C-03-07

U.S. Department
of Transportation
**Federal Transit
Administration**

Administrator

1200 New Jersey Ave., S.E.
Washington, DC 20590

Dear Colleague:

In January 2004, the Federal Transit Administration (FTA) issued a letter to its transit constituents to clarify the performance bond requirements policy described in FTA Circular 4220.1E, Third Party Contracting Requirements. The Circular is available on line at http://www.fta.dot.gov/ laws/circulars/leg_reg_4063.html. In consulting with members of the transit business community, it has come to my attention that the high cost of performance bonds continues to directly impact both our grantee's bottom line and competition within the industry.

Although the Common Grant Rule requires that performance bonds secure the Federal interest in construction projects, there is no Federal regulation, statute, FTA Circular or Order that requires or prohibits performance bonds in transit management solicitations and other non-construction contracts. FTA leaves to the good business judgment of our grantees the discretion to determine the appropriate amount of bonding, if any, to incorporate in non-construction contracts.

It is the responsibility of each transit agency to assess the risks involved in any given procurement and carefully balance those risks against the cost and competitive impacts of bonding requirements. At FTA, we have worked closely with the transit community to identify cost-effective ways to manage risks and share that information through our *Best Practices Procurement Manual*, Section 8.2.1. The Manual is a compilation of successful approaches, methods and examples based on the Federal acquisition process, Comptroller General decisions and "best practices" reported by grantees and other industry partners. The Manual is available on line at http://www.fta.dot.gov/fta/ library/admin/ BPPM/ ch8.html#performance.

As competition for public resources becomes ever more intense, it is incumbent upon each of us to maximize the benefits generated by every transit dollar. Please review your bonding practices to ensure that you are prudently utilizing this important tool to its best advantage.

Sincerely,

James S. Simpson

James S. Simpson

Enclosure