**PROCUREMENT POLICY & PROCEDURES**

PURCHASE OF SERVICE & NONTRADITIONAL PROJECTS

SECTION 5310 NON-PROFIT GRANTEES



**State of Connecticut**

**Department of Transportation**

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# OVERVIEW

The Section 5310 program provides formula funding to improve mobility for seniors and individuals with disabilities by removing barriers to transportation service and expanding transportation mobility options. This program supports transportation services planned, designed, and carried out to meet the special transportation needs of seniors and individuals with disabilities in all areas – large urbanized (over 200,000), small urbanized (50,000-200,000), and rural (under 50,000). Eligible projects include both traditional capital investment (traditional projects) and nontraditional investment (nontraditional projects) beyond the Americans with Disabilities Act (ADA) complementary paratransit services.

The Connecticut Department of Transportation (CTDOT) is the designated and direct recipient for rural and small urbanized areas, and the designated recipient for large urbanized areas. CTDOT works with Regional Planning Organizations (RPOs) to award federal funding to subrecipients (grantees) through a competitive application process.

As the designated recipient of federal funds apportioned to the State of Connecticut, CTDOT is responsible for oversight of the procurement of commodities, services and technology that use Federal Transit Administration (FTA) program funds under the federal guidelines issued by the FTA.

# PROCUREMENT POLICY

This document is intended only for nonprofit grantees that receive Section 5310 funding for purchase of service or nontraditional projects.As a subrecipient of Federal assistance funds, a Section 5310 nonprofit grantee (the grantee) needs to comply with State and Federal statutory and regulatory requirements when acquiring or purchasing goods or services.

Municipalities are exempt under common law from adhering to the federal and state procurement oversight procedures outlined in this document. Section 5310 grantees of traditional vehicle projects that elect to join an existing transit district contract using an FTA compliant competitive process may refer to Appendix F of the Section 5310 Application Instructions. Appendix F outlines vehicle procurement options for grantees that receive funding for traditional projects.

Examples of goods or services that a grantee may need to procure, beyond staffing, include but are not limited to office supplies to assist with printing and administration; kiosks, tablets or other equipment used by Mobility Ombudsmen to assist in trip planning; vouchers for accessible transportation programs; postage; and leasing of GPS/GIS systems for navigation and vehicle location tracking.

# PROCUREMENT METHODS

This document provides parameters and general guidance related to procurement activities. The following methods and procedures are an abstract of the more robust CTDOT Procurement Procedures document. Please refer to the Procurement Procedures document for the most comprehensive detail of the procedures, guidance and oversight in place. The FTA Best Practices manual provides additional procurement assistance, contract clauses and language provisions and is located at: <https://www.transit.dot.gov/funding/procurement/best-practices-procurement-manual>.

There are nine (9) different procurement methods that may be applicable to a grantee, depending on the goods or services being procured. A list of each procurement method is below, along with a description of the procedures that apply to the methods Section 5310 grantees are most likely to partake in.

1. Micro-Purchases.

Micro-purchases are purchases of $2,500 or less. The grantee may acquire property and services valued at $2,500 or less without obtaining competitive quotations. These purchases are exempt from FTA’s Buy America requirements. Davis-Bacon prevailing wage requirements, however, will apply to construction contracts exceeding $2,000, even though the grantee uses micro-purchase procurement procedures.

Micro-Purchase Procedures

* 1. Competition. The grantee shall distribute micro-purchases equitably among qualified suppliers.
	2. Prohibited Divisions. The grantee may not divide or reduce the size of its procurement merely to come within the micro-purchase limit unless it is proven to be the most economically advantageous approach of procuring such items.
	3. Documentation. The only documentation requirement for micro-purchases is a determination that the price is fair and reasonable and a description of how the grantee made its determination. Procurement by micro-purchases may be ordered from a Corporate Purchasing Agreement (CPA), state and government contract pricing, e-commerce by way of the world wide web stationary or tool catalog, or other catalog which has been determined by the grantee to be generally competitive in cost and quality and if it is determined that the price is fair and reasonable. The grantee is not required to provide its rationale for the procurement method used, selection of contract type, or reasons for contractor selection or rejection.
1. Small Purchases

Small purchase procedures may be used to acquire services, supplies, or other property valued at more than the micro-purchase threshold (currently, $2,500) but less than $50,000.

