

3. TECHNICAL

BASIC REQUIREMENT

The grantee must be able to implement the Urbanized Area Formula Grant Program of Projects in accordance with the grant application, Master Agreement, and all applicable laws and regulations, using sound management practices.

AREAS TO BE EXAMINED

1. **Grant Administration**—Procedures for managing grants and submitting timely and complete reports.
2. **Review of Open Grants**—Grant implementation and closeout, including deobligation of federal funds, if warranted.
3. **Force Account Activities**—Force account plan and justification for grant activities performed by the grantee's workforce.
4. **Capital Leasing**—Cost-effectiveness evaluation for leased capital assets.

5. Project Management

- a. Project Management Plans for major capital projects
- b. Procedures for technical oversight of capital projects
- c. Capacity to monitor subrecipients, contractors, and lessees

REFERENCES

1. [49 USC Chapter 53](#) as amended by the *Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU)*, Section 5327, "Project Management Oversight."
2. [49 CFR Part 18](#), "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments."
3. [49 CFR 633](#), "Project Management Oversight."
4. [49 CFR Part 639](#), "Capital Leases."
5. [FTA Circular 5010.1D](#), "Grant Management Requirements."
6. [FTA Circular 5800.1](#), "Safety and Security Management Guidance for Major Capital Projects."
7. [FTA Master Agreement](#).

QUESTIONS FOR THE REVIEW

1. *What are the grantee's procedures for grant administration and management?*
 2. *Are Milestone/Progress Reports (MPR) and Financial Status Reports (FSR) submitted on time?*
 3. *Do MPRs contain narrative information including:*
 - a. *Current status of each open ALI within the active/executed grant*
 - b. *A narrative description of projects, status, any problems encountered in implementation, specification preparation, bid solicitation, resolution of protests, and contract awards*
 - c. *Detailed discussion of all budget or schedule changes*
 - d. *The dates of expected or actual requests for bid, delivery, etc*
 - e. *Actual completion dates for completed milestones*
 - f. *Revised estimated completion dates when original estimated completion dates are not met. Explanation of why scheduled milestones or completion dates were not met. Identification of problem areas and narrative on how the problems will be solved*
 - g. *Discussion of the expected impacts and the efforts to recover from the delays*
 - h. *Analysis of significant project cost variances. Completion and acceptance of equipment and construction or other work should be discussed, together with a breakout of the costs incurred and those costs required to complete the project. Use quantitative measures, such as hours worked, sections completed, or units delivered.*
 - i. *A list of all outstanding claims exceeding \$100,000, and all claims settled during the reporting period. This list should be accompanied by a brief description, estimated costs, and the reasons for the claims.*
- j. *A list of all potential and executed change orders and amounts exceeding \$100,000, pending or settled, during the reporting period. This list should be accompanied by a brief description*
 - k. *A list of claims or litigation involving third party contracts and potential third party contracts that:**
 - *Have a value exceeding \$100,000,*
 - *Involve a controversial matter, irrespective of amount, or*
 - *Involve a highly publicized matter, irrespective of amount.*
 - l. *A list of all real property acquisition actions, including just compensation, property(s) under litigation, administrative settlements, and condemnation for each parcel during the reporting period. **
 - m. *An annual transit enhancements report (4th quarter only) for designated recipients in urbanized areas of 200,000 or more who receive funds under Section 5307.*

*** Requirement added with issuance of 5010.1D.**

EXPLANATION

The grantee is responsible for administration and management of the grant in compliance with the grant agreement and other incorporated documents, including statutes, regulations, the Master Agreement, and FTA circulars. The grantee must have a mechanism to ensure continuous administration and management of the grant projects. There should be clear lines of authority and responsibility for grant administration and for preparing required reports to FTA.

The Milestone/Progress Report (MPR) is the primary written communication between the grantee and FTA, with regular progress reported up to four times a year. Public transportation providers in small urbanized areas (i.e., populations less than 200,000) are required to submit these reports annually, no later than 30 days after the end of the federal fiscal year (i.e., October 30th). Public transportation providers in large urbanized areas (i.e., populations of 200,000 or more) are required to submit these reports 30 days

after the end of each quarter. Quarters are based on the federal fiscal year, beginning October 1. These reports should be provided electronically using the TEAM system.

The Common Rule ([49 CFR Part 18](#)) and [FTA C 5010.1D](#) detail the information that, at a minimum, must be included in these reports. For each active grant, the report must include the items identified in Question 3, as appropriate.

MPRs are required for all grants covered by the circular (including capital, planning, and formula program grants). If a grant includes only operating assistance, the reporting requirement is limited to the estimated and actual date when funding has been expended.

