

# Table of Contents

<b>Chapter VII. Procurement</b> .....	<b>39</b>
Introduction.....	39
Resources.....	39
FTA Circular 4220.1.....	39
2 CFR Part 200.....	39
Procurement Pro.....	39
FTA Best Practices Procurement Manual.....	40
FTA Buy America Regulations.....	40
Procurement Checklists.....	40
Procurement Policy.....	40
Required Procurement Standards.....	41
Standards.....	41
Methods of Procurement.....	45
Micro-Purchases – Threshold: \$0 - \$2,999.....	45
Small Purchases – \$3,000 - \$150,000.....	45
Invitation For Bids (IFBs) –Procurement by Sealed Bids: Over \$150,000.....	46
Request for Proposals-Procurement By Competitive Proposals.....	46
Sole Source Procurement.....	46
Pre-Award and Post-Delivery Audits of Vehicle Purchases.....	47
Pre-Award Audits.....	47
Post-delivery Audits.....	48
Written Procurement Selection Procedures.....	49
Required Contract Clauses.....	49
Remedies for Breach of Contract.....	49
Contract Termination.....	49
Equal Employment Opportunity (EEO).....	50
Copeland Anti-Kickback.....	50
Davis-Bacon Act.....	50
Contract Work Hours and Safety Standard Acts.....	50
Discovery and Invention/Patent Rights.....	50
Access to Contractor’s Records.....	51
Clean Air and Clean Water Acts.....	51
Energy Efficiency.....	51
Disadvantaged Business Enterprise.....	51
Cargo Preference.....	51
Bonding.....	51

Compliance with Laws and Permits..... 52  
Other Contract Clauses..... 52  
Procurement Planning and INDOT Review ..... 52

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## CHAPTER VII. PROCUREMENT

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### INTRODUCTION

On December 26, 2013, the Office of Management and Budget (OMB) issued the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements For Federal Awards.” This publication consolidated virtually all previous grants management guidance and re-codified this material at 2 CFR Part 200. This guidance, in section 2 CFR Part 200.317 through 200.326 address basic procurement standards applicable to all Federal awards, including all INDOT grant awards involving Federal Transit Administration (FTA) funds.

In addition to this overarching guidance, FTA has issued detailed guidance on procurement requirements in the most current version of FTA Circular 4220.1, “Third Party Contracting Guidelines” available at [http://www.fta.dot.gov/legislation\\_law/12349\\_8641.html](http://www.fta.dot.gov/legislation_law/12349_8641.html). This document provides procurement instructions for all FTA grantees and subgrantees that contract with outside sources for goods and services.

The provisions in 2 CFR Part 200 and the most recent version of FTA Circular 4220.1 require grantees to establish local procurement procedures that reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law.

### RESOURCES

There are several resources that will be extremely helpful to ensure that all required procurement rules and laws are followed. A few have already been mentioned, but all are

described below along with their appropriate web link.

#### **FTA Circular 4220.1**

As a subrecipient of funding under 49 U.S.C. § 5311, grantees are held to a number of FTA-specific and other Federal requirements. For third party contracting or significant capital purchases or facility construction or renovation, grantees must follow the guidance set forth in the most recent version of FTA Circular 4220.1. Grantees which are local governmental entities may follow their own local procedures, provided that, at a minimum, the basic requirements in this circular are met. Designated grantees which are private nonprofit entities must follow FTA Circular 4220.1.

#### **2 CFR Part 200**

This document provides guidance on pre- and post- grant award requirements, definition of key grants management terms, cost allowability principles, indirect cost allocation practices, uniform management requirements for all Federal grants, and audit. This document is available from the Government Printing Office at <https://www.federalregister.gov/articles/2013/12/26/2013-30465/uniform-administrative-requirements-cost-principles-and-audit-requirements-for-federal-awards>.