Small Purchase Procedures

* 1. Competition. The grantee must obtain price or rate quotations from an adequate number of qualified sources.
	2. Prohibited Divisions. The grantee may not divide or reduce the size of its procurement to avoid the additional procurement requirements applicable to larger acquisitions.
	3. Documentation. Written, telephone, or e-commerce price quotations, and/or established CPA pricing, state and government contract pricing, or Catalog pricing is required from an adequate number of qualified and responsible sources for all contracts that exceed $2,500 but are less than $50,000. A written record of telephone and e-commerce quotations shall be made and shall contain at least the date of the quotation, the name of the contractor/supplier and the contractor’s/supplier’s representative, maintenance, work or supplies which are the subject of the quotation, and the price. In the event fewer than three qualified contractors/suppliers exist in the market within which it is practicable to obtain quotations, a memorandum shall be kept on file documenting the same. Written price quotations, written records of telephone and e-commerce quotations and any other related supporting documentation will be retained as an attachment to the AFE. See the Record Retention section of this document for guidance on length of time necessary to retain such records.
1. Sealed Bids (Formal Advertising)
2. Competitive Proposals (Request for Proposals-RFP)
3. Two-Step Procurement Procedures
4. Architectural Engineering (A &E) Services and Other Services
5. Design-Bid-Build
6. Design-Build
7. Other than Full and Open Competition

# PROCUREMENT PROCESS

## Step 1 – Develop a Solicitation (Solicitation Requirements)

Once a procurement method has been selected, a grantee must develop a solicitation to initiate procurement of a purchase in excess of $50,000 or procurement of a service. (For micro-purchases and small purchases, the grantee should follow the steps outlined above in the Procurement Methods section and skip to Step 5.) The solicitation and the contract awarded thereunder must include a clear and accurate description of the grantee’s technical requirements for the property or services to be acquired in a manner that provides for full and open competition. Each solicitation must contain:

* A description of the property or services
* The factors that will be used to evaluate the bid or proposal
* The type of contract that will be awarded
* Federal requirements that will affect contract scope and performance
* Federal requirements that a bidder or offeror must fulfill before and during contract performance
* An indication if the grantee intends to reserve its right to award to other than the low bidder or offeror
* An indication if the granteeintends to reserve its right to reject all bids or offers

Once a solicitation has been developed, a cost/price analysis must be performed.

## Step 2 – Perform a Cost/Price Analysis

The Common Grant Rules requires grantees to perform a cost or price analysis in connection with every procurement action, including contract modifications. The method and degree of analysis depends on the facts and circumstances surrounding each procurement, but as a starting point, the grantee must make independent estimates before receiving bids or proposals.

