



**Moving Public Transportation
Into the Future**

Federal Compliance 101: CALACT

June 19-21

Presented by:

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RLS & Associates, Inc.

Training Session Content – Day 1



DBE



Title VI

Training Session Content – Day 2



Equal Employment Opportunity (EEO)



Americans with Disabilities Act (ADA)



Charter and School Bus



Drug and Alcohol Testing

Training Session Content – Day 3



Legal



Financial Management



Satisfactory Continuing Control



Use and Maintenance of Equipment & Facilities



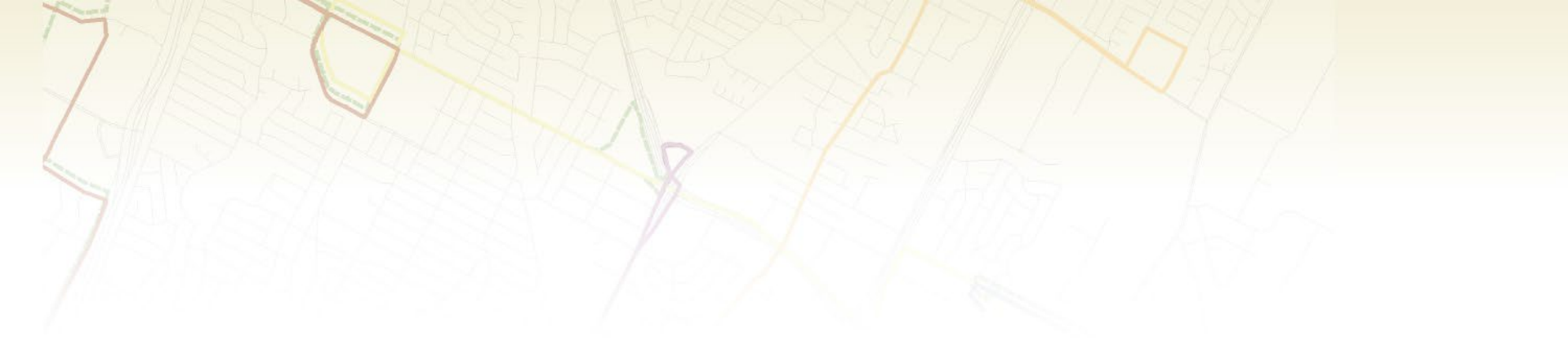
Procurement



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Module 1

LEGAL

Reference Documents

- ◆ FTA Master Agreement
- ◆ 49 CFR § 20.100
- ◆ 49 CFR § 20.110
- ◆ 2 CFR § 180.220(b)–(c)



Roles and Relationships

◆ Federal Grants Structure

○ Recipients

- Recipients Receive Funds Directly from the Federal Government
 - Urbanized Areas
 - State DOTs
 - Indian Tribal Governments



Roles and Relationships

◆ Federal Grants Structure

○ Subrecipients

- Receive Funds Through a Pass-Through Relationship with a Direct Recipient
- May Be Awarded Based on
 - Competition
 - Qualifications
 - Other

○ Lower Tier Recipients

- Receive Funds Through Pass-Through Relationships with Another Subrecipient



Roles and Relationships

- ◆ Contractors
 - Open Market Procurements
 - Generally to Provides Goods, Services, and Equipment to Carry Out a Federal Award



Roles and Relationships

- ◆ Recipients, Subrecipients, and Lower Tier Subrecipients are Responsible for Grant Compliance
- ◆ Contractors are Responsible for Complying with Contract Terms and Conditions
 - Contracting Agency Has Responsibility of Overseeing Compliance of Contractors

Basic Obligations of Subrecipients

- ◆ Obligation to Notify ODOT of Any Potential or Pending Legal Matters
 - ODOT Has an Obligation to Notify FTA
- ◆ Ensure That All Third-Party Agreements Over \$100,000 Have the Necessary Lobbying Certifications

Basic Obligations of Subrecipients

- ◆ The Subrecipient is Required to Include in Most Agreements a Provision that Requires the Third Party to Notify the Subrecipient of Any Legal Matter That May Affect the Federal Government
 - Inclusion in All Third-Party Agreements
 - All – Nonprocurement Agreements
 - \$25,000 for All Procurement Contracts



Module 2

FINANCIAL MANAGEMENT

A background map showing a street grid with several colored overlays: a red outline on the left, a yellow line running diagonally, and an orange outline on the right. The title 'Reference Documents' is centered in a large, bold, dark red font.