#### **Procurement Pro**

National RTAP offers a free web-based application, Procurement Pro (Pro), which “walks” grantees through the steps needed to determine the Federal clauses and

certifications that must be included in procurement documents for a Federally-funded project. In return you will receive a document that includes all current required Federal clauses and certifications for each type of procurement. Pro is intended to be used as procurement tool to assist the user in building a complete procurement, but in order to do this, the user must supply its own supporting documentation. Pro provides checklists and templates to help the user build a complete procurement package. INDOT recommends grantees use Pro to download the updated Federal clauses and certifications. It is the grantee's choice to use whatever procurement system that complies with all Federal, State and local requirements. To use Pro download the following user starter guide:

<http://demopro.nationalrtap.org/emailResource.aspx?design=1&fileid=875>  
<http://webbuilder.nationalrtap.org/WebApps/ProcurementPRO.aspx>:

### **FTA Best Practices Procurement Manual**

FTA has compiled a series of Federal and/or grantee procurement practices that have proven to be effective over the years and has published them in the *FTA Best Practices Procurement Manual*. The Manual presents these best practices for the assistance and guidance of the local grantee; procedures and practices presented in the *Manual* are not mandatory unless identified as such. These best practices are meant to be informative and helpful and are offered for the guidance and assistance. However, it is also recognized that there may be local, unique situations that precludes a grantee from adopting the procedures of another grantee in a certain area. Rural transit grantees are encouraged to refer to the Manual as they prepare documents for, and conduct, their procurements. FTA's Manual is available at

[http://www.fta.dot.gov/grants/13054\\_6037.html](http://www.fta.dot.gov/grants/13054_6037.html).

### **FTA Buy America Regulations**

FTA's Buy America requirements apply to construction contracts and acquisition of goods or rolling stock (valued at more than \$100,000). Specific requirements for pre-award and post-delivery audits apply to the purchase of rolling stock. INDOT awards all vehicle term contracts in compliance with FTA's Pre-Award/Post-Delivery Requirements. Grantees conducting direct purchase of vehicles are responsible for complying with all Buy America provisions. Refer to

[http://www.fta.dot.gov/legislation\\_law/12921.html](http://www.fta.dot.gov/legislation_law/12921.html) for more information.

### **Procurement Checklists**

INDOT has developed two procurement checklists to help ensure that all procurement processes have been completed and documented. These checklists, INDOT Pre-Solicitation Checklist and INDOT Pre-Award Checklist, are available from the Forms Section on the INDOT website,

<http://www.in.gov/indot/2436.htm>.

### **PROCUREMENT POLICY**

In order to be in compliance with the most recent version of FTA Circular 4220.1 grantees must prepare a written procurement policy and procedures (INDOT has developed a procurement policy template which may be downloaded from the Indiana RTAP website at [www.indianartap.com](http://www.indianartap.com)).

A grantee may adopt local (city or county) procurement procedures as long as they contain the provisions listed in this chapter.

Further, all procurements must also be conducted in accordance with Indiana Code (I.C.) 5-22-7 Competitive Bidding. (<http://www.in.gov/legislative/ic/2004/titl e5/ar22/ch7.html>).

## **REQUIRED PROCUREMENT STANDARDS**

Consistent with Federal requirements as contained in the most recent version of FTA Circular 4220.1, INDOT has set a maximum period of performance of four (4) years for all subrecipient third party contracts, such as property, including rolling stock, services, leases, construction, revenue, etc.

Specifically, INDOT's and Section 5311 procurement practices will comply with five Federal requirements, which include:

1. For rolling stock, a five year limitation on contract period of performance;
2. A requirement for full and open competition;
3. A prohibition against geographic preferences;
4. The use of Brooks Act procedures for procurement of architectural and engineering services if INDOT has not adopted a statute governing procurement of such services; and
5. Inclusion in contracts of all Federal clauses required by Federal statutes and Executive Orders and their implementing regulations.

### **Standards**

- ◆ **Competition:** All procurements will be conducted in a manner providing for full and open competition.
- ◆ **Code of Conduct:** Grantees must have a written code of conduct governing the

performance of their employees engaged in the award and administration of contracts. Employees of the grantee shall not participate in selection, award, or administration of contract supported by federal and state funds if a conflict of interest, real or apparent, is involved.

