CSX states that the Trip Optimizer product is an energy management system installed on locomotives that is used by the train's operator to improve the energy efficiency of train operations. CSX goes on to state that TO Air Brake Control is an expansion of the Trip Optimizer product that was initially deployed by CSX starting in 2008. CSX indicates that TO Air Brake Control functionality is designed to increase the number of miles of automatic operation and thereby decrease fuel consumption and the emissions output from all locomotives in the train. CSX also indicates that a train equipped with TO Air Brake Control will continue to operate under the supervision of a qualified train crew, who are required to assume control of the train and operate in manual mode, when necessary, and to retain overall responsibility for the safe operation of the train.

Interested parties are invited to comment on CSX's PSP by submitting comments to the electronic docket. Please refer to the **ADDRESSES** section above for guidance on how to submit comments to the electronic docket.

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2025–00862 Filed 1–15–25; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2024–0015]

Third Party Contracting Guidance

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice of availability of final circular and response to comments.

SUMMARY: The Federal Transit Administration (FTA) has made available on its website the final updated Third-Party Contracting Guidance Circular (C 4220.1G). The updated circular reflects statutory and regulatory changes that have occurred since the last update, provides additional non-binding guidance, and supersedes the previous Third-Party Contracting Guidance Circular C 4220.1F. This notice responds to the comments FTA received on the proposed circular, which was published in the **Federal Register** on November 27, 2024.

DATES: The applicable date of this circular is February 18, 2025.

ADDRESSES: One may view the comments at docket number FTA–2024–0015. For access to the docket, please visit *https://www.regulations.gov* or the Docket Operations office located in the West Building of the United States Department of Transportation, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For third party contracting questions, contact Tara Murphy, Division Chief, Office of Administration, Federal Transit Administration, 1200 New Jersey Ave. SE, Room E41–311, Washington, DC 20590, phone: (202) 366–5647 or email *tara.murphy@dot.gov.* For legal questions, Christopher Hall, Office of Chief Counsel, same address, Room E56–316, phone (202) 941–9595 or email *christopher.hall@dot.gov.*

SUPPLEMENTARY INFORMATION:

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I. Overview

This notice announces the availability of FTA Circular C 4220.1G, Third Party Contracting Guidance. C 4220.1G replaces C 4220.1F. The purpose of Circular 4220.1 is to provide updated Third-Party Contracting Guidance for Federal Transit Administration (FTA) assistance programs. This circular incorporates provisions of Federal law enacted since the publication of C 4220.1F, including the Infrastructure Investment and Jobs Act (Pub. L. 117–58, Nov. 15, 2021); the Office of Management and Budget's (OMB) and United States Department of Transportation's (USDOT) updated Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR part 200 (78 FR 78608, Dec. 26, 2013; 89 FR 30046, Apr. 22, 2024) and 2 CFR part 1201 (79 FR 76049, Dec. 19, 2014), respectively; USDOT's regulation implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act) (49 CFR part 24, 89 FR 36944, May 3, 2024); and USDOT's Disadvantaged Business Enterprise (DBE) regulation (49 CFR part 26, 89 FR 24963, Apr. 9, 2024).

A copy of the final circular is in the docket and is posted on FTA's Circulars page (*https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/circulars*).

II. Response to Comments

FTA issued a notice of availability and request for comments for the proposed circular, C 4220.1G ''Third Party Contracting Guidance'' on November 27, 2024 (89 FR 93824). The public comment period closed on December 27, 2024.

FTA received comments from 27 unique commenters including transit authorities, businesses and industry organizations, private individuals, and State and local departments of transportation.

FTA received seven requests to extend the comment period for the proposed circular. FTA declined to extend the comment period because FTA believes that the comment period was sufficient for interested parties to provide comment, evidenced by the number of comments FTA received on the proposed circular. In addition, the circular does not contain any binding requirements that are not already effective through statutory changes or regulatory changes established through a notice and comment process during which interested parties could have provided input.

FTA reviewed all relevant comments and took them into consideration when developing this final circular. FTA addresses these comments in the corresponding sections below. Some comments were outside the scope of the circular, and FTA does not respond to those comments in this notice. Several comments suggested typographical updates or changes. These changes, where appropriate, were incorporated.

In response to comments, FTA made changes to the final guidance which are discussed in detail in the corresponding sections below.

A. Chapter I

Comment: A consulting firm asserted that the concept of ''premium'' in the definition of the term ''best value'' is confusing and lacks a clear definition.

FTA Response: FTA declines to define the term ''premium'' further, as its meaning is context-specific and generally understood within the framework of best value procurements. In this context, premium refers to the additional cost a recipient may choose to pay for a proposal offering superior technical quality, performance, or other non-cost factors. Recipients are encouraged to clearly articulate evaluation criteria and the basis for

determining best value in their procurement documentation to ensure transparency and understanding.

Comment: A consulting firm suggested removing the term ''Common Grants Rule'' from Chapter I, noting that it is not appropriate in the context of the Americans with Disabilities Act (ADA) and 2 CFR part 200.

FTA Response: FTA has struck the definition, because the term is not actually used in the Circular.

Comment: A consulting firm suggested changing the defined term ''grant'' to ''award'' in the definitions to ensure consistency with terminology used in other FTA circulars and reviews.

FTA Response: FTA declines to replace the term ''grant'' with ''award'' in this definition, as the purpose of the definition is to define grants specifically, as distinct from other forms of financial assistance awards. (Compare with the nearby definition of ''cooperative agreement'' in the circular.) However, FTA has changed the definite article ''the'' to the indefinite article ''an'' (''Grant means an instrument . . .'') to reflect the existence of other forms of assistance awards.

Comment: A consulting firm noted that there are no mechanisms or tests to verify the accuracy of self-certifications and suggested instead asking recipients to affirm their agreement to comply with procurement regulations.

FTA Response: FTA declines to revise the approach to self-certifications, as the current process is well established and aligns with Federal requirements and standard oversight practices. Self-certifications serve as a formal acknowledgment of a recipient's commitment to comply with procurement regulations, and recipients remain responsible for ensuring their accuracy and validity. Additionally, FTA conducts periodic reviews and audits to verify compliance, providing further assurance beyond self-certification.

