

PROCUREMENT AND MATERIALS MANAGEMENT COMMITTEE

Monday, October 13, 2014 ~~ 7:30 to 9 AM

Room 381 ~~ Houston Convention Center

AGENDA

- 1. Welcome and Introductions** **Charlie Kalb**
- 2. Meeting Notes from the May 2014 meeting**
- 3. FTA Report** **Jim Harper**
- 4. APTA Procurement Programs**
 - UPPCC Certification
 - EXPO Learning Zone Sessions **Attachment 1**
 - Discussion of Procurement Sessions for 2015 and 2016
- 5. Other Current Procurement Issues and Trends**
 - DOT's DBE Final Rule **Attachment 2**
 - FTA Circular on Vehicle Overhauls **Attachment 3**
- 6. Subcommittee Reports**
 - DBE Subcommittee
 - Standards Subcommittee
 - Procurement Subcommittee Chair
 - Materials Management Subcommittee Chair
- 7. Election**
 - Committee Chair
 - Committee Vice Chair

The Procurement and Materials Management Committee will meet during the APTA Rail Conference in Salt Lake City June 21 – 24, 2015, and the APTA Annual Meeting October 4 – 7, 2015.

ATTACHMENT 1

PROCUREMENT AND MATERIALS MANAGEMENT LEARNING ZONE
PROGRAM SESSIONS AT EXPO 2014
Room 381 Houston Convention Center

SESSION 1 (Monday 9:15am to 10:45am)

How Can We Move Forward Together on DBE Participation In Transit Vehicles?

As the DOT's DBE & SBE program continually strives towards improvement, how can FTA, transit agencies, TVMs and DBEs work together toward measurable improvement? Panelists will discuss FTA's TVM DBE accomplishments and challenges, productive RFP requirements and DBE goals, eliminating pre-certification barriers, the role of outside assistance, increasing DBE subcontracting opportunities, and developing a relevant ready, willing and able DBE/SBE bidder's list.

Moderator: Robert "Bob" Nixon, President, Diversity Matters 2 US, LLC, Canisteo, NY

Panelists:

Britney Berry, DBE and TVM Program Coordinator, FTA Office of Civil Rights, Washington, DC

Michael Garner, Director, MTA Office of Civil Rights, New York, NY

David White, Executive Vice-President, New Flyer Industries, Winnipeg, MB

Kenneth Rivera, President & CEO, JM Fiber Optics, Inc., Chino, CA

Nicholas Coates, Senior Counsel, U.S. Department of Transportation Office of Inspector General, Washington, DC

SESSION 2 (Monday 11:00am to 12:15pm)

Rolling Stock Buy America Pre-Award & Post-Delivery Audits: Are You ready?

In this session transit agencies, rail/bus/paratransit manufacturers, and equipment suppliers will discover the necessary preparation and procedures to complete, survive and certify Buy America compliance for FTA-funded rolling stock procurements. Panelists will discuss the "grey areas" of required documentation, sufficient component/subcomponent manufacturing, acceptable supplier certifications, partial counting values and protecting proprietary data.

Moderator: Charlie Kalb, Principal, PMM Transit Group, Redwood City, CA

Panelists:

Steve Policar, Superintendent, Transit Fleet Management Group, King County Metro, Seattle, WA

Robert "Bob" Nixon, President, Diversity Matters 2 US, LLC, Canisteo, NY

SESSION 3 (Tuesday 7:30am to 9:00am)

Successful Bus Procurement Partnerships

This session will focus on successful partnerships. Learn about Florida's successful state-wide TRIPS program for small and medium duty transit vehicle procurements, and how Valley Metro and the City of Phoenix Public Transit moved from a history of separate bus procurements and consortium piggyback purchases to a true joint procurement. The session will also focus on FTA's guidance and expectations for grantees conducting joint procurements

Moderator: John Andrews, Regional Sales Manager, New Flyer, Orlando, FL

Panel:

Joe Ramirez Manager, Contracts and Procurement, Valley Metro, Phoenix AZ

James Harper, Director, Office of Procurement, Federal Transit Administration, Washington DC

Edward Bart, Senior Research Associate, University of South Florida

SESSION 4 (Tuesday 9:15am to 10:45am)

Current Topics in Buy America

This session will address current topics in Buy America including the status of issues affecting utilities, Buy America compliance reviews, and what are bus and rail OEMs doing to increase domestic content.