- ◆ **Purchase Review:** Grantees must develop a process for reviewing purchases to avoid unnecessary and duplicate items. Consideration must be given to the most economical approach. Where appropriate, an analysis of lease versus purchase shall be made. All grantees are encouraged to use intergovernmental agreements, where possible.
- ◆ **Contract Cost and Price Analysis for Every Procurement Action:** Grantees shall perform a price or cost analysis with every procurement, including contract modifications. As a starting point, the grantee must make an independent estimate before receiving bids or proposals. Usually a price analysis will be used to determine the reasonableness of the proposed contract price. This may also be established based on the catalog or market price of products sold in substantial quantities to the public, or based on price set by law. A cost analysis is required when the bidder is required to submit the cost elements of his estimated price (e.g., under professional service contracts such as, consulting or architectural and engineering). Also, a cost analysis is 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. [FTA C 4220.1F, VI, 6.]

The process for developing an Independent Cost Estimate will vary depending on the nature of the procurement. For construction projects, the engineering firm preparing the designs and specifications will usually be able to provide a cost estimate. For purchases, such as vehicles, software or equipment, a variety of sources can be considered. For more standardized items, pricing research can be conducted by seeking publically available cost information, such as pricing information provided by suppliers of similar products. For more specialized purchases, such as specialized transit software or vehicles with special equipment, the staff conducting the procurement can seek cost information from other transit agencies which may have recently made similar purchases. For services to be performed on an hourly rate basis, recent past internal procurement rate information for similar services, or information from other transit agencies who have secured similar services may be used. In all instances, the Independent Cost Estimate should provide a reasonably accurate summary of the expected costs of the items or services procured, using recent or current cost information, so that an accurate cost or price analysis can be conducted once proposals or bids have been received.

For additional information, refer to Section 5.2 of the FTA's Best Practices Procurement Manual.

- ◆ Profit: Grantees must 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. [FTA C 4220.1F, VI, 6.a.(3)]

- ◆ Federal Cost Principles: Costs or prices based on estimated costs for grant contracts will be allowable only to the extent that costs incurred of 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.
- ◆ Required Federal and State Clauses: All procurements and resulting contracts must include all required federal and state clauses. Copies of these clauses are made available to the Grantees in the Section 5311 grant application and further identified in the Section 5311 grant assistance contracts between INDOT and its grantees.
- ◆ Contract Awards to Responsible Vendors: Grantees may only award contracts to responsible contractors possessing the ability, willingness, and integrity to perform successfully under the terms and conditions of the contract and who demonstrate that its proposed subcontractors also qualify as responsible. Grantees must consider such matters as contractor integrity, compliance with public policy, record of past performance and financial and technical resources when making a determination of contractor responsibility. Grantees must also ensure that the contractor is not listed as a debarred or suspended contractor

on the System for Award Management (SAM), which is maintained by the General Services Administration (GSA), at the time of contract award. Entities that are listed as debarred or suspended contractors on SAM may not be determined to be responsible contractors by the grantee.

To designate a prospective contractor “responsible” as required by 49 U.S.C. § 5325, grantees, at a minimum, must determine and ensure that the prospective contractor satisfies the following criteria described herein. In addition to being otherwise qualified and eligible to receive the contract award under applicable laws and regulations, a responsible contractor:

- Integrity and Ethics – Has a satisfactory record of integrity and business ethics, in compliance with 49 U.S.C. Section 5325(j)(2)(A).
- Debarment and Suspension – Is neither debarred nor suspended from Federal programs under DOT regulations, “Nonprocurement Suspension and Debarment,” 2 CFR Parts 180 and 1200, or under the FAR at 48 CFR Chapter 1, Part 9.4.
- Affirmative Action and DBE – Is in compliance with the Common Grant Rules’ affirmative action and FTA’s Disadvantaged Business Enterprise requirements.
- Public Policy – Is in compliance with the public policies of the Federal Government, as required by 49 U.S.C. § Section 5325(j)(2)(B).
- Administrative and Technical Capacity – Has the necessary

organization, experience, accounting, and operational controls, and technical skills, or the ability to obtain them, in compliance with 49 U.S.C. Section 5325(j)(2)(D).