Reference Documents

- ◆ 2 CFR part 200
- ◆ 49 CFR part 1201
- ◆ FTA Circular 5010.1E



OMB Role

- ◆ Office of Management and Budget (OMB)
 - Predominant Mission Is to Assist the President in Overseeing the Preparation of the Federal Budget and to Supervise Its Administration in Executive Branch Agencies



OMB Role

- ◆ OMB Has Management Role in Federal Grants
- ◆ Guidance in Three (3) Primary Areas
 - Cost Principles
 - Grant Management/Administrative Requirements
 - Audit



Basic Requirements

- ◆ Written Fiscal Procedures
 - Management of Federal Awards
 - Internal Controls
 - Allowability of Costs
- ◆ Requisite Organizational Structure
 - Clearly Define Roles and Responsibilities
 - Adequate Checks and Balances
- ◆ Ability to Report Grant Activity



Basic Requirements

- ◆ Accurate Claiming Indirect Costs
 - Indirect Cost Allocation Plans (ICAPs)
- ◆ Preparation of Single Audits
 - Entities That Expend More Than \$750,000 in a Single Fiscal Year from All Federal Sources
- ◆ Ability to Provide the Required Local Share



Allowability – Basic Standards

- ◆ Necessary and Reasonable/Allocable
- ◆ Conform to Any Limitations or Exclusions Set Forth in the Federal Cost Principles, Federal Laws, Terms and Conditions of the Federal Award
- ◆ Be Consistent With Policies and Procedures That Apply Uniformly to Both Federal Awards and Other Activities of the Non-Federal Entity

Allowability – Basic Standards

- ◆ Be Accorded Consistent Treatment
- ◆ Be Determined in Accordance With Generally Accepted Accounting Principles (GAAP)
- ◆ Not Be Included As a Cost or Used to Meet Cost Sharing or Matching Requirements of Any Other Federal Award
- ◆ Must be Adequately Documented



Written Procedures

- ◆ An FTA Requirement
- ◆ FTA Prescribes No Contents for Such Policies
 - Recommend That Organizations Follow 2 CFR § 200
 - National RTAP's Fundamental Financial Management for Rural Transit Providers Contains Some Recommendations on Policy Contents
- ◆ Required That the Entity Have Written Policies on the Allowability of Costs



Internal Controls

- ◆ Clearly Defined Organizational Structure
- ◆ Assignment of Duties to Ensure that Tasks Involving Grant Funds are Distributed to Ensure Sufficient Segregation of Duties
- ◆ Ensure that Proper Authorities are Implemented on the Disbursement of Funds



Allowability of Costs

- ◆ In Addition to the Seven Basic Principles, Costs Must Conform to Allowability Principles Set Forth in 2 CFR § 200
 - All FTA Grant Recipients/Subrecipients Must Have a Working Knowledge of These Principles



Indirect Costs

- ◆ Allowable to the Extent the Indirect Costs Claimed are Consistent with the Organization's Indirect Cost Rate Proposal (ICRPs) and Approved Rates
- ◆ ODOT Has Written Guidance on the Preparation of ICRPs



Indirect Costs

- ◆ ICRPs Are Submitted to a Cognizant Agency for Indirect Costs
 - OMB Assigns Agency for Entity's that Receive More that Exceed Certain Thresholds
 - For Entities Below the Thresholds, Typically the Federal Agency that Consistently Provide the Most Funding Will Serve as the Cognizant Agency