1. Cost Analysis. The grantee must obtain a cost analysis when a price analysis will not provide sufficient information to determine the reasonableness of the contract cost. The grantee must obtain a cost analysis when the offeror submits elements (that is, labor hours, overhead, materials, and so forth) of the estimated cost, (such as professional consulting and A&E contracts, and so forth). The grantee is also expected to obtain a cost analysis when price competition is inadequate, when only a sole source is available, even if the procurement is a contract modification, or in the event of a change order. The grantee, however, need not obtain a cost analysis if it can justify price reasonableness of the proposed contract 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.
	1. Federal Cost Principles. Federal cost principles contain many requirements about the costs that are allowed and how they are allocated.
	2. Establishing Indirect Cost Rates. For contracts other than A&E contracts discussed in subsection 3.e of this section, if the third party contractor or subcontractor does not have an approved Government indirect cost rate agreement, the contract’s dollar value should determine how that rate is verified.
		1. Contracts of $5 Million or Less. CTDOT and FTA will accept the audit recommendations of the contractor’s certified public accountant, or indirect cost information in the contractor’s annual statement to their stockholders, shareholders, or owners, or examples of acceptance of their rates by other governmental agencies within the last six months.
		2. Contracts Exceeding $5 Million. If the contract exceeds $5 million, then the 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.
	3. Profit. The grantee will negotiate profit as a separate element of the cost for each contract in which there has been no price competition, and in all acquisitions in which the grantee performs or acquires a cost analysis. To establish a fair and reasonable profit, the grantee needs to consider the complexity of the work to be performed, the risk undertaken by the contractor, the contractor’s investment, the amount of subcontracting, the quality of the contractor’s record of past performance, and industry profit rates in the surrounding geographical area for similar work.
2. Price Analysis. If the grantee determines that competition was adequate, a price analysis, rather than a cost analysis, is required to determine the reasonableness of the proposed contract price. The price analysis for micro-purchases may be limited. An abbreviated bid analysis form for small purchases is available, see Attachment 1.

Each price analysis is recorded on this preprinted form on which the grantee can annotate a finding of fair and reasonable pricing and check off the most common reasons why this would be so, such as catalog or market prices offered in substantial quantities to the general public, regulated prices (for example, for many utilities purchases), or a comparison with recent prices for similar goods and services. The grantee will use the bid analysis form for each procurement transaction.

1. Guidance on Cost and Price Analysis. CTDOT recognizes the potential difficulty in obtaining the information necessary to conduct a proper cost or price analysis. The grantee may use the following resources as guidance in preparing cost or price analyses:
* FTA’s “Best Practices Procurement Manual, Chapter 5.
* The National Transit Institute Course, “Cost or Price Analysis and Risk Assessment,”
* Pricing Guide for FTA Grantees, FTA Web Site: <https://www.transit.dot.gov/funding/procurement/third-party-procurement/pricing-guide-fta-grantees>
* FAR, Part 31, Contract Cost Principles and Procedures, and
* Defense Contract Audit Agency Audit Manual, See, the DCAA Web site: <http://www.dcaa.mil/>

## Step 3 – Evaluate Bids or Proposals

When evaluating bids or proposals submitted, the grantee needs to consider all evaluation factors specified in its solicitation documents, and evaluate the bids or offers only on the evaluation factors included in those solicitation documents. The grantee may not modify its evaluation factors after bids or proposals have been submitted without re-opening the solicitation.

1. Options. In awarding the contract that will include options, the following standards apply:
	1. Evaluation Required. In general, the grantee will evaluate bids or offers for any option quantities or periods contained in a solicitation if it intends to exercise those options after the contract is awarded.
	2. Evaluation Not Required. The grantee need not evaluate bids or offers for any option quantities when it determines that evaluation would not be in its best interests. An example of a circumstance that may support a determination not to evaluate bids or offers for option quantities is when the grantee is reasonably certain that funds will not be available to permit it to exercise the option.
2. Evaluators. In addition to evaluators with experience in technical or public policy matters related to the procurement, other evaluators may also include auditors and financial experts to the extent that the grantee determines would be necessary or helpful.

## Step 4 - Award a Contract

The following provisions apply to third party contract awards:

1. Award to Other Than the Lowest Bidder or Offeror. A grantee may award a contract to other than the lowest bidder if the award furthers an objective consistent with the purposes of 49 U.S.C. Chapter 53, including improved long-term operating efficiency and lower long-term costs. The grantee may also award a contract to other than the offeror whose proposal is lowest, when stated in the evaluation factors of the solicitation. In both cases, the grantee will include a statement in its solicitation document reserving the right to award the contract to other than the low bidder or offeror.
2. Award Only to a Responsible Bidder or Offeror. Contract awards should be made only to “responsible” contractors possessing the ability, willingness, and integrity to perform successfully under the terms and conditions of the contract. Responsibility is a procurement issue that is determined by the grantee after receiving bids or proposals and before making contract award. The grantee should expect the prospective contractor to demonstrate affirmatively that it qualifies as “responsible” under the standards of 49 U.S.C. Section 5325, and that its proposed subcontractors also qualify as “responsible.”