- Licensing and Taxes – Is in compliance with applicable licensing and tax laws and regulations.
- Financial Resources – Has, or can obtain, sufficient financial resources to perform the contract, as required by 49 U.S.C. Section 5325(j)(2)(D).
- Production Capability – Has, or can obtain, the necessary production, construction, and technical equipment and facilities.
- Timeliness – Is able to comply with the required delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments.
- Performance Record – Is able to provide a:
  - Current Performance – Satisfactory current performance record; and
  - Past Performance – Satisfactory past performance record in view of its records of long-time performance or performance with a predecessor entity, including:
    - Sufficient Resources. Key personnel with adequate experience, a

parent firm with adequate resources and experience, and key subcontractors with adequate experience and past performance,

- Adequate Past Experience. Past experience in carrying out similar work with particular attention to management approach, staffing, timeliness, technical success, budgetary controls, and other specialized considerations as described in the recipient's solicitation, and
- Any Past Deficiencies Not the Fault of the Bidder or Offeror. A prospective bidder or offeror that is or recently has been seriously deficient in contract performance is presumed to be non-responsible, unless the recipient determines that the circumstances were properly beyond the bidder or offeror's control, or unless the bidder or offeror has taken appropriate corrective action. Past failure to apply sufficient tenacity, perseverance, and effort to perform acceptably is strong

evidence of non-responsibility. Failure to meet the quality requirements of a contract is a significant factor to consider in determining satisfactory performance. INDOT expects each grantee to consider the number of the bidder or offeror's contracts involved and the extent of deficient performance in each contract when making this determination.

- ◆ Contract Administration: Grantees must maintain a contract administration system, which ensures that contractors perform in accordance with the terms, conditions, and specifications of all purchases.
- ◆ Contract Records: Grantees shall maintain records to sufficiently detail the procurement history. At a minimum this should include the rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.
- ◆ Disputes and Protests: Grantees are responsible for resolving all contractual and administrative issues arising out of procurement. Violations of law should be referred to the proper local authority having jurisdiction. If there is no local authority, the matter should be referred to INDOT. Grantees must have protest procedures to handle and resolve disputes relating to their procurement. A protestor must exhaust all administrative remedies with the

grantee before pursuing protest with INDOT.

## **METHODS OF PROCUREMENT**

Most purchases and leases (procurement) made under the Section 5311 program will be made through Sealed Bid (formal advertising) method. All procurements must be conducted in accordance with Indiana Code (I.C.) 5-22-7 Competitive Bidding. (<http://www.in.gov/legislative/ic/2004/title5/ar22/ch7.html>).

### **Micro-Purchases – Threshold: \$0 - \$2,999**

An exception to the formal procurement method is the case of purchases under \$3,000 (i.e., micro-purchases), or other lower threshold that grantees may set as they deem appropriate for purchases. Purchases below that threshold may be made without obtaining competitive quotations.

For micro-purchases, INDOT requires the grantee to, at a minimum, justify that the price for the procurement is fair and reasonable, and maintain written documentation about how that determination was derived. INDOT believes that determination may be completed quickly and efficiently in several ways. One possible method would be for the official tasked to review and authorize payment of a bill to annotate a finding such as “I have examined the expenditures reflected on this bill and determine that each reflects a reasonable price based on market price offered by vendors to the general public.”

### **Small Purchases – \$3,000 - \$150,000**

Purchases and leases of \$3,000 up to \$150,000 or more are considered small purchases, therefore, relatively simple and

informal procurement methods may be used. Small purchase procurement requires inclusion and acceptance of applicable federal clauses. The Request for Quotations Form Template that includes all of the required clauses can be found at <http://www.in.gov/indot/2436.htm>.

If the grantee has small purchases procedures which meet the intent of I.C. 5-22-8 (<http://www.in.gov/legislative/ic/archive/2012/ic/2012/title5/ar22/ch8.html>), or which are stricter, then the grantee’s procedures may be followed. If the grantee does not have small purchase procedures, then they may invite quotes from at least three vendors known to deal in the type of purchase or lease being made. A copy of the specification should be mailed to the vendor not less than seven days before the deadline for receiving written quotes.

A quotation should be solicited from other than the previous supplier before placing a repeat order. Whether quotations are solicited orally or in writing, the purchase record file should contain the following abstract information:

- ◆ Name, address, and telephone number;
- ◆ Pertinent details on the offered items (make, model, etc.);
- ◆ Unit price and total price;
- ◆ Discount terms;
- ◆ Delivery times;
- ◆ FOB point;
- ◆ Small, minority, and disadvantaged business information as appropriate;
- ◆ The person who provided the quote; and
- ◆ The time and date of the quote.