The designated recipient in an urbanized area with a population of at least 200,000 must submit a certification that it 1) will expend not less than one percent of the amount the recipient receives each fiscal year under Section 5307 for transit enhancements, and 2) will submit with its 4th quarter MPR an annual report listing projects carried out in the preceding fiscal year with those funds. In these urbanized areas, where there is more than one designated recipient of 5307 funds, an agreement can be reached among some or all of the designated recipients to certify that no less than 1 percent of section 5307 funds apportioned by FTA to that urbanized area among those designated recipients will be used for transit enhancements. One recipient would then submit the report with the list of transit enhancement projects implemented by those designated recipients. The report must include: a) name of grantee(s) expending the enhancement funds, b) UZA name and number, c) FTA project number(s), d) transit enhancement category or categories for which enhancement funds were obligated, e) brief description of enhancement by Federal fiscal year of funding and progress towards project implementation, f) activity line item codes from the approved budget(s), and g) amount awarded by FTA for the enhancement.

Financial Status Reports (FSRs) should accompany the MPRs. The FSR is a specific form (SF-269) used to monitor project funds. These reports also should be submitted electronically. The content of the FSR is addressed in the Financial Capacity section of the triennial review.

REASON FOR THE QUESTION

[49 CFR 18.40](#)

[FTA C 5010.1D](#), Ch. II, Section 3 and Ch. III, Section 3

[Certifications and Assurances](#)

SOURCES OF INFORMATION

The grantee's procedures for grant administration and reporting should be discussed during the site visit. Most larger grantees will have written procedures that can be reviewed. Those grantees that do not have written procedures should be able to describe how the staff performs these responsibilities.

The MPRs and FSRs should be available through TEAM. The reviewer should determine if the reports are filed on time and if the MPR includes all required information.

DETERMINATION

A reviewer typically will make a finding about the grantee's procedures for grant administration and management in concert with findings related to submission of reports, inactive grants, untimely grant closeouts, or delays in project implementation (see Question 4 below). Together, these issues may indicate that the grantee is deficient with respect to requirements for technical capacity.

When the grantee has submitted the MPR and FSR on time with the appropriate information, the grantee is not deficient. If the grantee's reports are consistently late, the grantee is deficient. A grantee is deficient if it submits the reports on time but does not include sufficient detail about schedule delays or omits other required information.

SUGGESTED CORRECTIVE ACTION

If the grantee does not have procedures in place to manage the grant program, as indicated by late or incomplete reports or other grant implementation problems, the grantee must implement management procedures to correct the deficiencies.

If MPRs or FSRs have not been submitted, the corrective action is to submit the delinquent report(s). If the reports have been late, the reports due following the issuance of the triennial review report must be on time. If reports are consistently late, the grantee may be asked to demonstrate to FTA that it has implemented improvements to its grants management and reporting procedures.

Where narrative information is lacking in the MPR, the corrective action is to include such information in future reports. The grantee must submit the next Milestone/Progress Report with all of the appropriate narrative information.

4. *What is the schedule for closing out all open grants? Are projects on schedule? Are any open grants inactive? Should these or any other grants be closed? Should any grant funds be deobligated?*

EXPLANATION

These questions help the reviewer determine if the grantee has taken the appropriate steps to carry out projects on schedule, spend obligated funds, and close grants. FTA requires that closeout documents be submitted after all funds have been expended or within 90 days after project activities are completed. It is not necessary to wait for the single audit before closing out a grant.

Grants that have been inactive for a substantial length of time (more than six months) also should be closed out unless the grantee has a good explanation, and activity is likely to resume soon. Grant inactivity may be a result of delays in project implementation. Determine the reasons for the delay. If project delays are the result of inadequate actions by the grantee or failure in performance by a contractor, there may be deficiencies in the grantee's technical capacity. When delays are due to poor performance by contractors, examine how the grantee managed the delay and tried to obtain performance by the contractor. It should be noted that delays are not unusual in major construction projects, especially when land acquisition, zoning changes, environmental studies, weather, and other factors not under the complete control of the grantee must be considered. If a grant has been delayed for a substantial period of time and the grantee does not have a reasonable explanation, FTA may determine that the grant should be closed and the funds deobligated. Occasionally, a project may be delayed indefinitely because of factors beyond the grantee's control (e.g., political issues). If there is no realistic chance of a project's going forward, FTA will deobligate the grant funds and make them available for other projects that are ready to proceed.

