



Public Transportation Division

# State Management Plan (SMP)

*for FTA Section 5339 Bus & Bus Facilities Formula Program*

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*DRAFT – 1/21/16*

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# Chapter 1 – Introduction

## SMP Purpose

The Section 5339 grant program of the Federal Transit Act (FTA) provides federal financial assistance to organizations that serve the citizens of the state of Texas. Administered by the FTA at the national level, state administration is vested in the Texas Department of Transportation (TxDOT), as designated by the Governor. The Public Transportation Division (PTN) provides the day-to-day management of the grant program.

The State Management Plan (SMP) is a document that describes TxDOT's policies and procedures for administering the State-managed portions of FTA's Section 5339 Bus and Bus Facilities Formula Program in accordance with MAP-21. The department is required to have an approved SMP on file with the FTA Region 6 office in Fort Worth, Texas, and to update it regularly to incorporate any changes in program management or new requirements.

The SMP is intended to facilitate both State management and FTA oversight by documenting TxDOT's procedures and policies for administering the program in a single reference. The SMP is a document which is useful to TxDOT and subrecipients, as well as to FTA. This SMP includes the department's goals, policies, procedures, and administrative requirements.

## Mission Statements & Goals

### *Texas Department of Transportation*

#### Department Mission Statement

Work with others to provide safe and reliable transportation solutions for Texas. (*TxDOT 2013-2017 Strategic Plan*)

#### Statewide Long Range Transportation Plan 2035 Goals

1. Develop an organizational structure and strategies designed to address the future multimodal transportation needs of all Texans;
2. Enhance safety for all Texas transportation system users;
3. Maintain the existing Texas transportation system;
4. Promote congestion relief strategies;
5. Enhance system connectivity; and
6. Facilitate the development and exchange of comprehensive multimodal transportation funding strategies with transportation program and project partners.

#### Texas Department of Transportation Agency Strategic Plan 2013-2017 Goals

1. Maintain a Safe System
  - Objective: Reduce crashes and fatalities on the system through innovations, technology, and public awareness
  - Objective: Maintain and preserve the transportation assets of the state of Texas
2. Address Congestion

- Objective: Partner with local officials to develop and implement congestion mitigation plans in Texas
- 3. Connect Texas Communities
  - Objective: Prioritize new projects that will increase the state GDP and enhance access to goods and services throughout the state
- 4. Become a Best in Class State Agency
  - Objective: Ensure the agency deploys its resources responsibly and has a customer service mindset
  - Objective: Focus on work environment, safety, succession planning, and training to develop a great workforce

### ***Public Transportation Division***

#### Division Mission Statement

Work with others to provide a network of mobility options for people who use alternatives to driving alone.  
(FY 2015 Public Transportation Division Strategic Plan)

#### Division Goals and Objectives

1. Distribute grant funds to support mobility and congestion-relief programs.
  - Objective: Maximize the combination of formula and discretionary grant funds available to Texas.
  - Objective: Timely distribution of funds to eligible applicants based on objective criteria.
2. Ensure compliance with funding program requirements.
  - Objective: Maintain a monitoring program that assures grant funds are utilized in accordance with federal and state requirements.
3. Promote training, coordinated planning, partnerships and best practices
  - Objective: Strategic development of the public transportation industry through training, conferences, technical assistance, leadership growth and meetings

### ***Process for Establishing Long-term Goals***

In accordance with the Texas Transportation Code Section 201.601, the department develops a statewide transportation plan covering a period of 24 years, including for public transportation. The current long-range plan, the Year 2035 Statewide Long Range Transportation Plan (SLRTP), contains specific, long-term transportation goals for the State with formal participation by other State agencies, regional and local governments, local transportation entities, and the general public.

The process includes development by the department, metropolitan planning organizations (MPO), and rural planning organizations (RPO) of separate but interrelated long-range planning documents that identify projects, strategies, and transportation needs, mid-range programming documents that contain a listing of prioritized projects expected to be ready for implementation in identified future years, and short-range programming documents that contain a listing of prioritized projects that are likely to be implemented. Underlying the planning and programming process is the need to develop reliable financial assumptions and forecasts for common use by all participants at all levels of the process. Finally, there is the allocation of available state and federal resources by the department and MPOs to fund individual projects that will address the long-range needs and goals. Strategic performance measures are used to monitor and evaluate the effectiveness of the process and its participants and to identify areas that need improvement.

Specific to rural public and special transportation, the department also develops the rural transportation plan (RTP) as part of the SLRTP. The RTP is a long-range plan developed by the department for areas not

included in the boundaries of a metropolitan planning organization, that covers a period of at least 20 years, contains a priority based listing of projects for long-range strategies that lead to the development of an integrated intermodal transportation system, and becomes a component of the statewide long-range transportation plan.

The long-term goals from the Statewide Long Range Transportation Plan and the Rural Transportation Plan form the basis for the department's long-term goals and objectives of the Section 5310 and Section 5311 programs for the Public Transportation Division, Rural Transit Districts, and the lead agencies responsible for regionally coordinated transportation planning in Texas.

## **General Program Roles and Responsibilities**

### ***Federal Transit Administration (FTA)***

The FTA Headquarters Office is responsible for providing overall policy and program guidance; apportioning funds annually to the states; developing and implementing financial management procedures; initiating and managing program support activities; and conducting national program review and evaluation.

The FTA Regional offices have the day-to-day responsibility for administration of programs. Regional office activities include: reviewing and approving grant applications; obligating funds; managing grants; overseeing the state's implementation of the annual program, including revisions to the program of projects; receiving certifications; reviewing and approving Management Plans; providing technical assistance and advice to the state as needed; and performing management reviews every three years, and special reviews at FTA's discretion. TxDOT is located within the FTA Region VI located in Fort Worth, Texas.

### **Authority**

Most Federal transit laws are codified at Title 49 U.S.C. Chapter 53. Authorizing legislation is substantive legislation enacted by Congress that establishes or continues the legal operation of a Federal program or agency. FTA's most recent authorizing legislation is the Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21), Pub. L. 112-141, signed into law on July 6, 2012 and effective on October 1, 2012.

### ***Texas Department of Transportation***

The governor has designated the Texas Transportation Commission to administer public transportation programs in Texas. The Texas Transportation Commission is a five-member board that oversees TxDOT.

### **The Public Transportation Advisory Committee (PTAC)**

PTAC consists of nine members, appointed by the governor, lieutenant governor and speaker of the House of Representatives. The committee's primary responsibilities include:

1. Advising the commission on the needs of the state's public transportation providers
2. Advising the commission on the allocation of public transportation funds
3. Commenting on rules involving public transportation

### **The Public Transportation Division (PTN)**

TxDOT is organized into offices, divisions and districts. The TxDOT's Public Transportation Division (PTN) is responsible for overall administration. PTN has headquarters staff located at Camp Hubbard in Austin and Public Transportation Coordinators (PTCs) located in district offices. PTN's responsibilities include but are not limited to:

1. Developing and implementing public transportation programs throughout the state

2. Ensuring adherence to federal program guidelines by all subrecipients through periodic monitoring and oversight
3. Notifying eligible and/or potential local entities of the availability of programs
4. Developing project selection criteria
5. Soliciting applications
6. Ensuring fair and equitable distribution of program funds
7. Ensuring the maximum feasible coordination of transit resources at both the state and local levels
8. Ensuring a planning process whereby private transit and paratransit operators are provided an opportunity to participate to the maximum extent feasible
9. Manage and process all grant agreements, amendments, and budget revisions
10. Ensure projects are placed in the district and Metropolitan Planning Organization (MPO), Transportation Improvement Plans (TIP)
11. Process financial reimbursements
12. Monitor transit agencies to ensure compliance with state and federal rules and regulations.
13. PTCs serve as the direct contact points for applicants/subrecipients/the public.
14. PTCs provide technical assistance to subrecipients.
15. PTCs conduct regularly scheduled quarterly and annual program compliance monitoring of subrecipients.

One of TxDOT's primary public transportation responsibilities is to provide technical assistance to transit agencies. Examples of technical assistance include, but are not limited to the following:

1. Internet websites
2. Conferences
3. Semi-annual meetings
4. Workshops
5. Manuals
6. Video teleconferences or webinars
7. Training (Specialized)
8. Specific system and topic assistance through the Texas Transportation Institute

### Authority

Title 43, Texas Administrative Code, Chapter 31 Public Transportation (43 TAC 31) sets out policies and procedures to be followed by the Texas Department of Transportation and grant subrecipients in accomplishing the duties prescribed by Transportation Code, Chapters 455, 456, 458, and 461, concerning public transportation. 43 TAC 31 also describes the administration of federal public transportation grant monies by the department pursuant to 49 USC Section 5301 et seq.

### Other TxDOT Divisions' Roles in Public Transportation

TxDOT's Transportation Planning and Programming Division (TPP) is responsible for the department's long-, mid-, and short-range multimodal transportation plans. TTP coordinates with and includes planners from the PTN for statewide plan development of rural public transportation goals, objectives, strategies, and projects.

The TxDOT Office of Civil Rights (OCR) is responsible for affirmative action and Title VI/Equal Employment Opportunity contract compliance. The office oversees the Disadvantaged Business Enterprise (DBE) and Small Business Enterprise (SBE) certification programs and DBE compliance elements of Business Outreach and Program Services. The OCR staff coordinates with PTN to ensure that FTA-specific civil rights policies and procedures are reflected in the department's civil rights programs. PTN participates on the OCR Title VI Integration Team, which meets quarterly to review Title VI and language assistance program rights policies, procedures and compliance.

## ***Transit Agencies***

Transit agencies are the department's partners in providing public transportation to the citizens of Texas. Many have long-established, ongoing relationships with TxDOT. To carry out their service delivery responsibilities, transit agencies:

1. Provide transportation services,
2. Work with human service agencies, workforce centers, education facilities, employers, ridership, and the public to identify and coordinate transportation needs,
3. Comply with all terms in the grant agreement, applicable state and federal regulations, and reporting requirements.

## ***Metropolitan Planning Organizations (MPOs)***

A Metropolitan Planning Organization (MPO) is a transportation policy-making organization made up of representatives from local government and transportation authorities. MPOs ensure that existing and future expenditures for transportation projects and programs are based on a comprehensive, cooperative, and continuing planning process. The role of the MPO includes establishing a local forum for transportation decision making; evaluating transportation alternatives; developing and updating a long-range transportation plan; developing a Transportation Improvement Plan (TIP); and getting the public involved.

TxDOT works in cooperation with these local groups in developing their TIPs. In accordance with federal regulations, the MPOs establish their project priorities; and TxDOT includes those in the statewide program.