Moderator: Wright Parkes, Director of Procurement, Southwest Ohio Regional Transit Authority, SORTA, Metro, Cincinnati, OH

Panel:

Jeffrey Boothe, Partner, Holland & Knight LLP, Washington, DC

Bruce Robinson, FTA Deputy Associate Administrator for Program Management, Washington DC

Chris Turner, Vice President Manufacturing & Supply Chain, Gillig LLC, Hayward CA

Scott Reichert, Sales and Marketing Manager, CAF USA, Washington DC

SESSION 5 (Tuesday 11:00am to 12:15pm)

What a Procurement Officer needs to know about PPP's and PM/CM at Risk

Most alternative project delivery discussions take place at the executive or engineering level, leaving out the perspective of the hands-on procurement practitioner.

Recognizing that the consultant can only consult and Procurement is usually still responsible, this session will draw upon lessons learned from successful PPPs and PM/CM at Risk projects, including the experience of a small agency.

Moderator: Robert Brownstein, Vice President, AECOM, New York, NY

Panel:

Scott Baker, Senior Consulting Manager and Alfiya Mirzagalyamova, Senior Consultant, AECOM, Arlington, VA

Stanley Grill, Director, Supply Management, Jacobs, Morristown, NJ

Bill Tsiforas, Consultant, Regional Transportation Commission of Southern Nevada

SESSION 6 (Wednesday 7:30am to 9:00am)

Negotiated Procurements

This session will discuss three aspects of negotiated procurement: evaluation committee training, two-step procurements, and Brooks Act procurements.

Moderator: Margaret Merhoff, Principal, Transportation Consulting Services, Upland, CA

Panel:

Virginia Abadessa, Director, Contracts Administration & Materials Management Orange County Transportation Authority,

Jennifer Sims, Director of Procurement, OMNITRANS, San Bernadino, CA

Gunther Scheib, Manager of Procurement, Houston Metropolitan Transit Authority, Houston TX

SESSION 7 (Wednesday 9:15am to 10:45am)

Supply Chain Management in Transit

Supply Chain Management is an integrated approach to obtaining materials and services in time to support program requirements. Supply chain management is common practice in the business sector but the principles apply equally to operating and maintaining a modern transit fleet. Applying innovative supply chain best practices improves supply velocity, ensures that critical parts are on and to meet program needs and reduces inventory and component costs. Panelists will discuss supply chain management best practices and trends and how they can be applied to transit agencies.

Moderator: Adam Nicholas, Assistant VP Procurement\SCM, Dallas Area Rapid Transit, Dallas, TX

Panelists:

Susan Cleaver, Director, Marketing, Bus Business, Cummins Southern Plains, Inc., Austin, TX

Mary Litke, Vice President, Supply Chain, NABI Bus LLC, Anniston, AL

Eric O'Connor, Material Manager Inventory Control, Los Angeles County Metropolitan Transportation Authority, Los Angeles, CA

Todd Mills, Senior Supply Chain Manager, Utah Transit Authority, Salt Lake City, UT.

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DBE News

The Department has issued a final rule amending its disadvantaged business enterprise (DBE) program at 49 CFR Part 26. The final rule improves DBE program implementation in three major areas. First, the rule revises the uniform certification application and reporting forms, creates a uniform personal net worth form for use by applicant owners, and collects data required by the Department's surface transportation reauthorization, Moving Ahead for Progress in the 21st Century Act (MAP-21). Second, the rule strengthens the certification-related program provisions, which includes adding a new section authorizing summary suspensions under specified circumstances. Third, the rule modifies several other program provisions concerning such subjects as: overall goal setting, good faith efforts, transit vehicle manufacturers, and counting for trucking companies.

HIGHLIGHTS OF MAJOR CHANGES IN THE 2014 DBE FINAL RULE

October 2, 2014

The Department of Transportation's (DOT) disadvantaged business enterprise (DBE) program is an affirmative action program designed to combat discrimination and its continuing effects by providing contracting opportunities on Federally-funded highway, transit, and airport projects for small businesses owned and controlled by socially and economically disadvantaged individuals. Over the years, the Department has met or exceeded the national aspirational goal established by Congress in the statutes authorizing the program since 1983 and has made continuous program improvements.

The Department's 2014 final rule contains important improvements to the implementation and administration of the DBE program regulations. This fact sheet highlights the major changes.

Certification Standards

Size – The cap on statutory gross receipts (i.e., the average annual gross receipts over the previous three fiscal years) applicable to small businesses eligible to participate in the program is increased from \$22.41 million to \$23.98 million.

Economic Disadvantage – The socially disadvantaged owner may be disqualified if there is evidence that he or she is not economically disadvantaged due to assets and resources that indicate an ability to accumulate substantial wealth based on specific factors, similar to those used by the Small Business Administration (SBA), that are set out in the rule.