REASON FOR THE QUESTION

[49 CFR 18.50](#)

[FTA C 5010.1D](#), Ch. III, Section 5

SOURCES OF INFORMATION

The TEAM system will show both the initial grant implementation schedule and amendments. MPRs will provide information on what projects remain open within a grant. The TEAM system shows grant activity for previous quarters and unobligated balances in grants. With the regional staff, identify any grants that are potential candidates for closeout. Additional information, including a current schedule for the closeout of all open grants and reasons for any delays, should be obtained from the grantee.

DETERMINATION

The grantee is not deficient if projects are on schedule and grants are closed out on time or if delays are reasonable and are documented in progress reports. In some instances, major problems may have arisen during the triennial review period that the grantee has corrected. If the appropriate corrective action has been taken, the grantee is not deficient.

If a grantee has inactive grants, determine if the grants should be closed or are temporarily delayed. If there are open grants that should be closed, the grantee is deficient. Often, grants can be closed between the desk review and the site visit.

Where continuing problems, delays, or overruns are evident, the grantee is deficient. This is especially true if the organizational structure of the grantee contributes to the problem (i.e., clear lines of authority and delegation of responsibility are lacking).

SUGGESTED CORRECTIVE ACTION

When the grantee is found to be deficient because of delays in project implementation, the grantee should develop a closeout schedule for all open grants. If the problem is due to organizational structure or the effectiveness of grant or project administration, the corrective action is for the grantee to devise and implement necessary administrative procedures.

5. *Is the grantee's work force used in the execution of capital grant projects? If yes:*
- a. *If the force account work equals \$10,000,000 or more, was a force account plan and justification submitted to FTA?*
 - b. *Is a plan on file for force account work of \$100,000 or more but less than \$10,000,000?*

EXPLANATION

Work performed by the grantee's work force, other than grant administration, that is included in an approved grant is "force account" work. Force account work may consist of design, construction, refurbishment, and inspection, and construction management activities. Incremental labor costs from flagging protection, service diversions or other activities directly related to a capital grant may also be defined as force account work. Force account work does not include grant or project administration activities which are otherwise direct project costs. Force account can include major capital project work on rolling stock. An example of this is preventative

maintenance activities. (Note, this is a change from FTA C 5010.1C, which stated that force account does not include work on rolling stock which is not a major capital project.

Force account work typically is found in rail systems, where the grantee's workforce is used to rehabilitate rolling stock or perform track and signal work. Reimbursement of force account work is subject to a grantee's providing the force account plan and justification, including documentation equivalent to a sole source justification, stating the basis for a determination that no private sector contractor has the expertise to perform the work. Reimbursement of such expenses is subject to FTA's prior review of the grantee's force account plan and justification when the total estimated cost of force account work under the grant equals \$10,000,000 or more. Justification may be on the basis of cost, exclusive expertise, safety and efficiency of operations, or union agreement. Force account reimbursement for projects below this threshold must be supported by a force account plan and justification, which are to be retained in the grantee's files. No plan or justification is required if the force account work to be performed under the grant is less than \$100,000.

REASON FOR THE QUESTION

[FTA Master Agreement](#) for FY 2009, Section 15.h
[FTA C 5010.1D](#), Ch. IV, Section 4.d

SOURCES OF INFORMATION

Individual grant files at the regional office should contain force account plans for work that equals \$10,000,000 or more. Justification for work below this threshold but equal to or exceeding \$100,000 should be available from the grantee.

DETERMINATION

If the grantee does not have a force account plan included in a grant, but seeks FTA funds for force account costs on projects that exceed the above-referenced threshold, the grantee is deficient. The grantee is also deficient if force account costs between \$100,000 and \$10,000,000 are not supported by the proper force account plan and justifications.

SUGGESTED CORRECTIVE ACTION

The grantee must develop a force account plan and justification as detailed in FTA Circular 5010.1D for use of its own workforce on capital improvement projects. The force account plan and justification should be submitted to FTA to demonstrate compliance.

6. *During the review period, did the grantee use FTA capital assistance to*

finance the lease of any transit facilities or equipment costing \$100,000 or more annually or \$250,000 over the life of the lease?

If yes, did the grantee make a written comparison of the cost of leasing the asset with the cost of purchasing or constructing it? Is the written comparison on file?

If the grantee did not make a written cost comparison, did the grantee obtain FTA approval for an alternative form of cost-effectiveness evaluation?

Were any such leases terminated or substantially modified before the end of period used in the cost-effectiveness evaluation?