Indirect Costs

- ◆ When a Recipient of Non-Federal Entity Primarily Receives Funding Only as a Subrecipient from a Pass-Through Agency, the Pass-Through Agency May Review, Negotiate, and Approve the Indirect Cost Rate Proposal
 - ODOT = Pass-Through Entity
 - Your Program = Subrecipient



Indirect Costs

- ◆ Indirect Cost Rates are Typically Updated Annually Based on the Most Recent Audited Data
- ◆ Beginning in December 2014, a New Type of Indirect Cost Rate was Introduced, the *de minimis* Rate
 - This is an Automatic Ten Percent Indirect Cost Rate that Requires no ICRP Preparation or Approval



Indirect Costs

- ◆ Effective November 12, 2020, This Rate is Now Available to Most Non-Federal Entities
 - Previously Limited to Entities that Had Never Negotiated an Indirect Cost Rate with the Federal Government



Audit Period

- ◆ Audit Period
 - Typically, Performed on an Annual Basis
 - Some Minor Exceptions

Auditee Responsibilities

- ◆ Auditee Responsibilities
 - Preparation of Financial Statements
 - Schedule of Expenditures of Federal Awards (SEFA)
 - A Description of Significant Accounting Policies Used In Preparing The Schedule
 - A Summary Schedule of Prior Audit Findings
 - The Auditee Must Also Prepare a Corrective Action Plan for Current Year Audit Findings

Auditee Responsibilities

- ◆ Schedule of Expenditures of Federal Awards (SEFA)
 - List of Individual Federal Awards
 - Name/Cluster Name
 - Subrecipients
 - Name of Pass-Through Agency
 - Grant Identification Number
 - CFDA Number (Section 5311 – 20.509)
 - Total Amounts Provided
 - Significant Accounting Policies
 - Statement as to Whether Entity Used *de minimis* Indirect Rate

Auditee Responsibilities

- ◆ Optional Elements
 - Multiple Federal Award Years
 - Separate Listing of Amounts Expended, By Year
- ◆ Corrective Action Pan

Auditee Follow-Up

- ◆ Auditee Must Prepare a Summary Schedule of Prior Audit Findings
 - Include Audit Reference Number
 - Status
 - May Exclude
 - Those Findings Corrected
 - Those Findings No Longer Valid or Warranting Further Action
 - Reasons Must be Described
 - » Two Years Have Passed
 - » Federal Agency /Pass Through Entity Not Following Up
 - » Management Decision Was Not Issued



Corrective Action Plan

- ◆ Corrective Action Plan For Current Year Audit Findings
 - Must Address Each Finding
 - Name of Contact Person Responsible for Corrective Action
 - Action Planned
 - Anticipated Completion Date
 - Rebuttal
 - The Corrective Action Plan Must Include An Explanation and Specific Reasons Why the Entity Believes Corrective Action is Not Required



Report Submission

- ◆ Specific Timeframes for Completion
 - Report Must be Submitted to Federal Audit Clearinghouse (FAC) Within 30 Calendar Days After Receipt of Audit Report
 - or
 - Nine Months After End of Audit Period
- ◆ Must Be Available to the Public
 - Some Exceptions for Indian Tribal Organizations



Module 3

SATISFACTORY CONTINUING CONTROL

Key Reference Documents

- ◆ 2 CFR § 200.311
- ◆ FTA Circular 5010.1E, Chapter IV



Real Property Inventory & Reporting

- ◆ If FTA Participated in Whole or in Part in the Acquisition of Real Property, an Inventory of All Such Property Must be Maintained
- ◆ Reports are Submitted Annually
 - FTA May Extend Reporting for Assets with a Useful Life Greater Than 15 Years

Real Property Inventory & Reporting

◆ Inventory Data

- ❑ Property Location/Address
- ❑ Use and Condition
- ❑ Summary of Conditions on Title
- ❑ Description of Improvement, Expansions, and Retrofits
- ❑ Useful Life
- ❑ Date Placed In-Service
- ❑ Original Acquisition Cost
- ❑ Source of Funding
- ❑ Federal and Non-Federal Participation Ratios
- ❑ FAIN
- ❑ Appraised Value and Date
- ❑ Anticipated Disposition
- ❑ Sales Price (if Sold)



