

## Grant Management Guidelines

**C 5010.1C**

10-01-98

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U.S. Department of Transportation

### Federal Transit Administration

1. **PURPOSE.** The purpose of this circular is to provide guidelines and management procedures for Metropolitan Planning grants, Capital Program grants and Urbanized Area Formula grants for assistance programs of the Federal Transit Administration (FTA), after award. Guidance is provided which covers Grant Administration and Management in Chapter I, Real Property and Equipment Issu in Chapter II, Financial Management in Chapter III, and Payment Procedures in Chapter IV.

Grant management guidelines for the Elderly and Persons With Disabilities Program are contained in FTA Circular 9070.1E, and grant management guidelines for Other Than Urbanized Areas Program are contained in FTA Circular 9040.1E.

2. CANCELLATION. This circular cancels FTA Circular 5010.1B, "Grant Management Guidelines," dated 9-7-95.
3. EXPLANATION OF CHANGE. This circular incorporates the Federal transit laws as codified in United States Code, chapter 53. The major changes in this circular are in the new chapter II, for management of real and personal property. This change was made to better meet customer needs. This chapter includes a comprehensive list of disposition options for real property, equipment and supplies including the new TEA-21 provision, 49 U.S.C. 5334(g)(4).
4. REFERENCES :
  - a. Federal transit laws, 49 U.S.C. chapter 53.
  - b. Transportation Equity Act for the 21st Century, Pub. L. 105-178, June 9, 1998, 23 U.S.C. 101 note, as amended by the TEA-21 Restoration Act 105-206, 112 Stat. 685, July 22, 1998, 23 U.S.C. 101 note.
  - c. Intermodal Surface Transportation Efficiency Act of 1991, Public Law No. 102-240, 105 Stat. 1914, December 18, 1991 (codified as amended by Public Law 103-272, 108 Stat. 744, July 5, 1994, in scattered sections of 49 and 23 United States Code).
  - d. 49 U.S.C. 5307(i), "Reviews, Audits, and Evaluations," [This includes reference to the triennial review process.]
  - e. 49 U.S.C. 5327, "Project Management Oversight."
  - f. 31 CFR Part 205, Ch. II, "Withdrawal of Cash From the Treasury for Advances Under Federal Grant and Other Programs." (Treasury C.1075.)
  - g. 49 CFR Part 18, the Common Rule, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments ."
  - h. 49 CFR Part 21, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1984."
  - i. 49 CFR Part 23, "Participation by Minority Business Enterprise in Department of Transportation Programs."
  - j. 49 CFR Part 24, "Uniform Relocation Assistance and Real Property Acquisition Regulations for Federal and Federally Assisted Programs," dated 3-2-89.
  - k. Americans With Disabilities Act of 1990, as implemented in 49 CFR Parts 27, 37 and 38 Transportation for Individuals With Disabilities; Final Rule 9-6-91.
  - l. 49 CFR Part 663, "Pre-Award and Post Delivery Audits of Rolling Stock Purchases," dated 9-24-91.
  - m. OMB Circular A-87, "Cost Principles Applicable to Grants and Contracts with State and

Local Governments," dated 1-15-81, and changes to this document published 5/17/95, effective 9/1/95.

- n. OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations" as revised June 24, 1997. Department of Health and Human Services Publication No. OASC-10, "A Guide for Local Government Agencies - Cost Principles and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Grants and Contracts with the Federal Government."
  - o. FTA Circular 4220.1E, "Third Party Contracting Guidelines," dated 4-15-96.
  - p. FTA Circular 4702-1, FTA, "FTA Guidelines for Title VI Information Specific to FTA Programs," dated 5-26-88.
  - q. FTA Circular 4704.1, "Equal Employment Opportunity Program Guidelines for FTA Recipients," dated 7-26-88.
  - r. FTA Circular 4715.1A, "Section 20 (Human Resource) Guidelines for FTA Applicants," dated 7-26-88.
  - s. FTA Circular 4716.1A, "FTA Disadvantaged Business Enterprise Requirements for Recipients and Transit Vehicles Manufacturers," dated 7-26-88.
  - t. FTA Circular 5700.1, "Requirements and Responsibilities for Indirect Cost Proposals/Co Allocations Plans for Technical Studies and Capital Grants," dated 5-24-83.
  - u. FTA Circular 8100.1B, "Program Guidance and Application Instructions for Planning and Technical Studies Grants," dated 10-25-96.
  - v. FTA Circular 9030.1C, "Urbanized Area Formula Program: Grant Application Instructions," dated 10-1-98.
  - w. FTA Circular 9300.1A, " Capital Program: Grant Application Instructions." dated 10-1-98
  - x. National Environmental Policy Act of 1969, as amended (NEPA).
  - y. Uniform Standards of Professional Appraisal Practice (USPAP).
  - z. FTA Buy America regulations, 49 C.F.R. Part 661.
  - aa. DOT Seismic Safety Rule, 49 C.F.R. 41.117.
5. **BACKGROUND.** This revised circular updates the general grant management procedures applicable to FTA grantees that receive Federal funds under 49 U.S.C., chapter 53. The revisions are consistent with the current provisions of the Transportation Equity Act for the 21st Century (TEA-21), as amended, and other applicable statutes, OMB guidelines and DOT policy and

regulations.

These procedures are intended to assist grantees in administering FTA-funded projects and in meeting grant responsibilities and reporting requirements. More specific guidance regarding certain subjects, such as civil rights or cost principles, is provided in the above-referenced documents, which deal more specifically with individual topics. Grantees are reminded of their responsibility to comply with regulatory requirements and should be aware of all pertinent material to assist in the management of federally assisted grants.

6. WAIVERS. To the extent permitted by law, the Federal Transit Administrator reserves the right to waive any provision of this circular.

Sincerely,

Gordon J. Linton  
Administrator

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## **Revised Grant Management Guidelines Circular 5010.1C, dated 10/1/98**

**Number C-98-31**  
11-04-98

U.S. Department of Transportation

Headquarters

400 Seventh St. S.W.  
Washington, D.C. 20590

**Federal Transit Administration**

Dear Colleague:

As you know, many changes have occurred in the Federal Transit Administration (FTA) over the past several years. Consequently, FTA guidance circulars have become outdated and in need of revision. I am happy to provide to you a revision of FTA's Grant Management Guidelines Circular 5010.1C, dated October 1, 1998.

This circular has been updated to include a separate chapter II for real property and equipment acquisition, management, and disposition issues. One of the changes, enacted by the Transportation Equity Act for the 21st Century (TEA-21), allows the grantee to retain sales proceeds from excess assets to help reduce the gross project cost of subsequent capital projects.

In FY 1999, FTA will begin using its new Transportation Electronic Award and Management (TEAM) system for grant award and management. The system uses graphic user technology, providing point and click "smart" selections that will aid grant recipients in the process of submitting applications and reporting on the management of their grants.

I hope you will find many benefits to assist you in the management of your FTA transit grant programs. I ur

you to become familiar with the changes as this circular is now the operational document for FTA program management. You also have my personal assurance that in the months ahead FTA will continue its efforts to assist you in the management of your transit grants in the most business-like manner possible.

Sincerely,  
Gordon J. Linton

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## **Chapter I: Project Administration and Management**

1. GENERAL. This circular describes the process and provides guidelines and procedures for management of FTA grants at 49 U.S.C. chapter 53, sections:

5309 Capital Program;

5303 Metropolitan Planning;

5307 Urbanized Area Formula Program;

5313(b) State/Planning and Research.

Procedures for management of 49 U.S.C. Section 5310, the Elderly and Persons with Disabilities Program grants, are provided in the current version of FTA Circular 9070.1E, and procedures for management of 49 U.S.C. Section 5311, Nonurbanized Areas Formula Program grants, are provided in the current version of FTA Circular 9040.1E. FTA follows the Common Rule (49 C.F.R. Part 18) for project management for those programs that have states as grantees, including Sections 5310, 5311, and 5313(b).

Agencies that receive FTA assistance are defined as "grantees." The term "projects" refers to public transit improvement activities funded under an executed grant. Similarly, "projects" refer to locally developed groups or lists of projects as presented in the Transportation Improvement Program or State Transportation Improvement Program (TIP/STIP) and to FTA, as approved and defined in executed agreements, referred to herein as "program."

FTA Regional Offices retain responsibility for management oversight of most grant projects. References in this circular to the cognizant agency mean the FTA Regional Office unless otherwise defined.

2. GRANT APPROVAL.
  - a. Notification. FTA notifies grantees of grant approval electronically through the electronic award and management system. The Grant Agreement includes the notification of award, and the approved project budget. Special conditions of the approval may be included in the award, the current version of the Master Agreement, the electronic grant (screen), or the conditions for using pre-award authority if applicable. Pre-award authority may be granted for incurring project-related costs prior to approval of an application.
  - b. Cost Eligibility and Payment Method. Absent any type of pre-award authority, the grantees

may begin to incur project costs as of the obligation date stated in the Notification of Grant Approval. Cash payments are made by the Automated Clearing House Method (ACH). See Chapter IV for more details. Requests for reimbursements will not be honored until the grant agreement has been executed by both FTA and the grantee and returned to FTA. Information regarding a cost allocation plan is discussed in Chapter III.

- c. Execution of Grant Agreement. Electronic execution of the grant agreement is accomplished, for the most part, by all grant applicants. There may still be occasions where printed paper copies will be accepted. However, FTA expects all applicants to gain access to the electronic award and management system, thereby saving time and money for them and the Federal government.
3. GRANTEE RESPONSIBILITIES FOR GRANT ADMINISTRATION AND MANAGEMENT. The grantee is responsible for administration and management of the grant in compliance with the grant agreement and applicable FTA circulars and regulations. The grantee is also responsible for funds that "pass through" to a subrecipient. Grantees may revise budgets in ways that do not change the scope of a grant. Procedures for changes to an approved grant are discussed later in this chapter. FTA monitors grants to confirm that grantees establish and follow procedures that are reasonable and comply with FTA requirements. Submission of Annual Certifications and Assurances stand in lieu of detailed FTA scrutiny. Annual independent audits for recipients of urbanized area formula program funds and triennial reviews give FTA an opportunity to verify the grantee's certifications and assurances. The grantee's responsibilities include actions that :
  - c. Provide continuous administrative and management direction of project operations.
  - d. Provide, directly or by contract, adequate technical inspection and supervision by qualified professionals of all work in progress.
  - e. Assure conformity to grant agreements, applicable statutes, codes, ordinances, and safety standards.
  - f. Maintain the project work schedule agreed to by FTA and the grantee and constantly monitor grant activities to assure that schedules are met and other performance goals are being achieved.
  - g. Keep expenditures within the latest approved project budget.
  - h. Assure compliance with FTA requirements on the part of agencies, consultants, contractors and subcontractors working under approved third party contracts or inter-agency agreements.
  - i. Request and withdraw Federal cash only in amounts and at times as needed to make payments that are immediately due and payable.
  - j. Account for project property and maintain property inventory records that contain all the elements required.
  - k. Arrange for an annual independent organization-wide audit in accordance with OMB Circular, A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
  - l. Prepare and submit force account and cost allocation plans prior to incurring costs if seeking reimbursement for these costs. Update and retain these approved documents for FTA upon request and during Triennial Review.
  - m. FTA requires reports, once submitted and approved by FTA, to be updated and retained by the grantee for availability during the Triennial Review process.
4. CIVIL RIGHTS REQUIREMENTS.
  - . General. It is the responsibility of FTA to ensure that grantees are in compliance with all civil

rights program requirements that apply to FTA-assisted projects and activities. The applicable civil rights program areas are: Title VI of the Civil Rights Act of 1964 (Service Delivery/Benefits); Equal Employment Opportunity (EEO); Disadvantaged Business Enterprise (DBE) Program; and the Americans with Disabilities Act (ADA) Program. These program areas are detailed in the Annual List of Certifications and Assurances and in the Master Agreement.

All required civil rights program submissions must be approved by FTA and periodically updated in accordance with program guidelines.

- b. Nondiscrimination. 49 U.S.C. Section 5332, states that no person on the basis of race, color, creed, national origin, sex, or age, shall be excluded from participation in, be denied the benefits of, or be subject to discrimination under any project, program, or activity funded in whole or in part through Federal financial assistance.

These nondiscrimination provision and associated affirmative action obligations apply to employment and business opportunities and are in addition to the provisions of Title VI of the Civil Rights Act of 1964.

- c. Title VI (Service Delivery/Benefits). Each grantee receiving Federal financial assistance pursuant to any section of 49 U.S.C. chapter 23 or Title 23 U.S.C., covered by this circular, must have its Title VI submission approved by FTA, as specified in FTA Circular 4702.1, "Title VI Program Guidelines for Federal Transit Administration Recipients," and must annually certify compliance regarding the level and quality of transit service through the Annual Certifications and Assurances process.
- d. Equal Employment Opportunity (EEO). Grantees with 50 or more employees that have received in the previous Federal fiscal year capital and/or operating funds of over \$1 million or technical studies grants totaling over \$250,000, must develop and submit to FTA an EEO program. Areas covered by the EEO program are specified in FTA Circular 4704.1, "Equal Employment Opportunity Program Guidelines for [FTA] Recipients."
- e. Disadvantaged Business Enterprise (DBE) Program. Grantees must meet the requirements of the Department of Transportation's (DOT) Disadvantaged Business Enterprise Regulation (49 CFR Part 23) which implements Section 1101 of the Transportation Equity Act for the 21st Century. DBE program requirements are specified in FTA Circular 4716.1A, "Disadvantaged Business Enterprise Requirements for Recipients and Transit Vehicle Manufacturers."
- f. The Americans with Disabilities Act of 1990 (ADA). The ADA prohibits discrimination on the basis of disability. In the area of public transit, the ADA mandates increased accessibility and nondiscriminatory service. This includes the construction of facilities, acquisition of rolling stock or other equipment, undertaking of studies or research, or participation of any program or activity receiving or benefiting from FTA financial assistance. The Act also broadens the range of disabilities which must be accommodated. To comply with this provision, all entities must meet the requirements of DOT's regulations implementing the ADA. (49 CFR Parts 27, 37 and 38).