Comment: A consulting firm suggested deleting references to the Best Practices Procurement Manual (BPPM), arguing that it lacks authority, does not cover all areas, contains incorrect examples, and is often copied by recipients without proper analysis, making it unhelpful for ensuring compliance. Similarly, a state department of transportation noted that the proposed circular, C 4220.1G, referenced the Best Practices Procurement Manual, last updated in 2016, and suggested either removing these references or updating the manual to include new requirements from the Infrastructure Investment and Jobs Act and 2 CFR part 200, which was last updated in October 2024.

FTA Response: FTA declines to remove references to the Best Practices Procurement Manual (BPPM), as it serves as a valuable resource offering practical examples and guidance to assist recipients in navigating complex procurement requirements. The BPPM does not carry regulatory authority. It complements regulations and FTA's other guidance by providing illustrative scenarios and best practices. Recipients can use the BPPM as another guidance tool, applying their own judgment and analysis to ensure compliance with Federal procurement standards.

Comment: An individual commenter suggested that in construction manager/general contractor (CM/GC) contracts, the Guaranteed Maximum Price (GMP) should be negotiated before contract award, with a fixed price finalized at 60–90% design completion, and an ''off-ramp'' available for the owner to seek competitive bids if needed. For Progressive Design-Build contracts (PDB), the commenter highlighted a concern that because the GMP or Target Maximum Price (TMP) is determined late in the design process, it prevents a fair and reasonable price determination at the time of award and may lead to uncontrolled cost escalation without a firmly established in upfront budget.

FTA Response: FTA acknowledges the commenters' concerns regarding CM/GC and PDB contract structures and has made clarifications in the Circular to address them. With respect to CM/GC contracts, FTA recognizes the value of early contractor involvement in the design process to optimize lifecycle costs, value engineering, and scheduling outcomes. While the reference to CM/GC contributing to design up to the 60–90% design stage reflects common industry practice, it is not intended to preclude earlier involvement where it aligns with project goals. The definition aims to provide general guidance rather than prescriptive instructions on implementing alternative contracting methods.

Regarding the timing of GMP negotiations, FTA acknowledges that practices may vary based on project-specific factors and local preferences. The Circular now clarifies that GMP or equivalent price negotiations may occur either before or after the 60–90% design stage, depending on the recipient's risk tolerance and procurement strategy. FTA also notes that recipients have the flexibility to structure GMP negotiations to include ''off-ramps'' for competitive bidding if the GMP does not align with budgetary or value expectations.

For PDB contracts, FTA recognizes the potential risk of cost escalation if the GMP or TMP is established late in the design process. However, PDB remains an allowable contracting method under FTA regulations. FTA emphasizes the importance of strong project management capacity when using alternative contracting approaches to mitigate risks and ensure effective outcomes. Lastly, while the term ''Guaranteed Maximum Price'' is widely understood in the industry, FTA acknowledges that some recipients may prefer terms like ''final construction price'' to better reflect their procurement and project management processes.

Comment: A city agency commented that the new definition in Chapter I, Section 5b for Approval, Authorization, Concurrence, Waiver is overly general and suggested retaining the more specific language from the previous version (4220.1F).

FTA Response: FTA declines to revise Chapter I, Section 5b to reintroduce the prior definition from C 4220.1F. The updated definition aligns with Federal procurement standards, and further specificity is unnecessary to meet compliance objectives.

Comment: A city agency commented that Chapter I, Section 5dd should clarify that the term ''recipient'' refers to the entire legal entity, not just a specific component, as was explicitly stated in the prior version (C 4220.1F).

FTA Response: FTA declines to revise this section to restate that the term ''recipient'' applies to the entire legal entity. The recipient is the entity with authority to enter into an assistance agreement with FTA and to execute certifications, which may at times be a unit of local government. The updated language provides sufficient clarity and aligns with Federal regulatory standards.

Comment: A city agency commented that Chapter I, Section 6 should reinstate references to the Master Agreement, as its removal has created a gap in clarity.

FTA Response: FTA declines to reinstate the description of the Master Agreement in this section. The purpose of Chapter I Section 6 is to describe FTA's role and oversight activities. The Master Agreement is not an oversight activity by FTA, but is the document incorporated into every financial assistance award describing the recipient's obligations.

B. Chapter II

Comment: A consulting firm suggested removing references to

revenue contracts, stating that they are not evaluated for compliance.

FTA Response: The FTA declines to remove references to revenue contracts, as they remain an important aspect of third-party contracting activities.

Comment: A consulting firm suggested removing references to the Federal Acquisition Regulation (FAR), expressing concern that recipients might rely on it as a primary procurement guide rather than using it solely as a reference.

FTA Response: The FTA declines to remove references to the FAR, because it is important to plainly distinguish between the FAR and the procurement standards of 2 CFR part 200 so recipients are not confused. Additionally, recipients may at times use the FAR as an additional source of guidance.

Comment: A city agency commented that Chapter II, Section 2.a(1) distinguishes Cooperative Agreements but does not reference Joint Partnership Agreements, creating inconsistency with earlier chapters.

FTA Response: FTA has revised this section to provide a more concise statement regarding its applicability to grants and cooperative agreements. Grants and cooperative agreements are forms of financial assistance awarded by FTA. FTA declines to revise this section to include a reference to Joint Partnership Agreements, which are not a form of financial assistance awarded by FTA. The current language aligns with applicable regulatory requirements.

Comment: A city agency commented that Chapter II, Section 2.b(8) should expand the definition of Force Account to include activities performed by contractors, as the current definition limits it to a recipient's own forces.

FTA Response: FTA declines to expand the definition of Force Account to include contractor activities. The current definition reflects the Federal intent for force account work to refer specifically to the recipient's own non-contracted workforce.

C. Chapter III

Comment: A consulting firm noted that all ability to accept gifts of ''nominal value'' should be removed, advocating for a zero-tolerance policy as the best practice.

FTA Response: FTA declines to remove all ability to accept gifts of ''nominal value'' because 2 CFR 200.318 authorizes a recipient or subrecipient to ''set standards for situations where the financial interest is not substantial or a gift is an unsolicited item of nominal value.''

