◆ Number #1 Deficiency – Missing FTA Clauses
- ◆ Issues:
 - Procurement Lacks Any FTA Clauses
 - Procurement Lacks Specific FTA-Required Clauses
 - Failure to Recognize that Some Clauses Apply to All Procurements Above Micro Purchases



Federal Clauses

◆ Resources

- FTA Master Agreement
- FTA Best Practices Procurement Manual (BPPM)
- FTA Circular 4220.1F, Appendix D-4
- 2 CFR § 200.324
- Appendix II to 2 CFR Part 200
- National RTAP's Procurement Pro



Federal Clauses

- ◆ Applicability

- Clauses Must be Used in Purchases Over the Micro-Purchase Level
 - Some Construction Clauses (Davis-Bacon) Required for Lesser Amounts (\$2,000+)



Federal Clauses

- ◆ Best Practice Methods
 - Develop Independent Cost Estimate
 - Classify the Procurement in Accordance with FTA Defined Categories
 - Professional Services/A&E
 - Operations/Management
 - Rolling Stock
 - Construction
 - Materials & Supplies



Federal Clauses

- ◆ Best Practice Methods
 - Use ProcurementPRO Tool to Source Clause Language
 - Avoid “Shotgun” Approach (e.g., Copying and Pasting All FTA Third Party Clauses, Even When They Do Not Apply)



Federal Clauses

- ◆ Best Practice Methods
 - Include All Applicable Clauses in the Solicitation Documents
 - Do Not
 - Incorporate by Reference
 - Simply Refer to the Master Agreement



Cost/Price Analysis

- ◆ No. #2 Deficiency – Lacking Required Cost/Price Analysis
 - Major Regulatory Change with 2 CFR § 200.323(a)
 - Required for Procurements Over the Simplified Acquisition Threshold
 - FTA Circular 4220.1F States Such Analysis is Required for Every Procurement
 - Issue: Procurement File Lacks Documentation that the Required Analysis Was Performed



Price Analysis

◆ Price Analysis

○ Adequate Price Competition

▪ Conditions

- Two or More Offerors that Meet the Requirements of the Solicitation
- Determination of Responsibility
- Pricing is Responsive to Terms of the Solicitation



Cost Analysis

- ◆ Cost Analysis
 - Admittedly, More Complex and Time-Consuming than Price Analysis
 - Review and Evaluation of the Separate Cost Elements and Profit in an Offeror's Proposal



Cost Analysis

- ◆ Issue: Transit Agency Fails to Conduct Cost Analysis in Other Situations Where it is Required
 - Contract Modifications
 - Competition is Inadequate (Sole Source, Single Bid)
 - Change Orders



Independent Cost Estimate

- ◆ No. #3 Deficiency – Lacking Independent Cost Estimate (ICE)
 - Issues:
 - ICE Not Prepared
 - ICE Not Prepared Prior to the Receipt of Bids or Proposals
 - ICE Lacks Independence
 - ICE Predicated on Cost Quote from a Single Vendor



Independent Cost Estimate

◆ Best Practices

- Adopt Procurement Policies that Incorporate the Development of the ICE as Integral Element of the Procurement Process
- Conduct Requisite Market Research
- Ensure the ICE is Documented



**Moving Public Transportation
Into the Future**

NCDOT-IMD Procurement Tools



NCDOT-IMD Procurement Tools

- ◆ Quick-Reference Purchasing Guide ([link](#))
- ◆ Procurement History Checklists (handouts)
 - Price Quotes
 - Informal Written Quotes
 - Formal Bid
- ◆ Procurement History Form (handout)



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