## ***Regional Service Planning (RSP)***

Chapter 461 of the Texas Transportation Code focuses on maximizing the benefits of the state's investment in public transportation through the coordination of services. Accordingly, the Texas Transportation Commission looks to a lead agency in each of the state's 24 planning regions to head up local activities. These include developing a stakeholder-led plan to enhance service delivery, improve customer satisfaction, and increase the efficiency and effectiveness of transportation services. Regional plans contain the following essential elements or characteristics:

1. Local development
2. Comprehensiveness
3. Inclusion of public, private, and non-profit human service agencies, workforce and public transportation agencies, advocacy groups, passengers, and the general public
4. A mechanism to share the coordinated plan document as needed to support cross-jurisdictional project selection processes.

These plans and associated materials can be obtained at the regional service planning website: <http://www.regionalserviceplanning.org/>.

## **Summary of State Management Plan Development**

This State Management Plan is a new plan based on FTA Circular 5100.1 for the Section 5339 Bus and Bus Facilities Formula Program (May 18, 2015). For FY 2016, this Section 5339 SMP will be a "stand-alone" document for purposes of development and stakeholder/public review. Beginning in FY 2017, the Section 5339 SMP will be incorporated into the Public Transportation Divisions "combined SMP," which will then include the SMP for Sections 5310, 5311, and 5339 grant programs.

## ***Change Management***

The Compliance Section will maintain a document of proposed or potential changes to the SMP and will update it annually, as required by FTA guidance, beginning in January of each year. It is estimated that minor

changes will be completed by April of each year. Significant changes will undergo a public review and comment period and will likely result in an update by June. The intent is to have an updated SMP ready at the beginning of the State Fiscal Year (September 1<sup>st</sup>). This schedule may change based on new federal transportation authorizing legislation (the successor to MAP-21).

Proposed changes or edits may be submitted at any time to:

Texas Department of Transportation

Public Transportation Division

125 E. 11th Street

Austin, Texas 78701-2483

Email: [Mark.Sprick@txdot.gov](mailto:Mark.Sprick@txdot.gov)

## Chapter 2 – Section 5339 Program: Bus and Bus Facilities Formula Program

### Program Purpose and Authority

The Bus and Bus Facilities Program is authorized under the provisions set forth in the Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21) under Section 5339 of Title 49, United States Code. The Texas Department of Transportation (TxDOT) receives Section 5339 from the FTA to provide grants to rural and small urban areas within the State to assist in financing capital projects to replace, rehabilitate, and purchase buses and bus-related equipment, and to construct bus-related facilities.

Title 43, Texas Administrative Code, Chapter 31.30, The Section 5339 Grant Program (43 TAC 31.30), prescribes many of the policies and procedures to be followed by TxDOT. The policies and procedures in this SMP are the same as those in the TAC and are augmented by additional federally-required policies and procedures in the most current FTA regulations and circulars.

### Program Goals and Objectives

The goal of the 5339 program is to improve the readiness of fleet, other equipment, and facilities through capital investment. This is accomplished by undertaking modest overhaul or rebuild projects to extend the life of existing fleet to offset vehicle replacement needs. Additionally, program funds are used to make facility repairs or upgrades, purchase passenger amenities (shelters, signage), purchase shop equipment, and address obsolescence in certain technology aspects of transit operations. This can be done by upgrading communication, fare collection, and security equipment. Such projects may not be feasible in other funding programs due to regular budget demands.

Due to the large size of the state-funded fleet in Texas compared with the relatively small amount of 5339 funding available to the state each year, this program is not sufficient to address long-term fleet replacement needs.

To reduce administrative burden and make the 5339 program more responsive to fleet replacement requirements, TxDOT may elect to combine two years of available 5339 funding into one grant.

### Program Roles and Responsibilities

#### *Public Transportation Division*

In addition to the general program roles and responsibilities (Chapter 1, Introduction), the Texas Administrative Code (43 TAC 31.30) requires the department, as administrating agency, to:

1. develop application materials and disseminate information to prospective applicants and other interested parties;
2. develop evaluation criteria and select projects for funding, with input from local entities and local individuals;
3. prepare the state's annual program of projects and funding application and submit that material to the FTA for approval;
4. negotiate and execute contracts with local Section 5339 recipients;
5. prepare requests for federal reimbursement and process payment requests from Section 5339 recipients;

6. monitor and evaluate the progress of ongoing transportation operations, including compliance with federal regulations and coordination of services; and
7. provide technical assistance to Section 5339 recipients to aid them in improving and coordinating transit services.

### ***Subrecipients***

Subrecipients are responsible for carrying-out selected projects in accordance with the grant agreement, state and local laws & rules, and federal program guidance.

## **Coordination**

### ***State Agency Level Coordination***

State agency level coordination includes programing the grant in the State Transportation Improvement Program (STIP), which is done through communication with the Transportation Planning and Programming Division (TPP), and the advancement of environmental findings, which is done through communication with the Environmental Affairs Division (ENV), who then coordinates as needed with the Texas Commission on Environmental Quality (TCEQ), State Historical Preservation Office, and other agencies.

### ***Project-level Coordination***

Some subrecipients are able to select projects without any coordination while others require local board action. Similarly purchase approval requirements vary by subrecipient based on expected costs.

## **Eligible Subrecipients**

All Rural Transit Districts in the state are eligible to participate in the 5339 program. Small Urban Transit Districts operating in small urban areas in the Governor's Apportionment (those cities with populations between 50,000 and 199,999) are also eligible.

## **Eligible Activities**

Eligible activities include but are not limited to:

- Some fleet maintenance expenses (overhaul, for vehicles at about 40% of useful life, or rebuild, for vehicles nearing or exceeding the end of useful life). Typical overhaul and rebuild projects include engine / transmission replacement, major lift repair, and major HVAC repair.
- Vehicle replacement or vehicles to be used in service expansion
- Facility projects
- Passenger amenities (shelters, signage)
- Miscellaneous equipment, such as shop equipment, communication, etc..

In general (see "project Selection Criteria and Method of Distributing Funds") eligible expenses are limited to "hard capital", that is, some expenses such as purchase of service which are considered

capital and are eligible in other programs are not eligible in the 5339 Program. Also, general preventive maintenance expenses are not eligible.

**NOTE:** Regardless of type, eligible expenses are reimbursed, that is, the applicant must incur the cost before it can request payment from grant funds.

## **Local Share and Local Funding Requirements**

Transportation Development Credits are applied uniformly to subrecipient projects as match at an 80/20 rate, as the 5339 program is limited to capital expenses. If additional funds are needed to cover the costs of a given project, local, state or other federal funds may be used at the discretion of the subrecipient (as additional funding not match). Match requirements for other federal funds used on a 5339 project would be applicable to that other program's contribution.

## **Method of Distributing Funds and Project Selection Criteria**

### *Project Selection Criteria and Method of Distributing Funds*

According to the Depreciation Value formula (described below), each subrecipient will receive a proportional share of available funding based on the remaining useful life of its public transportation fleet and the cost of replacing that fleet based on information in the department's information system containing transit fleet data, called the Public Transportation Management System (PTMS).

The process is as follows:

- 1) Each vehicle's depreciation rating is determined by dividing current mileage by a standard useful life mileage. The rating is capped at 1.
- 2) The replacement cost of each vehicle is determined.
- 3) An adjusted fleet replacement cost is determined for each subrecipient by multiplying the average depreciation rating of a subrecipient's fleet by the total cost of replacing a subrecipient's entire fleet.
- 4) The total adjusted fleet replacement cost is determined by adding all the subrecipient adjusted fleet replacement costs.
- 5) A scaling constant is determined by dividing the total available funds by the total adjusted fleet replacement cost.
- 6) Each subrecipient award is determined by multiplying its adjusted fleet replacement cost by the scaling constant.

Once the subrecipient award amounts are determined (by the formula described above), application forms are provided to subrecipients (see attachment A). The application provides a short list of eligible capital projects, but applicants may select from a broader list of projects for consideration by TxDOT and the FTA. Some non-capital expenses have been determined to be allowable, but grant-wide or program-wide limitations on the overall amount to be used in such categories may be applicable.

Upon receipt of complete, accurate applications, reflecting eligible expenses are received from all eligible recipients, the project selection process is complete.

## **Annual Program of Projects Development and Approval Process**

Based upon receipt of complete applications from subrecipients that reflect all eligible projects, a program of projects (POP) is developed. A list is compiled by Activity Line Item (ALI), grouping all projects that share an ALI together. Under each ALI, a list of subrecipients expected to carry-out a project under that ALI is included, along with the amount of program funds and the amount of Transportation Development Credits required to carry-out each project are listed. A total of program funds and transportation development credits must also be provided for each ALI.

Additional details and organization are required for certain projects. For instance, different fuel types are considered a separate “sub ALI” and fuel type and quantities of vehicles to be purchased per ALI must also be included.

Additional details are sometimes required for certain projects to carry the POP through the grant application phase such as lists of shop equipment or miscellaneous equipment to be purchased and addresses of facilities where improvements are planned to be made.

### ***Application Process and Timetable for Soliciting, Reviewing and Approving Local Projects***

Upon the announcement of 5339 funding awards in the federal register, the Depreciation Value formula (described in ‘Project Selection Criteria and Method of Distributing Funds’) is applied using fleet information in the Public Transportation Management System (PTMS). Then, subrecipient award amounts, an application form, and instructions are provided to TxDOT’s field representatives (Public Transportation Coordinators) for distribution to the subrecipients.

The application process allows time (typically, about 3 weeks) for subrecipients to consider what projects to undertake and return the applications. Upon receipt of complete, accurate applications, reflecting eligible expenses are received from all eligible recipients, the project selection process is complete. Using the information in the applications, the Program of Projects (POP) can typically be assembled within one month.

Once the Program of Projects (POP) is completed, the statewide grant applications are made through FTA’s automated grant management systems (TEAM or TRAMS). 5339 grant applications require a review by the Department of Labor in addition to the Federal Transit Administration.

## **Transfer of Funds**

Not applicable.

## **Administrative Requirements for Section 5339 Program**

Refer to Chapter 3, Administrative Requirements for Programs, in this SMP for basic grant administrative requirements in the Section 5339 Program.

These basic grant management requirements for State and local governments are contained in the Department of Transportation (DOT) regulations, “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,” 49 CFR part 18. The comparable DOT rule for private non-profit organizations is, “Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,” 49 CFR part 19. Parts 18 and 19 are collectively known as the “common rule,” or the “common grant rule.” The provisions of these rules apply except where inconsistent with Federal statutes or authorizing legislation.

## **Chapter 3 – Administrative Requirements for All Programs**

### **Deobligated Funds**

Funds that are deobligated from an approved program of projects remain available to TxDOT and are subject to reobligation during the period that the funds were originally available to TxDOT.

If deobligated funds from a program are available at the close of the project year, TxDOT considers previously identified projects as approved by the TxDOT Commission during initial allocation as well as special requests from subrecipients. In some cases, funds may roll over into the next year funding cycle.

### **Financial Management**

As primary recipient of FTA apportionments to states, and as the state agency designated to administer such funds for transportation activities in Texas, TxDOT will manage the fiscal elements of these programs in accordance with its existing procedures, FTA guidelines, and other applicable state and Federal regulations.

