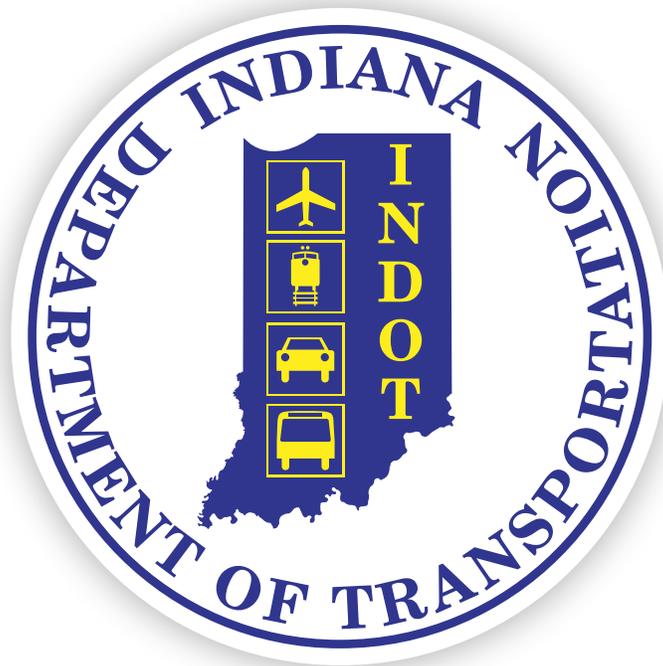


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# Section 5311 Program Manual

*Transit Assistance to Small Urban and Rural Areas*



*Third Edition*

*2013 Update*

**Indiana Department of Transportation  
Public Transit Section**

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# Section I.

## Introduction

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## I. INTRODUCTION

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### INTRODUCTION

This manual is designed to assist Section 5311 grantees in implementing and managing rural transit projects in compliance with all applicable Federal and State rules and regulations.

Section 5311 funding is for other than Urbanized (Nonurbanized) Areas, which means any area outside of an urbanized area. The term “nonurbanized area” includes rural areas and urban areas under 50,000 in population not included in an urbanized area.

### ORGANIZATION OF THIS MANUAL

This manual is divided into two volumes. The first volume contains explanations regarding all major compliance elements associated with INDOT’s administration of the Section 5311 program.

Volume I is organized in sections as follows:

- I. [Introduction](#)
- II. [Eligible Grantees, Services, and Funding](#)
- III. [Grant Application Procedures](#)
- IV. [Financial Management](#)
- V. [Property Management](#)
- VI. [Procurement](#)
- VII. [Facility Procurement](#)
- VIII. [Civil Rights](#)
- IX. [Other](#)

Each section contains a summary of program and project administrative requirements. Pertinent information is provided as appendices to each section.

Volume II contains copies of all applicable source documents that are referenced in this volume. Grantees who desire a more thorough understanding of the applicable regulations will want to consult Volume II.

### SECTION 5111 PROGRAM SUMMARY

#### Overview

The nonurbanized formula assistance program for public transportation is authorized by [49 U.S.C. § 5311 \(Federal Transit Act of 1964, as amend – Volume II, Section A\)](#). The Federal Transit Administration (FTA), on behalf of the Secretary of Transportation, apportions the funds appropriated annually to the Governor of each state for public transportation projects in nonurbanized areas. The Governor, in turn, has designated the Indiana Department of Transportation (INDOT), Public Transit Section, as the responsible state agency for program administration. The statutory formula is based solely on the nonurbanized population of the states. Each state prepares an annual program of projects, which must provide for fair and equitable distribution of funds within the states, including Indian reservations, and must provide for maximum feasible coordination with transportation services assisted by other Federal sources.

Program funds may be used for capital, and operating. And, the state must use fifteen percent of its annual apportionment to support intercity bus service, unless the Governor certifies that the intercity bus needs of the state are adequately met. The state may also use up to fifteen percent of its annual apportionment for planning and technical assistance activities to existing grantees and program applicants. INDOT,

for example, may fund feasibility studies for prospective grantees from this fund.

A separate annual allocation to the state under Section 5311(h), the Rural Transit Assistance Program (RTAP) may be used only for training, technical assistance, research, and related support activities.

The maximum Federal share for capital is 80 percent of the total project costs. The maximum Federal share for operating assistance is 50 percent of the net operating costs.

Eligible recipients include state agencies and local units of governments authorized under state law to provide and carry out a local public transportation project (refer to [Section II](#) for a definition of eligible projects). As a matter of INDOT administrative procedure, however, a unit of local government must sponsor all projects.