Comment: A consulting firm noted that the phrase ''sound and complete agreement'' is too ambiguous unless specific elements can be stated or evaluated.

FTA Response: FTA disagrees that the term is ambiguous and declines to make a change. The phrase recognizes the broad discretion recipients have to design and form contracts. Furthermore, the statement that recipients should take care to include contract terms that form a sound and complete agreement is advisory. It is not intended to create criteria by which FTA will inspect recipients' contracts for Federal compliance.

Comment: A consulting firm noted that the term ''Industry Contract'' is unclear and should either be redefined or removed altogether.

FTA Response: FTA disagrees that the term is unclear and declines to redefine or remove the term ''Industry Contract.'' FTA believes the term is contextually clear within the procurement framework and allows for broad application across diverse procurement scenarios.

Comment: A consulting firm noted that the term ''reasonable documentation'' lacks clarity and is overly subjective, which could lead to inconsistent compliance assessments.

FTA Response: FTA declines to revise the term ''reasonable documentation.'' The term allows for recipients to exercise their discretion across diverse procurement scenarios and aligns with standard Federal practices for documentation. It would be impractical to attempt to specify recordkeeping requirements to apply to everything a recipient might procure, from micro-purchases to mega-projects.

FTA encourages recipients to maintain records sufficient to demonstrate compliance with applicable procurement regulations.

Comment: A consulting firm noted that ''access to records'' should be a mandatory clause in all third-party contracts.

FTA Response: The commenter was not specific about whose records he means to be accessed by whom. Nonetheless, FTA declines to add such a requirement for another mandatory clause in recipients' contracts. A recipient's obligation to maintain records related to its award and provide access to the Federal Government already is well established. A recipient must take whatever measures are required to assure compliance, which may, in some cases, include making provisions to obtain records from contractors. Specifying a new required clause is not necessary.

Comment: A consulting firm noted that the criteria for using reverse auctions are insufficient and should not be limited to the Simplified Acquisition Threshold (SAT) and commented that clear reasons for their use, similar to Requests for Proposals (RFPs) and Invitations for Bids (IFBs), should be provided.

FTA Response: FTA declines to expand the use of reverse auctions for procurements above the SAT. This is because 2 CFR 200.320 specifies procurement methods to be used for procurements above the SAT and does not include reverse auctions. Reverse auctions are primarily suited for procurements involving standardized goods or services where price is the primary evaluation factor and technical complexity is minimal. Sealed bidding is the procurement method required by regulation for such procurements when they exceed the SAT. 2 CFR 200.320(b)(1).

Comment: A consulting firm noted that audits are not clearly stated as a requirement and may cause confusion for recipients, suggesting their removal.

FTA Response: FTA declines to remove references to audits as they are a requirement pursuant to 2 CFR part 200, subpart F, but has clarified the requirements to describe the procedure more accurately.

Comment: A state department of transportation noted that one of the proposed changes required annual self-certification of the procurement policy. It was recommended to add criteria outlining the attributes that this self-certification should include.

FTA Response: Self-certification is not a change. For many years, FTA has relied on recipients self-certifying their procurement systems annually. The certification is made as part of a recipient's annual Certifications and Assurances, which can be found on FTA's website here (along with previous years' versions): *https://www.transit.dot.gov/funding/grantee-resources/certifications-and-assurances/certifications-assurances.* The Certifications and Assurances are standardized for all recipients and provide the exact text of the certification. Therefore, it is not necessary for the Circular to describe the contents that must be included in such a certification.

Comment: A state department of transportation noted that the Circular recommends reviewing Federal requirements when deploying an e-commerce system but does not specify which requirements to follow. The commenter recommended FTA include these specific Federal requirements.

FTA Response: FTA refers the commenter to Chapter III, Section 3, paragraph e, subparagraphs i-iii for these requirements.

Comment: A transit bus manufacturer suggested using stronger language to encourage electronic procurement methods rather than printed documents in Chapter III, Section 3(e).

FTA Response: FTA declines to revise this section to include stronger language encouraging the use of electronic methods over printed documents. The existing guidance already supports and promotes the use of electronic documentation as a best practice while allowing recipients the flexibility to determine the most appropriate format for their specific circumstances. Mandating stronger language may not account for varying technological capabilities or regulatory requirements across different recipients and procurement environments. Recipients are encouraged to adopt electronic methods where feasible and practical to improve efficiency and reduce administrative burdens.

D. Chapter IV

Comment: An individual commenter urged FTA to explicitly clarify whether third-party contractors must be registered in SAM.gov at the time of offer or quotation to be eligible for an award. The commenter described inconsistencies between the Circular's description of the requirement that a recipient verify a contractor's exclusion status (*i.e.,* suspension or debarment) and the expectations of triennial reviewers, noting that SAM checks often seemed mandatory in practice despite the Circular's statement that checking SAM is strongly recommended.

FTA Response: In response to the comment, FTA has added a statement to clarify that contractors are not required to be registered in SAM to do business with FTA recipients. FTA also has reworded the paragraph about verifying prospective contractors' exclusion status, to clarify that SAM is one of several methods available to a recipient to confirm a prospective contractor's non-exclusion.

Comment: A county requested clarification on the percentage requirements for Disadvantaged Business Enterprises (DBEs) and which clauses must be flowed down to subcontractors in the proposed FTA Circular 4220.1G.

FTA Response: FTA declines to revise Circular 4220.1G to provide the requested clarification because the Circular is focused on procurement standards and not the U.S. Department of Transportation's DBE program. The Circular directs readers to 49 CFR 26.49 and 2 CFR 200.321(b)(3) for detailed requirements regarding DBE participation. The U.S. DOT's website is another useful source of guidance for administering a DBE program or competing for work as a DBE: *https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise.* When a recipient is required to set a percentage goal for DBE contracting, the recipient creates its own goal, based on the availability of DBEs in its area. In other words, there is no one DBE goal for FTA recipients. Regarding flow-down clauses, FTA separately will update its guidance on flow-down clauses on the FTA website soon.

Comment: A consulting firm noted that the phrase ''sound business judgment'' should be removed as it cannot be objectively evaluated.

FTA Response: FTA declines to remove the term ''sound business judgment.'' The term is intentionally broad to allow recipients flexibility in decision-making while maintaining accountability.