#### *Project Identification*

TxDOT assigns all projects included in the annual program of projects a project number for identification purposes.

#### *Accounting Systems*

All subrecipients are required to establish and maintain an accounting system to which all transportation-related costs, revenues and operating costs are recorded so that they may be clearly identified, easily traced and substantially documented. The fully allocated cost of the public transit program must be clearly identified regardless of the operational nature of the agency serving as the designated transit system.

TxDOT maintains a financial management system of financial reporting, accounting records, internal controls, and budget controls. All systems and procedures for financial management are in compliance with 49 CFR Part 18, the “Common Rule.”

TxDOT and the subrecipient are both responsible for documenting and supporting all costs charged to the project. Examples of adequate documentation include, but are not limited to:

1. Properly executed payrolls
2. Time records
3. Invoices
4. Project Grant Agreements (PGAs)
5. Vouchers

#### *Payment Procedures*

Procedures for requesting payment of program costs are available from the Public Transportation Coordinator assigned to a district. All payments are made on a reimbursement basis. It is not possible to advance grant funds to program subrecipients. Upon receipt of a properly completed billing reimbursement request, subrecipients should expect to receive reimbursement within 30 days.

#### *Budget Revisions and Amendments*

During the course of the PGA, it may become necessary to make modifications to the project in the form of budget revisions or PGA amendments.

### Budget Revisions

Changes may be made in the form of a budget revision if the purpose, scope and amount of the PGA will remain consistent with the applicable Approved Project Budget. This may include a transfer of funds between or among budget categories within an approved PGA. A budget revision cannot be used to change the purpose, scope, total dollar amount or terms and conditions of the PGA.

### Amendments

An amendment is used to modify the scope or purpose of a PGA or the Federal and/or state participation.

### ***Project Financial Review and Audit***

The Public Transportation Coordinators visit each subrecipient a minimum of once every quarter to review reimbursement requests using the PTN-126 form. The Texas Administrative Code outlines the specific actions required of the PTC and the subrecipient (43 TAC 31.48).

Grant subrecipients must obtain an independent audit annually in accordance with both the Texas Uniform Grants Management Standards and 2 CFR 200, "The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards." Subrecipients will provide copies of the annual audit to the TxDOT Audit Office and to the PTC. TxDOT reserves the right to perform interim or project-level audits if there is evidence of a lack of fiscal and/or managerial capability on the part of the subrecipient. Audit costs are an eligible project expense.

In addition, the State Auditor's Office reviews TxDOT's management of transportation programs as part of the department-wide audit. Copies of the latter audit report are routinely furnished to the Office of the Inspector General, U.S. Department of Transportation.

### ***Close-Out***

After all costs are incurred and all work activities under the state program of projects are completed, TxDOT initiates formal project closeout procedures with FTA.

### ***Technical Assistance***

TxDOT personnel will meet with representatives to answer questions relative to accounting practices and audit requirements. TxDOT personnel will provide all possible assistance in this area during the course of the project. There is no specified accounting system mandated for use by grant subrecipients. However, financial records should be maintained in accordance with the appropriate generally accepted accounting principles.

## **Agreements**

### ***Master Grant Agreement (MGA)***

The Public Transportation Division (PTN) Master Grant Agreement (MGA) is a system of documents that supports the issuance of federal and state grant programs from the Texas Department of Transportation (TxDOT) to eligible transit agencies throughout the state. The documents include the Master Grant Agreement (MGA) Application, annual Certifications and Assurances, the Budget Sheet, and the Project Grant Agreement (PGA).

A transit operator requesting federal and/or state funding from TxDOT completes only one application and one MGA for all sources of funding for a given year. Separate PGAs are completed for each grant program.

### ***Annual Certifications and Assurances***

TxDOT-PTN will produce annual certifications and assurances based on the FTA fiscal year certifications and assurances and State certification requirements. PTCs will send the annual certifications and assurances to subrecipients for signature and retain the original copies in their files. PTCs will email electronic copies to the Compliance Section.

### ***Project Grant Agreement (PGA)***

Upon approval of the Texas Transportation Commission Minute Order and the FTA approval of the program of projects for each program, the PTC will send a Project Grant Agreement to the subrecipient for review and approval.

## **Procurement**

### ***Authority/Guidance***

#### **Federal Authority**

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

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

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

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

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

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

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

Acquisition of real property is outside of the scope of FTA Circular 4220.1F (see FTA guidance) and such acquisitions shall comply with the uniform relocation and real property acquisition standards in 49 CFR part 25. An overview of such acquisition activities is provided separately from the bulk of the procurement guidance in this SMP in the “Real Property / Construction” chapter.

#### **State Authority**

For a description of TxDOT’s rules regarding standard federal requirements, see 43 Texas Administrative Code (TAC) Section 31.42.

For a description of TxDOT's rules regarding contracting and procurement requirements specific to public transit, see 43 TAC Section 31.43 and Section 31.44.

See 43 TAC Section 9.53 for the department's Disadvantaged Business Enterprise rules and Section 9.57 for complaint procedures.

Other agency procurement requirements are contained in the Government Code Section 2155.062 and Local Government Code Chapter 271.

The Uniform Grant Management Standards for the State of Texas (UGMS) apply to all state-managed grant programs.

### Federal Transit Administration Guidance

Federal Transit Administration (FTA) guidance for using third party contracts is found in FTA Circular 4220.1F, Third Party Contracting Guidance.

Guidelines and management procedures for capital purchases are covered in FTA Circular 5010.1D, Grant Management Guidelines. Of particular interest is circular Chapter IV concerning management of real property, equipment and supplies. It also includes guidance on using property as non-federal match.

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

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

Another helpful source of information is the procurement section of FTA's State Management Review Oversight Guidance document.

### State Guidance

The State of Texas Contract Management Guide provides practical suggestions and practices to make contract decisions that are in the best interest of the state.

### *Overview*

#### Introduction

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

The board must adopt standards, policies and procedures. They may be included in a single document or distributed among several documents such as municipal ordinances, operations manuals, employee handbooks, board ethics, etc.

The procurement section of FTA's State Management Review Oversight Guidance document provides a general overview of procurement standards and potential pitfalls in the process.

Transit agencies need to comply with grant agreement clauses that require timely initiation of procurement processes. The Transit Project Management Manual, Procurement Section details these requirements. Subrecipients must notify the PTC in writing when it is necessary to extend these deadlines.

All procurement documents are public information, and subrecipients must retain them for at least three years after the close of the contract. In the case of the procurement of capital assets, documents are retained for the life of the asset plus four years.

### ***Department Role***

When FTA funding is used, subrecipient procurement and contracting activity is monitored, reviewed, or approved by the department, using the PTN 129 form to check annually that the agency is poised to conduct any procurement process and the PTN 124 form to ensure that appropriate processes are followed when certain, specific procurement activities occur. The PTN fleet Planner may be contacted to assist in a review.

When FTA funding is used directly by the department to procure services, the Fleet Planner will be notified by the manager or program manager who is initiating the project involving FTA funds. The Fleet Planner will ensure all appropriate clauses, certifications, and assurances are associated with the purchase order/contract, and that the procurement otherwise meets FTA requirements.

### ***Procurement Process***

The procurement process has three phases:

1. procurement planning and solicitation,
2. award / contracting activities, and
3. delivery.

### **Procurement Planning and Solicitation**

Before an agency begins a specific procurement process, it must have a procurement program in place that meets certain standards, which should include but are not limited to:

1. Procurement procedures that reflect applicable federal, state and local laws and regulations
2. Contract administration that ensures contractor performance in accordance with terms, conditions, and specifications of the contracts or purchase orders
3. Written code or standards of conduct
4. Review procedures that avoid purchase of unnecessary or duplicative items
5. Written procurement history record
6. Written procedures to handle and resolve protests
7. Written procurement procedures
8. Use of intergovernmental agreements, federal excess and surplus property, and value engineering wherever possible
9. Rolling stock/replacement parts procurements that do not exceed five years inclusive of options
10. Making an independent cost estimate (ICE) prior to solicitation
11. Performing cost or price analysis prior to entering into a contract or issuing a purchase order.

Procurement transactions must be conducted in a manner that encourages full and open competition. Specific procurement procedures based on the ICE are identified in the table below. Typical methods of formal solicitation are invitation for bids (IFB), request for proposals (RFP), and request for statements of qualification (RFQ), and these are briefly described below. 4220.1F provides complete descriptions of these processes, and provides other methods that may be used in certain cases, such as design-build type projects. Due to the complexity of these other methods, selecting a contractor through a formal solicitation process using a method other than an IFB, RFP, or RFQ process is discouraged. Using a “2-step” method to select a commodity supplier or to procure services other than A&E services is discouraged.

### **Invitation for Bids**

The IFB method is used when the contractor can be selected principally on price. It is most commonly used when selecting a commodity supplier who can meet a realistic, complete specification, but it may also be used to procure services when, again, the agency believes it can select a contractor principally on price. As in all FTA-supported awards, the transit agency may only select responsible contractors who are responsive to the solicitation. In an IFB context, this means the agency evaluates all bids to determine which bidders are responsible against some standard and which bids have responded appropriately to the terms described in the solicitation. All responsible bidders submitting responsive bids are then considered equal, and selection is made based on price.

Due to the prohibition against arbitrary actions, using “best value” provisions in connection with an IFB process is strongly discouraged. If the transit agency wishes to base its award on factors other than costs, an RFP process is appropriate.

### Request for Proposals

The RFP method is used when the contractor will be selected on predominantly non-cost factors. It is most commonly used when selecting a contractor for services, but it may also be used to select a commodity supplier. An RFP is most appropriate when selecting a commodity supplier when the specification is very basic or incomplete. In an RFP process, the agency will establish scoring criteria that measure the responsibility of proposers and the responsiveness of their proposals. The scoring criteria must be published, indicating the selection factors in order of priority. Cost should be a factor, but it is bad form in an RFP process to make cost the top selection factor, as that would lend itself better to an IFB process.

### Request for Statements of Qualifications

Procurement of architectural or engineering (A & E) services requires a qualifications-based, procedure (i.e., Brooks Act procedures). Services subject to this requirement may include preliminary engineering, design, architectural, engineering, and related services that lead to construction activity. If the work is not expected to lead to construction, the solicitation should take the form of an RFP instead of an RFQ, even if some or all of the offerors are expected to be architects or engineers.

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

Upon receipt of various statements of qualifications, the offers are ranked and price negotiations are initiated with the best-scoring offeror. If negotiations with the first offeror are unsuccessful, negotiations may begin with the next ranked candidate.

Unlike the procurement of any other service or the procurement of any commodity, a local preference may be exercised in an RFQ process without violating the FTA prohibition against geographical preference.

### ***Vehicle Accessibility***

Vehicles purchased with TxDOT grant funds are required to be ADA accessible to persons with disabilities. A transit agency may apply for a waiver if it can demonstrate service equivalency. The Transit Project Management Manual Procurement Section provides a process for requesting waivers to purchase non-accessible vehicles, using the PTN 116 form.