If the grantee receives a satisfactory quote, the grantee shall award the contract to the lowest responsible and responsive offeror. The grantee may reject all quotes.

### **Invitation For Bids (IFBs) –Procurement by Sealed Bids: Over \$150,000**

State law (I.C. 5-22-7 – <http://www.in.gov/legislative/ic/2004/title5/ar22/ch7.html>) requires purchasing by IFB, or Sealed Bids, for purchases and leases over \$150,000. The formal advertisement notice must be published in accordance with I.C. 5-3-1 Publication of Notices (<http://www.in.gov/legislative/ic/2004/title5/ar3/ch1.html>). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the lowest responsible, responsive bidder. In addition to the published notice, INDOT strongly recommends direct solicitation to known vendors.

The grantee is responsible for preparing the bid contract and specification, advertising and soliciting bids, receiving and reviewing bids, and awarding the contract to the lowest responsible and responsive bidder. Bids will be opened only at a time and place listed in the solicitation, and at least one (1) witness must be present. **The solicitation documents must include detailed information on the location and time of the public bid opening information, and any access requirements at the location.**

An exception to the sealed bid requirement is for the solicitation of professional services. This is described in the request for proposals (RFP) method of procurement.

### **Request for Proposals-Procurement By Competitive Proposals**

A Request For Proposals (RFP) is the method generally used when conditions are not appropriate for the use of sealed bids and when it is allowed by State law I.C. 5-22-9– (<http://iga.in.gov/legislative/laws/2015/ic/>

[titles/005/](https://iga.in.gov/legislative/laws/2015/ic/titles/005/)). One situation mentioned earlier is for the development of specifications. Also, a grantee may use the RFP method for the procurement of architectural, engineering, program management, construction management, planning and feasibility studies, and land surveying services. Services of architects, engineers, and land surveyors must be procured in accordance with I.C. 5-16-11.1

(<https://iga.in.gov/legislative/laws/2015/ic/titles/005/>).

If the RFP method is used, the following requirements apply:

- ◆ The request must identify all evaluation factors and their relative importance, including cost as a factor. Please note that cost may not be used as an evaluation factor for architectural and engineering services, in accordance with the Brooks' Amendment;
- ◆ Any bonding requirements or other evidence of financial responsibility;
- ◆ Solicitation of an adequate number of qualified vendors;
- ◆ Grantee must have a written method for conducting technical evaluation for the proposals; and
- ◆ Contract award will be made to the responsible vendor whose proposal is determined in writing to be the most advantageous to the program.

### **Sole Source Procurement**

When a grantee requires products or services available from only one responsible source, and no other products or services will satisfy its requirements, a grantee may make a sole source award with the prior approval of INDOT. Sole source awards are only appropriate when one of the following conditions apply:

- ◆ Unique Capability or Availability – The products or services are available from

only one source if one of the conditions described below is present:

- Unique or Innovative Concept – The offeror demonstrates a unique or innovative concept or capability not available from another source. Unique or innovative concept means a new, novel, or changed concept, approach, or method that is the product of original thinking, the details of which are kept confidential or are patented or copyrighted, and is available to the grantee only from one source and has not in the past been available to the grantee from another source.
- Patents or Restricted Data Rights – Patent or data rights restrictions preclude competition.
- Substantial Duplication Costs – In the case of a follow-on contract for the continued development or production of highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in substantial duplication of costs that are not expected to be recovered through competition.
- Unacceptable Delay – In the case of a follow-on contract for the continued development or production of a highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in unacceptable delays in fulfilling the grantee’s needs.

In addition, when a grantee requires an existing contractor to make a change to its contract that is beyond the scope of that contract, the grantee must treat the changes

as if the grantee has made a sole source award that must be justified.

INDOT must review and approve all sole source procurements prior to any contract award.