Comment: A consulting firm noted that if seat belt use is only encouraged and not mandated, it should be removed from the guidance.

FTA Response: FTA declines to remove references to seat belt use. Executive Order 13043 (note at 23 U.S.C. 402) requires Federal agencies to encourage seat belt use in Federal grants. Furthermore, encouraging seat belt use remains an important safety consideration, even when it is not a requirement.

Comment: A consulting firm noted that if texting policies are only encouraged and not mandated, they should be removed from the guidance.

FTA Response: FTA declines to remove references to texting policies. Executive Order 13513 (note at 23 U.S.C. 402) requires Federal agencies to encourage recipients to adopt policies to ban text messaging while driving in carrying out a Federal award. While not mandatory, encouraging safe texting practices supports broader safety objectives within transit operations.

Comment: A consulting firm noted that the civil rights clauses should be reviewed to determine if they should flow down to contractors and subcontractors, with revisions made as necessary.

FTA Response: FTA intends separately to update its guidance on mandatory clauses and flow-down clauses on FTA's website. The existing guidance in the Circular aligns with the applicable Federal statutes.

Comment: A consulting firm noted that the word ''considered'' in Chapter IV, Section 3.b in references to Small and Disadvantaged Business Enterprises should be removed because it cannot be quantitatively measured or evaluated.

FTA Response: FTA declines to remove the term ''considered'' in relation to Small and Disadvantaged Business Enterprises. Examples of what consideration means are provided in the paragraph at Section 3.b. The text of the Circular closely follows the text of 2 CFR 200.321, which requires, when possible, that the recipient ensure disadvantaged businesses are ''considered''.

Comment: A consulting firm noted that spare ratios are an agency planning function and not related to procurement. The commenter noted spare ratios already are discussed in FTA's Circular 5010.1F and should not be addressed in Circular 4220.1G. The commenter suggested spare ratios should be tracked through the Triennial Review.

FTA Response: FTA declines to remove references to spare ratios from procurement guidance. Although spare ratios are addressed primarily in Circular 5010.1F, referring to spare ratios in the procurement circular helps ensure a recipient is aware of the spare ratio policy when undertaking a vehicle procurement. The Triennial Review serves as a broad assessment of a recipient's compliance across multiple areas, including procurement, maintenance, and financial management, and does review a recipient's spare ratio.

Comment: An individual commenter noted difficulty finding confirmation of the Micro-purchase threshold increase to $50,000 in the proposed FTA Circular 4220.1G and mentioned their understanding that the threshold increase became effective on October 2, 2024.

FTA Response: The Federal micro-purchase threshold has not changed; it is still $10,000. However, as of October 1, 2024, 2 CFR 200.320(a)(1) permits a recipient to certify for itself a higher micro-purchase threshold, up to $50,000 in certain instances. This higher threshold is not automatic and requires the recipient's self-certification and supporting documentation. The circular discusses this change in Chapter VI, Section 4.

Comment: An individual commenter sought clarification on two points in the proposed Circular 4220.1G: whether the removal of the prohibition on geographic preferences formally stated at 2 CFR 200.319 affected the guidance provided in Chapter VI of the Circular regarding geographic preferences; and clarification of the statement regarding

Patent and Restricted Data Rights as a possible reason for a non-competitive procurement, specifically the statement, ''However, the mere existence of such rights does not by itself justify a noncompetitive award,'' and whether such scenarios should be treated as unsolicited proposals.

FTA Response: Circular 4220.1G does reflect the removal of the prohibition against geographic preference from 2 CFR 200.319. However, 2 CFR 200.319 was not the only rule affecting geographic preferences in FTA procurements. The Circular presents FTA's explanation of the current status of geographic preferences across various procurement types, reading relevant statutes and regulations together.

Additionally, the statement that ''the mere existence of [patent and restricted data] rights does not by itself justify a noncompetitive award,'' does not imply that these scenarios should be treated as unsolicited proposals. It means that just because a single company may own rights necessary to the delivery of the product or service being acquired, does not mean that company is the only possible source for the product or service. Recipients should conduct market research, including consideration of Brand Name or Equal products or services, and document their findings in the procurement file before pursuing a sole source award.

Comment: A State department of transportation noted that in Chapter IV, the section on Small Procurements references DBEs but does not include small businesses or veteran-owned businesses.

FTA Response: The Small Procurement section in Chapter IV does reference women owned businesses. FTA has added reference to veteran owned businesses to correctly reflect the requirements of 2 CFR 200.321. Additionally, FTA refers the commenter to Chapter IV, section 2, ''Small and Disadvantaged Business Enterprises,'' for information on small and veteran owned businesses.

Comment: A state department of transportation noted that the section of Chapter IV related to small procurements allowed splitting a procurement to increase DBE participation, and that this appeared to be in conflict with other statements in Chapter IV that prohibit dividing procurements to meet the micro-purchase limit. The commenter requested clarification on whether splitting the procurement when using a DBE is permissible if the end result were procurements that met the micro-purchase threshold.

FTA Response: As noted in Chapter IV, Section 1(c)(2), a known requirement must not intentionally be divided into multiple smaller procurements to fall below the simplified acquisition threshold or micro-purchase threshold, regardless of the use of DBEs. The Uniform Requirements and U.S. DOT's DBE rule suggest ways to increase DBE participation by ''dividing procurement transactions into separate procurements'' (2 CFR 200.321) or ''breaking out contract work items into economically feasible units (for example, smaller tasks or quantities)'' (App. A to 49 CFR part 26). These suggestions must be interpreted consistently with the requirement not to undermine full and open competition. For example, it may be possible to unbundle a solicitation for multiple services or supplies that do not necessarily have to be combined under the same contract.

Comment: A law firm on behalf of an industry coalition suggested FTA state that liquidated damages should not exceed incentives but rather should be balanced with incentives.

FTA Response: FTA declines to specify that liquidated damages should not exceed incentives but rather should be balanced with them. Liquidated damages and incentive provisions serve distinct purposes in a contract, with liquidated damages addressing the costs associated with non-performance or delays, and incentives encouraging superior performance or early completion. Balancing these two elements in every contract may not always align with the specific goals or circumstances of the procurement. FTA's existing guidance allows recipients the flexibility to structure contracts, including liquidated damages and incentives, in a manner that reflects their unique project needs and risk assessments. Recipients are encouraged to ensure that both liquidated damages and incentives are reasonable, justifiable, and aligned with the overall objectives of the procurement.