EXPLANATION

Transit facilities and equipment that are eligible for capital assistance, including associated capital maintenance items, may be acquired by lease, purchase, or construction. When a grantee leases capital assets, the leasing costs are eligible for capital assistance if the lease is more cost effective than purchase or construction. The grantee must make a written comparison of the cost of leasing the asset with the cost of purchasing or constructing it, following the method provided in 49 CFR 639.23 through 639.27. Costs used in the comparison must be reasonable, based on realistic current market conditions, and based on the expected useful service life of the asset. Before entering into the lease or before receiving a capital grant for the asset, the grantee certifies to FTA that it has performed this comparison. The written comparison may not be submitted with the grant. The grantee should keep the comparison on file to provide at the triennial review. Only leases with annual costs of \$100,000 or more or \$250,000 over the life of the lease should be examined during the review.

A lease entered into before grant approval (a pre-existing lease) may qualify for capital assistance later if recipients conduct a cost comparison effective as of the date the lease was entered into and certify the cost-effectiveness to FTA.

If a grantee is unable to perform the required cost-effectiveness comparison, it may ask FTA to approve an alternative form of cost-effectiveness evaluation. This documentation also should be kept on file. If a grantee terminates a lease or modifies the terms of the lease before the end of the period used in the

evaluation, the grantee must reimburse any federal funds paid for the portion of the lease term remaining and/or pay any penalties due.

REASON FOR THE QUESTION

[49 CFR 639](#)

[FTA C 5010.1D](#), Ch. IV, Sections 2 and 3

SOURCES OF INFORMATION

The Annual Certifications and Assurances include the grantee's assurance that obtaining the capital asset by lease is more cost effective than purchase or construction. The regional office should have copies of any correspondence documenting FTA approval of an alternative cost-effectiveness evaluation. The written cost comparison or approved alternative evaluation should be available in the grantee's files.

DETERMINATION

The grantee is not deficient if it has used FTA capital funds to lease transit facilities or equipment and performed the required cost comparison. If the grantee did not perform the cost-effectiveness comparison, but obtained FTA approval for an alternative type of evaluation, it is not deficient. The grantee is deficient if it used FTA capital assistance to lease transit facilities or equipment costing \$100,000 or more per year or \$250,000 or more over the life of the lease and did not perform and/or does not have on file the cost comparison or other approved documentation. The grantee is not deficient if a lease was terminated early or modified, but the FTA share was reimbursed or the grantee paid any penalties. If the grantee used FTA funds to pay any penalties or if a lease was terminated or modified and the FTA share was not reimbursed, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

Consult the regional office for deficiencies related to capital leasing. The grantee may be required to conduct a cost-effectiveness comparison if one is not on file, but FTA will determine if corrective action is possible or if federal participation in the project must be withdrawn. If the grantee has terminated or modified a lease, FTA may require reimbursement of federal funds or payment of penalties.

7. *Does the grantee have a Project Management Plan for major capital projects? If yes, is the plan followed? Does the Plan include a Safety and Security Management Plan, if required?*
8. *How does the grantee ensure adequate technical oversight of other capital projects (those not monitored*

by Project Management Oversight (PMO) consultants or that do not exceed \$100 million) including inspection and acceptance of rolling stock?

EXPLANATION

Grantees are required to have a formal Project Management Plan (PMP) for all major capital projects. The plan must provide for a detailed project management strategy to control the project budget, schedule, and quality. The plan must address change orders, document control, and materials testing policies and procedures.

A major capital project is defined as a project that: involves the construction, extension, rehabilitation, or modernization of a fixed guideway or New Starts project with a total project cost in excess of \$100 million; or the Administrator determines it to be a major capital project based on criteria in [49 CFR Part 633](#).

Effective August 1, 2007, all new major capital projects and fixed-guideway construction and extension projects that are in preliminary engineering or earlier phases must prepare and carry out a Safety and Security Management Plan (SSMP) as part of the PMP. The preparation and implementation of the SSMP is a condition of award. The grantee's SSMP must explain how the following activities will be performed:

- Prepare Policy Statement;
- Identify Safety and Security Interfaces;
- Establish Safety and Security Organization;
- Identify Safety and Security Activities by Project Phase;
- Ensure Construction Safety and Security; and
- Ensure Coordination with External Agencies.

In nearly all cases where a grantee has a major capital project, FTA will assign a Project Management Oversight (PMO) contractor to monitor the work. If a PMO contractor is assigned, the triennial review site visit may be scheduled concurrently with the PMO quarterly review meetings. Problems in project implementation typically are discussed at these meetings. The PMO contractor can provide the triennial review team with a thorough summary of the grantee's project management program. The triennial reviewer should contact the PMO project manager prior to the site visit to determine if there are any particular concerns. The triennial review team may find it unnecessary to spend a great deal of time reviewing the grantee's project management strategy if the PMO contractors are monitoring this function. Any major issues raised in the PMO's quarterly reports to the regional office should be addressed during the site visit.