The grantee must annually signify compliance with the above civil rights requirements through the Annual Certifications and Assurances.

5. **REPORTING REQUIREMENTS.** The purpose of a grant is defined by the budget at the time of grant approval and is formalized in the Grant Agreement. FTA monitors grant activities to ensure proper grantee stewardship of Federal funds and compliance with the laws and regulations that govern its grant programs. FTA must also be able to report on program results, industry trends and its own oversight responsibilities. The information FTA needs for program forecasting, management and reporting is furnished through narrative milestone/progress reports submitted by grantees about significant events, relevant grant activities and any changes to or variances in the grant schedule or budget.

With respect to the level of detail required for these reports, FTA treats all approved activity line items alike. Thus, an activity contained in a Capital Program grant (49 U.S.C. Section 5309), and a project contained in an Urbanized Area Formula Program grant (49 U.S.C. Section 5307), must be presented in the reports in sufficient detail that important information is not lost in aggregation. For example, the number of full-sized buses in a grant must not be reported together with vans and supervisory automobiles under the heading "rolling stock." FTA staff are available to meet with grantees soon after grant approval to mutually agree on an appropriate level of reporting detail. This will assure that FTA has the information needed to manage its overall program and to respond fully to specific requests from Congressional committees, auditors and the general public.

- f. **Milestone/Progress Reports.** The requirement for milestone/progress reports applies to all FTA grants covered by this circular. This report should be provided electronically through the FTA electronic award and management system. Procedures are available from the FTA regional offices. If only operating assistance is involved, the reporting requirements are limited to the estimated and actual dates when all funding has been expended. FTA reserves the right to review operating revenue and expense records for these operating-only grants. Depending on project complexity, FTA may also request other special reports or quarterly project management meetings. Final project reports are discussed in Close-Out Procedures at the end of this chapter. Each milestone/progress report should include the following data:
1. Address each activity line item within the approved grant unless FTA advises otherwise.
  2. Include a discussion of all budget or schedule changes.
  3. For each milestone, include original estimated completion date, revised estimated completion date, and the actual completion date if applicable.
  4. Provide the dates of expected or actual requests for bid, delivery, etc.
  5. Provide a narrative description of projects, status, specification preparation, bid solicitation, resolution of protests, and contract awards.
  6. Analyze significant project cost variances. Completion and acceptance of equipment and construction or other work should be discussed, together with a breakout of the costs incurred and those costs required to complete the project. Use quantitative measures, such as hours worked, sections completed or units delivered.
  7. Include reasons why any scheduled milestones or completion dates were not met, identifying problem areas and discussing how the problems will be solved. Discuss the expected impacts of delays and the steps planned to minimize these impacts.
  8. Provide a list of all outstanding claims exceeding \$100,000, and all claims settled during the reporting period. This list should be accompanied by a brief description, estimated costs, and the reasons for the claims.



9. Include a list of all change orders and amounts exceeding \$100,000, pending or settled, during the reporting period. This list should be accompanied by a brief description.
- b. Transit Enhancement Reports are required from recipients with population areas of 200,000 and above who receive funds under the Urbanized Area Formula Program (section 5307). The term "transit enhancement" means projects that are designed to enhance mass transportation service or use and are physically or functionally related to transit facilities. Enhancements are defined in the urbanized area formula program application circular, FTA Circular 9030.1C. Recipients of these funds are required under Section 5307(f) to submit a report listing the projects carried out during the previous fiscal year with those funds to include the amounts expended. This report is to be submitted as a narrative attachment to the electronic 4th quarter milestone/progress report. Certification that this report has been submitted is required as part of the Annual List of Certifications and Assurances.
- c. Financial STATUS Reports. FTA grant recipients are to submit financial information through the electronic award and management system. This report should be provided concurrently with the milestone/progress reports.
- d. Disadvantaged Business Enterprise (DBE) Quarterly Progress Reports. As with financial reports, grantees may submit these reports (required by FTA Circular 4716.1A) with other quarterly reports if furnishing paper form.
- e. Reports of Significant Events. Unforeseen events that impact the schedule, cost, capacity, usefulness or purpose of the project should be reported to FTA immediately after detection and then reflected in the next quarterly progress report. Special reports should be submitted when:
  1. Problems, delays, or adverse conditions will affect the grantee's ability to achieve project objectives within the scheduled time period or within the approved project budget. The report should discuss actions taken and/or contemplated and any Federal assistance needed to resolve the situation; or,
  2. Favorable developments will enable the grantee to achieve project goals/complete project activities ahead of schedule or at lower cost.
- f. Report Due Dates. Urbanized area formula and capital program financial status reports (FSR) and milestone/progress reports are due to FTA within 30 days after the end of each calendar quarter, i.e., by January 30, April 30, July 30, and October 30. All state recipients of planning assistance are required to submit their reports annually. In individual cases, FTA may grant extensions of report due dates. Payments may be withheld when reports are not submitted as agreed.

Submission of FSRs and milestone/progress reports for grants in FTA's non-urbanized area formula, elderly and persons with disabilities, metropolitan planning, and state planning and research programs are due annually for the period ending September 30 each year. FTA may request more frequent reporting when circumstances warrant.

2. GRANT MODIFICATIONS. A grant obligates the grantee to undertake and complete activities defined by the scope and budget as incorporated in the grant agreement. The grant budget, as used in this circular, means the approved financial plan that FTA and the grantee agree will be followed in carrying out the purposes of the grant. During the course of the program or project, it

may be necessary to modify the grant by revising the budget or amending the grant agreement. For example, modifications may be required because of changes in the purpose, description, terms and conditions, or an increase in the cost of an approved grant.

f. Definitions.

1. Grant Scope is defined as the broad purpose or objectives of a grant. The scope of a grant may encompass one or more specific projects.
  2. Project scope is defined as the broad purpose of a specific project within a grant. There may be multiple scopes identifying each of the different projects within a grant and each scope may contain a number of activities which represent the estimate of actions needed to complete the project. FTA reserves the right to consider other information in determining the "scope of the project" when that term is used for legal purposes. See the Master Agreement.
  3. Project Activity Line Item is defined as the description and dollar amount contained in the budget for an approved grant activity associated within a particular scope approved as part of a grant. Activity line items under each scope are informational and are used as tools for the FTA and grantee to manage the grant. Quantities of rolling stock must be recorded at the project activity line item level.
  4. Budget Revision is defined as any change within the scope of the original grant. A budget revision may be a transfer of funds within a project or among projects within an approved grant. It could also include the addition or deletion of an activity. A budget revision cannot be used to materially change the purpose or intent, i.e., scope, or Federal dollar amount of the grant. When a transfer is performed between capital/operating/planning activities, a financial purpose code (FPC) change is made by the FTA project manager. Grant recipients should be aware of this when initiating drawdowns.
  5. Administrative Amendment. An administrative amendment is defined as a minor change in a grant agreement normally initiated by FTA to modify or clarify certain terms, conditions or provisions of a grant.
2. Lapsed Funds. It is important to note that the authority to obligate program funds lapses, i.e., ceases to be available, at the end of the funds' period of availability. After the year of availability, any lapsed funds already approved in a grant can only be used for the purpose for which the funds were approved. Proposed changes in the scope of a grant cannot be done with lapsed funds, however, budget revisions are still allowable. If all activities in the approved grant have been completed, and there are lapsing funds that are unobligated by the grantee, these funds should be deobligated by FTA. Because of the potential for severe penalties for anti-deficiency violations, grantees must exercise careful judgment in determining changes to their grants. A grantee should periodically review the funding approved in their grants and its availability. The year of funding can be found on the last page in the approved project budget under the accounting classification.

Planning and capital grant changes are summarized in Exhibit I-1, at the end of this chapter. The table provides an overview of the relationship between budget revisions, administrative amendments and grant amendments as described in the text.

3. Budget Revisions.

1. General. The approved grant budget is sent to the grantee electronically following FTA approval of the grant. The grantee is responsible for controlling and monitoring all grant activities to ensure that they are carried out in accordance with the approved

budget, including control of individual projects within the grant.

Beyond assuring that grantees' budget revisions will not change the amount or scope of a grant, the grantee may change the dollar amount to be spent to procure or construct items under an individual activity item. FTA monitors grants to confirm that grantees establish and follow procedures that are reasonable and comply with FTA requirements. Grant changes may be made by budget revision if the purpose, scope and amount of the grant will remain unchanged.

2. Prior Approval. Grantees must obtain prior FTA approval electronically for the following proposed budget revisions.
  - a. Prior FTA approval is required when the Federal share of the grant exceeds \$100,000 and the cumulative amount of project funds to be transferred between or among activities, (including all budget revisions since the last one specifically approved by FTA) exceeds twenty percent. Proposed budget revisions for planning grants which exceed thirty percent require prior FTA approval
  - b. Prior FTA approval is required when the revision would transfer funds between operating and capital/planning categories, or between activity line items with different Federal matching ratios, such as from 80/20 to 83/17 option to include "Americans with Disabilities Act" or "Clean Air Act" requirements.
  - c. Prior FTA approval may be required when the revision is for the addition or deletion of capital expenditures. The grantee should refer to OMB Circular A-87, attachment B for selected items of cost. Paragraph 19.c. of that attachment indicates criteria for requiring FTA approval.
  - d. Prior FTA approval is also required for a formula or capital program grant if the budget revision would:
    3. Increase or reduce the number of revenue rolling stock vehicles to be purchased by more than two units.
    4. Change the size or physical characteristics of the activities specified in a grant.
    5. Advance a formula program Section 5307 contingency project if the contingency project is not in year one of the current TIP.
- d. Administrative Amendment.
2. Modify Terms. An administrative amendment cannot be used to change the scope of a grant. An administrative amendment may be used to change or clarify the terms, conditions or provisions of a grant contract. These usually are initiated by FTA and may be used only when no change will result in the scope, amount or purpose of the grant. An administrative amendment is used to modify a grant contract for such purposes as to comply with changes required by FTA law, to change the year or type of funds obligated for a grant, to transfer equipment from one grantee to another, to reflect a change in the grantee's name, or to deobligate Federal funds that are not needed to complete approved project scope or purpose.
3. Operating Period Changes. An administrative amendment may be used to institute time period changes, adjustments or extensions to time of operating period provided the total amount of Federal funds previously awarded under the grant remains unchanged. The grantee may enter a change in electronic text with a brief explanation. This allows sufficient flexibility to encompass

potential time adjustments, and allows the FTA office sufficient time to review.

If a time period is part of the grant agreement, the grantee may request a time change in a brief letter for approval by the Regional Administrator. This is then retained for potential auditor review. The alternate option is to specify a longer time period in the original grant to encompass any potential time adjustments that may become necessary or do not specify a finite time period, [e.g., "for the next operating period"] which provides maximum flexibility.

- e. Grant Amendment. An increase in the Federal share or a change in the scope of a grant requires a grant amendment.
  0. A grant amendment is required when proposed changes in the grant would:
    - a. Materially alter the objective of the approved project (i.e., change the scope); or
    - b. Require an increase in the Federal share.
  1. Requirements. Grant amendments are subject to the same application requirements as a new grant request. Issuance of a revised grant agreement and budget is required for an amendment and, because a change in scope or funding of the grant results, a change in the previous obligation of funds is also required. FTA can reobligate funds only if the previously obligated funds have not lapsed.
  2. Procedures. An amendment must be used for grant changes that cannot be handled by a budget revision or administrative amendment. Amendments require the issuance of a revised grant agreement and budget, and may require a change in the amount of funds obligated for the grant. A deobligation and reobligation of funds to accompany a change in project scope can occur only if the previously obligated funds have not lapsed, or if new funds are available.

An amendment is subject to the same requirements as a new grant request except that the grantee need not resubmit portions of the original grant application which are unaffected by the change. The grantee must submit a detailed description of the changes, a revised project budget and if applicable, an SF-424 form if there are changes in funding levels. These changes may be accomplished electronically.

0. Change of Scope. The scope of a grant is changed by the following.
  - d. A transfer within an approved planning grant budget that cumulatively exceeds thirty percent of the budget most recently approved by FTA when FTA's share of the grant is more than \$100,000 would constitute a scope change. This would include changes totaling 30 percent or more at the state (cumulative) level for metropolitan planning (49 U.S.C. Section 5303) grants as well as at the state level for statewide planning (49 U.S.C. Section 5313).
  - b. A material change that FTA concludes would modify an activity item, project description or the size or type of items specified in any grant would constitute a scope change.
  - c. Changes in quantity of items to be purchased or constructed generally trigger an amendment only when they are significant enough to materially change the purpose or intent of the approved grant as defined by the scope. Changes in quantities for revenue rolling stock that exceed 20 percent of the base amount, where specified, are generally considered significant changes and will require processing of a grant amendment.