## **PRE-AWARD AND POST-DELIVERY AUDITS OF VEHICLE PURCHASES**

It is INDOT’s responsibility to conduct a pre-award and post-delivery audit of vehicles purchased with FTA funds. The three sections of both audits are: Buy America, Bid Specifications, and Federal Motor Vehicle Safety Standards. Documentation of all pre-award and post- delivery audits is maintained by INDOT. Grantees may request a copy of the documentation from INDOT for their files.

### **Pre-Award Audits**

INDOT must ensure that audits are complete before the grantee enters into a formal purchase contract for vehicles.

### **Buy America**

For vehicle purchases in excess of \$100,000, INDOT must review documentation from the bidder as to the cost of the vehicle’s major components and primary sub-components, their country of origin, the location of final assembly, and any activities that will take place at the location (49 CFR Part 661, <http://www.gpo.gov/fdsys/granule/CFR-2012-title49-vol7/CFR-2012-title49-vol7-part661/content-detail.html>). Cost information is used to determine whether a vehicle meets the Buy America regulation and that 60% of the vehicles’ components are domestically produced. All information resulting from this audit must be kept on file by INDOT. It will be made available to the grantee, upon request.

If the vehicle does not have to meet Buy America regulations, then INDOT must have the Federal waiver letter on file.

This audit cannot be performed by the bidder or manufacturer. INDOT must conduct the necessary review and certification or hire an independent third party contractor to conduct the review and certification.

### **Bid Specifications**

INDOT must assure that the vehicle(s) proposed is the same vehicles(s) as described in the bid specifications. Also, INDOT must certify that the bidder is a “responsive manufacturer with the capability to produce” the specified vehicle.

When the purchase is for eleven or more vehicles for a single recipient, INDOT must also provide a resident inspector on-site where the vehicles are being manufactured. This inspector must certify that he or she was on-site throughout the manufacturing process, monitored the vehicles’ manufacturing, and must prepare a report about the manufacturing process.

### **Federal Motor Vehicle Safety Standards (FMVSS)**

If the vehicles being purchased are subject to FMVSS, INDOT must ask for a certification from the bidder stating that the vehicles being acquired meet all applicable standards. The bidder’s self-certification must be kept on file at INDOT.

If the vehicles are not subject to FMVSS, the bidder must provide certification stating this. This certification must also be kept on file by INDOT. Therefore, the burden of proof

is on the bidder to comply with this regulation.

### **Post-delivery Audits**

INDOT must ensure that audits are completed before vehicle titles are transferred to the grantee.

### **Buy America**

This is a certification that Buy America regulations (after change orders or other revisions) are still being met. If the vehicle does not have to meet Buy America regulations, then INDOT must have the waiver letter on file.

### **Federal Motor Vehicle Safety Standards**

INDOT must maintain on file the FMVSS certification by the bidder. If the vehicle(s) is not subject to FMVSS, then INDOT must maintain on file the bidder’s certification that FMVSS do not apply.

### **Bus Testing**

Any new bus model must be tested at the FTA test facility in Altoona, Pennsylvania in accordance with Federal regulation 49 CFR Part 665

[\[http://www.gpo.gov/fdsys/granule/CFR-2012-title49-vol7/CFR-2012-title49-vol7-part665/content-detail.html\]](http://www.gpo.gov/fdsys/granule/CFR-2012-title49-vol7/CFR-2012-title49-vol7-part665/content-detail.html). This

requirement covers all medium and heavy duty body-on-chassis and purpose built buses of 25 feet or greater. INDOT must require that the bidder/manufacturer provide the testing report before final acceptance of the vehicle(s). It is INDOT’s responsibility in dealing with the bidder/manufacturer to determine if the vehicle is subject to these requirements. The cost of testing is paid for by FTA and the manufacturer.

## **Written Procurement Selection Procedures**

INDOT requires grantees to maintain written records detailing the history of each procurement, including:

- ◆ Procurement Method: The rationale for the method of procurement, including a sole source justification for any acquisition that does not qualify as competitive;
- ◆ Contract Type: State the reasons for selecting the contract type (fixed price, cost reimbursement, etc.);
- ◆ Contractor Selection: State the reasons for contractor selection or rejection. Include a written responsibility determination for the successful contractor;
- Cost or Price: Each recipient must evaluate and state its justification for the contract cost or price. [FTA C 4220.1F, III, 3. d. (1)]; and
- Adequate documentation of the procurement, as commensurate with its size and complexity. The documentation kept in the file should include records of all phases of the procurement, from the initial advertisement and solicitation through the evaluation and award, any contract modifications, and close-out.