Incidental Use of Real Property

- ◆ Incidental Use is Defined as the Authorized Use of Real Property Acquired or Improved With FTA Funds
- ◆ FTA Encourages Recipients to Make Incidental Use Of FTA- Funded Real Property When It Can Raise Additional Revenues for the Transit System
- ◆ Incidental Use Cannot Interfere With the Primary Purpose of the Property



Disposition of Real Property

- ◆ If Property is No Longer Needed for Transit Purposes, Seek ODOT Guidance
- ◆ Options
 - Retain Title After Compensating ODOT the Federal Share of Original Acquisition Cost (and Any Improvements)
 - Sell the Property and Give Proceeds to ODOT
 - Amount Due Will Equal Federal Share in Original Acquisition * Sales Price
 - Transfer to Another Eligible Recipient/Subrecipient

A background map showing a residential area with property lines and several highlighted flood hazard zones in red, orange, and yellow. The title 'Flood Insurance' is centered over the map.

Flood Insurance

- ◆ If Property is Located in an Area Designated as Having Special Flood Hazards, the Subrecipient Must Obtain Flood Insurance

Rolling Stock and Other Requirements

- ◆ Subrecipients Must Maintain Control Over All Federally-Funded Equipment
 - Control
 - Maintain Asset Inventories
 - Follow Equipment Management Requirements in 2 CFR § 200.313
 - Lease of Equipment is Permitted Provided Adequate Controls are Included in the Lease Agreement



Removal from Service

- ◆ After the End of Useful Life
 - If Disposition Proceeds are Less Than \$5,000, the Recipient May Retain 100% of Proceeds for Other Transit Capital and Operating Purposes
 - If Disposition Proceeds are Greater Than \$5,000 Seek ODOT Guidance on Use of Proceeds
- ◆ Before the End of Useful Life
 - Seek Guidance from ODOT
 - Similar Procedures for Equipment as for Real Property



Module 5

USE AND MAINTENANCE OF PROJECT EQUIPMENT & FACILITIES



Reference Documents

- ◆ FTA Circular 5010.1E
- ◆ 2 CFR Part 200.310 - 200.316



Equipment - Maintenance

- ◆ Maintenance Requirements
 - Must Have Written Procedures to Keep the Property and Equipment In Good Condition
 - Applies to
 - Facilities
 - Rolling Stock
 - Other Assets

Equipment - Maintenance

- ◆ Maintenance Requirements
 - If a Subrecipient Owns Real Property, Must Have a Facilities Maintenance Plan
 - For Rolling Stock, Maintenance Procedures Should Include
 - OEM Recommendations for Each Type of Vehicle
 - Specification of Event and Interval for Preventive Maintenance Actions
 - Procedures to Keep a Vehicle's Accessibility Features in Good Working Order
 - Warranty Procedures



Equipment - Maintenance

◆ Maintenance Requirements

○ Evaluation

- Ten (10%) Percent Allowance on Intervals
- On-Time Events Performed Within 10% of Interval
 - Classify Events as:
 - » On-Time
 - » Early
 - » Late
- Eighty (80%) Percent of Events Should Not be Late



Maintenance of Accessibility Features

- ◆ Maintenance Requirements
 - ADA Regulations Stipulate that the Transit System Maintenance Program Must Address Wheelchair Lifts and Other Accessibility Features
 - Most Lift Manufacturers Now Publish a PM Schedule
 - Warranty Issues
 - If Covered by Warranty, ODOT Expects the Subrecipient to Obtain Warranty Service



Maintenance of Accessibility Features

- ◆ Leasing Vehicles
 - The Transit System Must Ensure that All Leased Vehicles are Subject to Adequate Preventive Maintenance Procedures



