

FTA Circular 4220.1F Changes

Revision 3 Changes dated February 15, 2011

1. Chapter I, Subsection 5.g. A new subsection 5.g has been added to include a definition of “contract.” Accordingly, former subsections 5.g. through 5.s have been re-designated Subsections 5.h. through 5.t, respectively.
2. Chapter I, Subsection 5.u. A new subsection 5.v has been added to include a definition of “modification.” Accordingly, former subsections 5.t. through 5.dd have been re-designated Subsections 5.v. through 5.ff, respectively.
3. Chapter II, Subsection 2.b. Under the authority of 41 U.S.C. Section 431a the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) amended the Federal Acquisition Regulation (FAR) at 48 C.F.R. Section 2.101 to increase the Simplified Acquisition Threshold from \$100,000 to \$150,000 for many items. This change became effective October 1, 2010. *See*, 75 Federal Register 53127 - 53135, August 30, 2010. Because 41 U.S.C. Section 431a authorizes the Councils to undertake adjustments to dollar thresholds specified in law only for direct Federal procurements and not for procurements under grants, the change to the FAR definition does not necessarily apply to federally assisted procurements. To date, staff of the Office of Federal Financial Management, Office of Management and Budget (OMB) have not issued guidance about the applicability of this change to federally assisted programs. It is our understanding that they did not participate in the Councils’ initiative. As a result, FTA does not consider the changes made by the Councils to be mandatory with respect to FTA programs. Because the Common Grant Rules and various FTA regulations refer to the “simplified acquisition threshold” or the “small purchase threshold,” both fixed at the statute codified at 41 U.S.C. Section 403(11), rather than the FAR definition, and because the statute has not been amended to reflect the \$150,000 increase permitted under 41 U.S.C. Section 431a, FTA will be honoring the \$100,000 standard of the statute as it applies to the Common Grant Rules and FTA regulations until OMB issues different guidance or DOT or FTA regulations change.
4. Chapter IV, Subparagraph 2.a(6)(a) adds a reference to the “Hiring Incentives to Restore Employment Act” (HIRE Act), Pub. L. 111-147, Title IV, § 451, March 18, 2010, 124 Stat. 96, 23 U.S.C. 101 note, which extends the Federal statutory provisions requiring FTA to continue its disadvantaged business enterprise activities and program.
5. Chapter IV, Subparagraph 2.a(6)(b) acknowledges that potential small or minority businesses may be found in Historically Underutilized Business Zones, a list of which can be accessed by <http://www.sba.gov/hubzone>.
6. Chapter IV, Subparagraph 2.a(6)(b)5 includes among possible subcontracting opportunities available to small business are race-neutral (and gender-neutral) small business set-asides for prime contracts under a stated amount as permitted by FTA’s “Disadvantaged Business Enterprise: Program Improvements” amendments to its DBE regulations, effective February 28, 2011, even though set-asides restricted to DBEs continue to be prohibited except in limited and extreme circumstances.

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7. Chapter IV, Subparagraph 2.b(6)(b) has been corrected to reflect the provisions of the Common Grant Rule for non-governmental recipients that their contracts exceeding the small purchase threshold (simplified acquisition threshold) contain appropriate remedy and termination provisions.

8. Chapter IV, Paragraphs 2.c(5) and 2.i(9), pertaining to FTA's Buy America requirements have been revised to stress that the FTA Buy America requirements apply to the overall FTA assisted project irrespective of how many third party contracts are included within that project. FTA seeks to emphasize that a recipient may not remove a specific contract or part of a contract from an FTA assisted project and finance it entirely without FTA funds in order to dispense with FTA's Buy America requirements.

9. Chapter V, Paragraph 6.b(3) has been added to reference U.S. General Services Administration (GSA) Supply Schedule 84, which may be accessed by State and local governments (as defined by GSA) to acquire local preparedness equipment and related items and services.

10. Chapter VI, Subparagraph 3.i(1)(b)2a has been revised to substitute the term "valid competitive award" for "valid sole source" for clarity in connection with the discussion of single bids.

11. Appendices. In the 07-01-2010 edition of this circular, Appendices A (References) and B (Contact Information) were incorrectly combined into Appendix A. This has been corrected, so that there are now four Appendices again, Appendix A, B, C, and D, as originally established.

12. Appendix A. Citations for Section 451 of the Hiring Incentives to Restore Employment Act Section 451 of the Hiring Incentives to Restore Employment Act (HIRE Act) 23 U.S.C. Section 101 note, Section 2 of the Local Preparedness Acquisition Act, 40 U.S.C. Section 502(c)(1)(B), and the new amendments to the DOT's DBE regulations have been added.

13. Appendix D. Civil Rights Threshold. Civil rights requirements, for the most part do not have a dollar threshold. The main exception is the Department of Labor civil rights equal employment opportunity clause for federally assisted construction contracts within 41 C.F.R. Chapter 60, which applies to construction contracts of more than \$10,000.