To designate a prospective contractor “responsible” as required by 49 U.S.C. Section 5325, the grantee, at a minimum, will determine and ensure that the prospective contractor satisfies the following criteria described herein. In addition to being otherwise qualified and eligible to receive the contract award under applicable laws and regulations, a responsible contractor:

* 1. Integrity and Ethics. Has a satisfactory record of integrity and business ethics, in compliance with 49 U.S.C. Section 5325(j)(2)(A),
	2. Debarment and Suspension. Is neither debarred nor suspended from Federal programs under DOT regulations, “Nonprocurement Suspension and Debarment,” 2 CFR Parts 180 and 1200, or under the FAR at 48 CFR Chapter 1, Part 9.4,
	3. Affirmative Action and DBE. Is in compliance with the Common Grant Rules’ affirmative action and FTA’s and CTDOT’s Disadvantaged Business Enterprise requirements,
	4. Public Policy. Is in compliance with the public policies of the Federal Government, as required by 49 U.S.C. Section 5325(j)(2)(B),
	5. Administrative and Technical Capacity. Has the necessary organization, experience, accounting, and operational controls, and technical skills, or the ability to obtain them, in compliance with 49 U.S.C. Section 5325(j)(2)(D),
	6. Licensing and Taxes. Is in compliance with applicable licensing and tax laws and regulations,
	7. Financial Resources. Has, or can obtain, sufficient financial resources to perform the contract, as required by 49 U.S.C. Section 5325(j)(2)(D),
	8. Production Capability. Has, or can obtain, the necessary production, construction, and technical equipment and facilities,
	9. Timeliness. Is able to comply with the required delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments, and
	10. Performance Record. Is able to provide a:
		1. Current Performance. Satisfactory current performance record, and
		2. Past Performance. Satisfactory past performance record in view of its records of long-time performance or performance with a predecessor entity, including:
			1. Sufficient Resources. Key personnel with adequate experience, a parent firm with adequate resources and experience, and key subcontractors with adequate experience and past performance,
			2. Adequate Past Experience. Past experience in carrying out similar work with particular attention to management approach, staffing, timeliness, technical success, budgetary controls, and other specialized considerations as described in the grantee ’s solicitation, and
			3. Any Past Deficiencies Not the Fault of the Bidder or Offeror. A prospective bidder or offeror that is or recently has been seriously deficient in contract performance is presumed to be nonresponsible, unless the grantee determines that the circumstances were properly beyond the bidder or offeror’s control, or unless the bidder or offeror has taken appropriate corrective action. Past failure to apply sufficient tenacity, perseverance, and effort to perform acceptably is strong evidence of nonresponsibility. Failure to meet the quality requirements of a contract is a significant factor to consider in determining satisfactory performance. The grantee will consider the number of the bidder or offeror’s contracts involved and the extent of deficient performance in each contract when making this determination.

Before entering into a full funding contract for a fixed guideway project, the grantee must now consider the prospective contractor’s past performance in estimating costs and ridership as reported in the Contractor Performance Assessment Reports, as required by 49 U.S.C. Section 5325(j)(2)(C).

1. Rejection of Bids and Proposals. The following applies:
	1. Governmental Recipients. As a local government subrecipient, the grantee asserts the right to reject all bids submitted in response to an invitation for bids or request for proposals.
2. Extent and Limits of Contract Award. A selection of a contractor to participate in one aspect of a project does not, by itself, constitute a sole source selection of the contractor’s wholly owned affiliates to perform other work in connection with the project.