- d. Changes in activity item quantities may be made by budget revision unless the change is so significant as to materially alter the grant's basic purpose. The 20 percent threshold does not apply to changes in activity items when quantities are not specified at the scope level in the approved project budget.
- e. A change to a grant to add a project, if not previously included as a contingency project in an approved TIP/STIP, or to delete a project if the deletion affects the intent or objectives of the grant would constitute a scope change.
  - 5. Funds Reobligation. To effect a change in scope of a formula grant, the Federal funds previously approved must not have lapsed and the obligation of Federal funds must be changed as follows.
  - 6. Scope Reduction. If the scope of a grant is reduced or the cost of the original scope decreases, the funds obligated to it must be reduced accordingly unless offsetting cost increases are approved by FTA.
  - 7. Activity Replacement. If a grant is changed to replace some activities by others within a scope, funds must be adjusted to reflect the change.
  - 8. Increase in the Project Amount. If the scope of a grant increases or the costs of the original scope increases and additional Federal funds are required, new funds may be obligated to the project.

## 2. PROCUREMENT.

- g. General. Third party contracts are entered into by the grantee for procurement of supplies, equipment, construction, and other services required to implement a grant project. Grantees must follow certain procedures to ensure that these materials and services are obtained in free and open competition, prices are fair and reasonable, and are in compliance with the provisions of applicable Federal, State and local laws. This includes affording procurement opportunities to small and disadvantaged business enterprises.

For information on specific third party contracting standards, see FTA Circular 4220.1D, dated April 15, 1996, entitled "Third Party Contracting Guidelines," and FTA Circular 4716.1A, entitled "FTA Disadvantaged Business Enterprise Requirements for Recipients and Transit Vehicle Manufacturers." Inter-agency agreements passing through grant funds to other public bodies (including transit operators) are not third-party contracts. The pass-through grantee must comply with FTA Circular 4220.1D (or subsequent revision), if it enters into any subsequent third-party contracts using FTA grant funds.

- h. Claims and Change Orders. FTA will not substitute its judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts.
  - 0. Interest and Rights. Consistent with provisions of the grant agreement, third party contractor claims are to be evaluated and resolved by the grantee pursuant to the following considerations, requirements and limits.

1. FTA has a vested interest in the settlement of disputes, defaults, or breaches involving any federally assisted third party contracts.
2. FTA retains a right to a share of any proceeds recovered through a third party contract claim, in proportion to the Federal share committed to the project. If the third party contract contains a liquidated damages provision, any liquidated damages recovered must be credited to the project unless FTA permits other uses of the funds involved.
3. The grantee must pursue all legal rights available under any third party contract.
4. The grantee must notify FTA of any current or prospective litigation or major disputed claim in excess of \$100,000 relating to any third party contract.
5. Claims for reimbursement that result from third party contract change orders issued by the grantee are handled as sole source procurements under provisions of FTA Circular 4220.1D, not as claims. All change orders must be approved by authorized grantee officials and supported by cost justification. The cost must be allowable, within the grant scope, allocable and reasonable for the completion of project scope to be eligible for funding under an FTA grant.

1. Settlement of Claims.

1. In order to substantiate each part of a large claim before settlement, a formal audit may be conducted by the grantee. In those instances, the audit should be conducted in accordance with "Generally Accepted Auditing Standards" as defined by the American Institute of Certified Public Accountants.
2. Before settlement of other claims, the grantee may prefer to undertake an audit or similar analysis.
3. The grantee must adequately document in its project files all pertinent facts, events, negotiations, applicable laws, and a legal evaluation of the likelihood of success in any potential litigation proceeding.
4. The grantee must assure that its documentation provides sufficient information to serve as the basis for FTA concurrence in the compromise or settlement of the claim, in the event that FTA review and concurrence become necessary. Although FTA does not become involved in the negotiation of a claim, the FTA may review the reasonableness of a negotiated settlement for the purpose of determining the extent of our participation in the settlement.
5. Cost Sharing. Any Federal cost sharing in grantee's third party contractor claims will be determined as follows. Claims that result from grantee negligence or error normally are not eligible for FTA participation. For example, FTA normally will not participate in any claim settlement for which the grantee failed to:

1. obtain clear access to all needed right-of-way prior to award of the construction contract;
2. execute all required utility agreements in time to assure uninterrupted construction progress;
3. undertake comprehensive project planning and scheduling to achieve proper coordination among contractors;
4. inform potential contractors of all available geo-technical information on subsurface conditions;
5. assure that all grantee-furnished materials are compatible with contractor project facilities and/or equipment and available when needed;
6. complete all pre-construction survey and engineering prior to issuing the contractor a Notice to Proceed;
7. obtain the necessary approvals and agreements from all other public authorities affected by the project prior to contract award; or
8. assure that all design and shop drawings are promptly approved and made available to the

contractor as needed.

If the grantee's claim records substantiate that reasonable and prudent measures were taken to prevent or offset the causes underlying the claim, FTA may participate in the negotiated cost. Subject to availability of funds, FTA can fund a prorated share of the properly incurred, eligible costs of contractor claims that are not caused by mismanagement on the part of the grantee or attributable to the contractor.

1. FTA Review and Concurrence. Grantees must secure FTA review and concurrence in a proposed claim settlement before using Federal funds in the following instances:
  1. when negotiated settlement exceeds \$100,000;
  2. when insufficient funds remain in the approved grant to cover the settlement; or
  3. where a special Federal interest is declared because of program management concerns, possible mismanagement, impropriety, waste or fraud.
  
1. Claims Review. When deemed necessary, FTA may initiate review of grantee claims file/history or experience under a particular grant. Claimed amounts, determined to be ineligible through subsequent audit or FTA review, if already disbursed, must be returned to FTA by the grantee.
2. Claims List. A list of all outstanding claims exceeding \$100,000 and a list of all claims settled during the reporting period are required as part of each quarterly progress report. This list should be accompanied by a brief description and reasons for each claim.
3. ROLLING STOCK PURCHASES.
  - h. Buy America. The grant applicant must certify that in carrying out a procurement it will comply with applicable Buy America laws. Specific Buy America requirements apply to each acquisition of iron, steel, or manufactured goods, including rolling stock. Unless an acquisition qualifies for a waiver, Federal transit assistance authorized by 49 U.S.C. chapter 53 and 23 U.S.C. (Highways) may not be used to finance the acquisition of iron, steel, or manufactured goods that are not produced in the United States. [49 U.S.C. Section 5307(d)(1)(E). Also see Category XII, item A(5) in Annual Certifications and Assurances. Also in accordance with 49 U.S.C. Section 5323(j), and FTA Buy America regulations, 49 CFR. Part 661.]
  - i. Pre-Award and Post Delivery Audits. FTA requires grant recipients purchasing revenue passenger rolling stock to undertake reviews of the rolling stock prior to the award of the contract and following delivery of the vehicles. The intention is to improve compliance with Buy America requirements, the grantee's bid specifications, and Federal Motor Vehicle Safety Standards. Compliance must be certified on the Annual List of Certifications and Assurances. The requirement is from 49 U.S.C. Section 5335(a) and is implemented in a regulation (49 CFR. 663).
  - j. Requirements for Bus Fleets. FTA has established several policies that are meant to ensure that buses purchased or leased with Federal funds are maintained and remain in transit use for a minimum normal service life and to ensure that the buses acquired are necessary for regularly scheduled transit revenue service (i.e., to meet peak service requirements with a reasonable allowance for spares).
  
1. Service Life Policy. Service life of rolling stock begins on the date the vehicle is placed in revenue service and continues until it is removed from service. Minimum normal service lives for buses are

vans are:

2. Large, heavy-duty transit buses (approximately 35'-40', and articulated buses): at least 12 years of service or an accumulation of at least 500,000 miles.
3. Medium-size, heavy-duty transit buses (approximately 30'): 10 years or 350,000 miles.
4. Medium-size, medium-duty transit buses (approximately 30'): 7 years or 200,000 miles.
5. Medium-size, light-duty transit buses (approximately 25-35'): 5 years or 150,000 miles.
6. Other light-duty vehicles such as small buses and regular and specialized vans: 4 years or 100,000 miles.

It is recommended that grant applicants specify the expected service life category in requests for bids when acquiring new vehicles.

FTA calculates the value of vehicles prior to the end of their minimum normal service life on the basis of a formula using straight-line depreciation as described in paragraph (2)(b) below. Removal of an FTA-funded vehicle from revenue service before the end of its minimum normal service life, except for reasons of fire, collision, or natural disaster, leaves the grantee liable to FTA for the Federal share of the vehicle's remaining value. Consistent with this policy, the suggested vehicle service life standards stated above in years refer to time in normal service, not time spent stockpiled or otherwise unavailable for regular transit duty.

8. Replacement Policies. (Also see Chapter II of this circular for equipment disposition.)
7. Replacement at End of Minimum Normal Service Life. Vehicles proposed to be replaced must have achieved at least the minimum normal service life. For purposes of bus replacement grant applications, the age of the bus to be replaced is its years of service or mileage at the time the proposed new bus is introduced into service. A fleet roster must accompany a grant application for which funds are requested to replace vehicles.
8. Early Disposition Policy. If a vehicle is replaced before it has achieved its minimum normal service life, the grantee has the option of returning to FTA an amount equal to the remaining Federal interest in the vehicle or applying the "Like-Kind Exchange" policy (discussed below) and placing an amount equal to the remaining Federal interest in the vehicle into a newly purchased vehicle.

To determine the Federal interest in a federally funded vehicle during its minimum normal service life straight-line depreciation formula is used: for example, for a bus with a 12-year minimum normal service life, the bus's value decreases each year by 1/12 of its original purchase price. Similarly, the Federal interest in the bus decreases each year by 1/12 of the amount of the Federal grant that was awarded for its purchase.

- c. Use of Like-Kind Exchange Policy. A vehicle may be traded-in or sold before the end of its minimum normal service life, if a grantee so chooses. Moreover, a grantee may elect to use the trade-in value or the sales proceeds from the vehicle to acquire a replacement vehicle of like kind. "Like-Kind" means a bus for a bus with a similar service life and a rail vehicle for a rail vehicle. Under the Like-Kind Exchange policy, proceeds from the vehicle sales are not returned to the FTA; instead, all proceeds must be invested in acquisition of the like-kind replacement vehicles. If sales proceeds are less than the amount of the Federal interest in the vehicle to be replaced, the grantee is responsible for providing the difference along with the grantee's local share of the cost of the replacement vehicle. If sales proceeds are greater than the amount of the Federal interest, the investment of all the proceeds in



acquisition of the like-kind replacement vehicle results in reduction of the gross project cost.

Grant applicants interested in buying a replacement vehicle before the end of the minimum normal service life of the vehicle to be replaced should refer to the FTA Notice, "Change in Policy on Sale and Replacement of Transit Vehicles," published in the

2. Rebuilding Policies. Buses to be rebuilt should be at the end of the minimum normal service life as previously described, and in need of major structural and/or mechanical rebuilding. The age of the bus to be rebuilt is its years of service at the time the rebuilding begins. The eligibility of this major capital bus rebuild work is in addition to the eligibility of vehicle overhauls as described below.

Depending upon the extent of rebuilding planned, it may be subject to Americans with Disabilities Act requirements. Rebuilding is also an eligible capital cost under the category of preventive maintenance.

1. Vehicle Overhauls. Rolling stock overhauls are an eligible capital expense. FTA assistance for vehicle overhaul is based on a percentage of annual vehicle maintenance costs. A grant applicant may apply for FTA capital assistance for vehicle overhauls in an amount up to 20 percent of its annual vehicle maintenance costs. This eligibility for capital assistance applies also to leasing and to contracted service. This eligibility is in addition to eligibility of rebuilding discussed in paragraph (3) above. Because the category, "vehicle overhaul-20 percent" is also an eligible capital cost under the category of preventive maintenance, FTA intends to eliminate the category "vehicle overhaul-20 percent" beginning with FY 2000 funds.
2. Spare Ratio Policies. Spare ratios will be taken into account in the review of projects proposed to replace, rebuild, or add vehicles. The basis for determining a reasonable spare bus ratio takes local circumstances into account. The number of spare buses in the active fleet for grantees operating 50 or more revenue vehicles should not exceed 20 percent of the number of vehicles operated in maximum service.

For purposes of the spare ratio calculation, "vehicles operated in maximum service" is defined as the total number of revenue vehicles operated to meet the annual maximum service requirement. This is the revenue vehicle count during the peak season of the year, on the week and day that maximum service is provided. It excludes atypical days and one-time special events. Scheduled standby vehicles are permitted to be included as "vehicles operated in maximum service."

Spare ratio is defined as the number of spare vehicles divided by the vehicles required for annual maximum service. Spare ratio is usually expressed as a percentage, e.g., 100 vehicles required and 20 spare vehicles is a 20 percent spare ratio.

For each grant application to acquire vehicles, a grant applicant must address the subjects of current spare ratio, the spare ratio anticipated at the time the new vehicles are introduced into service, disposition of vehicles to be replaced, and the applicant's conformance with the FTA spare ratio guideline. An applicant is required to notify FTA if the spare ratio computation on which the grant application is based is significantly altered prior to the grant award. A fleet status report must be submitted with each grant application to acquire rolling stock.