### ***Oversight and approval of solicitations***

The subrecipient shall furnish the department notice of the intent to issue a formal solicitation when the amount of the independent cost estimate meets or exceeds the threshold level in the Government Code or Local Government Code (or \$25,000 for those entities not covered by the Government Code or Local Government Code) requiring formal competitive procurement. See the table below “Procurement Procedure Based on Independent Cost Estimate.” When a transit agency elects to purchase goods or services through the state contract, also known as “the co-op” the agency is not required to issue a solicitation, as the co-op conducts the solicitation.

Purchases shall not be split out to stay below the threshold amount.

Procurement Procedure Based on Independent Cost Estimate		
See FTA Circular 4220.1F for definitions		
Exceptions allowed when a transit agency purchases through the state contract (co-op). A transit agency may elect to follow a more stringent process than described below. Formal solicitation documents (invitations for bids / requests for proposals / requests for statements of qualifications) must be reviewed and approved by TxDOT.		
Independent Cost Estimate	Agency Covered by Local Government Code	Agency Not Covered by Local Government Code
\$3,000 or less	Micro-Purchase	Micro-Purchase
\$3,001 - \$24,999	Small Purchase Procedure	Small Purchase Procedure
\$25,000 - \$50,000	Small Purchase Procedure	Formal Solicitation Process
Over \$50,000	Formal Solicitation Process	Formal Solicitation Process

***Initiation of a Written Procurement History***

The subrecipient shall begin developing a written procurement history, including the following information:

1. The independent cost estimate;
2. The rationale the subrecipient used for the method of procurement (such as invitation for bid, request for proposals or request for statements of qualifications);
3. The rationale the subrecipient used for the planned contract type; and
4. The methodology that will be used to select a contractor.

***Planning for Joint Procurements***

A joint procurement occurs when two or more transit agencies collaborate using the same specifications, solicitation process, and terms and conditions to purchase goods or services through the same procurement process. While some tasks are shared among transit agencies throughout the procurement process, one of the agencies must be designated to take the lead.

The procurement procedure used by the lead agency cannot violate another participating agency’s own procurement procedures. Therefore, it is important that all relevant procurement information be shared among the participants. For vehicle purchases, this includes but is not limited to:

1. Vehicle options;
2. Floor plans;
3. Agency tax status;
4. Delivery locations; and
5. Fleet identification numbers for fleet discounts.

In addition to the above, all participants in a joint procurement must maintain a written procurement history and individually meet all federal, state, and local requirements. The PTC for the lead transit agency is responsible for creating and maintaining a procurement record in PTMS that tracks progress and lists participants.

### ***Solicitations for Rolling Stock and Manufactured Goods***

Requests for offers to supply rolling stock, steel, iron, or manufactured products shall provide for receipt of certifications from offerors indicating compliance with Buy America or qualification for exception to Buy America requirements.

### **Award / Contracting**

Subrecipients shall furnish the department notice of the intent to award a purchase order or contract to any individuals or organizations not a part of the subrecipient's organization when the amount of the purchase meets or exceeds the threshold level in the Government Code or Local Government Code (or \$25,000 for those entities not covered by the Government Code or Local Government Code) requiring formal competitive procurement. The department monitoring thresholds are the same as described for formal solicitation processes in the table "Procurement Procedure Based on Independent Cost Estimate." Purchases shall not be split out to stay below the threshold amount. No subcontract will relieve the subrecipient of the subrecipient's legal responsibilities to the department. All subcontracts in excess of \$25,000 shall contain the following required provisions from the pro forma grant contract between the department and the subrecipient:

1. Financial management;
2. Civil rights; and
3. Disadvantaged business enterprise program requirements

Contracts shall contain all required provisions required by state and federal law. These requirements flow down to all third party contractors and their contracts at every tier. All relevant clauses contained in the transit agency's most current grant agreement with TxDOT must be copied into a transit agency's subcontracts. 43 TAC 31.44(c)(1) and 49 CFR 18.36 apply.

Transit agencies must be prepared to monitor the successful contractor for compliance with these requirements.

### ***Price Analysis***

When an agency makes a competitive vendor selection, (multiple bids were received) and there is no requirement to evaluate specific elements of cost, the agency conducts a price analysis by comparing the price of the low bid or best to the independent cost estimate, to the other offers, and to any other price information the transit agency may have, such as internal, historical information. The price analysis will show the consistency between the estimated cost and the proposed price. Any significant discrepancy must be explained.

### ***Cost Analysis***

When there is no price competition (as in the case of a sole source procurement, or when only one bid or proposal is received) or the procurement requires a submission of separate cost elements (as in the case of most requests for proposals, such as construction projects, transit services, professional consulting, etc.), the agency conducts a cost analysis by comparing the overall cost of the best offer to the independent cost estimate, along with an analysis of each element of cost presented in the offer. The cost analysis will include profit, and the agency must negotiate profit as a separate element of the price.

The Best Practices Procurement Manual has additional information on how to conduct these analyses.

Additionally, the solicitation document and resulting contract should include “performance measures” by which the transit agency can judge the contractor’s fulfillment of the contract requirements. Such contracts often include clauses for renewal. Sound business practice dictates that before exercising such options, transit agencies should consider the contractor’s performance and if the terms, conditions, and price are still favorable to the agency.

### ***Pre-Award Audit and Buy America***

All revenue rolling stock purchases will be supported by a pre-award audit. Audit documentation descriptions and forms may be found in the PTN-124 form. The audit is a self-certification by the transit agency that includes:

1. Purchaser’s Certification;
2. Buy America Certification; and
3. FMVSS Certification

Offers to supply steel, iron, or manufactured goods shall be accompanied by a certificate from the offeror that it will supply products that comply with Buy America or that it may qualify for an exception to the Buy America requirements.

### ***Development of the Written Procurement History***

In addition to the other significant contract and award actions taken in this procurement phase, the following will be added to the transit agency’s written procurement history:

1. The reasons the bidder or proposer was selected;
2. The methodology used to determine that the contract price is fair and reasonable;
3. Any negotiation activity, as appropriate.

### **Delivery**

TxDOT oversight is triggered in the delivery phase when the request for reimbursement is submitted.

The timeliness and adequacy of the delivery of commodities or services is documented in this final phase of development of the written procurement history. In addition to the requirement to have a complete written procurement history, this information may be used for future reference, for example if considering the extension of optional quantities or the term (timeline) of a contract. Content of the documentation should address, for example, the degree to which:

1. commodities or services were delivered to specification;
2. contractor responded to requests to correct any deficiencies;
3. the contractor honored warranty commitments; and
4. the contractor performed services in the project scope.

### ***Post-Delivery Audit***

When revenue service vehicles are purchased with FTA funding, the agency must conduct a post-delivery audit. It addresses the same areas as the pre-award audit, confirming that the vehicles delivered meet:

1. Specifications (Purchaser’s Certification);
2. Buy America; and
3. FMVSS.

In certain cases, the documentation that the vehicles were delivered to specification (purchaser’s certification) must be supported by documentation of a factory inspection. Special preparations must be

made when purchasing more than ten (10) vehicles that will be placed into service in an urban area to ensure the post-delivery audit will be properly completed, or in the case of rural transit vehicles, when purchasing more than twenty (20) vehicles. In these cases, a resident inspector (other than an agent or employee of the manufacturer) must be at the manufacturing site throughout the period of manufacture to monitor the vehicle construction process and to complete a report that supports the purchaser's certification portion of the post-delivery audit.

### ***Other requirements***

When revenue service vehicles are purchased with FTA funding, the agency must receive a copy of the bus testing (Altoona) report prior to issuing payment for the vehicle.

When a vehicle is purchased with support of FTA funds administered by the department, or with state funds (including TDCs), subrecipients shall record a lien in the title application reflecting TxDOT-PTN as lienholder.

The transit agency must secure a deed of trust in favor of TxDOT on any real property purchased after January, 2002, with funds provided by the department. Any alternative form of recording the department's interest must be approved in writing by the division director. Such real property must be included in PTMS.

Any equipment purchased with grant funds with a unit cost of \$5,000 or more must be in the state's property records (PTMS) and inventoried in accordance with 43 TAC 31.50.

### ***Real Property / Construction***

Special requirements pertain to the purchase of real property. FTA Circular 5010.1D ***Grant Management Guidelines*** covers the acquisition of real property. TxDOT is the designated recipient of funds, all direct contact with FTA flows through TxDOT, not the transit agency, as stated in the FTA documents).

### **Appraisals**

To establish the value of the property, the Federal Transit Administration requires one appraisal and a review appraisal, which TxDOT may be able to perform. FTA's prior approval is required when the transit agency's recommended offer of just compensation exceeds \$250,000, or when a property appraised at \$250,000 or more must be condemned. This process must be followed to purchase real property using FTA funds. For guidance on using property as local match, see FTA Circular 5010.1D, page IV-8 "In-Kind Contributions".

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

### **Environmental Factors**

There are also environmental factors involved in the procurement of land or facilities. Before an agency can purchase property, FTA must accept the documentation in support of a categorical exclusion, environmental assessment, or environmental impact statement.

### **Purchase and Titling**

The TxDOT subrecipient, not its contractor, must be the recorded owner of real property purchased with funds provided by the department.

TxDOT will provide technical assistance for all real estate transactions.

## ***Procurement of Architectural and Engineering (A&E) Services***

See the Procurement chapter for information related to procurement of A&E services (see RFQ procedure). The Best Practices Procurement Manual (Chapter 6.5) provides excellent and detailed information about retaining A&E firms. Additionally, TxDOT can offer its expertise in this area to a requesting transit agency.

### ***Construction***

This subheading includes:

1. Peer reviews;
2. Pre-construction meetings; and
3. Facility accessibility.

### **Peer Reviews**

In consultation with FTA, TxDOT will determine if a facility project will require a peer review. If the department determines that a peer review is required, a peer review meeting at the 30-50% design stage must be scheduled. The project owner should notify the TxDOT at a minimum of 30 days in advance of a peer review meeting.

A peer review is an on-site exchange, facilitated by the transit agency doing the facility project, which includes a group of the agency's fellow transit system professionals who have built and operate similar facilities. The experience of the peer, rather than the number, is the important element. The peers included in the review should be supplied with project plans and information a minimum of two weeks prior to the review meeting. A meeting facilitator, other than the project manager, is strongly encouraged. Costs incurred for the performance of the peer review are eligible for federal participation and should be broken out in the detailed construction budget.

The intent of the peer review is to assure an efficient design in terms of operational concerns. An experienced peer may note building limitations, may recommend design features, and may prevent design and construction errors and costly mistakes. For example, when an agency proposed to install a vehicle maintenance lift inside a facility, the peer review recommended the incorporation of a maintenance pit instead, as the overhead clearance inside the facility prohibited the use of a vehicle maintenance lift.