## **REQUIRED CONTRACT CLAUSES**

Adequate terms and conditions must be present in every contract. The purchasing and contracting staff should meet with grant and legal personnel to determine the appropriate clauses to be included in third party contracts based on the information contained in the most recent version of FTA

Circular 9040.1 for the Section 5311 Program, <http://www.fta.dot.gov/13716.html>, the grant agreement between INDOT and the grantee, and any statutory or regulatory requirements required by INDOT. These contract clauses include, but are not limited to, required contract clauses. Please note that Section 5311 grantees are responsible for ensuring that all required contract clauses are included. One method of doing this is to use the National RTAP's free web-based application "Procurement Pro." This user-friendly web application takes grantees through the steps needed to determine the Federal clauses and certifications that must be included in procurement documents for a Federally-funded project. In return, grantees receive a document that includes all required Federal clauses and certifications as well as other documentation, such as checklists and templates, to help manage the procurement process. To access this application, go to <http://www.nationalrtap.org/WebApps/ProcurementPro.aspx>.

## **Remedies for Breach of Contract**

All contracts, other than those awarded under small purchase procedures, are to include provision or conditions which stipulate remedies available to the grantee if the contractor violates or breaches the terms of the contract.

These provisions must allow for either administrative, contractual, or legal remedies, and provide for appropriate sanctions and penalties.

## **Contract Termination**

All contracts exceeding \$10,000 must include provisions that stipulate the conditions under which the grantee may

terminate the contract for either default or convenience.

In a termination for default, the contractor must fail to comply with certain terms and conditions of the contract. The contractor is paid only for supplies delivered and accepted by the grantee or for the services performed in agreement with the grantee.

If there is a good reason beyond the contractor's control that prevents compliance with the contract provisions, the contractor may be allowed to continue work or the contract can be terminated for convenience. For convenience terminations, the contractor should be paid all closeout costs and a partial fee as provided in the contract.

#### **Equal Employment Opportunity (EEO)**

All contracts exceeding \$10,000 must include a clause which requires the contractor to take positive action to ensure that persons employed or seeking employment are treated without bias regarding race, religion, color, sex, sexual orientation, gender identity or national origin. Federal and State EEO requirements require the contractor to post notices to this effect in conspicuous locations within the plant or worksite. EEO conditions must be stated in all RFPs and IFBs issued by the grantee.

#### **Copeland Anti-Kickback**

All construction or repair contracts must include provisions which require the contractor to comply with the Copeland Anti-Kickback Act which prohibits the contractor from inducing anyone employed on the project to give up any portion of their pay. Further, the provision requires the

grantee to report all suspected or reported violations.

#### **Davis-Bacon Act**

All construction contracts exceeding \$2,000 must stipulate that the contractor will pay all laborers and mechanics employed on the project at least once a week at a rate not less than the minimum wage specified in the wage determination formally issued by the Secretary Of Labor. A copy of this determination is to be included in each solicitation, and the award of the contract is conditional, pending the contractor's acceptance of the terms of the wage determination schedule. Further, grantees are required to report all suspected or reported violations.

#### **Contract Work Hours and Safety Standard Acts**

All construction contracts exceeding \$2,000 and all other contracts exceeding \$2,500 that employ laborers and mechanics must include a provision requiring the contractor to pay the mechanics and laborers on the basis of a standard 8-hour workday and a 40-hour workweek. Any work in excess of 8 hours a day or 40 hours a week must be compensated at a rate not less than 1.5 times the worker's base rate. In addition, no workers will be required to work in surroundings or working conditions that are unsanitary, hazardous or dangerous as determined under the standards established by the Secretary of Labor.

#### **Discovery and Invention/Patent Rights**

Any research, development, experimental or demonstration contract must include a provision stipulating FTA's requirements and regulations regarding all patent rights, copyrights and rights to data related to any

discovery or invention made by the contractor.