3. Contingency Fleet. Buses may be placed in an inactive contingency fleet -- stockpiled -- in preparation for emergencies. No bus may be stockpiled before the vehicle has reached the end of its minimum normal service life. Buses held in a contingency fleet must be properly stored,

maintained, and documented in a contingency plan, updated as necessary, to support the continuation of a contingency fleet. A contingency plan is not an application requirement, although FTA may request information about the contingency fleet during application review. Contingency plans are subject to review during triennial reviews required for the Urbanized Area Formula Program. Any rolling stock not supported by a contingency plan will be considered part of the active fleet. Since vehicles in the contingency fleet are not part of the active fleet, they do not count in the calculation of spare ratio.

d. Requirements for Fixed Guideway Rolling Stock.

5. Service Life. In the case of rail vehicles acquired with FTA assistance, FTA has established a minimum normal service life of 25 years. Service life of rolling stock begins on the date the vehicle is placed in revenue service and continues until it is removed from service. The service life in years refers to total time in normal transit service, not time spent stockpiled or otherwise unavailable for regular transit use. A grantee that regularly measures lifespan by hours of operations, or by any other measure, may develop an appropriate methodology for converting its system to years of service. The reasonableness of such methodologies will be subject to examination, particularly if the grantee proposes to retire a vehicle before FTA's service life requirement has expired.

When a grantee removes a vehicle financed by FTA from service before expiration of its minimum normal service life--except for reasons of fire, collision, or natural disaster--the grantee is legally obligated to FTA for an amount equal to the Federal share of the vehicle's remaining value, as explained further below. The value of a vehicle prior to the end of its minimum normal service life is calculated on the basis of straight-line depreciation.

6. Replacement. (Also see Chapter II of this circular on Equipment Disposition.)

- d. Replacement at End of Minimum Normal Service Life. Before a grantee may replace an old rail vehicle with a new rail vehicle, the old vehicle must have reached or exceeded its 25-year minimum normal service life. For purposes of a rail vehicle replacement project, the age of the vehicle to be replaced is its age at the time the new vehicle is introduced into service. FTA's 25-year service life requirement is a minimum standard.
- e. Early Disposition. If a vehicle is replaced before the end of its minimum normal service life, the grant applicant has the option of returning to FTA an amount equal to the remaining Federal interest in the vehicle or using FTA's "Like Kind Exchange" policy and putting an amount equal to the remaining Federal interest in the vehicle into a newly purchased vehicle.

To determine the Federal interest remaining in a federally financed rail vehicle, one must first calculate the total value remaining in the vehicle using the straight-line depreciation method. Based on straight-line depreciation, the value of a rail vehicle with a 25-year minimum normal service life decreases by 1/25 of the purchase price for each year the vehicle has been in transit service. Thus, a rail vehicle in service for 20 years has a total remaining value of 5/25 or 1/5 of the original purchase price. Having calculated the total remaining value, one then multiplies that figure by the percentage of Federal assistance that was provided to purchase the vehicle. The product of this multiplication represents the Federal interest

remaining in the vehicle.

- f. Use of Like-Kind Exchange. A vehicle may be traded-in or sold before the end of its minimum normal service life, if a grantee so chooses. Moreover, a grantee may elect to use the trade-in value or the sales proceeds from the vehicle to acquire a replacement vehicle of like kind. "Like-Kind" means a bus for a bus with a similar service life and a rail vehicle for a rail vehicle. Under the Like-Kind Exchange policy, proceeds from the vehicle sales are not returned to the FTA; instead, all proceeds must be invested in acquisition of the like-kind replacement vehicles. If sales proceeds are less than the amount of the Federal interest in the vehicle to be replaced, the grantee is responsible for providing the difference, along with the grantee's local share of the cost of the replacement vehicle. If sales proceeds are equal to or greater than the amount of the Federal interest, all the proceeds also must be used to purchase the like-kind replacement vehicle, and the reinvestment amounts to a lowering of the gross project cost. Grant applicants interested in buying a replacement vehicle before the end of the minimum normal service life of the vehicle to be replaced should refer to the FTA Federal Register Notice, "Change in Policy on Sale and Replacement of Transit Vehicles," 57 Fed. Reg., 39328, August 28, 1992.
- g. Rebuilding. Any rail vehicle that will be rebuilt must have an accumulated service life of at least 12 years (mid-life rebuild) or must have reached the end of its minimum normal service life (end-of-life rebuild). The eligibility of this major capital rail rebuild work is in addition to the eligibility for vehicle overhauls (paragraph c below). The rebuilding is also eligible as preventive maintenance.
- h. Spare Ratio. Because rail transit operations tend to be highly individualized, FTA has not established a specific number to serve as an acceptable spare ratio for rail transit operations. Nevertheless, rail operators should be aware that the grant applicant's rail vehicle spare ratio and the rationale underlying that spare ratio will be examined as part of the grant application review whenever FTA assistance is requested to purchase rail vehicles, and during the triennial review. A fleet status report must be submitted with any grant application for assistance to acquire rolling stock. As in the calculation of spare ratio for bus fleets, scheduled standby fixed guideway vehicles are permitted to be included as "vehicles operated in maximum service."

The following guidance should be used to support an operator's proposed spare ratio when the spare ratio is under review by FTA:

2. An operator of a rail system must have in its file available upon request by FTA a fleet management plan that addresses operating policies (level of service requirements, train failure definitions and actions); peak vehicle requirements (service period and make-up, e.g., standby trains); maintenance and overhaul program (schedules, unscheduled, and overhaul); system and service expansions; rail car procurements and related schedules; and spare ratio justification.

3. Spare ratio justification should consider: average number of cars out of service for scheduled maintenance, unscheduled maintenance and overhaul program; allowance for ridership variation (historical data); ridership changes that affect car needs caused by expansion of system or services; contingency for destroyed cars; and car procurements for replacements and system expansions.
  4. Cars delivered for future expansion and cars that have been replaced, but are in the process of being disposed of, should be identified and separated from other spares because they unfairly inflate the spare ratio.
  5. Peak Vehicle Requirement includes "standby" trains that are scheduled, ready for service, and have a designated crew.
  6. Factors that may influence spare ratio are: equipment make-up (locomotive hauled trains; married pair units or single cars; equipment design, reliability and age); environmental conditions (weather, above ground or underground operation, loading and track layout); operational policies (standby trains, load factors, headways); maintenance policies (conditions for removing cars from service, maintenance during nights and weekends, and labor agreement conditions; and maintenance facilities and staff capabilities.
4. Vehicle Overhaul. Rolling stock overhauls are an eligible capital expense; this is considered a major re-work item. Another assistance category for overhauls, available since 1996, has been that referred to as "vehicle overhaul -20 percent." In that option, a grant applicant has been able to apply for FTA capital assistance in an amount up to 20 percent of its annual vehicle maintenance costs for vehicle overhauls, and FTA has participated in the total project cost at the 80/20 Federal/local share ratio. Because preventive maintenance, defined as all maintenance, has been authorized as a capital expense by TEA-21, FTA intends to eliminate as redundant the category "vehicle overhaul-20 percent," concurrent with the appropriation of Fiscal Year 2000 funds. The eligibility for the major re-work categories, vehicle overhauls and rebuilding, will continue.

## 9. DESIGN AND CONSTRUCTION

- i. Buy America Requirements. The grant applicant must certify that in carrying out a procurement authorized for the Urbanized Area Formula Program the applicant will comply with applicable Buy America laws (49 U.S.C. Section 5307(d)(1)(E)). (See Category XII, in Annual Certifications and Assurances.) In accordance with 49 U.S.C. Section 5323(j), and FTA Buy America regulations, 49 CFR. Part 661, specific Buy America requirements apply to each acquisition of iron, steel, or manufactured goods, including rolling stock. Unless an

acquisition qualifies for a waiver as discussed further in this section, Federal transit assistance authorized by 49 U.S.C. chapter 53 and 23 U.S.C. (Highways) may not be used to finance the acquisition of iron, steel, or manufactured goods that are not produced in the United States.

- b. Environmental Mitigation. The National Environmental Policy Act (42 U.S.C. 4321) and the FTA's implementing procedures (23 CFR Part 771) require that the environmental effects of proposed transit projects be documented and that environmental protection be considered before a decision can be made to proceed with a project. Where adverse environmental effects are likely to result, 49 U.S.C. Section 5324(b) Economic, Social and Environmental Interests, require that alternatives be considered to avoid those effects. If there is no feasible and prudent alternative which avoids the adverse environmental effects, then all reasonable steps must be taken to minimize those effects.

Measures to avoid or mitigate environmental harm are described in the environmental documents prepared for projects. These measures have been developed jointly by FTA and the grantee to respond to State and local as well as Federal environmental requirements. The mitigation measures in final environmental documents are expressed as commitments on the part of the grantee which will be implemented if the project receives Federal funding. When a grant is made, the mitigation measures are incorporated by reference in the grant agreement for construction and become legally binding terms and conditions of the grant which cannot be withdrawn or substantively changed without FTA's approval.

The progress in implementing adopted mitigation measures is monitored by FTA regional staff through periodic project reviews, on-site inspections and special meetings when necessary. The grantee has the responsibility to apprise FTA at the earliest possible time of any problems in implementing the adopted measures and any need for changes. Where mitigation options are being considered, FTA will maintain a role in the decision making process to ensure continuing compliance with DOT regulation 23 CFR Part 771 implementing Environmental Impact & Related Procedures, and 49 U.S.C. Section 5324 (b) Economic, Social and Environmental Interests .

Information about FTA's environmental protection process is available through the FTA regional office.

- c. Project Management Plan. A written plan is required by 49 U.S.C. Section 5327. Grantees develop and implement a project management plan for all major capital projects funded by FTA as part of the Project Management Oversight Program. This plan covers a grantee's detailed project management strategy to control the project budget, schedule and quality. (See paragraph Design and Construction for definition of major capital project.)

As a general rule, if the project meets the definition of major capital project, the grantee must submit the project management plan during the grant application review process. If FTA determines the project is major after the grant has been

approved, FTA will inform the grantee of its determination and will require submission of the plan within 90 days. (See 49 CFR Part 663, dated 9-1-89.)

d. Utility Relocation.

9. General. The construction of transit systems may require the relocation and/or rearrangement of privately and publicly owned utilities. These utilities include, but are not limited to systems and physical plant for producing, transmitting or distributing communications, electricity, gas, oil, crude oil products, water, steam, waste storm water, or other substances; publicly owned fire and police signal systems; and railroads and streets which directly or indirectly serve the public or any part thereof. Relocating and/or rearranging utilities and facilities necessary to accommodate an FTA-funded transit system may be considered an eligible expense as part of an FTA-funded project. Exceptions to this include those situations where State and local law expressly prohibit the financing of such by the public entity.

10. Eligibility for FTA Funding. In order to qualify for FTA funding, the grantee must execute an agreement for relocating or rearranging facilities with the entity responsible for the facilities prescribing the procedures for the relocation and/or rearrangement of the facilities for the purpose of accommodating the construction of the FTA funded project. Prior FTA approval is not required in reaching a utility relocation agreement.

11. Utility Relocation Agreement. These agreements are distinguishable from third party contracts in that:

Only actual allowable, allocable, and reasonable costs are reimbursable. Where the work is to be performed by the public utility's forces, no profit is allowed; and

Reimbursement is limited to the amount necessary to relocate and/or rearrange the facilities to effect a condition equal to the existing utility facilities. Generally, reimbursement would not provide for greater capacity, capability, durability, efficiency or function, or other betterments, except for meeting current state and local codes. Indirect costs of governmental entities incurred under a utility relocation agreement are eligible for FTA reimbursement only in accordance with an approved Cost Allocation Plan as prescribed in OMB Circular A-87.

b. Force Account. Force account is work other than grant or project administration that is included in an approved grant and performed by a grantee's own labor forces. Force account work may consist of design, construction, refurbishment, and inspection, and construction management activities, if eligible for reimbursement under the grant. (See paragraph 14b below.) Incremental labor costs from flagging protection, service diversions or other activities directly related to the capital grant may also be defined as force account work. Force account work does not include grant or project administration activities which are otherwise direct project costs. Force account

also does not include work on rolling stock which is not a major capital project.

One of four conditions may warrant the use of a grantee's own labor forces. These are cost savings, exclusive expertise, safety and efficiency of operations, and union agreement.

FTA prior review of a force account plan and justification are required where the total estimated cost of force account work to be performed under the grant is greater than \$10,000,000. When work to be performed is less than \$10,000,000 but over \$100,000, a force account plan is required to be in the grantee's file, but does not require prior FTA approval. When work to be performed using force account is less than \$100,000 a detailed plan is not required.