Comment: A city agency commented that Chapter IV, Section 2.b.5(b) omits the Percentage of Completion Method for progress payments, which was previously included in C 4220.1F. The commenter suggested including language on this method.

FTA Response: FTA declines to add language about the Percentage of Completion Method. Until 2014, the now-superseded Common Rule at 49 CFR 18.21(d) (2014) specified that recipients may use the percentage of completion method to pay their construction contractors. The current procurement standards at 2 CFR part 200 do not mention percentage of completion. Recipients retain flexibility in structuring construction progress payments under Federal requirements.

Comment: A city agency commented that the last sentence at Chapter IV, Section 2.b(9)(d) contains unclear language regarding returning liquidated damages to the award budget, and recommended clarification.

FTA Response: FTA has revised the last sentence of this section for clarity.

Comment: A city agency commented that Chapter IV, Section 2.c(3)(b) should clarify whether DBEs have priority over other small, minority, or disadvantaged business enterprises as defined by the USDOT.

FTA Response: There is no prioritization. Under U.S. DOT's disadvantaged business enterprise (DBE) rule, a DBE means a for-profit small business that is at least 51% owned by one or more individuals who are both socially and economically disadvantaged. 49 CFR 26.5. The rule rebuttably presumes that women and persons of certain racial descent are socially disadvantaged. 49 CFR 26.67(a). Firm owners whom the rule does not presume to be socially disadvantaged can register their firms as DBEs by demonstrating their disadvantage through a narrative description. 49 CFR 26.67(d).

Comment: A city agency commented that Chapter IV, Section 2.a(1) introduces a requirement for recipients to verify contractor employee classification. They requested additional guidance, including whether FTA will provide a standard contract clause or certification.

FTA Response: The U.S. Office of Management and Budget added this to the Uniform Requirements in 2024. 89 FR 30136. As part of assessing a potential contractor's responsibility, the rule now requires the recipient or subrecipient to consider the contractor's proper classification of its employees under the Fair Labor Standards Act. 2 CFR 200.318(h). The rule does not specify that the recipient must make a special investigation or acquire relevant information in any other particular manner. The commenter's suggestion that a certification or contract clause could be employed may be acceptable. FTA does not have further guidance to provide at this time.

Comment: A city agency asked whether the Circular's new guidance regarding protection and types of data rights created a change to the required clauses recipients must include in their contracts. The commenter also asked where to find a list of required clauses

now that Appendix D no longer is part of the Circular.

FTA Response: The Circular's guidance regarding data rights has not created a new required clause. FTA intends to update and maintain a table of required clauses separate from Circular 4220.1G on FTA's website.

Comment: Regarding organizational conflicts of interest during contracting, a city agency asked whether a consultant who assisted in drafting reports or partial designs can still bid on future project phases if the recipient discloses the consultant's work to other potential bidders.

FTA Response: The comment presents a fact-specific hypothetical that is beyond the scope of this comment process. FTA encourages the commenter to contact its FTA regional office if it has discovered or is trying to cure an organizational conflict of interest.

Comment: A city agency commented that Chapter IV, Section 2.b(4) creates a barrier for non-profits and SBEs/DBEs by requiring an indirect cost rate for non-A&E services. They suggested flexibility to allow fixed or fully burdened rates, especially for community engagement work.

FTA Response: The cost principles and requirements related to indirect cost rates found in 2 CFR part 200 specify how recipients may charge indirect costs to their FTA awards. FTA does not have rules about how the recipient's *contractors* charge indirect costs to the *recipient.* (An exception to this exists for A&E firms. The law requires a recipient to accept and use an A&E firm's indirect rate established in accordance with the Federal Acquisition Regulation. 49 U.S.C. 5325(b).) That being said, the commenter's local rules may impose such requirements, but FTA cannot comment on local requirements.

Comment: A transit bus manufacturer requested that FTA change its guidance that recipients ''may use'' progress payments and advance payments to say recipients ''should use'' such payments. The commenter also requested that FTA rephrase other parts of the section on advance and progress payments and include more examples to promote the use of advance and progress payments by recipients.

FTA Response: FTA declines to replace the permissive ''may use'' with the more prescriptive ''should use''. The current language provides recipients with the flexibility to determine the most appropriate procurement approach based on their specific project needs and circumstances, while still adhering to Federal requirements. Additionally, FTA declines to provide exhaustive descriptions of circumstances where phrases like ''in some circumstances'' apply. The variability in procurement scenarios across agencies and projects makes it impractical to prescribe a one-size-fits-all definition. Recipients are encouraged to consult with their FTA Regional Offices for guidance when specific scenarios arise that require further clarification.

Comment: In Chapter IV, Section 2(b)(9)(d), Liquidated Damages, a transit bus manufacturer suggested that FTA include statements balancing risk and related penalties, add descriptions of excusable delay on the part of contractors, and add a statement recommending that recipients allow contractors to be reimbursed for costs and damages associated with delivery delays requested or caused solely by the recipient. The commenter noted this is particularly relevant with respect to zero-emission bus delivery delays caused by charging or fueling infrastructure.

FTA Response: FTA declines to revise this section to include specific descriptions of risk-balancing and excusable delay or to recommend contractor reimbursement for costs and damages associated with delivery delays caused solely by the recipient. The existing guidance provides sufficient flexibility for recipients to negotiate contract terms with their vendors, including provisions for liquidated damages, excusable delays, and risk-sharing, tailored to the specific circumstances of their procurements.

Comment: A transit bus manufacturer suggested that in Chapter IV, Section 2(e), where the Circular discusses special considerations for rolling stock procurements, FTA include a paragraph on Excessive Bonding that discourages excessive bonding and includes descriptions of situations deemed excessive. The commenter suggested examples deemed excessive include bonding required when no payments are made until acceptance of vehicles, bonding that exceeds the amount of contracted work remaining or the amount of advance payments or progress payments, and bonding that exceeds the term of the period of performance. The commenter also suggested such a detailed list be included in the section on Excessive Bonding in Chapter VI. This commenter also suggested that Chapter IV, Section 2(e) clarify that Federal law only requires security for rolling stock procurements using advance or progress payments.