### **Pre-Construction Meeting**

A pre-construction meeting must be held between the transit agency, the construction company, and the architect or overseer of the construction phase. PTCs will attend the pre-construction meeting. The agenda for the meeting shall include, at a minimum:

1. Construction milestones;
2. Billing processes; and
3. Contingencies.

### **Transportation Facility Accessibility**

Public entities constructing new facilities or altering existing facilities that include the provision of public transportation service must make the facility or alterations readily accessible to and useable by individuals with disabilities. The facility accessibility regulations are contained in (49 CFR Part 37). Appendix D to Part 37.215 contains an explanation of the regulations.

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

## **Asset Management**

### ***Authority / Guidance***

#### Federal Authority

Administrative requirements for grants and cooperative agreements are contained in 49 CFR Part 18 and 49 CFR Part 19. These constitute what is known as the “Common Rule”.

The federal authorization for maintenance of ADA equipment is found in 49 CFR Section 37.161, 49 CFR Section 37.163 and 49 CFR Section 38.23.

49 USC Section 5334(h) lists the federal criteria for transferring assets out of the transit program.

#### State Authority

Texas Transportation Code, Chapter 455 defines the state’s authority. The property management standards are contained in Title 43, Texas Administrative Code (TAC), Part 1, Chapter 31, Subchapter E.

The Texas Department of Motor Vehicles (DMV) rules (43 TAC 218.16) and the Texas Tort Claims Act (Civil Practices and Remedies Code Chapter 101) set minimum insurance requirements for vehicles. Transit agencies that receive an exemption from DMV are still required to maintain a proper level of insurance coverage through a third party or self-insurance.

Under the authority of Chapter 783 of the Texas Government Code, the Office of the Governor established Uniform Grant Management Standards (UGMS) for state agencies. The UGMS are designed to promote the efficient use of public funds by providing awarding agencies and grantees a standardized set of financial management procedures and definitions, by requiring consistency among grantor agencies in their dealings with grantees, and by ensuring accountability for the expenditure of public funds. UGMS procedures apply in areas not covered by the Common Rule.

### ***Federal Transit Administration (FTA) Guidance***

Property management and continuing control are part of FTA Circular 5010.1D *Grant Management Guidelines*.

Individual program circulars also have sections on maintenance and continuing control. A complete listing of FTA circulars is available online.

### ***State Guidance***

In the publications section of the Public Transportation Division Internet page, TxDOT makes available copies of the “Maintenance Management Guide” and a sample maintenance plan from a transit agency.

### ***Overview***

The Texas Department of Transportation (TxDOT) oversees the public investment in vehicles, facilities, real property and equipment purchased or operated with state or federal funds administered by the department. As necessary, PTN will coordinate compliance issues with the Office of General Counsel.

### ***Transit Asset Management Planning and Maintenance***

Each recipient must have a asset management / maintenance program addressing all real property and equipment. TxDOT has the authority to direct the transit agency to transfer or dispose of vehicles, property or equipment that is not maintained properly. Basic elements of the program include the following:

1. Written plan(s), which may separately address asset management and maintenance, or may combine them, including an asset inventory and capital plan with a minimum 5 year span;
2. Preventive maintenance inspections and scheduled services, which shall include at a minimum the manufacturers' recommended servicing schedules;
3. Provisions for accessible equipment;
4. Management of maintenance resources and assets, including “decision support tools” which may be considered maintenance and / or asset management performance measures;
5. Warranty compliance and recovery; and
6. Standards for maintenance subcontractors.

TxDOT documents that a transit agency has and is following an adequate asset management / maintenance program on the annual compliance review form, PTN-129 Compliance Review.

### ***Inventory, Control Mechanisms, and Insurance***

#### **Inventory**

The Public Transportation Management System (PTMS) is an information database for transit agency contact data, security and safety information, and fleet and facility inventory.

PTMS:

1. Enables TxDOT to fulfill its federal and state continuing control mandates;
2. Provides vehicle information for developing vehicle capital replacement program needs;
3. Facilitates the department’s response to inquiries on capital assets; and
4. Is routinely used for legislative inquiries, planning, inventory and grant management purposes.

Real property and equipment (with unit cost over \$5,000) purchased with support of TxDOT funding, all vehicles used in transit service, and all rural maintenance facilities will be maintained on TxDOT inventory (PTMS) until they are no longer used for public transportation purposes and properly disposed.

The inventory activity required by 43 TAC Section 31.50(c) is an important method for ensuring continuing control of TxDOT’s interest in vehicles, real property, facilities and equipment.

The TAC calls for two types of inventory activity. One is an update of mileage and condition of vehicles, and an update of condition of facilities if needed. This may be accomplished by the transit agency sending a current list of transit assets to TxDOT that includes an update of mileage and condition. Alternately, the PTC can send an inventory report or fleet condition report from PTMS to the transit agency, requesting an update of the list. The PTC reconciles the agency submission with existing information and updates the records accordingly. This is commonly referred to as the “annual inventory” or “annual update” and the PTC documents completion by printing-out the transit agency’s inventory report, labeling it “annual update” or “annual inventory” and signing or initialing it. The inventory report is automatically date-stamped by PTMS.

The other inventory activity requires the TxDOT staff to physically view all inventoried assets to ascertain their condition, in addition to updating the mileage and condition. Again, reconciliation with existing information occurs; and records are updated in PTMS. This is commonly referred to as the “physical inventory” and the PTC documents completion by printing-out the transit agency’s inventory report, labeling it “physical inventory” and signing or initialing it.

The inventories occur in an alternating cycle - annual update one year, physical inventory the next, and so forth. PTCs maintain their own schedules in this regard.

## Control Mechanisms

The subrecipient shall not execute any lease, mortgage, lien or other legal document that adversely affects the federal or state interest in project facilities or equipment or impairs the government's continuing control of the asset. To prevent unauthorized use as collateral, sale or transfer of vehicles, TxDOT uses one of two asset control mechanisms. An older method placed a restraining mark or "flag" on the vehicle title. More recently, titles show TxDOT as a lien holder.

1. **Restraint Marks (Flags).** Prior to January 2002, at the time the transit agency titled a vehicle purchased with department funds, the Vehicle Titles and Registration Division (VTR) placed a restraining mark on the title. This "flag" signaled that the Public Transportation Division must approve the sale of the vehicle before VTR processed a change of owner.
2. **Vehicle Liens.** In January 2002, the department moved to a different asset control mechanism. Now, at the time a vehicle is titled, TxDOT-PTN is listed as a lien holder; and titles are kept in the division headquarters office.

The transit agency must secure a deed of trust in favor of TxDOT on any real property purchased after January, 2002, with funds provided by the department. Similarly, a deed of trust is secured in favor of TxDOT when grant funds are used to make improvements to facilities / real property. Any alternative form of recording the department's interest must be approved in writing by the division director. Real property must be included in PTMS.

Any equipment purchased with grant funds with a unit cost of \$5,000 or more must be in the state's property records (PTMS) and inventoried in accordance with 43 TAC 31.50.

## Insurance

TxDOT documents that a transit agency has adequate insurance on vehicles, real property and other transit assets as part of the annual compliance review documented on the PTN-129 Compliance Review form. Insurance on new vehicles is checked as part of procurement monitoring through the PTN-124 form.

Transit agencies shall maintain the minimum insurance on all transit vehicles required by TxDOT (43 TAC Section 18.16) and the Texas Tort Claims Act (Civil Practices and Remedies Code Chapter 101). Transit agencies that have been granted an exemption by the Texas Department of Motor Vehicles are still required to maintain a proper level of insurance coverage through a third party provider or self-insurance.

Agencies offering cross-border or interstate service must ensure that insurance is in force at the appropriate levels.

The fleet must also be insured for the replacement value of all vehicles and equipment. The PTC will monitor agencies to confirm that all vehicles purchased with FTA funds are properly insured. Department has the authority to order a vehicle parked if it is improperly insured.

Transit agencies should obtain sufficient levels of insurance to protect and replace real property and other assets purchased with state or federal funds through the department. TxDOT will monitor insurance policies annually to verify that federally funded facilities and property are properly insured.

## ***Asset Disposition and Transfer***

### Vehicles

If a vehicle is no longer used for public transportation, it is to be disposed of immediately. Vehicles are not to be maintained by subrecipients for spare parts or use by non-public transportation operations.

Once removed from service, vehicles are formally disposed of through sale (including salvage sale), or transfer to another transit service provider in accordance with requirements outlined in the Texas Administrative Code Section 31.57 and the procedures described at: [https://ftp.dot.state.tx.us/pub/txdot-info/ptn/vehicle\\_disposition\\_process.pdf](https://ftp.dot.state.tx.us/pub/txdot-info/ptn/vehicle_disposition_process.pdf)

Individuals associated with the transit agency may not personally profit from the sale or salvage of state or federally funded vehicles. Proceeds from vehicle sale and insurance proceeds shall be retained by the transit agency and reinvested back into the transit program.

Vehicles may be transferred to other transit agencies with TxDOT's approval. A priority is to keep any transferred vehicle within the funding program for which it was initially procured.

To facilitate the transfer process, prevent duplication, and record all information to support disposition and transfer decisions, vehicles must be transferred within PTMS.

The Transit Project Management Manual Property Management Section contains specific instructions on how to transfer a vehicle.

### Real Property

All disposition of real property purchased with federal funds involves consultation between TxDOT and the FTA. FTA Circular 5010.1D provides guidance.

If the transit agency determines that real property is no longer needed for the approved project, TxDOT may approve the use of the property for other purposes. If the transit agency is disposing of one property and purchasing another, the department may permit the net proceeds from the sale of one property to offset the cost of the other.

TxDOT handles disposition of real property on a case-by-case basis.

### Other Equipment

The general principles guiding the disposition of vehicles also apply to equipment valued at \$5,000 or more. Disposition instructions for equipment are handled on a case-by-case basis.

## **Civil Rights**

### ***Disadvantaged Business Enterprise (DBE)***

It is the policy of the United States Department of Transportation (U.S. DOT) that Disadvantaged Business Enterprises (DBE) as defined in 49 CFR Part 26 shall have the opportunity to participate in the performance of contracts financed in whole or in part with federal funds. Consequently, the DBE and TxDOT's DBE Program requirements of 49 CFR Part 26 applies to all contracts as follows:

1. The Subrecipient and any subcontractor will offer DBEs, as defined in 49 CFR Part 26 Subpart A, the opportunity to compete fairly for contracts and subcontracts financed in whole or in part with federal funds. In this regard, the subrecipients should make good faith efforts to meet DBE goals.
2. The Subrecipient and any subcontractor shall not discriminate based on race, color, national origin or sex in the award and performance of contracts funded in whole or in part with federal funds.
3. The subrecipient and any subcontractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of U.S. DOT assisted contracts.

DBE requirements are included in the Master Grant Agreement.

The subrecipient must submit semi-annual reports using PTN-134 DBE reporting form that includes, but is not limited to, identification of the DBE, the actual amount paid to each DBE, the breakdown of awards to by ethnicity and gender and certification that all information reported is accurate and DBE's hired to perform the work are actually performing the work committed to them. TxDOT, as a multimodal transportation agency, has prepared and submitted a statewide DBE program covering all funds received from the U.S. Department of Transportation.