Basis for Reimbursement. Reimbursement for force account work is subject to the grantee providing the following:

9. Justification for using grantee forces;
10. Preparation of a force account plan;
3. A description of the scope of work;
4. A copy of the construction plans and specifications which includes:
  - c. A detailed estimate of costs
  - d. A detailed schedule and budget; and
  - e. A copy of the proposed cooperative agreement when another public agency is involved.
5. Submit documentation equivalent to a sole source justification stating the basis for a determination that no private sector contractor has the expertise to perform the work. In addition, the required documentation must provide the basis for the grantee decision to use force account labor including the following information;
6. Provide the present worth of the estimated cash drawdown for both the force account and private sector contract options. In the analysis, use the current interest rate paid on one-year Treasury Bills as the discount rate;
7. Include the cost of preparing documents; cost of administration and inspection; cost of labor, materials and specialized equipment; cost of overhead; and profit for private contract;
8. Include the unit prices for labor; materials and equipment; overhead; and profit, if applicable for private contract;
9. Provide certification that costs presented are fair and reasonable;
10. Provide an analysis of force account labor availability, considering normal operations and maintenance activities as well as other programmed and existing capital projects. This must be consistent with costs of labor, material and specialized equipment; and
11. Provide relevant citations from labor union agreements and an analysis of how it pertains to the work in question.

Base the present value calculation on the midpoint of construction; and if the time for completion of the work differs for force account and a private sector contract, include an estimate of the cost of not using the completed improvement in the present worth calculation. For example, if the work is to replace leased facilities, the cost of continuing the lease until the work is complete should be taken into account in the cost estimate for each option considered.

Safety considerations may be addressed by a statement of the transit operator's safety officer that performing the work with private sector contractors would have an adverse effect on public safety. Efficiency concerns may be addressed by a present worth calculation, including an estimate of the value of lost transit operation efficiency.

Special care must be taken to ensure that requirements of OMB Circular A-87 are followed, especially for charging expendable property to force account projects and making sure that allowable costs are assigned to the correct activity codes.

Most general purpose equipment and tools can be used in force account work and thereby benefit more than one project. Therefore, the cost of these items normally should not be treated as a direct charge to the project. However, an appropriate use or depreciation charge is an allowable indirect cost if otherwise provided for in the project budget. Unusual circumstances may call for purchase of specialized equipment that is unique to the force account work that is being performed. If such equipment is required, prior FTA approval must be obtained. The usual FTA equipment disposition requirements apply.

The progress and status of force account activities should be separately discussed in milestone/project reports, with emphasis on schedule and budget.

- f. Seismic Standards & Reporting. New Federally funded buildings, and additions to existing buildings and bridges, built with Federal assistance must be designed and constructed in accordance with state, local and industry required standards or codes. The applicant is responsible to know before accepting delivery that the building complies with the seismic design and construction requirements and certify through the annual certification and assurance process, as required by 49 CFR, Part 41.
- g. Value Engineering. Value Engineering (VE) is the systematic, multi-disciplined approach designed to optimize the value of each dollar spent. To accomplish this goal, a team of architects/engineers identifies, analyzes and establishes a value for a function of an item or system. The objective of VE is to satisfy the required function at the lowest total costs (capital, operating and maintenance) over the life of a project consistent with the requirements of performance, reliability, maintainability, safety and esthetics.

#### 0. Applicability.

. Major Projects. It is the FTA policy to require VE on major capital projects, and encourage the application of VE techniques to all construction projects. A major capital project is usually identified during the grant review



process.

- a. Major capital project means the construction, extension, rehabilitation or modernization of fixed guideway or new-start projects with a total project cost in excess of \$100 million; or a project which FTA determines is a major capital project based on criteria defined in 49 CFR, Part 633. Other Projects . Grantees are encouraged to conduct VE on all construction projects including bus maintenance and storage facilities whose costs are estimated to exceed \$2 million, and on revenue railcar acquisition and rehabilitation.
2. Timing. VE on a project should be performed early in the design process before major decisions have been completely incorporated into the design, at or near the end of preliminary engineering (PE) or at 30 percent of design. Some large or complex projects may need to conduct two VE studies.
  3. Reporting. VE Report. Grantees with major capital projects are required to submit a VE report to the appropriate FTA Regional Office at the end of each Federal fiscal year indicating the results of their VE efforts. Copies of the VE report form are available in each regional office.
- h. Peer Review. Peer review is a process used by the grantee in the planning, design and implementation of capital projects. The concept of peer review can be applied to any problem or situation where a second opinion can be useful to decision makers. FTA encourages the grantee to confer with other transit operations and maintenance experts in order to benefit from their experiences. It has been used to review rail extensions, new start projects and the planning of a system of bus facilities. It has provided an in-depth critique of rail systems designs at the preliminary and final engineering stages, provided operations and maintenance information with respect to a variety of rail subsystems and validating the process used by a grantees' planning staff to site bus facilities. The purpose of peer review is to improve the performance of the process or product being reviewed. Basically the question asked is "can we do this better?" Although the grantee is encouraged to conduct peer review with all capital projects, in some instances it may be required by FTA.
  - i. Crime Prevention Review. Grantees are encouraged to perform crime prevention reviews during the design phase of all FTA funded transit facilities with particular focus on the incorporation and use of crime prevention through environmental design techniques. This review should be carried out as a project intended to improve and increase the safety and security of an existing or planned transit system or facility for both transit patrons and transit employees. The level of the review should complement the project size and scope. Local crime prevention

professionals should be included in the review process. Review documentation should remain on file by the grantee and be available for FTA review upon request.

3. SALES PROCEEDS.

- i. General. Procedures for disposition of proceeds from the sales of FTA-funded assets are set forth below. These apply to all planning and capital grants governed by this circular except for previously approved grants that contain terms and conditions to the contrary.

(See Chapter II of this circular for Real and Personal Property and Equipment disposition.)

- j. Definition. Sales Proceeds are the net proceeds generated by the disposition of excess real property or equipment that was purchased in part with FTA grant funds.
- k. Requirement. When a grantee disposes of equipment with a unit value of more than \$5,000, or supplies with an aggregate residual value of more than \$5,000, the grantee must remit to FTA the Federal portion of original participation in market value or net sales proceeds, whichever is greater. Real property must be appraised for its market value. This provision does not apply to proceeds from the licensing or leasing of air rights or from other incidental uses of project property, which are treated as program income. (See Chapter II for alternative options for disposition of real property, equipment and supplies.)
- l. Refunds to FTA. Sales proceeds refunded to FTA must be paid in the form of a check or, if over \$10,000, must be transmitted to FTA by the electronic funds transfer system. See "Repayment Procedure" in chapter IV of this circular.
- m. Proceeds Retained. Certain proceeds from the sale or other disposition of assets will be retained by the grantee. These include the local share of proceeds from the sale of assets that were funded with Federal assistance, all proceeds from the sale of assets not funded with Federal assistance, and all proceeds from the license or lease of air and subsurface rights generated through incidental use of project real property. Proceeds from the sale of locally financed assets that were replaced under a Federal grant must be retained for mass transit purposes. (Also see Chapter II.3 Equipment for insurance proceeds, and other equipment and real property disposition guidelines.)

11. PROGRAM INCOME. Program income means gross income received by the grantee or subgrantee directly generated by a grant-supported activity, or earned only as a result of the grant agreement during the grant period, the time between the effective date of the award and the ending date as reflected in the final financial report. The following provisions apply to all FTA planning and capital grants governed by this circular except for approved grants that contain specific terms and conditions to the contrary. (Also see Chapter III regarding Program Income Accountability, and the Common Rule at 49 CFR. part 18.25.)

- b. Definition. Program income is revenue generated directly or indirectly from grant- supported activities (i.e., income generated by grant funds after they have been applied to authorized grant purposes). Program income is a form of mass transit revenue, but excludes sales proceeds, interest earned on advances of Federal funds and revenues generated by activities that are not grant supported. Examples of program income include fare box revenues and income from the licensing or leasing of air rights or from other leases; advertising; concessions; and the sale of planning reports and maps.
- c. General. Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement and from payments of principal and interest on loans made with grant funds. Except as otherwise provided in regulations, program income does not include interest on grant funds, rebates, credits, discounts, refunds, etc., and interest earned on any of them.
- d. Reference. FTA's program income policies are governed by 49 CFR, Part 18, the Common Rule, and may differ from OMB Circular A-102 for State and Local Governments. (See FTA circulars 9070.1E and 9040.1E for guidance on state issues of program income.)
- e. Use. Grantees may retain program income so long as it is used only for mass transit purposes. These may include planning, capital or operating expenses. Program income may not be used to refund or reduce the local share of the grant from which it was earned, but may be used for other transit grants.

## 12. SPECIAL REQUIREMENTS.

- b. Political Activities. Chapter 15 of Title 5 of the United States Code (Hatch Act) provides that all State or local agency employees who are engaged in an activity financed by Federal government grants or loans may not be candidates for elective office or use their positions to influence public elections. Furthermore, those State and local agencies receiving Federal assistance are prohibited from coercing their employees into making political contributions. Exceptions to the general Hatch Act prohibition do exist, such as certain non-supervisory transit employees and persons holding elective office. State and local agencies should contact the appropriate FTA Regional Counsel or the FTA Office of Chief Counsel to discuss any questions they may have about the specific applicability of these provisions to their situation.
- c. Copyrights and Rights in Data. When FTA provides financial assistance for demonstration projects, it is with the general intention of increasing public transit knowledge, rather

than limiting the benefits of the project to the participants of the project. Except as otherwise provided in the grant agreement, the grantee is free to copyright any material developed under or during the course of a project.

However, FTA reserves a royalty-free non-exclusive and irrevocable right to reproduce, publish, distribute, or otherwise use, and authorize others to use the work for Government purposes. This applies particularly to FTA-assisted capital and operating projects. In addition, for research, development, and demonstration projects financed with FTA-awarded assistance, FTA reserves the right to acquire greater rights in data including copyrights.

d. Patent Rights. All grantees must notify FTA of any inventions, improvements, or discoveries conceived of or actually reduced to practice by the grantee or its employees in the course of, or under the terms of, the grant contract. FTA determines whether or not and where a patent application will be filed, as well as the disposition of all rights in such inventions, improvements and/or discoveries, including title to and rights under any patent application or patent that may be issued. The grantee is responsible for executing all documents to effect the determination.

e. Published Reports.

0. All FTA sponsored reports must contain on the inside front cover the following disclaimer:

NOTICE

"This document is disseminated under the sponsorship of the Department of Transportation in the interest of information exchange. The United States Government assumes no liability for the contents or use thereof."

2. When trade names or manufacturers' names are used in a report, this fact must be specifically brought to the attention of FTA before the report is approved. These reports must contain the following notice on the inside front cover:

NOTICE

"The United States Government does not endorse products or manufacturers. Trade or manufacturers' names appear herein solely because they are considered essential to the object of this report."

13. FTA OVERSIGHT. FTA may conduct on-site inspections of projects to evaluate the grantee's effectiveness in implementing the project in conformance with the grant agreement. Inspection visits may be made, for example, to follow up on information received from the grantee about an event with significant impact on the project, or to determine whether the grantee has adequately complied with civil rights laws, regulations, and agreements. Inspection and concurrence by FTA in project work does not relieve the grantee of its responsibilities and liabilities as the responsible party for carrying out the grant.

Project Management Oversight (PMO).

0. Definition. Oversight is a continuous review and evaluation of various processes to ensure: compliance with statutory, administrative and regulatory requirements; that FTA national and grantee goals are reached; and improvement of the process (FTA and grantee) and components. Although oversight is focused during various reviews, oversight is actually an ongoing activity. Oversight can also be viewed as an increased emphasis on monitoring the adequacy of grantee systems to ensure proper planning, technical, financial and administrative controls and which will result in improved grantee compliance with statutory and administrative requirements.
  1. Requirement. FTA conducts PMO for major capital projects, using its own staff or a combination of FTA and contractor staff. For general guidance, grantees are required to provide all needed information about each project selected for this oversight. PMO begins as early in project implementation as practical, usually during the preliminary engineering process.
  2. FTA Project Team. FTA may assign its own or contractor staff to provide special oversight or monitoring of major construction or equipment acquisition projects. Contractor staff are generally used for major projects.
  3. Financial Capacity Reviews. These reviews provide data for spot reports on the financial plan and are complementary to project management oversight.
- b. Quarterly Project Management Meetings. Quarterly project management meetings may be instituted with selected grantees. These meetings will provide a forum for management briefings, status/progress reports, discussion of accomplishments and problems and, as appropriate, an opportunity for site inspection. The quarterly meetings do not replace quarterly written reports unless a specific exemption is granted by FTA.
- c. Triennial Reviews. FTA is required by law to perform reviews and evaluations of urbanized area formula program

grantees to evaluate formula grant management performance and grantee compliance with current FTA requirements. The reviews must be conducted for each formula grant recipient at least once every three years and integrated into FTA's grant management functions. The reviews are conducted by teams formed by FTA staff and outside contractors following an annual work program. Desk reviews are followed by a site visit. The team documents its findings and recommendations in a draft triennial review report, which is furnished to the grantee for comment before it is released in final form to interested local, State and Federal officials.

When appropriate, corrective actions are recommended to resolve grantees' program management deficiencies. FTA monitors the grantee's actions until compliance with all program requirements is achieved. If needed, FTA can invoke sanctions to assure that grantees act to correct any noted program deficiencies.