Ownership – In evaluating whether the ownership of a firm by disadvantaged individuals is real and substantial, the new rule examines whether there are any agreements or practices in place that give a non-disadvantaged individual or firm a priority or superior right to a DBE's profits. If

so, these agreements or practices constitute grounds for denial of certification or removal from the program. Examples of what constitutes real, substantial, and continuing ownership are included in the rule.

Control – An assumption of control is created when a non-disadvantaged individual who is a former owner of the firm remains involved in the operation of the firm unless a determination is made by the recipient (the entity receiving financial assistance from FAA, FHWA, or FTA) that the disadvantaged owner is in control.

Forms and Data Collection

Uniform Certification Application – The application removes unnecessary details (e.g., the phone number and address of applicant's bank) but includes new items useful to certifiers such as State departments of transportation, transit authorities, and airports.

New DOT Personal Net Worth (PNW) Form – The DOT form is an adaptation of the SBA Form 413 tailored to DBE program requirements. All applicants must use the simplified form to document the economic status of the disadvantaged owner(s). The spouse of a disadvantaged owner who is involved in the operation of the firm must also submit a PNW form with the application.

Uniform Report of DBE Awards or Commitments and Payments – The new form captures data on minority women-owned DBEs and actual payments to DBEs during the reporting period. Recipients must begin to use the new Uniform Report when they submit activity reports in Fiscal Year 2015.

MAP-21 Report – Beginning January 1, 2015, State departments of transportation, on behalf of the Unified Certification Program, must submit to the DOT Office of Civil Rights information required by MAP-21 on the percentage of DBEs in the state owned by non-minority women, minority women, and men.

Certification Procedures

Prequalification – The new rule disconnects the prequalification requirements from the requirements for certification (size, disadvantage, ownership, and control).

Summary Suspension – A DBE's certification will be suspended without a hearing for 30 days if the recipient has evidence that the disadvantaged owner(s) has died or is incarcerated. At the discretion of the recipient, evidence of other material changes affecting the certification eligibility of the DBE also may result in summary suspension. The recipient has 30 days to determine whether to reinstate certification or initiate removal proceedings.

Grounds for Removal – A DBE that is suspended or debarred for conduct related to the DBE program will automatically be removed from the program.

Certification Appeals – An applicant who appeals the denial of its application for certification to the Department is not prohibited from reapplying at the end of the waiting period if the appeal has not been decided.

Goal Setting and Good Faith Efforts

Overall Goal Setting Methodology and Process – A bidders list must meet the requirements of the rule if it is used to establish an overall goal. If it does not, additional data sources must be used to determine the relative availability of DBEs in the recipient’s contracting market. Additional data sources must also supplement the use of prequalification and similar lists. Further, any adjustments by the recipient to the base figure must be supported by the evidence. The public participation process may, but is not required to, include a 45-day comment period.

Transit Vehicle Manufacturers (TVM) – This section clarifies the goal setting, reporting, and other requirements that apply to TVMs. A TVM that is noncompliant will be removed from the FTA’s certified TVM list, and will be deemed ineligible to bid. A recipient that is noncompliant may be subject to a formal enforcement action or other appropriate sanctions.

Submission of Good Faith Efforts – Bidders/offers that are required to submit DBE information for a DOT-assisted contract that contains a DBE goal must provide the information at the time of bid (as a matter of responsiveness) or no later than 7 days after bid opening (as a matter of responsibility). The 7 days shall be reduced to 5 days beginning January 1, 2017. The DBE information submitted includes the North American Industry Classification System (NAICS) code applicable to the kind of work the DBE will perform on the contract, and, when a non-DBE subcontractor is selected over a DBE, copies of the quotes from each DBE and non-DBE subcontractor. The bidder/offers shall make copies of DBE subcontracts available upon request.

Guidance on Good Faith Efforts – The guidance includes additional examples of the kinds of actions taken by bidders/offers that recipients may consider when evaluating good faith efforts. A bidder/offers will not be deemed to demonstrate good faith if it rejects a DBE simply because it is not the low bidder, or if it is unable to find a replacement DBE at the original price, without more. When evaluating the efforts of the low bidder to meet the contract goal, recipients should review the performance of other bidders.

Program Administration

Domestic Partnerships and Civil Unions – Domestic partnerships and civil unions recognized under state law are included in the definitions of “immediate family members” and “spouse.”

Record Retention – All records documenting a DBE’s compliance with the eligibility requirements must be retained. These include the complete application package, change notices, all affidavits of no-change, and the on-site review report.

Contract assurance – The contract clause included in each DOT-assisted contract obligates the contractor to comply with the DBE program regulations in the administration of the contract. Failure to do so may result in termination of the contract or other remedies that the recipient deems appropriate, including withholding monthly progress payments, assessing sanctions, liquidated damages, and disqualifying the contractor from future bidding as non-responsible.