FTA Response: FTA declines to revise this section to include a paragraph on Excessive Bonding with a detailed list of specific situations deemed excessive. Prescribing an exhaustive list of scenarios could unintentionally limit recipients' ability to make risk-based determinations suited to their unique procurement needs. The situations described by the commenter may or may not be excessive based on the specific facts and circumstances of any particular procurement. Therefore, it is better for FTA not to be so prescriptive, and to leave that to the discretion of the parties to the contract. The current guidance already aligns with Federal procurement standards and provides recipients with flexibility to assess bonding requirements based on their project-specific risks and financial considerations.

Regarding the clarification on security for advance or progress payments in rolling stock procurements, FTA affirms that it requires security only for rolling stock procurements involving advance or progress payments. However, this requirement is already addressed in the guidance in the section describing advance and progress payments, which have application beyond just rolling stock procurements, and further clarification is unnecessary. FTA notes that recipients may require security in excess of the minimums required by FTA.

Comment: A transit bus manufacturer requested that FTA include in Chapter IV, Section 2(e)(3) (paragraph referring to FTA's minimum useful life policy for rolling stock), a statement that infrastructure and other property included in rolling stock purchases are also subject to the minimum useful life requirements in Circular 5010.1F. The commenter also requested FTA repeat the list of acceptable methods to determine minimum useful life from Circular 5010.1F, rather than referring to Circulars 5010.1F and 9050.1A.

FTA Response: FTA declines to revise this section to include a statement about the useful life of infrastructure and other property related to rolling stock, or a list of acceptable methods for determining minimum useful life, rather than referencing Circulars 5010.1F and 9050.1A. These circulars already provide detailed guidance on determining minimum useful life and duplicating their content within Circular 4220.1G would create unnecessary redundancy and potential inconsistencies across guidance documents. Recipients are encouraged to consult Circulars 5010.1F and 9050.1A for specific requirements regarding minimum useful life determinations for rolling stock and related infrastructure.

Comment: A transit authority commented that in regions with a limited number of DBEs, meeting the specialized needs of Federally funded procurements is challenging. The commenter stated that the proposed tiered compliance standards and enhanced documentation requirements place significant administrative burdens on agencies without delivering corresponding benefits due to the scarcity of qualified DBEs in the region.

FTA Response: FTA declines to revise the description of the DBE rule. The U.S. DOT DBE rule is a Department-wide rule administered by the Office of the Secretary of Transportation, and changes to it are beyond the scope of this circular update. FTA notes, however, that the DBE rule directs recipients to take into account the availability of DBEs when setting their DBE goals. 49 CFR 26.45.

Comment: A transit authority commented that proactive measures to increase DBE participation, such as breaking contracts into smaller components or altering delivery schedules, are often impractical and may compromise cost efficiency and operational effectiveness. The transit authority commented that mandating these measures risks causing delays and increased costs for critical procurements.

FTA Response: FTA declines to make changes in response to the comment. FTA declines to revise the description of the DBE rule. The U.S. DOT DBE rule is a Department-wide rule administered by the Office of the Secretary of Transportation, and changes to it are beyond the scope of this circular update. The DBE rule does not mandate the actions the commenter described; the DBE rule suggests them as actions a recipient can ''consider'' as part of good faith efforts to increase DBE participation. 49 CFR part 26, app. A para. IV.

Comment: A transit authority commented that greater flexibility should be provided in compliance expectations for regions with limited DBE availability. The commenter specifically commented that FTA should allow recipients to demonstrate ''good faith efforts'' without punitive measures if participation goals cannot be met due to local constraints and offer exemptions or modified compliance standards for regions where DBE participation opportunities are demonstrably limited.

FTA Response: FTA declines to make changes in response to the comment. The U.S. DOT DBE rule is a Department-wide rule administered by the Office of the Secretary of Transportation, and changes to it are beyond the scope of this circular update. The commenter should review the DBE rule, 49 CFR part 26, which does make provision for ''good faith efforts'' on the part of a recipient.

Comment: A transit authority commented that rather than imposing rigid participation requirements, FTA should prioritize capacity-building initiatives for DBEs in underserved regions. The commenter suggested that this approach would expand the pool of qualified DBEs over time and better align with long-term equity goals.

FTA Response: FTA declines to make changes in response to the comment. The U.S. DOT DBE rule is a Department-wide rule administered by the Office of the Secretary of Transportation, and changes to it are beyond the scope of this circular update.

Comment: A transit authority requested that FTA expand the Circular's guidance related to software-as-a-service (SaaS) agreements. The commenter requested that FTA add more detail addressing shared data ownership in SaaS agreements, the eligibility of SaaS licensing for Federal funds, and detailed clarification about the respective cybersecurity responsibilities of the customer and the SaaS vendor. The commenter also requested that FTA create a requirement about data portability at the end of a SaaS contract and develop model clauses and forms for recipients to use when procuring SaaS.

FTA Response: FTA declines to make these revisions. The purpose of the Circular is to describe the Federal procurement standards and how they apply to recipients' transit related procurements. The commenter's suggestions are far more detailed and specific than the Federal standards and are beyond the scope of this Circular. The guidance in the Circular section acknowledges these data issues at a high level, while not being unnecessarily prescriptive, and allows recipients and their vendors to make these determinations for themselves.

Comment: A transit authority commented that FTA should include a dedicated appendix featuring case studies of successful P3 implementations, highlighting best practices and lessons learned, noting that examples would offer practical insights into how P3s have been structured, financed, and managed effectively in real-world scenarios.

FTA Response: FTA declines to create a dedicated appendix featuring case studies of successful P3 implementations. While case studies can offer valuable insights, the purpose of FTA Circular 4220.1G is to provide regulatory guidance and requirements for federally funded procurements. The Transit Cooperative Research Program (TCRP) conducts research on P3s and some of their reports may include case studies. Interested stakeholders may review these studies on TCRP's website: *https://nap.nationalacademies.org/search/?term=public+private+partnerships.*

Comment: A transit authority commented that FTA should simplify compliance requirements for procuring products with recycled content, prioritize high-impact product categories, and allow greater flexibility for product categories with lower environmental impact. They suggested allowing agencies to document ''good faith efforts'' when such products are either unavailable in the market or cost-prohibitive. Additionally, they recommended a self-certification process to reduce the administrative burden associated with compliance and requested a balance between benefits and practicality.