## Step 5 – Initiate a Purchase

To initiate the procurement process, all purchases need to be requisitioned on an Approval for Expenditure (AFE) form (see Attachment 2). The AFE allows the grantee to specify the type of expenditure to be purchased (e.g., purchase of a capital asset, a rental or lease, a one-time purchase of services, a contract for professional services, etc.) and describe the item(s) to be purchased or work to be performed. It also requires a narrative justification for the purchase or contract and support of the procurement method utilized. The AFE must also include the number of units and total cost. The grantee is responsible for ensuring the appropriate purchasing method.

# PROTESTS, CHANGES & MODIFICATIONS, DISPUTES, CLAIMS, LITIGATION AND SETTLEMENTS

The grantee is responsible for resolving all contractual and administrative issues arising out of third party procurements, including source evaluation and selection and including protests of awards, disputes, and claims using good administrative practices and sound business judgment.

In general, CTDOT or FTA will not substitute its judgment for that of the grantee unless the matter is primarily a State or Federal concern. Examples of “State or Federal concerns” include, but are not limited to, situations “where a special State or Federal interest is declared because of program management concerns, possible mismanagement, impropriety, waste, or fraud.” Nevertheless, CTDOT or FTA can become involved in the grantee’s administrative decisions when a protest decision is appealed to FTA, or when the grantee seeks to use CTDOT or FTA assistance to support the costs of settlements or other resolutions of protests, disputes, claims, or litigation.

## Protests

1. Grantee’s Role and Responsibilities. The grantee has the initial responsibility to resolve protests of third party contract awards.
	1. Protest Procedures. The grantee should establish appropriate written protest procedures.
	2. Responsibilities to FTA. The grantee ’s minimum responsibilities to FTA consist of the following:
		1. Timely Notification
		2. Access to Information
2. FTA’s Role and Responsibilities. FTA has developed an appeals process for reviewing protests of a procurement decision.
	1. Requirements for the Protester. The protester must:
		1. Qualify as an “Interested Party”
		2. Exhaust Administrative Remedies
		3. Appeal Within Five Days
	2. Extent of FTA Review. FTA will limit its review of third party contract protests as follows:
		1. Grantee’s Procedural Failures. FTA will consider a protest if the grantee :
			1. Does not have protest procedures, or
			2. Has not complied with its protest procedures, or
			3. Has not reviewed the protest when presented an opportunity to do so
		2. Violations of Federal Law or Regulations. FTA will not consider every appeal filed by a protestor of the grantee’s protest decision merely because a Federal law or regulation may be involved. Instead, FTA will exercise discretionary jurisdiction over those appeals involving issues important to FTA’s overall public transportation program. FTA will refer violations of Federal law for which it does not have primary jurisdiction to the Federal authority having proper jurisdiction.
		3. Violations of State or Local Law or Regulations. FTA will refer violations of State or local law to the State or local authority having proper jurisdiction.
	3. FTA Determinations to Decline Protest Reviews. FTA’s determination to decline jurisdiction over a protest does not mean that FTA approves of or agrees with the grantee’s decision or that FTA has determined the contract is eligible for Federal participation. FTA’s determination means only that FTA does not consider the issues presented to be sufficiently important to FTA’s overall program that FTA considers a review to be required.

## Changes and Modifications

1. Grantee’s Role and Responsibilities. The grantee is responsible for issuing, evaluating and making necessary decisions involving any change to its third party contracts, and any change orders, or modifications it may issue. The grantee is also responsible for evaluating and making the necessary decisions involving any claim of a constructive change. The grantee will comply with the following procedures:
	1. Approval Requirements
	2. Cost Restrictions

A more extensive discussion on Changes and Modifications can be found in FTA’s Best Practices Procurement Manual (BPPM).