Module 5

PROCUREMENT

Key Reference Documents

- ◆ FTA Circular 9040.1F, “Nonurbanized Area Formula Grant Program”
- ◆ FTA Circular 4220.1F, “Third Party Contracting Requirements”
- ◆ 49 CFR part 1201
- ◆ 2 CFR part 200
- ◆ FTA’s Best Practices Procurement Manual (BPPM)



Applicability

- ◆ States/Governmental Subrecipients
 - Must Meet Some Federal Requirements
 - Contract Term Limitations for Revenue Vehicle Purchases
 - Competition
 - Prohibitions Against Geographic Preferences
 - Brooks Act for A/E Services
 - Awards to Responsible Contractors



Applicability

- ◆ Nonprofit Subrecipients Must Comply with FTA Circular 4220.1F in its Entirety
- ◆ Joint Funded Projects
 - When a Grantee Uses Both FTA Funding and Funding from Another Federal Program, All Applicable FTA Provisions as Well as the Third Party Contracting Requirements of the Other Funding Source



Coverage

- ◆ Purchase, Lease, or Acquisition of Property, Supplies, Equipment, or Services Financed in Whole or in Part by an FTA Grant



Conflicts

- ◆ Conflicts Between Federal and State Procurement Regulations
 - Recipients and Subrecipients Will Use Their Own Procurement Procedures That Comply with Applicable State and Local Laws and Regulations
 - Must Also Comply with Applicable Federal Laws and Regulations
 - Conflicts – Must Notify ODOT/FTA



Basic Requirements

- ◆ Written Standards of Conduct
- ◆ Technical Capacity



Written Standards of Conduct

- ◆ Every Grantee Must Maintain Written Standards of Conduct
 - Applies to Officers, Employees, Agents, Board Members, or by Contractors or Subrecipients or Their Agents, Immediate Family Members
 - Personal Conflicts of Interest
 - Gifts
 - Violations



Technical Capacity

- ◆ General Requirement
 - Grantees Must Undertake Its Procurements Effectively and Efficiently in Compliance with Applicable Federal, State, and Local Requirements



Technical Capacity

- ◆ Written Procurement Procedures
 - Solicitations
 - Clear Descriptions
 - Nonrestrictive Specifications
 - Quality Requirements
 - Performance Specifications
 - Brand Name or Equal



Technical Capacity

- ◆ Written Procurement Procedures
 - Necessity
 - Lease vs. Purchase
 - Metric Usage
 - Environmental and Energy Efficiency Preferences



Technical Capacity

- ◆ Inclusion of All Third Party Contract Provisions in Lower Tier Contracts
- ◆ Caution Regarding Industry Contracts



Technical Capacity

- ◆ Written Procurement History
 - Method
 - Contract Type
 - Contractor Selection
 - Cost/Price Analysis
 - Documentation
- ◆ Access To Records



Technical Capacity

- ◆ Electronic Commerce
 - Permissible, With Stipulations



Rolling Stock Requirements

- ◆ Rolling Stock
 - Accessibility
 - Manufacturer DBE
 - Minimum Service Life
 - Spare Ratio Standards
 - Pre-Award/Post Delivery Reviews
 - Bus Testing



Prohibited Actions

- ◆ Improper Contract Expansions
 - Expanding Scope, Ordering Greater Quantities, or Negotiating Options Outside Those Needed by the Grantee/Subrecipient
 - Establishing Additional Quantities Primarily to Permit Assignment of Those Contract Rights to Another Entity



Prohibited Actions

◆ Cardinal Changes

- A Significant Change in Contract Work (Property or Services)
 - Major Deviation From the Original Purpose of the Work
 - Methods of Achievement of the Work Scope
 - Causes a Revision of Contract Work So Extensive, Significant, or Cumulative That, In Effect, The Contractor Is Required to Perform Very Different Work From That Described in the Original Contract