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September 29, 2014

Docket Operations
U.S. Department of Transportation
1200 New Jersey Avenue SE.
West Building; Room W12-140
Washington, DC 20590-0001

RE: Docket No. FTA-2014-0018

Dear Docket Clerk:

On behalf of the more than 1,500 member organizations of the American Public Transportation Association (APTA), I write to provide comments on the Federal Transit Administration (FTA) Bus and Bus Facilities Formula Program: Proposed Circular, published July 30, 2014 at 79 FR 44241.

About APTA

APTA is a non-profit international trade association of more than 1,500 public and private member organizations, including public transit systems; high-speed intercity passenger rail agencies; planning, design, construction, and finance firms; product and service providers; academic institutions; and state associations and departments of transportation. More than ninety percent of Americans who use public transportation are served by APTA-member transit systems.

APTA speaks for its members. Its Board of Directors reiterated that fact on March 9, 2013, when it adopted the following statement: "While APTA encourages its members to provide specific examples or impacts in support of the association's positions, APTA crafts its comments to represent those of all APTA members. The association goes to great lengths to ensure its regulatory comments represent the consensus views of our members. Every APTA member has the opportunity to review drafts, participate in discussions, and assist in crafting those consensus comments. In short, we speak with a single voice and, when the rare instance occurs that we cannot reach consensus, we do not speak at all. APTA's comments are those of our more than 1,500 members. This consensus-based method of crafting regulatory comments is a factor underlying APTA's selection as one of Washington's most trusted brands in a broad survey conducted by the National Journal and we encourage all federal agencies to recognize the representative nature of the association's regulatory comments."

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FTA Must Amend the Draft Program Circular to Incorporate Bus Overhaul and Other Capital Maintenance

While 49 USC 5339(a)(1) authorizes grantees to utilize section 5339 funding to “rehabilitate” buses, the draft circular unilaterally replaces the word “rehabilitate” with the word “rebuild,” then proceeds to differentiate “rebuild” from “overhaul,” effectively withholding the statutory authority of grantees to use these funds for mid-life capital maintenance.

We object to this unauthorized limitation on program funding in the strongest of terms. FTA has no statutory authority to make preventive maintenance ineligible under section 5339. In fact, while original drafts of the bill may have suggested the restriction FTA currently proposes, that position is contradicted by the final language as enacted, leaving intact applicability of “the requirements of section 5307...” in their entirety, not just subsections (b) or (c) thereof. Section 5307(a) specifically authorizes expenditures for “capital projects,” defined at 49 USC 5302 as including rehabilitating a bus, remanufacturing a bus, and performing capital maintenance.

Capital maintenance, in its various forms as contemplated in section 5302, has long been a cornerstone of FTA bus programs and, by using the term “rehabilitate” and specifically referencing “the requirements of section 5307,” Congress clearly envisioned that this practice would continue. To restrict the program as proposed threatens to upend maintenance activities throughout the industry and threatens the very core of efforts to achieve and maintain a state of good repair across all public transportation agencies. Individual properties will find it difficult, if not impossible, to adequately replace the federal dollars utilized for these significant maintenance activities and are likely to defer that maintenance out of economic necessity – an almost certain path to increased costs, reduced reliability, and reduced useful life.

FTA must remain consistent with the clear intent of 53 USC 5339 and acknowledge that funding is thereby authorized for all capital maintenance activities, whether in the nature of rehabilitation, remanufacturing, rebuilding, overhauling, or other preventive maintenance.

FTA Should Clarify Its Understanding of the Intended Purpose of Section 5339 Funding

We recommend the purpose section of the circular be amended to read:

PURPOSE. This circular is an issuance of guidance on the Bus and Bus Facilities Program administered by the Federal Transit Administration (FTA) under 49 U.S.C. § 5339. This circular provides guidance for applying for grants under the Bus and Bus Facilities Program and addresses the requirements that must be met in the application for Section 5339 program assistance. This circular includes the most current available guidance on statutory and programmatic requirements for the federal public transportation program as of the date of publication. It incorporates authorizing provisions of the Moving Ahead for Progress in the 21st Century Act (MAP-21; Pub. L. 112-141, July 6, 2012), that supplement formula funding for bus capital needs available under previous programs.

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We appreciate the opportunity to assist FTA in this important endeavor. For additional information, please contact James LaRusch, APTA's chief counsel and vice president corporate affairs, at (202) 496-4808 or jlarsch@apta.com.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Michael P. Melaniphy", with a stylized flourish at the end.

Michael P. Melaniphy
President & CEO

MPM/jpl