### Goal Setting

Each year TxDOT's Office of Civil Rights (OCR) sets an annual goal for the department. OCR establishes a 3-year DBE goal for PTN and submits a report that outlines the goal-setting methodology as well as the actual goal to FTA for concurrence.

All subrecipients will adhere to the requirements as specified in the U.S. DOT DBE regulation set forth in 49 CFR Part 26, Subpart C. Additional requirements are described in the application procedures, which may also be obtained from TxDOT.

TxDOT is actively seeking qualified DBEs to participate in federally funded activities. Firms interested in being certified and added to TxDOT's directory for public transportation programs should contact:

Office of Civil Rights  
Texas Department of Transportation  
Attention: DBE Officer  
125 E. 11th Street  
Austin, Texas 78701-2483

### ***Title VI of the 1964 Civil Rights Act***

Section 601 of Title VI of the Civil Rights Act of 1964 states the following:

“No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.”

These procedures describe the requirements that all FTA recipients must follow to ensure that their programs, policies, and activities comply with U. S. Department of Transportation Title VI regulations (in accordance with FTA Circular 4702.1B, Title VI Requirements and Guidelines for Federal Transit Administration Recipients, October 1, 2012) and the TxDOT Civil Rights Programs.

### TxDOT Public Transportation Division Title VI Program and Language Assistance Plan

The Public Transportation Division coordinates with the FTA Region 6 Civil Rights Officer and the TxDOT Office of Civil Rights for policy and procedures guidance on all civil rights programs, including Title VI. The Public Transportation Division's current Title VI Program (April 1, 2015) provides guidance to subrecipients and complies with the FTA Circular 4702.1B for Title VI. The PTN Title VI Program is posted on the TxDOT-PTN website at <http://www.txdot.gov/inside-txdot/forms-publications/publications/public-transportation.html>

Copies may also be acquired from Public Transportation Coordinators located in TxDOT District offices.

### Subrecipient's Title VI Programs

All subrecipients that receive FTA grant funds through the TxDOT Public Transportation Division are required to comply with the FTA and TxDOT Title VI programs. These include:

1. Nondiscrimination clauses in the TxDOT Master Grant Agreement.

2. Title VI assurances and a review of existing subrecipient Title VI program components in the grant application processes.
3. Submission of subrecipient Title VI programs to Public Transportation Coordinators for review, in accordance with the TxDOT-PTN Title VI Program and guidance for updates.

### ***Environmental Justice Requirements***

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, requires the U.S. Department of Transportation (DOT) and the Federal Transit Administration (FTA), to identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of programs, policies, and activities on minority populations and/or low-income populations (collectively “EJ populations”). The Texas Department of Transportation and subrecipients of FTA funds shall incorporate environmental justice and non-discrimination principles into transportation planning and decision-making processes as well as project-specific environmental reviews.

Subrecipients will follow the guidance in FTA Circular 4703.1, “Environmental Justice Policy Guidelines for Federal Transit Administration Recipients,” including environmental justice analysis and meaningful public outreach. The Circular provides examples of effective strategies for engaging minority and low-income populations in support of Title VI public participation plans.

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

Transit agencies must ensure that no person in the United States shall on the grounds of race, color, creed, national origin, sex, age, or disability be excluded from participating in, or denied the benefits of, or be subject to discrimination in employment under any project, program, or activity receiving federal financial assistance.

Subrecipients must submit to TxDOT the following assurance that they “Shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin, and they shall take affirmative action to assure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin.”

Subrecipients will be monitored annually by PTCs with the PTN-129 or PTN-137 forms to ensure compliance with the requirements of EEO in FTA Circular 4704.1, “Equal Employment Opportunity Program Guidelines for Grant Recipients,” dated June 26, 1988.

Subrecipients that receive capital or operating assistance in excess of \$1 million or planning assistance in excess of \$250,000 and employ 50 or more transit-related employees are required to submit to their TxDOT PTC an EEO plan consistent with the criteria set forth in FTA Circular 4704.1. EEO Plans shall be updated every three years. Copies of the circular may be obtained from PTCs or on the FTA website at [http://www.fta.dot.gov/civilrights/sitemap\\_78.html](http://www.fta.dot.gov/civilrights/sitemap_78.html).

TxDOT Public Transportation Division does not meet the threshold of 50 or more transit-related employees and therefore is not required to submit an EEO Plan that meets the requirements of FTA Circular 4704.1. However, the Division will work with the TxDOT Office of Civil Rights to include, to the extent possible, the provisions of the FTA Circular in the Department’s EEO Program.

### ***Americans with Disabilities Act (ADA) of 1990***

Pursuant to 49 CFR Part 37, the Americans with Disabilities Act of 1990 provide that no entity shall discriminate against an individual with a disability in connection with the provision of transportation service. The law and regulations sets forth specific requirements for vehicle and facility accessibility and the provision of service, including reasonable modifications to providers’ transportation service procedures. This service must include employment (applicants, hiring, advancement, or discharge of employees,

compensation, job training, and other terms conditions, and privileges of employment), providing accessibility to public facilities (constructing or acquiring accessible facilities), and, and providing accessible vehicles to potential riders regardless of their impairment.

Each public entity operating a fixed route system shall provide a paratransit or other special service to individuals with disabilities that is comparable to the level of service provided to individuals without disabilities who use the fixed route system. To be deemed comparable to fixed route service, a complementary paratransit system shall meet the requirements of 49 CFR 37.123-133.

Subrecipients operating a route deviation service must ensure that the route deviation service has the characteristics of demand-responsive service, including:

1. Response time;
2. Fares;
3. Geographic area of service;
4. Hours and days of service;
5. Restrictions or priorities based on trip purpose;
6. Availability of information and reservations capability; and
7. Any constraints on capacity or service availability.

To be considered demand responsive, the service must deviate for the general public, not just persons with disabilities. If deviations are restricted to a particular group, the service ceases to be a form of demand-responsive service for the general public.

PTN will review each public entity operating a fixed route system for all ADA requirements using the PTN-129 Compliance Review form. The review will include evaluations of complementary paratransit and route deviation services, as appropriate.

### ***USDOT Section 504 Requirements***

Prior to the passage of the ADA in 1990, the Rehabilitation Act of 1973 – and Section 504 of that act – were implemented to prohibit discrimination against individuals with disabilities by entities that receive Federal funds. The purpose of the Rehabilitation Act is to ensure that individuals with disabilities are not excluded from, denied the benefits of, or subject to discrimination in any programs or activities receiving Federal financial assistance. The DOT regulations implementing Section 504 are found at 49 CFR Part 27. In order to receive Federal financial assistance, grantees must comply with Section 504; in order to comply with DOT's Section 504 regulations, grantees must comply with the DOT ADA regulations. Subrecipients agree to Section 504 regulations as part of annual certifications and assurances.

### ***Complaint Process***

The Public Transportation Division has a complaint process in the TxDOT-PTN Title VI Program that is designed specifically to meet the needs of the small urban and rural transportation riders in the state. Individuals or agencies that do not feel a subrecipient is complying with civil rights requirements may file a complaint with the subrecipient. Customers who remain unsatisfied after receiving the agency's response may file their complaint, with a copy of the agency's answer, with the:

1. Appropriate PTC in TxDOT's District Offices;
2. Public Transportation Division's Compliance Section by emailing to [Carter.Sieber@txdot.gov](mailto:Carter.Sieber@txdot.gov) or calling 512-374-5224;
3. TxDOT Office of Civil Rights using the form at <http://www.txdot.gov/inside-txdot/contact-us/complaints.html>; or
4. FTA using the Title VI Complaint Form and following the instructions at [http://www.fta.dot.gov/civilrights/12328\\_5104.html](http://www.fta.dot.gov/civilrights/12328_5104.html).

TxDOT will investigate all complaints and prefers to resolve complaints at the lowest level possible.

## **Charter Bus**

FTA regulations 49 CFR 604 (amended April 30, 2008) and the TxDOT-PTN “FTA’s Charter Regulations: Compliance Guide for Texas Public Transit Systems” (October 2009 revision) place limits on the charter services that federally-funded public transportation operators may provide. The charter service regulation applies to both buses and vans. Subrecipients agree to comply with the charter regulations as part of the Master Grant Agreement and annual certifications and assurances.

Subrecipients are required to submit reports on charter service quarterly to their PTC using the PTN-104 form. TxDOT-PTN headquarters will report charter service for all subrecipients quarterly to FTA. PTCs will also review charter services and reporting as part of the annual monitoring using the PTN-129 and PTN-137 forms.

For detailed policies and procedures related to charter service, refer to “FTA’s Charter Regulations: Compliance Guide for Texas Public Transit Systems,” October 2009 revision (Appendix B).

## **Prohibition of Exclusively School Transportation**

Subrecipients may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operations (49 CFR 605). Subrecipients may enter into a school bus agreement in accordance with 49 CFR 605, Subpart B, but that agreement must be approved by the FTA Administrator and a copy of that approval provided to TxDOT-PTN before school bus operations commence. Subrecipients agree to comply with the school bus operations regulations as part of the Master Grant Agreement and annual certifications and assurances.

### ***Tripper Service***

The prohibition against the use of buses, facilities and equipment shall not apply to tripper service. Tripper service is defined as, “regularly scheduled mass transportation service which is open to the public, and which is designed or modified to accommodate the needs of school students and personnel, using various fare collections or subsidy systems.” Buses used in tripper service must be clearly marked as open to the public and may not carry designations such as “school bus” or “school special”. These buses may stop only at a regular service stop. All routes traveled by tripper buses must be within a subrecipient's regular route service as indicated in their published route schedules. Subrecipients are not required to report tripper service to their PTCs as service occurs. However, compliance with school transportation regulations will be reviewed by PTCs annually using the PTN-129 and PTN-137 forms.

## **Environmental Protections**

### ***Environmental Review of Projects under NEPA & Related Laws***

The National Environmental Policy Act (NEPA) requires agencies using federal funds to integrate environmental values into their decision making processes by considering the environmental impacts of their proposed actions and reasonable alternatives to those actions. FTA’s environmental impact regulations (49 CFR 662) require different levels of analysis and documentation for the various types of projects funded through its programs. Most projects and activities funded through the Section 5310, 5311, 5316 and 5317 programs do not normally involve significant environmental impacts.