Prohibited Actions

- ◆ Cardinal Changes

- Cardinal Changes

- Sometimes Difficult to Determine
 - Not Measured by Specific Quantity, Percentage, or Number
 - Consultation with ODOT Highly Recommended



Open Market Procurements

◆ General Principles

○ Full and Open Competition

■ Actions Not Consistent with Full and Open Competition

- Excessive Qualifications
- Unnecessary Experience
- Improper Pre-Qualifications
- Retainer Contracts
- Excessive Bonding
- Brand Name Only Specifications
- Geographic Preferences
- Organizational Conflicts of Interest



Open Market Procurements

- ◆ Disclosure of Evaluation Factors
 - Regardless of Procurement Type, the Purchaser Has the Obligation to Disclose the Factors on Which the Purchase Decision Will be Made



Open Market Procurements

◆ Methods

- Informal Methods
 - Micro Purchases
 - Small Purchases
- Formal Methods
 - Sealed Bids
 - Competitive Proposals
- Non-Competitive



Special Procurement Issues

- ◆ Procurements With Less Than Full and Open Competition
 - Single Bid or Proposal
 - Grantee Receives Only One Response
 - Requires Grantee Action
 - Documentation of Market Conditions Beyond the Control of the Grantee
 - Review of Specifications (Restrictiveness)



Special Procurement Issues

- ◆ Procurements With Less Than Full and Open Competition
 - Unusual and Compelling Emergency

Cost and Price Analysis

- ◆ Federal Rules Require the Grantee to Perform a Cost or Price Analysis in Connection with Every Procurement Action Over the Simplified Acquisition Threshold
- ◆ Contract Modifications Also Trigger Cost and Price Analysis
- ◆ Any Procurement Where Competition Was Lacking



Cost and Price Analysis

◆ Cost Analysis

- Required When
 - When an Offeror Submits Cost Elements Such as Labor, Overhead, Materials, etc. of the Estimated Cost (Typical of Professional Consulting and A&E Contracts)
 - When Price Competition is Inadequate
 - When Only a Sole Source is Available
 - In the Event of a Change Order
- Not Necessary If Grantee Can Justify Price Reasonableness Based on a Catalog or Market Price of a Commercial Product Sold in Substantial Quantities to the General Public or Based on Prices Set By Law or Regulation

Cost and Price Analysis

◆ Cost Analysis Techniques

- Assess Cost Allowability
- Examine Approved Federal Overhead Rate
 - Contracts Less Than \$5 Million
 - Accept Rates
 - Contracts Over \$5 Million
 - Contractor Must Have Defense Contract Audit Agency, Another Federal cognizant Audit Agency, or an Accounting Firm Approved By the Federal Government to Perform Audits For the Federal Government, Must Verify The Contractor's Rates

Cost and Price Analysis

◆ Cost Analysis Techniques

- Profit – Negotiated on All Contracts Without Competition or All Contracts that Require a Cost Analysis
 - Complexity of the Contract
 - Risk Undertaken by the Contractor
 - Contractor's Investment
 - Amount of Subcontracting
 - Industry Rates

Cost and Price Analysis

◆ Price Analysis

- Acceptable When Competition Is Deemed Adequate
- Scalable – Minimal Effort Required for Micro or Small Purchases
- Based on Catalog Prices, Market Price Documentation, Recent Procurement Results



Protests and Disputes

- ◆ Super Circular Assign Responsibility to the Grantee for Resolving All Contractual and Administrative Issues Arising Out of Third Party Procurements
- ◆ Includes
 - Source Evaluation and Selection
 - Protests of Awards
 - Contract Disputes



Protests and Disputes

- ◆ Requirements for the Protester
 - A Party Must Qualify as an “Interested Party”
 - A Party That Is an Actual or Prospective Bidder or Offeror Whose Direct Economic Interest Would be Affected By the Award or Failure to Award the Third Party Contract at Issue
 - Subcontractors Do Not Qualify as an Interested Party
 - Party Must Exhaust Administrative Remedies (e.g., the Grantee’s Protest Process)



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