- d. Financial Management Systems Reviews. Grantees are selected for FMO review by FTA to provide FTA an oversight tool and the grantees with technical assistance on financial management systems issues. The FMO review scope requires FMO contractors to conduct a series of interviews, full transaction review and appropriate substantive tests. Determination is made whether the grantee's financial management system meets the requirements of the Common Rule (49 CFR Part 18.20), and expresses an objective, external, independent professional opinion to FTA on the effectiveness of the grantees' internal control environment. An average FMO review takes three to four weeks at the grantees' site.
- e. Procurement Reviews. Conduct of procurement system reviews of FTA grantees involves a site visit to ensure that the requirements and standards of the common rule on administrative requirements for grants, 49 CFR Part 18.36 as it specifically applies to procurements, are met.
- f. Safety Reviews.
  0. Drug and Alcohol Program. Based on information acquired from a variety of possible sources (media reports, triennial review findings, annual MIS reports), FTA assigns its own staff, plus contractor support, to audit grantees' drug and alcohol testing programs which appear to be in non-compliance with FTA regulations. The audits are extensive, in-depth reviews and include detailed examination of records and interviews with appropriate grantee personnel and their contractors.
  1. Security Audits. Grantees' security activities are reviewed, on a voluntary basis, to assist grantees in their efforts to enhance the personal security of patrons and

employees. The National Transit Data Base [49 U.S.C. Section 5335(a), ] is used to target which grantees can benefit from security audits; audit findings are used subsequently to focus technical assistance efforts and capital program resources where most needed.

2. FTA Safety Oversight Audit Program. 49 CFR Part 659.7 requires FTA to monitor and evaluate compliance with the State Safety Oversight Rule. In order to monitor activities for this regulation, FTA has initiated this State safety oversight audit program. The audits are intended to establish compliance with the regulation. The audits are also expected to provide a forum to recommend improvements in the effectiveness of the oversight program established by each State in which regulated rail fixed guideway systems operate.
  3. Civil Rights Review. Civil rights compliance is required by recipients and subrecipients of Federal assistance as specified in the FTA Master Agreement which sets forth the terms and conditions governing the administration of a transit project or projects supported with FTA financial assistance. FTA retains the right to review grantee compliance status at any time during the life of the project.
14. SUSPENSION AND TERMINATION. The suspension of a grant is an action by FTA which temporarily suspends Federal assistance for a project pending corrective action by the grantee or pending a decision to terminate the grant by FTA. If FTA determines that the grantee has failed to comply with the terms and conditions of the grant agreement, including the civil rights requirement, FTA notifies the grantee in writing of its intent to suspend the grant. FTA may withhold further payments and/or prohibit the grantee from incurring additional obligations pending corrective action by the grantee or a decision to terminate the project for cause. This includes work being performed by third party contractors or consultants. Unless FTA notifies the grantee otherwise, suspension will not invalidate obligations properly incurred by the grantee prior to the date of suspension to the extent that they are uncancelable.
- b. Termination for Cause. FTA may terminate a grant, in whole or in part, at any time before project completion, whenever it determines that the grantee failed to comply with the conditions of the grant including failure to make reasonable progress. FTA will promptly notify the grantee in writing of its intent to terminate and the reasons therefore and the effective date. Payments made to the grantee or recoveries by FTA are in accordance with the terms of the grant agreement and the legal rights and liabilities of both parties as defined in the agreement.
  - c. Termination for Convenience. FTA or the grantee may terminate a grant in whole or part, when both parties agree that continuation of the

project would not produce results commensurate with the further expenditure of funds. By signing the grant agreement, the grantee agrees at the outset to a termination for convenience in the event FTA makes such a finding. Both parties must agree upon the termination conditions, including the effective date and, in case of partial termination, the portions to be terminated. The grantee may not incur new obligations for the terminated portion after the effective date and must cancel as many outstanding obligations as possible. FTA evaluates each obligation to determine its eligibility for inclusion in project costs. Settlement is made in accordance with terms and conditions of the grant agreement. FTA allows full credit to the recipient for the Federal share of the noncancelable obligations properly incurred by the grantee prior to termination.

d. Partial Termination. In some cases, FTA may deobligate funds in an approved grant before close-out because the funds are no longer needed to accomplish the grant purpose.

15. CLOSE-OUT PROCEDURES. Close-out is the process by which FTA determines that all responsibilities and work by the grantee are completed and the associated financial records are closed. Close-out begins immediately after all work activities under the grant are completed and all close-out documentation must be submitted within the following 90 days.

o. Final Financial Settlement. The grantee must initiate close-out of a grant when all approved activities are completed and applicable Federal funds expended. This requires a letter notifying FTA that the grant is ready for close-out. In order to expedite grant close-out the following should be submitted electronically:

2. a final Financial Status Report (SF-269A);
3. a final budget revision reflecting actual project costs by scope and activity;
4. a final narrative milestone/progress report including a discussion of each activity line item contained in the final budget and list of equipment purchased under the grant;
5. a request to deobligate any unexpended balance of Federal funds; and
6. any other reports required as part of the terms and conditions of the grant.

b. Close-Out by FTA. FTA reserves the right to unilaterally initiate grant close-out. There are certain circumstances that could cause FTA to close-out a grant in whole or in part at any time before project completion such as:

2. Grantee failure to comply with the terms or conditions of the grant agreement or other Federal requirement;



3. Continuation of the project would not produce results commensurate with further expenditure of funds;
  4. Funds are no longer needed to accomplish the grant purpose;
  5. Failure by the grantee to make reasonable progress to complete approved grant activities or,
  6. Determination that the project has been essentially completed and/or approved funds have been substantially drawn down.
- c. Adjustments to Federal Share of Costs. Necessary adjustments to the Federal share of cost are made after FTA receives and reviews the required close-out information. Adjustments may also be necessary after the audit required by OMB Circular A-133 is performed. FTA funds are not available for audit or other grant activities after a grant has been closed out. Additional information on audit is contained in Chapter III, Financial Management. Any Federal grant funds received by the grantee but not expended must be returned in the form of a check payable to the Federal Transit Administration and mailed to the address shown below, or by wire transfer if the amount is \$10,000 or more. See Chapter IV-7 for Pittsburgh lockbox facility mail address and wire transfer ABA number.

Whenever checks are mailed to the lockbox facility in Pittsburgh, the grantee should send a letter of explanation to the FTA Regional Office.

16. RETENTION AND ACCESS REQUIREMENTS FOR RECORDS .
  - b. Applicability. This section applies to all financial and programmatic records, supporting documents, statistical records, and other records of recipients which are:
    17. Records required to be maintained by this circular or the terms of the grant agreement, or otherwise reasonably considered as pertinent to FTA program requirements or the grant agreement.
    2. Records executed electronically may be retained in that manner, but files must be accessible for possible review, audit or down-loading to paper copy when required.
    3. This section does not apply to records maintained by contractors or subcontractors.
  - b. Length of Retention Period.
    2. Except as otherwise specified, records must be retained for three years from the starting date specified in paragraph 16c, below.
    2. If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records must be retained for three years after completion of the action

and resolution of all issues which arise from it.

3. To avoid duplicate record keeping, FTA may make special arrangements with grantees (including subgrantees as appropriate) to retain any records which are continuously needed for joint use. FTA will request transfer of records to its custody when it determines that the records possess long-term retention value. When the records are transferred to or maintained by FTA, the 3-year retention requirement is not applicable to the recipient.
- c. Starting Date of Retention Period.
  3. General. The starting date for retention of records related to multi-year projects is the date of submission of the expenditure report upon project completion or, if waived, the date it would have been due.
  2. Equipment records. The retention period for the equipment records required by paragraph 7c(2)(a) and (b) starts from the date of the equipment's disposition or replacement or transfer at FTA's direction.
  3. Records for income transactions after grant close-out. In some cases grantees must report income after a grant is closed out. Where there is such a requirement, the retention period for the records pertaining to the earning of the income starts from the end of the grantee's fiscal year in which the income is earned.
  4. Direct cost rate proposals, cost allocation plans and similar rate and rate allocation methods. This paragraph applies to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations or the rate at which a particular group of costs is chargeable (such as computer usage charge back rates or composite fringe benefit rates).
- c. If submitted for negotiation: If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the grantee) to form the basis for negotiation of the rate, then the three year retention period for its supporting records starts from the date of such submission.
- b. If not submitted for negotiation: If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the grantee) for negotiation purposes, then the three year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.
5. Contract Records. The retention period for all required contract

records commences after the grantees or subgrantees make final payments and all other pending matters are closed. [Reference 49 C.F.R. 18.36(i)(11)].

- d. Substitution of Photocopies. Copies made by microfilming, photocopying, or similar facsimile methods may be substituted.
- e. Access to Records.
- 4. Records of grantees and subgrantees. FTA and the Comptroller General of the United States, or any of their authorized representatives, have the right of access to any books, documents, papers, or other records of the grantee which are pertinent to the grant, in order to perform audits, or make examinations, excerpts, or transcripts.
- 2. Expiration of right of access. The right of access in this section is not limited to the required retention period but continues as long as the records are retained.
- f. Restrictions on Public Access. The Federal Freedom of Information Act (5 U.S.C. 552) does not apply to grantee records owned and possessed by the grantee. Unless required by State or local law, grantees and subgrantees are not required to provide periodic public access to their records. However, FTA may request a grantee to provide access to those records the grantee maintains on behalf of FTA, (i.e., records required by Federal statute or regulation, such as Davis-Bacon wage records).

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## **Chapter II: Management of Real Property, Equipment & Supplies**

1. DEFINITIONS. The following definitions apply to FTA property management standards.
  - a. Acquisition Cost of Purchased Equipment means the purchase price of equipment. This is the net invoice unit price, including the cost of modifications, attachments, accessories, or other auxiliary apparatus necessary to make the equipment usable for the intended purpose. Other charges such as the cost of inspection, installation, transportation, taxes, duty or protective in-transit insurance should be treated in accordance with the grantee's regular accounting practices, as separate line items. The cost of items separately installed and removable from rolling stock, such as fare boxes and radios, is treated as a separate acquisition and not as part of the cost of the vehicle.
  - b. Air Rights. That space located above, at, or below (subterranean) the surface of the ground, lying within a project's property limits, is defined as "air rights."
  - c. Brownfields. The U.S. Environmental Protection Agency (EPA) defines "brownfields" (one type of contaminated property), as abandoned, idled, or under-used industrial and

commercial land, often found in urban areas, where redevelopment is complicated by real or perceived hazardous contamination. These properties have lower levels of contamination than Superfund sites, but they are a health risk and economic detriment to the communities where they are located.

- d. Equipment Inventory means a physical inventory of property taken and results reconciled with the property records.
  - e. Equipment means all tangible, nonexpendable, personal property that has a useful life of more than one year and an acquisition cost that exceeds \$5,000 per unit. Includes rolling stock and all other such property used in the provision of public transit service. A grantee may use its own definition of equipment provided that such definition would at least include all equipment.
  - f. Excess Property means property which the grantee determines is no longer required for needs or fulfillment of its responsibilities under an FTA assisted grant.
  - g. Excess Real Property Inventory and Utilization Plan means the document which lists each real estate parcel acquired with participation of Federal funds that is no longer needed for approved FTA project purposes and which states how the grantee plans to use or dispose of the excess real property.
  - h. Incidental Use of Project Property and Equipment means the authorized use of real property and equipment acquired with FTA funds for purposes other than provision of transit service. Such use must be compatible with the approved purposes of the project and not interfere with intended mass transportation uses of project assets. Air rights licenses and leases are treated as incidental uses and not as disposition of excess property.
  - i. Market Value means the most probable price which equipment should bring in a competitive and open market.
  - j. Net Proceeds from the Sale of Project Equipment and Real Property means the amount realized from the sale of property no longer needed for transit purposes less the expense of any actual and reasonable selling and fixing-up expenses. Net proceeds from equipment means that selling expenses of \$100 or 10 percent of the sale price, whichever is greater, can be deducted to achieve net proceeds, in lieu of actual selling costs.
  - k. Real Property means land, including affixed land improvements, structures and appurtenances. It does not include movable machinery and equipment.
  - l. Service Life (Useful Life). Service life of revenue rolling stock begins on the date the vehicle is placed in revenue service and continues until it is removed from service. See Chapter I; and C 9030.1C, Urbanized Area Formula Program: Grant Applications Instructions; and C 9300.1A Capital Program: Grant Application Instructions.
  - m. Straight Line Depreciation. The value of a revenue passenger vehicle is depreciated on a straight-line basis over the service life as a percentage of cost. The Federal interest in rolling stock is determined on the basis of straight line depreciation over the service life of the asset. That is, a 12 year minimum service life depreciates 1/12 of its original purchase price each year. The FTA interest in that vehicle therefore decreases each year by 1/12 of the amount of the Federal grant that was awarded for its purchase.
  - n. Supplies mean all tangible personal property other than equipment.
2. REAL PROPERTY. The following requirements govern the acquisition, use or disposition of real property purchased with federally participating funds.
- a. Acquisition of Real Property and Relocation of Persons and Their Personal Property. Acquisition of real property and relocation activities necessary to secure property for a

project in which there will be Federal funds must be carried out pursuant to the requirements in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (the Uniform Act), as amended. The Uniform Act is implemented by regulation (49 CFR part 24).

The objective of the Uniform Act is that owners of real property to be acquired for Federal and federally assisted projects be treated fairly and consistently; that persons displaced be treated fairly, consistently and equitably; and that acquiring agencies implement the regulations in a manner that is efficient and cost effective. The regulations implementing the Uniform Act are very specific in naming the means to achieve those legislated objectives.