All projects and activities must fit into one of the following categories to determine the appropriate level of environmental review:

## Categorical Exclusions (CE)

These projects, also known as CEs, are the types of projects which have been pre-determined to have no significant impact to the environment. FTA regulations provide for two sub-types of CEs:

1. **C-List CEs** (so called because they are in the joint FHWA-FTA regulation 23 CFR 771.118c): these require only a FTA Region 6 CE Work Sheet (available on the TxDOT website or from your PTC) that includes the scope of work and the rationale/citation of the federal regulations specifying the category under which the project is excluded. These include activities and projects which have very limited or no environmental effects at all, such as:
  - a. Planning;
  - b. Technical studies;
  - c. Preliminary design work;
  - d. Program administration;
  - e. Operating assistance; and
  - f. Transit vehicle purchases.
2. **D-List CEs** (in 23 CFR 771.117d): these normally qualify for a CE, but are projects that involve more construction and greater potential for off-site impacts. Examples include:
  - a. New construction;
  - b. Expansion of transit terminals;
  - c. New/expanded storage and maintenance garages;
  - d. Office facilities; and
  - e. Parking facilities.

Experience has shown that these projects can be built and operated without causing significant impacts if they are carefully sited in areas with compatible land use where the primary access routes are adequate to handle the additional transit vehicle traffic. These construction projects may be designated as CEs after FTA approval, but no presumption exists concerning the significance of environmental effects. It is the applicant's responsibility to provide documentation which clearly demonstrates that the stated conditions or criteria are met and that no significant adverse effects will result. Such documentation is usually narrowly focused on one or a limited number of environmental concerns or questionable areas. Depending on the circumstances, some technical analysis may be required, such as a noise impact assessment or a street capacity analysis; but in most cases, the documentation will focus on consistency with local land-use plans, zoning, and any State or local plans or programs governing the protection and management of environmental resources, such as air quality, water quality and noise abatement. The documentation will provide a written record of coordination with those State and local agencies having jurisdiction or a special interest in some aspect of the project. There is no formal public review for these types of environmental studies. The D-List CE documents (PTN-135 and agency supporting information) are reviewed by the PTC and submitted to the Program Manager at PTN headquarters in Austin. FTA reviews this information and determines if a CE is appropriate. In order to include or advance such a project to Category A, the State must have on file a letter from FTA approving the CE.

## CE Worksheet Procedures

1. Agencies must use the latest version of the FTA Region 6 Categorical Exclusion Work Sheet for all transit facility construction and renovation projects funded through a PGA with TxDOT-PTN. The Work Sheet can be completed and submitted before a project is submitted to TxDOT for federal or state funding and before a PGA is issued by TxDOT. Agencies shall coordinate with their PTC as part of their planning and preliminary engineering phases of all transit facility construction projects.
2. The CE Work Sheet is reviewed by the PTC with the assistance of the TxDOT District Environmental Coordinator, and submitted to the PTN headquarters in Austin.
3. PTN headquarters will log the CE Work Sheet for tracking purposes and send it by email to FTA Region 6 for concurrence.

4. Once that concurrence is received, PTN headquarters will email that information to the PTC for distribution to the agency.
5. NOTE: FTA must concur with a CE before the agency can incur costs for federal or state reimbursement for all project development phases after preliminary engineering, including final design, real estate or right of way acquisition, procurement, and construction phases (23 CFR 771.113).

The final determination whether a project is a CE or EA rests with the FTA Region 6 Office.

### Environmental Assessments (EA)

For any project which is not found to be a CE, the project lead agency may be required to prepare an environmental assessment (EA) for public comment, TxDOT review, and FTA review to determine if a Finding of No Significant Impact (FONSI) is appropriate. One of the keys to a successful environmental review process for EAs is to coordinate with TxDOT and FTA during the project initiation, early when the project concept is evolving. A project which requires an EA may not be included in Category A before FTA has issued a FONSI for the project.

To assist in this decision, the TxDOT district office Environmental Coordinator will determine if an Environmental Assessment (EA) is required, and if so, help the operator prepare the EA. The EA will be sent to the TxDOT Environmental Affairs Division who will forward the EA to the FTA regional office in Fort Worth. Operators must comply with all provisions of FTA guidelines in preparing the EA, and provide any additional data requested by FTA. EA's are generally required for larger construction projects or projects proposed in sensitive areas. Examples of projects that require EA's are new construction of terminals and maintenance facilities, rehabilitation of facilities not previously used for public transportation purposes, transit malls, and park-and-ride lots. As a guide for project development purposes, an EA is estimated to require between six months and one year for development, review, and a final determination by FTA.

In the unlikely event that significant environmental impacts are identified for a project through an EA, an environmental impact statement (EIS) will be required.

### Environmental Impact Statement (EIS)

Depending on the nature of the proposed project, FTA may immediately require applicants to develop an Environmental Impact Statement (EIS), or request an EIS based on the outcome of an EA. In either case, an EIS requires that a substantial technical analysis and public review process be conducted to evaluate project alternatives, identify potential social, economic and environmental impacts of the project, and designate methods to avoid or mitigate these impacts. Successful completion of an EIS results in FTA signing a Record of Decision (ROD). Once FTA has signed a ROD, the applicant can proceed with the project having complied with NEPA and FTA may act on the application for federal assistance. As a guide for project development purposes, an EIS is estimated to require between two and six years, depending on the scale and complexity of the major project and its context.

### ***Related Environmental Protections***

In addition to NEPA compliance, there are related environmental laws and directives that may apply to a project. These may involve historic preservation, protection of public parks and recreation areas, flood plain concerns, and wetland preservation. TxDOT will provide all possible assistance to prospective applicants in addressing the environmental protection provisions and will coordinate the appropriate review activities with FTA.

### ***Transportation Conformity with Air Quality Plans***

Agencies located in air quality non-attainment or maintenance areas may be affected by the National Ambient Air Quality Standards from the Clean Air Act Amendments of 1991 (CAAA) and State Implementation Plans (SIPs) to achieve and maintain air quality standards. PTN will solicit prior concurrence from FTA before submitting all FTA grant applications to determine whether any proposed projects listed to be funded are Air quality issues will be considered by the metropolitan planning organizations and/or the Texas Council on Environmental Quality (TCEQ) in those areas as part of the project selection process.

## **Restrictions on Lobbying**

Pursuant to Section 319 of Public Law 101-21, which prohibits subrecipients of federal funds from using those monies for lobbying purposes, subrecipients shall comply with the special provision “New Restrictions on Lobbying.”

## **Labor Protections**

### *Davis-Bacon Act*

For FTA programs, 49 U.S.C. 5333(a) applies Davis-Bacon Act prevailing wage requirements. This provision applies only to construction projects. In the event that a project involves construction, Section 5333(a) of the Act requires such action as may be necessary to ensure that all laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed with the assistance of loans or grants under this Act be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended. Subrecipients agree to the Davis-Bacon Act provisions in the Master Grant Agreement and annual certifications and assurance. PTCs may monitor compliance with the Davis-Bacon Act for construction projects as part of the quarterly monitoring required by 43 TAC 31.48.

### *Employee Protection Provisions of Section 5333(b)*

Title 49 U.S.C. 5333(b) requires that the interests of employees affected by assistance under most FTA programs shall be protected under arrangements the Secretary of Labor concludes are fair and equitable. Title 49 U.S.C. 5311(b) requires that the Department of Labor (DOL) use “a special warranty that provides a fair and equitable arrangement to protect the interests of employees.” Subrecipients agree to the employee protection provisions in the Master Grant Agreement and annual certifications and assurance.

## **Public Transportation Safety**

MAP-21 grants FTA the authority to establish and enforce a new comprehensive framework to oversee the safety of public transportation throughout the United States as it pertains to heavy rail, light rail, buses, ferries, and streetcars. The law requires, among other things, that FTA update the State Safety Oversight (SSO) program to ensure that rail transit systems are meeting basic, common-sense safety requirements. The law also includes important new safety provisions for bus-only operators.

FTA is in the process of proposed rulemaking for the new Section 5329 Program, entitled “Public Transportation Safety Program.” The proposed rules have not yet been issued in the Federal Register. Normally, agencies will have one year after the effective date of the final rules issuance to comply with new requirements.

For planning purposes, it may be helpful to TxDOT-PTN and subrecipients to understand some of the major concepts included in the MAP-21 law and begin to collect and organize existing information in anticipation of likely future safety program requirements. These include:

1. Each recipient or State shall certify that the recipient or State has established a comprehensive agency safety plan that includes, at a minimum:
  - a. a requirement that the board of directors (or equivalent entity) of the recipient approve the agency safety plan and any updates to the agency safety plan;
  - b. methods for identifying and evaluating safety risks throughout all elements of the public transportation system of the recipient;
  - c. strategies to minimize the exposure of the public, personnel, and property to hazards and unsafe conditions;
  - d. a process and timeline for conducting an annual review and update of the safety plan of the recipient;
  - e. performance targets based on the safety performance criteria and state of good repair standards
  - f. assignment of an adequately trained safety officer who reports directly to the general manager, president, or equivalent officer of the recipient; and
  - g. a comprehensive staff training program for the operations personnel and personnel directly responsible for safety of the recipient that includes—
    - (i) the completion of a safety training program; and
    - (ii) continuing safety education and training.
2. All recipients of FTA funding will develop an agency safety plan and certify that the plan meets FTA requirements. At a minimum, these plans must include:
  - a. Strategies for identifying risks and minimizing exposure to hazards.
  - b. An adequately trained safety officer to report directly to the general manager or equivalent.
  - c. Performance targets based on the safety performance criteria above.
  - d. Staff training program.
3. For recipients receiving 5311 funds, the plan may be drafted and certified by the recipient or the state.
4. For recipients receiving 5307 funds, FTA must issue a rule designating the small public transportation providers or systems that may have their safety plans drafted or certified by the state.

## **Drug and Alcohol Program**

### ***Drug- Free Workplace Act***

TxDOT provides an annual certification that the entire Department, including the Public Transportation Division, is a Drug Free workplace.

### ***Drug and Alcohol Testing***

Grant subrecipients are contractually obligated to establish a drug and alcohol testing program in compliance with 49 CFR Part 655 of the Federal Transit Administration and 49 CFR Part 40 of the U.S. Department of Transportation. Subrecipients are required to annually certify their compliance with these federal regulations; failure to comply results in suspension of funding. TxDOT monitors each subrecipient's compliance through on-site visits, which include, but are not limited to:

1. Policy review
2. Verification of testing records
3. Verification of training records
4. Verification of confidentiality
5. Mock collections
6. Corroboration between testing procedures and federal regulations
7. Technical assistance and training is offered in the following areas:
  - a. Administration
  - b. Policies and procedures

- c. Employee and supervisor education and training
- d. Specimen collection and testing
- e. Recordkeeping
- f. Service agent and contractor oversight

The requirement for compliance is effective as long as any equipment purchased with FTA funds remains in the subrecipient's possession.

## **Incidental Uses**

Federal regulations require that all vehicles and/or related equipment acquired be used for its intended program purpose. Program purposes include but are not limited to transportation of people to:

1. Shopping;
2. Medical appointments;
3. Social services and facilities;
4. Recreational or social activities;
5. Employment; and
6. Rehabilitation services.

TxDOT public transportation programs are not intended to provide priority medical transportation or ambulance services. Subrecipients may coordinate and assist in providing incidental services if such service does not conflict with the provision of transit services or result in a reduction of service to transit passengers. Subrecipients may not alter any equipment purchased for the provision of incidental service.

