

2019 APTA Legal Affairs Seminar

Clean Transportation: Electric Buses

Legal Considerations for Bus Procurements

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Checklist for Legal Counsel

- Understand full scope of project
 - Make sure Governing Board is informed of full cost and breadth of project
 - Bus purchase
 - Charging infrastructure
 - Real Estate capacity impacts
 - Operational impact
 - Cost comparison between fuel and electricity

Checklist for Legal Counsel

- Method of Procurement
 - Competitive procurement
 - Government purchasing schedule
 - Piggyback/assignment
 - Sole Source



Purchasing Schedule vs. Piggyback

- Per FTA Circular 4220.1F, to use a **state or local government purchasing schedule** or purchasing contract, the:
 - State or Local Government Agency permits MTS to use its Purchasing Schedule
 - State or Local Government Agency awarded the Purchasing Schedule using full and open competitive procurement process
 - Applicable federal clauses and certifications are included in the state or local government agency's master agreement. If not, they are added to MTS's purchasing document
- Per FTA Circular 4220.1F, a transit agency can only **piggyback** if:
 - Original solicitation included an assignment clause
 - Assignment within capacity of original contract
 - Original solicitation only contracted for the original agency's reasonably expected needs
 - Applicable federal clauses and certifications are included in the original solicitation



Checklist for Legal Counsel

- Special Terms and Conditions
 - Local, State or Federal grant conditions
 - Buy America Compliant (if federal funds)
 - Performance standards
 - Delivery schedule
 - Liquidated damages
 - Altoona testing
- *What is Operations & Maintenance Staff most concerned about going wrong with untested technology?*

Altoona Testing

- <https://www.transit.dot.gov/research-innovation/bus-testing>
- FTA's Model Bus Testing Program (often referred to as "Altoona Testing" due to the location of the main testing center) tests new transit bus models for:
 - safety
 - structural integrity and durability
 - reliability
 - performance (including brakes)
 - maintainability
 - noise
 - fuel economy and
 - emissions
- Bus models that fail to meet one or more minimum performance standards will "fail" their test and thus be ineligible for purchase with FTA funds until the failures are resolved.

BYD: Case Studies

- LA Metro
 - First 5 buses in 2015
 - Significant technical problems
 - Stalling
 - Significantly lower range between charges (avg 59 miles between charges)
 - 10x more road calls than rest of fleet
 - 2017 procurement for new 40-ft and 60-ft buses
 - 60-ft: New Flyer
 - 40-ft: BYD
 - Agency commitment to electrify fleet (2,200 buses) by 2030
 - See LA Times Article dated May 20, 2018 “Stalls, stops and breakdowns: Problems plague push for electric buses” in materials

BYD: Case Studies

- ABQ Ride:
 - 2017 contract for 18 60-ft buses (\$22.9M)
 - Delivery no later than October 2, 2017
 - 275 miles on single battery charge
 - Altoona-tested
 - Meet or exceed route model, including speed elevation and pull
 - December 7, 2018 Lawsuit
 - Only delivered 15 buses by deadline
 - Significantly less than 275 miles per charge
 - Defects; cracks; improper welds; rust; improperly installed clamps, wiring and hoses; exposed wires and cables
 - Unsafe: brakes not functioning properly; rear doors opening while bus in motion; exit door placement impeded safe emergency exit; battery fires “with little possibility of putting out the fire”; exposed high voltage wiring; unsafe wheelchair securement; non-functional bridge plates
 - Did not pass Altoona testing
 - Could not meet speed elevation and pull specification
 - No signed certificates of crash-worthiness



Legal Counsel Role

- Be aware of scope of project and the biggest risks to Agency's zero emission bus project.
- Does contract address specific concern and what Agency's rights are if product is not as delivered?
- Are there other strategies that can be deployed to mitigate potential risks?



Questions?