Grantees with smaller capital projects, including rolling stock procurements, should have a mechanism for technical oversight of the project. Regular meetings between the project manager and contractor(s) should be held to review project status. Many grantees that do not have the technical expertise or internal resources to manage large projects hire an architectural/engineering (A/E) consultant to serve as project manager. The transit system's own maintenance and operations directors typically oversee the inspection and acceptance of rolling stock, sometimes with consultant support.

REASON FOR THE QUESTION

[49 USC Section 5327](#)

[49 CFR 633](#)

[FTA C 5010.1D](#), Ch. IV Section 4

[FTA C 5800.1](#)

SOURCES OF INFORMATION

If a PMO is assigned, quarterly reports should be on file in the regional office. For smaller projects, the grantee should report on its project management and technical oversight in the Milestone/Progress Reports. Ask the grantee during the site visit to describe its quality control procedures, including its procedures for acceptance and inspection of rolling stock. If the grantee contracts for such services, review the scope of services of these contracts along with progress reports from the contractors. Additional items related to rolling stock purchases will be addressed in more detail during the Buy America portion of the review.

DETERMINATION

The grantee is not deficient if the required oversight procedures are in place and such procedures are followed. The grantee is deficient if there is evidence that rolling stock procurements or other capital projects have proceeded without proper quality control responsibilities. The grantee also is deficient in cases where procedures are in place but have not been properly implemented or if PMO contractors have identified problems with major projects that the grantee has not resolved.

SUGGESTED CORRECTIVE ACTION

If the grantee has not followed the required project management procedures, the corrective action is to implement such procedures for existing or future procurements and construction activities.

9. *How does the grantee monitor subrecipients, third-party contractors, and/or lessees to ensure compliance with FTA requirements?*

EXPLANATION

Grantees can be involved in a variety of relationships with other parties where FTA funds, equipment, or facilities are used in providing public transit. In any circumstances where other entities play a role, the grantee is responsible for ensuring compliance with FTA requirements. These entities can include other governmental agencies, consultants, contractors, subcontractors, and lessees working under approved third-party contracts or interagency agreements. The grantee must have the capacity to fulfill its oversight responsibilities. There must be staff with knowledge of FTA requirements and mechanisms in place for monitoring. The mechanism can be as simple as a letter of agreement, contract, or lease supplemented by periodic meetings, inspections, or required reports. The mechanism may also be as complex as an audit of third-party contracts conducted by the grantee or an independent party. For example, a grantee may conduct an audit of overhead rates for engineering and consulting firms, or conduct audits of payments made to third-party contractors to ensure that these are in compliance with FTA regulations, as well as the terms of the agreement.

Many of these FTA requirements are addressed in other areas of the triennial review, but for this area, you should establish that the grantee staff has sufficient knowledge of FTA compliance requirements. For example, if the grantee leases FTA funded vehicles to a subrecipient, the grantee must inspect the vehicles and the vehicle records periodically in order to ensure compliance with maintenance, charter, and school bus requirements. The grantee should have procedures in place to ensure that all FTA funded property is used in transit service. Transit service must be provided in compliance with ADA regulations. Procedures should be in place to collect National Transit Database information and provide for drug and alcohol testing, if required. The grantee should demonstrate an awareness of these responsibilities in any case where FTA funds are passed through to a contractor or another operating entity.

REASON FOR THE QUESTION

[49 CFR 18.36](#)

[FTA C 5010.1D](#), Ch. II, Section 3

SOURCES OF INFORMATION

Discuss this issue with the grantee at the site visit. Large grantees may have written procedures for oversight of subrecipients, contractors, or lessees. Smaller grantees may have informal oversight mechanisms, such as periodic meetings.

DETERMINATION

If the grantee is adequately staffed and demonstrates an awareness of its responsibilities, and oversight occurs, it is not deficient. Corrective action may be required if the grantee is not staffed to ensure

compliance by subrecipients or contractors. A finding in this area typically will result in conjunction with a finding in another area of the triennial review. For example, a grantee may be found deficient in maintenance if FTA funded equipment is leased to a service provider and the grantee takes no responsibility for ensuring that preventive maintenance occurs as required.

SUGGESTED CORRECTIVE ACTION

The grantee must develop procedures and assign staff to monitor other entities with responsibility for meeting FTA requirements.