FTA Response: FTA declines to revise the guidance. The requirements related to procurement of recovered or recycled materials are a governmentwide regulation, 2 CFR 200.323, and FTA cannot amend them. The text in the Circular closely follows the text of the regulation, which already allows for practicality.

Comment: A transit authority commented that FTA should offer technical assistance and training to help agencies effectively incorporate recycled content requirements into their procurement processes. They suggested providing webinars, guides, or resources outlining best practices and market opportunities. They also suggested that FTA should promote collaboration through joint procurements or cooperative purchasing agreements for recycled-content products, which would enable smaller agencies to access competitive pricing and a broader range of product options.

FTA Response: FTA acknowledges the request for additional support to procure recycled-content products, but such efforts are beyond the scope of the Circular update.

Comment: A transit authority commented that FTA should incorporate the following verbiage to Chapter IV, Section 1.a: FTA prohibits, with limited exceptions, the use of capital assistance for the recipient's operating expenses.

FTA Response: FTA declines to add the suggested language because the existing language in this section already reflects FTA's policy regarding the use

of capital assistance, and adding specific examples may create unnecessary redundancy or confusion. Recipients are expected to understand and adhere to statutory and regulatory limitations on the use of capital funds, as outlined in the applicable FTA circulars and other guidance documents.

E. Chapter V

Comment: A consulting firm noted that interstate cooperative procurement contracts should also be allowed for non-rolling stock purchases as long as they comply with 2 CFR part 200.

FTA Response: FTA declines to extend the use of interstate cooperative procurement contracts to non-rolling stock purchases. Current guidance aligns with section 3019(b) of the FAST Act, which authorizes such interstate purchasing from cooperative procurement contracts only for rolling stock and related equipment.

Comment: A consulting firm noted that the term ''open market'' needs to be clearly defined to avoid ambiguity.

FTA Response: FTA declines to define the term ''open market'' further because the term is contextually understood within procurement practices, and additional definition is unnecessary.

Comment: A state department of transportation commented that the proposed Third-Party Contracting Guidance (FTA C 4220.1G) should explicitly allow state and local agency technology procurement through interstate cooperative purchasing agreements and purchasing schedules, provided the participating states' procurement policies allow it, regardless of the state in which the agencies are located. The commenter suggested that restricting interstate purchasing schedules would disproportionately harm smaller and rural transit agencies, which often lack the resources to conduct independent procurements or establish state-specific schedules for modern transit technologies.

FTA Response: Section 3019(b) of the FAST Act authorizes such interstate purchasing from cooperative procurements only for rolling stock and related equipment. FTA cannot amend it to include other products.

Comment: A transit technology company commented in support of FTA's clarifications in Chapter V regarding joint procurement, state or local government purchasing schedules, and intergovernmental agreements. They noted that public sector entities often misunderstand FTA's stance on these arrangements and believe this clarification will encourage their use, ultimately improving efficiency and cost-effectiveness in the procurement process.

FTA Response: FTA appreciates the comments of support for the proposed clarifications which are intended to provide transit agencies and stakeholders with guidance that ensures compliance with applicable laws and regulations while promoting efficiency and cost-effectiveness in procurement practices.

Comment: A city agency commented that Chapter V, Section 4.d lacks clarity on why Interstate Purchasing Schedules are restricted, despite aligning with intergovernmental agreement principles. The commenter requested further explanation.

FTA Response: FTA has added clarification to the Circular. Interstate purchasing schedules generally are ineligible for FTA funding because they curtail opportunities for competitive procurements. Section 3019(b) of the FAST Act makes an exception for interstate purchases of rolling stock and related equipment, but only for rolling stock and related equipment.

F. Chapter VI

Comment: A consulting firm noted that evaluation criteria, including how proposals will be scored or rated, should be explicitly stated.

FTA Response: Existing regulation, 2 CFR 200.320(b), requires that solicitations identify all evaluation factors and their relative importance. The Circular already states this requirement.

Comment: A consulting firm noted that the $50,000 threshold for contracts under the micro-purchase threshold should be tied to the total contract value rather than an annual limit.

FTA Response: FTA has revised the Circular to clarify that the self-certification to use a higher threshold must occur annually. The threshold is not an annual ''budget'' for micro-purchases.

Comment: A consulting firm noted that task order contracts should be evaluated as competitive procurements among the pool of selected contractors.

FTA Response: FTA declines to make this change, as the suggestion exceeds the requirements in the Federal procurement standards of 2 CFR part 200. The procurement standards do not prescribe how task orders are to be assigned under multiple award contracts. Recipients have discretion to manage their contracts and assign task orders effectively.

Comment: A consulting firm noted that the requirement to ''consider workforce impacts'' under cost and price analysis is unclear and should be clarified in terms of method and analysis depth.

FTA Response: In 2024, the U.S. Office of Management and Budget amended 2 CFR 200.324(a) to add that a ''recipient or subrecipient should consider potential workforce impacts in their analysis if the procurement transaction will displace public sector employees,'' as part of analyzing the cost or price of a procurement. (89 FR 30046). FTA will leave this term broad, to provide maximum discretion to recipients and to accommodate varied workforce considerations across projects.

Comment: A consulting firm noted that cost analysis requirements should explicitly apply to single-bid or single-proposal conditions.

FTA Response: FTA declines to revise the language to explicitly mandate a cost analysis for single-bid or single-proposal conditions. The provision as written notes that a recipient should perform a cost analysis when price competition is inadequate.

Comment: A state department of transportation noted that the requirement to negotiate profit separately was removed from 2 CFR 200.324 in the October 2024 update. However, the circular's language still included this requirement, creating a perceived conflict between the two regulations.

FTA Response: FTA acknowledges this change to 2 CFR 200.324. It is considered a best practice to perform these tasks, and the Circular had preserved it as a recommendation, not a requirement. FTA has removed this from the final version of the Circular.