1. Summary.

Following are examples of acquisition and relocation actions required in 49 CFR Part 24:

a. Acquisition :

1. Before making an offer to the property owner, the grantee must first establish market value of the parcel to be purchased. Market value is to be established through a current appraisal and appraisal-review. The owner has a right to accompany the appraiser during examination of the property.
2. No owner shall be required to surrender possession of real property without either payment of the agreed purchase price to the owners or deposit of the established just compensation in condemnation court and available to the owner. The grantee must expeditiously reimburse property owners for actual, reasonable, and necessary expenses incidental to transfer of title.
3. If the acquisition leaves the owner with an uneconomical remnant, the grantee must offer to acquire that remnant. An uneconomical remnant is defined as a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property, and which the acquiring agency has determined has little or no value or utility to the owner.
4. Any decrease or increase in market value caused by the project or caused by the likelihood that a particular property is to be acquired for the project will be disregarded in determining just compensation for the property.

b. Relocation :

1. Early provision of written explanations of acquisition and relocation programs.
2. No individual, family, partnership, corporation or association will be required to move without at least 90 days advance notice.
3. In the case of residential displaces, the 90-day notice must also include the availability of at least one comparable replacement dwelling. Rental assistance and replacement housing payments are provided to make the dwellings affordable

4. All displacees--both business and residential--are reimbursed for certain moving expenses.
5. There must be as many residential dwellings available as there are families who will be displaced. The dwellings must be comparable to the ones from which the persons are displaced. In addition, the comparable replacement dwellings must be decent, safe and sanitary; located in the same area or in areas generally not less desirable in regard to public utilities and public and commercial facilities; reasonably accessible to the displacees' places of employment and within the financial means of the displaced families; and adequate in size to accommodate the occupants.
6. Replacement housing must be open to all persons regardless of race, color, religion, sex, or national origin.

In addition, the grantee should inform itself of State laws regarding compensation for real property and requirements for relocation of persons and personal property.

2. Contaminated Property (including Brownfields). Appraisals should consider the effect, if any, the contamination has on the market value of the property being valued. Appropriate due diligence for contamination should have been conducted as a part of the NEPA process and discussed in the NEPA document before selection of a brownfield site in a capital project. The results of the due diligence should be given to the appraiser since the information should prove useful in estimating market value. Federal and local environmental regulatory programs originate from statutory laws and regulations, therefore words and terms often possess specific legal definitions. For convenience we use only the terms, "contamination" and "hazardous material." These terms should be interpreted broadly to include all contaminants that can affect property value.

The legal responsibility for hazardous material clean-up and disposal rests with parties within the property title chain and with parties responsible for the placement of the material on the property. Grantees must attempt to identify and seek legal recourse from those potentially responsible parties or substantiate the basis for not seeking reimbursement.

During the NEPA process, the grant applicant will have considered not only the estimated project cost of appropriate remediation (remediation being any action, developed in consultation with appropriate regulatory agencies, to reduce, remove or contain contamination), the applicant will also have considered and taken action regarding the short and long-term liabilities associated with brownfields.

To encourage the complete assessment of contamination prior to project decision-making, FTA generally will not participate in the remediation of contamination discovered during construction whose encounter was not anticipated.

The grantee should contact FTA for technical assistance regarding contaminated property.

### 3. Appraisals .

- a. General. Except as discussed below, an offer of just compensation will be established on the basis of a recent independently prepared appraisal that estimates a fair market value. Appraisers who are not staff employees must be certified appraisers. It is recommended that appraisals and review appraisals be completed by appraisers experienced with State and Federal laws for valuing properties for public acquisitions. Appraisers, and grantees making appraisal assignments should be familiar with the implementing regulations of the Uniform Act (49 C.F.R. 24), especially subpart B. Depending on the individual State Appraisal Board, certified appraisers may need to utilize the jurisdictional exception provisions of Uniform Standards of Professional Appraisal Practice (USPAP) in order to complete the assignment for a public agency. When valuing properties that contain contamination or hazardous material, the appraiser must consider the effect, if any, the contamination's or material's presence has on the market value.
- b. Exceptions . Full appraisal and/or negotiation procedures are not necessary in certain instances. FTA should be contacted for further guidance when any one of the following situations occurs:
  1. The owner is donating the property.
  2. The grantee does not have authority to acquire property by eminent domain.
  3. The property qualifies as a voluntary acquisition as defined in 49 CFR 24.101(a).
  4. The valuation problem is uncomplicated and the fair market value is estimated at \$2,500 or less, based on a review of available data.
  5. State subrecipients may use the state's staff appraisers to prepare required independent appraisals.
- c. Review Appraisals. All appraisals for acquisition of real property are to be reviewed in accordance with the Uniform Act. The review appraisal should determine the soundness of the report's value estimate. The review appraisal is often expected to determine if the value conclusion is consistent with State laws for public acquisitions and with the the Uniform Act. The review appraisal often is also responsible for assuring that value estimates are consistent when multiple parcels of property are needed for the project. The review appraisal cannot determine the soundness of a report's value estimate without the review appraiser possessing familiarity with the subject, its comparables and other market factors; rarely will a mere desk review be sufficient.

The Uniform Act contains options for the grantee when its review appraiser is unable to recommend approval of an appraisal. Review appraisers who are not staff employees must be certified appraisers.

### 4. FTA Oversight of Property Acquisition

- a. Prior FTA concurrence is required when the grantee's recommended offer of just compensation exceeds \$250,000, or when a property appraised at

\$250,000 or more must be condemned.

Instead of using its power of eminent domain, when a property cannot be purchased at appraised value, a grantee may propose acquisition through negotiated settlement. The grantee must document that reasonable efforts to purchase the property at the appraised amount have failed and prepare written justification supporting why the settlement is reasonable, prudent and in the public interest. A litigation attorney must provide the justification when the settlement purchase represents a significant increase. The attorney should evaluate the risks of settling for the proposed amount versus the risks of trying the condemnation in court. Prior FTA concurrence is needed when the settlement is \$50,000 higher than the offer.

b. Alternative Procedure. A grantee, conducting a major capital project or one with a fully staffed real estate department, may prefer an alternative process, which permits higher dollar thresholds before FTA prior concurrence is needed. To do this, an FTA real estate specialist must review and approve the processes used in acquiring and clearing real estate. Grantees may request a review through the FTA Regional Office.

5. In-Kind Contributions. Grantees may use in-kind contributions of real property as part of the local matching share are eligible for a grant if the property to be donated is needed to carry out the scope of the approved project. The property can be owned and donated by the grantee or by a third party. The in-kind contribution allowance will be based on the current market value as independently appraised.

Credit can only be allowed for the value of the portion of real property used or consumed by the project. The request must include a statement that Federal funds were not used to purchase the property. Only the non-federal share of the property may be counted as local share.

6. Functional Replacement. Functional replacement provides a method of paying the cost necessary to replace a publicly owned facility (i.e., a fire station or school) being acquired with a similar needed facility that offers the same utility, including requirements of current local laws, codes, and reasonable prevailing standards in the area for similar facilities. The property to be functionally replaced must be in public ownership (State, County, City or other public jurisdiction), and State law must permit the grantee to incur functional replacement costs. The grantee must demonstrate and FTA must concur that functional replacement is in the public interest. FTA must concur in the agreement between the grantee and the other owner.

b. Use. Title to real property is vested in the grantees or other public bodies. It is FTA's policy to permit grantees maximum flexibility in determining the best and most cost-effective use of FTA-funded property. To this end, FTA encourages incidental uses of real property that can raise additional revenues for the transit system or, at a reasonable cost, enhance system ridership. For example, grantees may be able to encourage incidental use of air rights at and over transit facilities and project areas. FTA approval is required for these incidental



uses of real property which must be compatible with the original purposes of the grant.

Incidental use of project real property is subject to the following considerations.

1. Needed Property. This policy applies only to property that continues to be needed and used for an FTA project or program. It is FTA's intention to assist only in the purchase of property that is needed for an FTA project.
  2. Purpose & Activity. The incidental use must not compromise the safe conduct of the intended purpose and activity of the initial mass transit project activity.
  3. Continuing Control. Incidental use must not in any way interfere with the grantee's continuing control over the use of the property or its continued ability to carry out the project or program.
  4. Non-Profit Use. While FTA is particularly interested in encouraging incidental use as a means of supplementing transit revenues, non-profit uses are also permitted.
  5. Air Rights Income. Proceeds from licensing and leasing of air rights should reflect appraised fair market value. Income received from the authorized use of air rights may be retained by the grantees (without returning the Federal share) if the income is used for eligible transit planning, capital and operating expenses. This income cannot be used as part of the local share of the grant from which it was derived. However, it may be used as part of the local share of another FTA grant.
- c. Disposition .
1. Excess Real Property Inventory and Utilization Plan. The grantee should prepare and keep up to date an excess property utilization plan for all property that is no longer needed to carry out the originally intended purpose. Grantees are also required to notify FTA when property is removed from the service originally intended at grant approval and put to additional or substitute uses.

The grantee's plan should identify and explain the reason for excess property. Such reasons may include one or more of the following.

- a. The parcel, when purchased, exceeded the grantee's need (uneconomic remnant, purchased to logical boundary, part of administrative settlement, etc.
- b. The property was purchased for construction staging purposes such as access, storage or underpinning, and construction is completed;
- c. The intended use of the parcel is no longer possible because of system changes, such as alignment, or amendments to the project grant agreement;
- d. Improvements to real property were damaged or destroyed, and therefore the property is not being used for project purposes, but it is still be needed for the project. If so, the improvements may be renovated or replaced. In this case applicable cost principles must be observed; or
- e. A portion of the parcel remains unused, will not be used for project purposes in the foreseeable future, and can be sold or otherwise disposed.

The inventory list should include such things as property location; summary of any conditions on the title, original acquisition cost and the Federal participation ratio; FTA grant number, appraised value and date; a brief description of improvements; current use of the property; and the anticipated disposition or action proposed.

Unless FTA and the grantee agree otherwise, the excess real property inventory and updated excess property utilization plan is to be retained by the grantee, available upon FTA request and during the Triennial Review process.

2. Disposition Alternatives. If the grantee determines that real property is no longer needed for the approved project, FTA may approve use of the property for other purposes. This may include use in other Federal grant programs or in non-Federal programs that have consistent purposes with those authorized for support by FTA.

In those situations where a grantee or subgrantee is disposing of real property acquired with grant funds and acquiring replacement real property under the same program, FTA may permit the net proceeds from the disposition to be used as an offset to the cost of the replacement property.

When real property is no longer needed for the originally authorized purpose, the grantee will request disposition instructions from FTA. Following are the allowable alternative disposition methods.

- a. Sell and Reimburse FTA. Competitively market and sell the property and pay FTA its share of the fair market value of the property. This is the percentage of FTA participation in the original grant times the best obtainable price, net of reasonable sales costs.
- b. Offset. Sell property and apply the net proceeds from the sale to the cost of replacement property under the same program. Return any excess proceeds to FTA. [Common Rule CFR49 part 18.31]
- c. Sell and Use Proceeds for Other Capital Projects. Sell property and use the proceeds to reduce the gross project cost of another FTA eligible capital transit project. [49 U.S.C., 5334(g)(4)]. The grantee is expected to record the receipt of the proceeds in the grantee's accounting system, showing that the funds are restricted for use in a subsequent capital project, and reduce the liability as the proceeds are applied to one or more FTA approved capital projects. The subsequent capital grant application should contain information showing FTA that the gross project cost has been reduced with proceeds from the earlier transaction.
- d. Sell and Keep Proceeds in Open Project. If the grant is still open, the grantee may sell excess property and apply the proceeds to the original cost of the total real property purchased for that project.
- e. Transfer to Public Agency for Non-Transit Use. Follow procedures for publication in Federal Register to transfer property (land or equipment) to public agency with no repayment to FTA. This is a competitive process and there is no guarantee that a particular public agency will be awarded the excess property. [49 U.S.C., 5334(g)(1)]
- f. Transfer to Other Project. Transfer property to another FTA eligible project. The Federal interest continues.
- g. Retain Title With Buyout. Compensate FTA by computing percentage of FTA participation in the original cost. Multiply the current fair market value of the property by this percentage. The grantee must document the basis for value determination; typically this is an appraisal or market survey.

Sales procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return or at least payment of appraised fair market value.

- h. Joint Development. A transfer meeting the three tests for joint development is not a disposition and the proceeds are deemed program income.

[See Joint Development Appendix at end of this circular for more detailed information. Also see FTA Circular 9300.1A, Capital Program: Grant Application Instructions, Appendix B]

- 3. EQUIPMENT. Certain equipment management standards apply to equipment purchased with Federal funds. Following are guidelines for the acquisition, use and disposition of equipment.
  - a. State recipients. A State will use, manage, and dispose of equipment acquired under a grant by the State in accordance with State laws and procedures. [49 CFR, part 18.32(b)]
  - b. Title. Subject to the obligations and conditions set forth in this section, title to equipment acquired under a grant or subgrant will vest upon acquisition in the grantee, subgrantee or another participating public body.
  - c. Use of Equipment.
    - 1. Equipment is to be used by the grantee in the programs or project for which it was acquired as long as needed, whether or not the program or project continues to be supported by Federal funds. When need no longer exists, see disposition guidelines.
    - 2. The grantee may make equipment available for use on other projects or programs currently or previously supported by the Federal Government, providing such use will not interfere with the work on the project or program for which it was originally acquired. FTA reserves the right in the grant agreement to require the grantee, with FTA approval, to transfer title to equipment no longer needed or used for the purposes of the grant (or program) to the Federal Government or an otherwise eligible grantee. (49 CFR.18.32)
    - 3. The grantee must not use equipment acquired with grant funds to provide services to compete unfairly with private companies that provide equivalent services. Non-transit use of FTA financially assisted equipment is acceptable so long as it is incidental, does not interfere with transit use (i.e., transit has priority), and income generated is retained by the grantee for transit use.
  - d. Leasing Agreement. The grantee may enter into a contract for leasing its project equipment and facilities to a private operator (the lessee). Under this arrangement the grantee (the lessor) should include the following provisions in the proposed lease agreement:
    - 1. The project equipment shall be operated by the lessee to serve the best interest and welfare of the project sponsor lessor and the public. The terms and conditions for operation of service imposed by the grantee shall be evidenced in a service agreement.
    - 2. The lessee shall maintain project equipment at a high level of cleanliness, safety,

and mechanical soundness under maintenance procedures outlined by the project sponsor. The project sponsor lessor and/or FTA shall have the right to conduct periodic maintenance inspections for the purpose of confirming the existence, condition, and the proper maintenance of the project equipment.