Annually, TxDOT monitors all subrecipients for compliance to ascertain that incidental service is not interfering with passenger transport. As a rule of thumb, a vehicle must be in use to serve the purposes of the program that purchased it 60% of the time. Vehicle checks occur during the biennial site inspection (physical inspection) of equipment, and more often at TxDOT's discretion, to ensure that equipment has not been altered to suit non-public transportation purposes..

In the event that there is a violation of these requirements that is not readily resolved, TxDOT will meet with the subrecipient to determine the best means for achieving the program's objectives without violating the restriction.

## **Reporting Requirements**

The FTA defers to the state, where possible, regarding the development of specific program standards, criteria, procedures and policies in order to provide Texas the flexibility to standardize its management of these Federal programs and related programs.

Any agency, local government or other entity, including non-profit organizations and intercity bus carriers using state funds or state-administered Federal funds for the purpose of transporting private citizens on a regular basis must provide input and information as requested by TxDOT in a timely manner and in a format specified by TxDOT.

### ***Project Monitoring and Reporting***

TxDOT is required to monitor and report on a variety of items, including ridership, revenues, expenses, vehicle and equipment management, drug and alcohol testing, involvement of DBE, and service coordination efforts. Some reports are filed quarterly and others are filed annually. Subrecipients are required provide data to the department. The monitoring and reporting schedule identifies areas and frequency of data reporting (Appendix C, Compliance Monitoring Table).

All Federal and state contractual and monitoring requirements remain in effect as long as the subrecipient holds the title to equipment and facilities. Failure to remain in compliance with program requirements, submit data on a timely basis or meet with TxDOT staff can result in sanctions as severe as contract termination and losing the use of vehicles and equipment.

A continuous system of checks and balances is built into project monitoring through various means such as subrecipient reports, invoice processing and the generation of supplemental agreements. Open channels of communication, site visits, and a compliance review process enhance these methods.

### Milestone Progress Reports (MPRs)

TxDOT PTN is required to submit an annual MPR to the FTA no later than October 31st through TEAM. The TEAM User Guide can be found at FTA's website in the "Grants and Financing" section under "Apply for and Manage Grants" located at: TEAM-Web User Guide Compilation. TxDOT understands that "FTA uses the MPRs to evaluate several elements of the grant status, such as: (1) The purposes of the grant are being achieved; (2) The project is progressing on time and within budget; (3) The subrecipient is demonstrating competence and control in executing the project; (4) The project meets all program requirements; (5) There is a problem developing which may require FTA resources to resolve."

Program Managers are responsible for submitting milestone changes on a quarterly basis, or more frequently if needed. Other TxDOT staff will assist Program Managers in ascertaining grant or project status. The purpose of these reports is to update FTA on significant project events and estimated completion dates in comparison to the dates that were estimated in the original grant application.

All changes in category of performance (scope) for a grant are reported in TEAM and include, but not limited to the following:

1. The original estimated, revised, and actual completion dates;
2. The dates of expected or actual requests for bid, delivery, and other events;
3. A narrative description of project status, including reasons why the milestones were not met and;
4. Any unforeseen events that affected project schedule, cost or purpose.

### ***National Transit Database (NTD)***

Public transportation providers are required to report operating and financial data to the FTA through the National Transit Database (NTD). Urban operators (including dual urban / rural operators) report directly to the NTD. This section of the State Management Plan describes the process used by the Texas Department of Transportation's (TxDOT) Public Transportation Division (PTN) to report on behalf of the majority of rural public transportation providers.

### TxDOT-PTN Process for NTD Reporting

The TxDOT-PTN Planning Section is responsible for NTD data collection and reporting. In partnership with the Texas A&M Transportation Institute (TTI), the section uses the PTN-128 Reporting System for NTD data collection and analyses. Subrecipients access the PTN-128 system (described in detail below) directly on a monthly or State Fiscal Year (SFY) quarterly basis to enter NTD data. After the close of SFY quarters, the Planning Section ensures that all subrecipient reports are received and follows up with subrecipients for missing reports or other data issues.

After the conclusion of the SFY, the Planning Section performs another verification of subrecipient reports and informs TTI when the data is ready for analysis and assessment. Final review of the PTN-128 is performed by TTI and TxDOT-PTN and then the report for the year is closed. Fleet data from the Public Transportation Management System (described in detail below) and the PTN-128 data for the SFY are then

entered annually, generally in January, into the NTD system by the TxDOT-PTN Planning Section using the RU-20 and other forms.

### The PTN-128 Reporting System

Title 49 U.S.C. 5311 (b)(4) provides NTD reporting requirement for rural public transportation providers, including the following information, which is captured through the use of the PTN-128 reporting system:

1. Total annual revenue;
2. Sources of revenue;
3. Total annual operating costs;
4. Total annual capital costs;
5. Rural maintenance facilities;
6. Revenue vehicle miles; and
7. Ridership.

PTN-128 reporting system is a Web-based application that provides methods for data entry and data reporting through a standard Web-browser interface. The data entered into the PTN-128 system is stored in a relational database in a central location accessible by a series of Web forms.

The PTN-128 system centralizes the data entry forms and quality control mechanisms by providing a uniform interface for all transit providers. The Web-based data collection and reporting tool provides several features for transit staff and reviewers to better ensure data accuracy and reasonableness, including comparisons to previous year data, performance measurements, color-codes to flag potential errors (missing data, negative miles/hours, significant change in monthly data), revenue-to-expense comparison, and annual performance reports.

### NTD Rural Fleet and Incident Reporting

Information from the Public Transportation Management System (PTMS) is used to complete the fleet reporting piece of the NTD reporting for each rural agency, if that agency is not also an urban agency (urban agencies report directly to the NTD).

As PTMS information is kept current by annual inventory activity, there is no requirement for rural agencies to separately report fleet information to support NTD reporting through TxDOT. Instead, PTN headquarters personnel accomplish fleet reporting. Specifically, PTN's NTD reporter prints-out each rural agency's fleet list from the previous year's report and provides this to the fleet planner. The fleet planner will compare each agency's fleet list to the information in the PTMS and updates the list so it reflects the revenue service fleet in operation during the reporting year. The updated list is then provided so the NTD report can be updated in the on-line system.

Information regarding specific incidents involving rural agencies who are not also small urban agencies shall complete a PTN 100 or 101 for all reportable incidents, including:

1. An incident resulting in one or more fatalities,
2. An incident causing one or more injuries that require treatment away from the scene, and
3. An injury resulting in \$25,000 or more in total damage.

Although not expected to occur in a rural agency setting, any incident resulting in a bus evacuation and any mainline derailment shall be reported regardless of damage amount or whether or not anyone was injured or killed.

Affected agencies shall notify TxDOT within 5 days of a reportable incident by submitting a PTN 100 or 101 form. If information is pending, such as the report, as much information as is available should be entered on

the form as possible and “pending” should be entered on the form for submission within the 5-day window. The completed form may be provided later when the pending information is obtained.

### NTD Reporting Reconciliation

After TxDOT completes the NTD reports, the NTD will review the reports for discrepancies such as missing information, large data fluctuations from the previous annual reports, and information that is out of the range of tolerances established by NTD. NTD will contact TxDOT’s NTD reporter and identify these discrepancies. TxDOT will review the discrepancies, correct the discrepancies, or verify that the information was correct as initially submitted.

## **Monitoring Program**

TxDOT monitors all project activities, services, project administration and management practices supported with Federal and/or state funds, to ensure compliance with Federal and state regulations.

TxDOT-PTN PTCs conduct quarterly on-site reviews of all subrecipients using the PTN-126 form (Appendix D) to coordinate project progress, consult on programs, and provide technical assistance to agency staff (43 TAC 31.48). The PTC will give the subrecipient prior notification of each monitoring activity (on-site review) to be conducted.

TxDOT-PTN PTCs conduct program compliance reviews of Section 5307, Section 5311, and Section 5339 subrecipients using the PTN-129 form (Appendix E) to ensure consistency with the ten program areas that FTA reviews with TxDOT in the State Management Reviews. Compliance reviews are conducted every year or every two years based on the subrecipients performance and risk assessment results.

The PTC notifies the subrecipient in writing of any deficiencies or findings noted during a monitoring visit and conducts follow-up visits to ensure that corrective actions are taken, as necessary. Deficiencies will be documented and acknowledged by the subrecipient in one of two manners prescribed by the Texas Administrative Code and PTN policies and procedures:

1. Deficiencies that can be corrected before the completion of the on-site review will be documented and noted as closed on the monitoring form. This information is documented for use by PTN in assessing program effectiveness, improvements to monitoring forms, and future technical assistance needs.
2. Deficiencies that cannot be corrected before the completion of the on-site review will result in an Improvement Action Plan (IAP), in accordance with 43 TAC 9.134. The plan will indicate the actions to be taken by the subrecipient within a specified period. Copies of IAPs are submitted to the PTN Compliance Section and reported in summary to TxDOT executive management on a monthly basis.

### ***Compliance***

As with any program involving public funds, accountability is important. TxDOT-PTN agrees with FTA to ensure that the department and all subrecipients comply with federal requirements associated with Title 49 funds. TxDOT-PTN’s primary methods of ensuring compliance are to provide clear program guidance and supportive technical assistance to all subrecipients receiving federal and state funds through the department. This is accomplished through the PTC with assistance of PTN headquarters staff in Austin. As appropriate, PTN management may be involved to resolve program issues and challenges. At all times, the primary goal of PTN is to assist subrecipients in executing a successful transit program and fully meet the attendant federal and state requirements as efficiently and easily as possible.

In cases where technical assistance, consultation, and interagency coordination do not achieve compliance with federal and state regulations, Section 18.43 of 49 CFR Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to and Local Governments, addresses enforcement. Subsection

18.43(a) provides for remedies for noncompliance and states, "If a grantee or subrecipient materially fails to comply with any term of an award, whether stated in a federal statute or regulation, an assurance, in a plan or application, a notice of award, or elsewhere, the awarding agency may take one or more of the following actions, as appropriate in the circumstances:

1. Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency
2. Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance
3. Wholly or partly suspend or terminate the current award for the subrecipient's or subcontractor's program
4. Withhold further awards for the program, or
5. Take other remedies that may be legally available."

The Texas Administrative Code (43 TAC 31.48) states that a subrecipient that fails to comply with federal or state law, standard or special grant or subgrant conditions, or contractual agreements on which the grant or subgrant award is predicated, is subject to actions under 43 TAC 9.133.

## **Appendices**

**A: Section 5339 Program Application**

**B: FTA's Charter Regulations: A Compliance Guide for Texas Public Transportation Systems**

**C: Compliance Monitoring Table**

**D: PTN-126 Quarterly Monitoring Form**

**E: PTN-129 Compliance Review Form for Section 5307, 5311, and 5339 Subrecipients**

**F: A Study of Sources to be Used for Local Revenue for Transit**