### **Access to Contractor's Records**

All negotiated contracts, except small purchases, must include a provision stipulating that the grantee, INDOT, FTA, Comptroller General, or any authorized agent of these four parties, are to be granted access to any of the contractor's books, documents, papers, and records directly related to the contract. The contractor must maintain all records for three years following contract closeout to allow for audits, examinations, excerpts and transcriptions of the contractor's files.

### **Clean Air and Clean Water Acts**

All contracts exceeding \$100,000 must include a provision that commits the contractor to comply with the requirements of Section 508 of the Clean Water Act and Section 306 of the Clean Air Act. These regulations prohibit the use of facilities included in the EPA "List of Violating Facilities" under exempt Federal contracts. In addition, grantees must report all suspected violations.

### **Energy Efficiency**

All contracts must recognize the mandatory standards and policies relating to energy efficiency that are contained in Indiana's Energy Policy. That policy is outlined in the state's strategic energy plan, Hoosier Homegrown Energy.

### **Disadvantaged Business Enterprise**

All contracts must include a provision which stipulates that the contractor will take affirmative steps to assure that disadvantaged businesses are utilized

whenever possible as sources of supplies, equipment, construction and services, including the following actions:

- ◆ Placing qualified disadvantaged businesses on solicitation lists;
- ◆ Assuring that disadvantaged businesses are solicited whenever they are potential sources;
- ◆ Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by disadvantaged businesses;
- ◆ Establishing delivery schedules, where the procurement requirements permit, that encourage participation by disadvantaged businesses;
- ◆ Using the services and assistance of the Office of Disadvantaged Business Enterprise of the Department of Transportation, Division of Economic Opportunity; and
- ◆ Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed above.

### **Cargo Preference**

To ensure fair and reasonable participation by privately owned U.S. flag vessels in transporting cargoes that are subject to the Merchant Marine Act of 1936 - including equipment, materials or commodities procured, contracted for or otherwise obtained within or outside the U.S. with funds made by or on behalf of the U.S. - appropriate clauses must be inserted in all third party contracts where the possibility exists for ocean transportation of such items. The clauses must provide that a least 50% of the gross tonnage generated by the contract be transported on U.S. flag vessels.

### **Bonding**

For construction or facility improvement contracts or subcontracts exceeding

\$100,000, INDOT may accept the bonding policy and requirements of the grantee, provided INDOT determined that the policy and requirements adequately protect the Federal interests. FTA has established the following minimum criteria:

- ◆ A bid guarantee from each bidder equal to 5% of the bid price;
- ◆ A performance bond for 100% of the contract price; and
- ◆ A payment bond for 50% payment of the contract price if the contract is not more than \$1 million; 40% if the contract price is more than \$1 million but not more than \$5 million; or, \$2.5 million if the contract price is more than \$5 million.

A grantee must seek INDOT approval of its bonding policy and requirements if it does not comply with these criteria.

### **Compliance with Laws and Permits**

The Contractor shall give all notices and comply with all existing and future federal, state, and municipal laws, ordinances, rules, regulations, and orders of any public authority bearing on the performance of the contract, including, but not limited to, the laws referred to in these provision of the contract and other contract documents. If the contract documents are at a variance therewith in any respect, any necessary changes shall be incorporated by appropriate modification. Upon request, the Contractor shall furnish all certificates of

compliance with all such laws, order, and regulations.

### **Other Contract Clauses**

The grantee must be aware of other Federal and State regulations or laws that may affect the contractual relationship with the contractor. For example, Drug & Alcohol Testing, Bloodborne Pathogens, and ADA requirements may affect the contract.

### **PROCUREMENT PLANNING AND INDOT REVIEW**

All bid contracts, IFBs and RFPs for purchases or leases of \$150,000 or greater must be submitted to INDOT for review. In addition, grantees must make all technical specifications available for review, when INDOT believes such a review is needed to ensure that the purchase or lease specified is consistent with grant award.

It is the responsibility of the grantee to include INDOT concurrence requirements into the procurement schedule. While INDOT will attempt to respond to each request as soon as possible, grantees should allow eight weeks to receive INDOT' s pre-bid concurrence.

Also, grantees must make available all procurement documentation upon request by INDOT.