3. The lease needs to cross reference a service agreement. A default under the lease is a default under the service agreement and vice versa.

e. Management. Equipment management procedures include the following minimum requirements:

1. Rail systems are required to submit a fleet management plan that addresses operating policies (level of service requirements, train failure definitions and actions; peak vehicle requirements (service period and make-up, e.g. standby trains); maintenance and overhaul program (scheduled, unscheduled, and overhaul); system and service expansions; rail car procurements and related schedules; and spare ratio justification.
2. Property records must be maintained by the grantee. Records must include a description, identification number, procurement source, acquisition date, cost, percentage of Federal participation in the cost, the grant project under which it was procured, location, use and condition, and any disposition data, including the date of disposal and sale price, or, where applicable, the method used to determine its fair market value. The grantee should also state who holds title to the equipment.
3. A physical inventory of equipment must be taken and the results reconciled with equipment records at least once every two years. Any differences must be investigated to determine the cause of the difference.
4. A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of property. Any loss, damage, or theft must be investigated and documented by the grantee.
5. Adequate maintenance procedures must be developed and implemented to keep the property in good condition. These procedures should be consistent with the maintenance plan required of grantees for equipment funded under 49 U.S.C. 5305 and 5307 and should be documented and available for audit or triennial review.
6. Warranty standards, when part of equipment contracts, should provide for correction of defective or unacceptable materials or workmanship. These should specify coverage and duration and meet currently available industry standards. Grantees are responsible for :
  - a. Establishing and maintaining a system for recording warranty claims. This system should provide information needed by the grantee on the extent and provisions of coverage and on claims processing procedures;
  - b. Identifying and diligently enforcing warranty system for recording warranty claims; and
  - c. Tagging or otherwise identifying property as Government property.

f. Disposition.

1. Disposition Before End of Service Life: Any disposition of rolling stock before the end of its service life requires prior FTA approval. FTA is reimbursed its share of the proceeds from disposition. If revenue rolling stock is being removed from service

before the end of its useful life, the return to FTA is the greater of the FTA share of the unamortized value of the remaining service life per unit, based on straight line depreciation of the original purchase price, or the Federal share of the sales price (even though the unamortized value is \$5,000 or less).

2. Retain and Use Elsewhere. When original or replacement equipment is no longer needed for the original project or program, it may be used by the grantee for other projects or programs. FTA prior approval of this alternative is required. FTA retains its interest.
3. Value Over \$5,000: After the service life of equipment is reached, equipment with current market value exceeding \$5,000 per unit, or unused supplies with a total aggregate fair market value of more than \$5,000, may be retained or sold, with reimbursement to FTA of an amount calculated by multiplying the total aggregate fair market value at the time of disposition, or the net sale proceeds, by the percentage of FTA's participation in the original grant. The grantee's transmittal letter should state whether the equipment will be retained or sold. Use of sales proceeds are discussed elsewhere in this chapter.
4. Less than \$5,000 value: Equipment with a unit market value of \$5,000 or less, or supplies with a total aggregate market value of \$5,000 or less, may be retained, sold, or otherwise disposed of with no obligation to reimburse FTA, providing useful service life requirements have been met. Records of this action must be retained.
5. Like-Kind Trade-In or Offset Exchange. With prior FTA approval, the grantee may elect to use the trade-in value or the sales proceeds to offset the cost of a replacement bus or rail transit vehicle to acquire a replacement vehicle, applying 10 percent of the net proceeds to acquisition of the replacement vehicle/s. (See 49 CFR, Part 18.32; and Federal Register pp. 39328/39329, dated August 28, 1992). Remaining cost differences, if more than the proceeds, are to be met by the grantee. Excess proceeds, if any, are returned to FTA minus a deduction for prorata local share.
6. Transfer to Public Agency for Non-Transit Use. With prior FTA approval, the grantee may follow procedures for publication in the Federal Register to transfer property (including land or equipment) to a public agency with no repayment to FTA. These procedures are available from the appropriate FTA regional office. [49 U.S.C. 5334(g)(1)].
7. Sell and Use Proceeds for Other Capital Projects. With prior FTA approval, the grantee may sell equipment or supplies and use the proceeds to reduce the gross project cost of other FTA eligible capital transit projects. [49 U.S.C., 5334(g)(4)] The grantee is expected to record the receipt of the proceeds in the grantee's accounting system, showing that the funds are restricted for use in a subsequent capital project and reduce the liability as the proceeds are applied to one or more FTA approved capital projects. The subsequent capital grant application should contain information showing FTA that the gross project cost has been reduced with proceeds from the earlier transaction.
8. Unused Supplies. Disposition of unused supplies before the end of the industry standard life expectancy is determined in total aggregate fair market value and if found to exceed \$5,000, the grantee or subgrantee shall compensate FTA for its share; or transfer the sales proceeds to reduce gross project cost of other capital project/s. [49 U.S.C. 5334(g)(4)].

## Chapter III: Financial Management

### 1. INTERNAL CONTROLS.

a. Definition. Internal controls are the organization plan, methods and procedures adopted by the grantee to insure that resources are properly used and safeguarded, and that necessary information is provided to grantees and FTA managers.

b. General. FTA payments to a grantee are made electronically to meet the Federal share of eligible expenses under a grant.

Acceptance of an FTA grant obligates the grantee to use funds it receives as specified in the grant agreement. This creates a vested interest by the United States in unused grant balances, any improperly applied funds, and property or facilities purchased or otherwise acquired under the grant whether funds are received by the grantee as an advance or by reimbursement.

Grantees and subgrantees are responsible for establishing and maintaining adequate internal control over all their functions that affect implementation of a grant.

For proper management of grants, these controls must be used by each grantee in all its operating, accounting, financial and administrative systems. To assure proper accountability for grant funds, internal controls must be integrated with the management systems used by the grantee to regulate and guide its operations.

b. Objectives. Resources must be used in accordance with applicable state, local, and Federal laws, regulations and policies, and the grant assistance agreement. Resources must be safeguarded against waste, loss, and misuse. Reliable data on resource use and safeguards must be accumulated, maintained and fairly disclosed in reports to grantee management and FTA. A proper system of internal controls will help the grantee to:

1. Operate efficiently and economically;
2. Keep obligations and costs within the limits of authorizations and legal requirements, consistent with accomplishing the purpose of the grant;
3. Safeguard assets against waste, loss and misuse;
4. Ensure timely collection and proper accounting of the grantee's operating and other revenues; and
5. Assure accuracy and reliability in financial, statistical and other reports.

d. Necessary Elements. Certain elements are necessary to achieve these objectives and meet the standards discussed later in this chapter. Each facilitates the grantee's use of internal controls. These are:

1. Reasonable assurance that internal controls are an integral part of the grantee's management systems;
2. Existence of a positive and supportive attitude among grantee managers and employees;
3. Assignment of internal control functions to competent and experienced employees;
4. Identification of specific internal control objectives to assure that needs are identified and that valid controls are planned and implemented;
5. Adoption of internal control policies, plans and procedures that reasonably assure their effectiveness, such as organizational separation of duties and physical arrangements such as locks and fire alarms; and
6. The grantee should conduct a regular program of testing to identify vulnerabilities in the internal control system.

e. Standards of Internal Control and Audit Resolutions.

1. General.
  - a. Grantee management policies that govern grant implementation must be clearly stated, understood throughout the organization and conform to applicable legislative and administrative requirements.
  - b. The grantee's formal organization structure must clearly define, assign and delegate appropriate authority for all duties.
  - c. Responsibility for duties and functions must be segregated within the organization to assure that adequate internal checks and balances exist. Grantees should pay particular attention to authorization, performance, recording, inventory control and review functions to reduce the opportunity for unauthorized or fraudulent acts.
  - d. A system for organizational planning should exist to determine financial, property and personnel resource needs.
  - e. Written operating procedures should be simply stated, yet meet the grantee's operating, legal and regulatory requirements. In developing its procedures, the grantee should consider such factors as feasibility, cost, risk loss or error, and availability of suitable personnel. Other important considerations are the prevention of illegal or unauthorized transactions or acts.
  - f. The grantee's information system must reliably provide needed operating and financial data for decisionmaking and performance review.
  - g. Proper supervision must be provided and performance must be subject to review of an effective internal audit program.
  - h. All personnel must be properly qualified for their assigned responsibilities, duties and functions. Education, training, experience, competence and integrity should be considered in assigning work. All must be held fully accountable for the proper discharge of their assignments.
  - i. Expenditures must be controlled so that construction, equipment, goods and services are acquired and received as contracted for (as to quality, quantity, prices and time of delivery). Authorizations for expenditures must conform to applicable statutes, regulations and policies.
  - j. All real property, equipment, expendables and funds must be safeguarded to prevent misuse, misappropriation, waste or unwarranted deterioration or

destruction.

2. Financial Management Systems. Minimum requirements of a grantee's financial management system are contained in the Common Rule, 49 CFR part 18.20(b).

[Exception: State Financial Management Systems. The common rule (49 CFR, Part 18.20(a) requires state to expend and account for grant funds in accordance with state laws and procedures for expending and accounting for its own funds.]

For other than state recipients and subrecipients, each grantee and subgrantee must establish and maintain an adequate financial management system that provides for:

- . Accumulation and reporting of accurate, current and complete financial information for each grant;
2. Records that identify the source and application of funds for grant-supported activities. These must include information about Federal awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays and income;
  - c. Control and accountability for all funds, property and other assets, including safeguards against unauthorized use;
  - d. Comparability of actual outlays with budgeted amounts for each grant-funded activity. Where appropriate, unit cost information should be provided for productivity comparisons;
  - e. Procedures for determining reasonableness, eligibility and proper allocation of costs as required by OMB Circular A-87 Cost Principles for State and Local Governments;
  - f. Accounting records that are supported by source documentation;
  - g. Procedures that assure the shortest elapsed time between receipt of funds from U.S. Treasury and grantee disbursements. Payment received from FTA must be disbursed within three business days. If not disbursed within three days, funds become excess funds and must be returned to FTA. (See Chapter IV for additional information regarding payment procedures.) These requirements apply to prime grantees as well as subrecipients; and
  - h. Procedures that assure timely and appropriate resolution of audit findings and recommendations.
3. FTA Review of Grantee's Internal Controls. DOT auditors or designated Financial Management Oversight representatives may visit a grantee after project approval to review its system of internal controls. The review will address grantee compliance with the internal and financial control standards.

FTA will provide the grantee with a copy of the review and discuss action by the grantee to correct any reported deficiencies.

4. Financial capacity reviews are performed on grantees involved in major capital investment projects. The review assesses the financial capability of grantees to meet Full Funding Grant Agreement obligations. The financial capacity reviews analyze plans to mitigate the risks associated with:
  - a. the provision of the required local share;
  - b. the ability to complete the project on schedule in the face of delays or reduced Congressional appropriations, unanticipated conditions or budget over-runs; and



- c. the ability to operate and maintain the existing system, as well as the project.

3. COST ALLOCATION PLAN/INDIRECT COST PROPOSAL.

- 3. General. Under federally funded grant programs, recipients may incur costs of both a direct and indirect nature. A cost allocation plan is required if a grantee desires to charge indirect program-related costs to an FTA grant.

- 4. Definitions

- 0. Direct costs are those that can be identified specifically with a particular project. These costs may be charged directly to a grant project.
- 2. Indirect costs are those that are:
  - a. Incurred for a common or joint purpose benefiting more than one cost objective;
  - b. Not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved; and
  - c. Originating in each of the grantee's operating or organizational units (as well as those incurred by others in supplying goods, services, and facilities to each unit).

Examples of indirect costs are operation and maintenance of buildings and expenses of unit heads and their immediate staff. Principles and standards for determining costs applicable to grants and contracts with grantees or other state or local agencies are presented in OMB Circular A-87, and the appropriate Department of Health and Human Services (DHHS) publications.

- 5. Types of Plans. There are two types of cost allocation plans presented in OMB Circular A-87.

The first plan covers the distribution of costs of support services provided by a state/local government to its operating agencies and is referred to as a state or local government-wide central service cost allocation plan.

The second plan covers distribution of costs within an individual grantee or contractor (i.e., operative) agency, including costs of services allocated to it under the state or local government-wide central service cost allocation plan, for all work performed by that agency. This second type of plan is commonly referred to as an indirect cost plan.