14. Appendix D. Preaward and Post Delivery reviews are required for all rolling stock procurements. However, an on-site inspector's report is not required for post delivery reviews involving procurements of:

- 10 or fewer vehicles;
- 20 or fewer vehicles serving rural (other than urbanized) areas or urbanized areas or 200,000 people or fewer; and
- any amount of primary manufactured standard production and unmodified vans that after visual inspection and road testing meet the contract specifications.

FTA Circular 4220.1F Changes

2010 Changes dated 7-1-10

1. Chapter II. Subparagraph 2.b(1)(b) has been revised to announce the inclusion of procedures for procuring art works and the services of artists.
2. Chapter III. A new section 5 has been added to discuss prohibitions against fraud.
3. Chapter IV. A new Paragraph 2.a(9) has been added to Chapter IV to include the requests of President Obama and Secretary LaHood to ban texting while driving.
4. Chapter IV. A new Subsection 2.g has been added to Chapter IV that includes procedures for the procurement of art. Other information pertaining to art is available on the FTA website and FTA's Best Practices Procurement Manual. Former Subsections 2.g through 2.j have been re-numbered Subsections 2.h through 2.k respectively.
5. Chapter IV. Paragraph 2.i(6) has been amended to show that Section 1 of the Copeland "Anti-Kickback" Act, 18 U.S.C. § 874, applies to all construction contracts, and Section 2 of the Copeland Anti-Kickback" Act, 40 U.S.C. § 3145, and implementing U.S. Department of Labor regulations apply to construction, contracts exceeding \$2,000. Appendix D to the circular has also been corrected.
6. Chapter VI. Paragraph 2.c(2) has been divided into three subparagraphs (rather than two) to emphasize better that the cost plus a percentage of cost method of contracting and the percentage of construction cost method of contracting are both prohibited, and the time and materials method of contracting is restricted.
7. Chapter VI. Paragraph 3.a(1) has been amended for consistency with Subsection 3.a to state that a micro-purchase is valued at \$3,000 or less, except for contracts covered by the Davis-Bacon Act. Appendix D has also been revised accordingly.
8. Chapter VI. Former Paragraph 6.a(2) "Establishing Indirect Cost Rates," has been deleted, and former Paragraph 6.a(3) has been re-numbered Paragraph 6.a(2).
9. Appendix D. Changes have been made to reflect the nature of the circular as guidance rather than requirements as well as for consistency with other revisions described above, and re-arranged the order of the matrices for easier use.

FTA Circular 4220.1F Changes

2009 Changes dated 4-14-09

1. No changes have been made to FTA Circular 4220.1F as a result of enactment of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, signed into law February 17, 2009.
2. However, the following substantive changes and technical corrections have been made.
 - a. Chapter IV, Subsection 2.h(8) pertaining to the use of Project Labor Agreements (PLA) has been revised to reflect the new Executive Order No. 13502 of, "Use of Project Labor Agreements for Federal Construction Projects," February 6, 2009, that removes restrictions on a recipient's use of Project Labor Agreements and rescinds former Executive Order No. 13202, "Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects," February 17, 2001, as amended by Executive Order No. 13208, April 6, 2001, 41 U.S.C. Section 251 note.
 - b. Chapter VI, Subsection 3(a)(1) has been corrected to state that micro-purchase standards may be used for contracts of \$3,000 or less, except that Davis-Bacon requirements will apply to third party contracts of more than \$2,000.
 - c. In Appendix A, a reference to the new Executive Order, No. 13502 of, "Use of Project Labor Agreements for Federal Construction Projects," February 6, 2009, has been added.
 - d. In Appendix D, "FEDERALLY REQUIRED AND OTHER MODEL CLAUSES," "A. REQUIRED THIRD PARTY CONTRACT CLAUSES," we set out separate category for Termination clauses for third party contracts exceeding \$10,000 to which 49 CFR Part 18 applies. [Appendix D, Page 1 of 8].
 - e. In Appendix D, "FEDERALLY REQUIRED AND OTHER MODEL CLAUSES," "A. REQUIRED THIRD PARTY CONTRACT CLAUSES," we set out separate category for Suspension and Debarment clauses for third party contracts exceeding \$25,000. [Appendix D, Page 1 of 8].
 - f. In Appendix D, "FEDERALLY REQUIRED AND OTHER MODEL CLAUSES," "APPLICABILITY OF THIRD PARTY CONTRACT CLAUSES," we added information that the requirement for a Termination clause applies to third party contracts exceeding \$10,000 to which 49 CFR Part 18 applies. [Appendix D, Page 6 of 8]
 - g. In Appendix D, "FEDERALLY REQUIRED AND OTHER MODEL CLAUSES," "APPLICABILITY OF THIRD PARTY CONTRACT CLAUSES," we added information that the requirement for a Contract Work Hours and Safety Standards Act clause applies to third party contracts exceeding \$100,000 to which 49 CFR Part 18 applies. [Appendix D, Page 6 of 8].