1. FTA’s Role and Responsibilities. FTA does not participate in the grantees ’s decisions involving change orders, constructive changes, or modifications, but reserves the right to review The grantee’s supporting documentation as necessary to determine the extent of FTA assistance that may be used to support those costs.

## Disputes

1. Grantee’s Role and Responsibilities. The grantee is responsible for evaluating and resolving third party contract disputes. If the grantee intends to use Federal assistance to support payments to a third party contractor to settle a dispute, or even intends to request increased Federal assistance for that purpose, the grantee’s responsibilities are as follows:
	1. Notify FTA about Disputes
	2. Adequate documentation
	3. Audit
2. CTDOT’s and FTA’s Role and Responsibilities. CTDOT and FTA generally do not become involved in negotiating the resolution of disputes. However, CTDOT and FTA does reserve the right to become involved as follows:
	1. Determine Reasonableness
	2. Review Documents

## Claims and Litigation

1. Grantee’s Role and Responsibilities. It is the grantee’s responsibility for evaluating and resolving third party contract claims and litigation resulting from a contractor’s violation, default, or breach of its third party contracts with Federal assistance. The grantee is responsible for resolving any claims and litigation the contractor may present against it. Due to CTDOT’s and FTA’s financial interest in the settlement of third party contract claims and litigation, and concerns about matters with significant policy consequences to the Federal Government and the State of Connecticut, CTDOT and FTA expects the grantee to:
	1. Notify CTDOT and FTA about Claims and Litigation
	2. Pursue Legal Rights and Remedies
2. CTDOT’s & FTA’s Role and Responsibilities. In support of its financial interest in the settlement of claims and litigation involving any federally and state assisted third party contracts, CTDOT and FTA has retained its discretion to assert the following rights:
	1. Proceeds Recovered
	2. Liquidated Damages

## CTDOT & FTA Participation in Settlements, Arbitration Awards and Court Awards

1. Grantee’s Responsibilities:
	1. Settlement Arrangements Must Be Reasonable
	2. Maintain Sufficient Records
	3. Obtain FTA Concurrence
2. CTDOT’s and FTA’s Prerogatives
	1. Review Supporting Documentation
	2. Provide Federal Assistance
	3. Deny State and Federal Assistance

# GRANTEE REQUIREMENTS & OVERSIGHT

## Procurement Administration/Record Retention

Final responsibility for all procurement administration is with the grantee*.* The grantee’s project contact and/or designated contact will be responsible for managing procurement activities including recurring purchases of goods and services as well as capital procurements. Records detailing the significant history of each procurement shall be maintained for a period of three years from the date specified below.

The starting date for retention of general procurement records is the date of submission of the final expenditure upon project completion. The starting date for retention of equipment records is the date of the equipment’s disposition or replacement or transfer. If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records must be retained for three years after completion of the action and resolution of issues which arise from it.

## Disadvantaged Business Enterprise (DBE) Contracting Policy

The Section 5310 nonprofit grantee is subject to regulations which require affirmative efforts to promote contracting with Disadvantaged Business Enterprises. The grantee’s project contact and/or designated contact is responsible to ensure the grantee’s adopted DBE contracting policies are fully implemented.

The grantee shall maintain information on DBE firms that are available to perform services or supply materials. To the extent possible, the grantee shall endeavor to solicit quotations from DBE firms for all procurements, consistent with the Company’s adopted contracting policy. For more information about the DBE Program or for a listing of Certified DBE firms please contact Ms. Debra Goss at (860) 594-2169 or by email at Debra.Goss@ct.gov.

## Additional Information

Additional information on miscellaneous, emergency and incidental purchases can be found in the CTDOT Procurement Procedures document, which also details procedural guidance for open market procurements, joint procurements, state/local government purchasing schedules and requirements that affect property and service needs.

# ATTACHMENT 1 – Abbreviated Bid Analysis Form for Small Purchases

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# ATTACHMENT 2 – Approval for Expenditures Form

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