Comment: A law firm on behalf of an industry coalition requested that FTA clarify that recipients planning to procure operations services through a multiyear contract should define the scope of work and performance metrics in their Request for Proposals. The commenter also noted that the contract should provide pricing flexibility. The commenter suggested that FTA should encourage recipients to seek input before putting out an RFP and include information that will aid bidders in developing proposals in the RFP. The commenter also suggested that RFPs should provide flexibility regarding substitutions of key staff.

FTA Response: FTA declines to revise the Circular. The existing guidance in Chapter VI already emphasizes the importance of clearly defining requirements, evaluation criteria, and contract expectations in RFPs to ensure fair and effective competition, consistent with regulation, 2 CFR

200.320. Recipients have flexibility in structuring their RFPs and contracts to address the unique needs of their operations services procurements, including considerations for pricing structures and staffing substitutions. Furthermore, while seeking industry input before issuing an RFP may be useful, it is not universally required. The current guidance provides sufficient flexibility for recipients to develop RFPs that align with their procurement objectives while complying with Federal requirements.

Comment: A law firm on behalf of an industry coalition suggested that FTA include a series of recommendations to recipients on what to include in contracts, such as provisions requiring the provision of detailed information from contract bidders, specifying a contract base period, bilateral rather than unilateral options for contract extension, inflation adjustment and force majeure clauses. This commenter also suggested FTA specify that fixed monthly fee and variable rate; variable rate; and cost plus rate structures are all appropriate for operations contracts.

FTA Response: FTA declines to include these specific recommendations. FTA's existing guidance already provides recipients with the flexibility to structure contracts in a manner that best meets their operational and financial needs, provided they remain compliant with Federal procurement requirements. Similarly, FTA declines to prescribe specific pricing structures—such as fixed monthly fees, variable rates, or cost-plus rates—as universally appropriate for recipients. Recipients have discretion to select contract terms and pricing structures based on their procurement objectives, market conditions, and the specific requirements of each procurement.

Comment: A city agency commented that Chapter VI, Section 2.g(1) should clarify whether contracts using negotiated hourly rates fall under the Cost Reimbursement category.

FTA Response: FTA declines to amend the Circular to describe different types of cost reimbursement contracts, because these terms are generally understood in the contracting community, and recipients have broad discretion to craft contracts within the limits of the Federal procurement standards (*e.g.,* cost-plus-percentage-of-cost contracts are ineligible). If the commenter has a question about a specific procurement, the commenter should contact its FTA regional office.

Comment: A city agency commented that Chapter VI, Section h.2(c) should clarify the prohibition on using qualifications based selection (QBS) procedures to procure actual construction. They suggested adding a cross-reference for exceptions under alternative contracting methods.

FTA Response: FTA has added a cross-reference to the section of the Circular discussing alternative contracting methods.

Comment: A transit bus manufacturer suggested that in Chapter VI, Section 2(g), ''Contract Type Specified,'' FTA include language on price adjustment clauses and contract modifications on price increases.

FTA Response: FTA declines to revise this section. The current guidance already provides recipients with flexibility to structure contracts, including incorporating price adjustment provisions where appropriate, as long as they remain consistent with Federal procurement requirements and principles of fair and reasonable pricing.

G. Chapter VII

FTA is adopting as proposed the proposal to eliminate Chapter VII and replace it with a new paragraph in proposed Chapter III on Recipient Responsibilities and FTA's Role in Procurement Disputes.

Veronica Vanterpool,

Deputy Administrator.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2025–0001]

Denial of Motor Vehicle Defect Petition

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition for a defect investigation.

SUMMARY: This notice sets forth the reasons for the denial of a defect petition, DP23–003, submitted on July 2, 2023, by Aldelberto A. Cordova (the ''Petitioner'') to NHTSA's Office of Defects Investigation (ODI). The petition requests that NHTSA (the ''Agency'') investigate an alleged defect in the ''ISG 48-volt on-board electrical system,'' which resulted in a warning light illumination and an inability to start the Petitioner's 2023 Mercedes-Benz GLC300. The Petitioner further requested a recall for 2023 Mercedes-Benz GLC300 vehicles based on this issue. After conducting a technical review of the Petitioner's submissions, reviewing complaints related to MY 2023 Mercedes-Benz GLC300 warning light illumination as well as the inability to start a vehicle, and reviewing information provided by Mercedes-Benz regarding the ISG 48-volt system, NHTSA has concluded that the issues raised by the petition do not warrant a defect investigation at this time. Accordingly, the Agency has denied the petition.

FOR FURTHER INFORMATION CONTACT: Ms. Alexa Ardron, Vehicle Defects Division D, Office of Defects Investigation, NHTSA, 1200 New Jersey Avenue SE, Washington, DC 20590. Phone: (202)-819–4554. Email: *Alexa.Ardron@dot.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

Interested persons may petition NHTSA requesting that the Agency initiate an investigation to determine whether a motor vehicle or an item of replacement equipment does not comply with an applicable motor vehicle safety standard or contains a defect that relates to motor vehicle safety. 49 U.S.C. 30162(a)(2); 49 CFR 552.1. Upon receipt of a properly filed petition, the Agency conducts a technical review of the petition, material submitted with the petition, and any additional information. 49 U.S.C. 30162(a)(2); 49 CFR 552.6. The technical review may consist solely of a review of information already in the possession of the Agency or it may include the collection of information from the motor vehicle manufacturer and/or other sources. After conducting the technical review and considering appropriate factors, which may include, but are not limited to, the nature of the complaint, allocation of Agency resources, Agency priorities, the likelihood of uncovering sufficient evidence to establish the existence of a defect, and the likelihood of success in any necessary enforcement litigation, the Agency will grant or deny the petition. *See* 49 U.S.C. 30162(a)(2); 49 CFR 552.8.

Background Information

In a letter dated July 2, 2023, Aldelberto A. Cordova (the ''Petitioner'') submitted a petition requesting that NHTSA initiate an investigation into an alleged defect in the ISG 48-volt on-board electrical system, which allegedly resulted in warning light illumination and an inability to start the Petitioner's 2023 Mercedes-Benz GLC300 vehicle.