### **Section 5311 Program Goals**

Congress has found that “significant public transportation improvements are necessary to achieve national goals for improved air quality, energy conservation, international competitiveness, and mobility for elderly individuals, individuals with disabilities and economically disadvantaged individuals in urban and rural areas of the United States.” The national goals of the nonurbanized formula program are:

- to enhance the access of people in nonurbanized areas to health care, shopping, education, employment, public services, and recreation;
- to assist in the maintenance, development, improvement, and use of public transportation systems in rural and small urban areas;
- to encourage and facilitate the most efficient use of all Federal funds used to

provide passenger transportation in nonurbanized areas through the coordination of programs and services;

- to assist in the development and support of intercity bus transportation; and
- to provide for the participation of private transportation providers in nonurbanized transportation to the maximum extent feasible.

In addition to these program goals, the FTA wants to ensure that all Americans, including those who live in nonurbanized areas, have access to transit to meet basic mobility needs. FTA anticipates that the significantly higher funding levels for the nonurbanized formula program authorized in the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA-LU) should enable the States to extend transit service to areas currently not served and improve service levels in areas that currently have minimal service.

The goal of Indiana’s transportation system includes providing transit service throughout the state to meet the needs of transit users. The State’s role in the delivery of transit service is supported by the Section 5311 Program, which provides operating and capital assistance as well as program assistance for the Intercity Bus transportation program and the Federal Rural Transportation Assistance Program (RTAP). The mission of the Indiana Department of Transportation’s Public Transit Section is to help people and communities meet their mobility needs by supporting safe, responsive, efficient, and environmentally sound transit services.

### **State 5311 Program Objectives:**

- The INDOT Section 5311 Program objectives are as follows:

- Increase availability of public transit for Indiana’s population that enhances access to health care, shopping, education, employment, public services, and recreation;
- Encourage and support increased coordination of transit service with various public resources that maximizes transportation efficiencies and benefits for Indiana;
- Alleviate transportation barriers as well as improve mobility opportunities for elderly persons, people with disabilities, economically disadvantaged persons, and any other populations that may have transportation disadvantages;
- Implement cost effective strategies and performance measures for subrecipient transit systems that maximize the Federal and State investment in transit;
- Maintain a state commitment to public transportation;
- Manage federal transit programs to ensure subrecipient compliance with pertinent federal and state regulations;
- Provide necessary planning and technical assistance to subrecipient transit system to ensure success with meeting local transit needs; and
- Ensure a successful Intercity Bus program, which promotes the participation of private providers in both the development and provision of transit services in Indiana.

### **Coordination with Other Programs**

FTA regional offices are available to work with states to address regional coordinated

transportation concerns and initiatives. FTA encourages state DOT's to work with their counterparts at state human service agencies, to participate with other states in regional initiatives, and to assist local recipients and subrecipients of Sections 5307, 5310, or 5311 funds to participate in coordinated systems at the local level, along with recipients of funds from the programs of DHHS and other Federal and state programs. Section 5311, RTAP, and Federal transportation planning funds provided to the state may be used in various ways to support eligible activities related to the development and administration of coordinated activities at the state and local level.

FTA also encourages state DOT participation in other interagency efforts such as the state Rural Development Councils.

### ***Statewide Coordinated Transportation Plan***

In 2007 and 2008, INDOT conducted the statewide SAFETEA-LU plan, which involved eleven (11) multi-county regions that include Section 5311 Rural Transit programs and human services transportation programs. In addition to the regional plans, each Metropolitan Planning Organization (MPO) in Indiana was responsible for completing a SAFETEA-LU plan. The Indiana Statewide SAFETEA-LU Coordinated Public Transit-Human Services Transportation Plan Overview provides additional information about SAFETEA-LU requirements and state oversight procedures.

In an effort to provide additional support to rural areas of Indiana, a dedicated staff member of RTAP is responsible for facilitating information sharing at the local level. RTAP coordinates with the regional coordination representative and monitors the progress of annual updates to the regional coordinated Public Transit Human Services Transportation Plans. The regional

coordination representative is the individual appointed by INDOT as the primary point of contact for the region. The regional coordination representative is usually the director of a Section 5311 program that operates in the region; contact INDOT for more information about the point of contact in your region. RTAP will offer guidance to the coordination representatives in each of the eleven (11) regions as he or she conducts community outreach efforts that incorporate new organizations and mobility needs into the regional plan on an annual basis.

### **SAFETEA-LU IMPACTS ON THE SECTION 5311 PROGRAM**

The U.S. Department of Transportation (DOT) through its Federal Transit Administration (FTA), began an earnest initiative to address transportation coordination after a 2003 report by the General Accountability Office revealed that there were no less than sixty-two different Federal funding programs administered by eight different Federal agencies providing passenger transportation, resulting in little or no coordination between and among the funding agencies and, thus, duplication of services and resources in many cases.

In August of 2005, Congress passed the Safe, Accountable, Flexible, Efficient, Transportation, Equity Act: A Legacy for Users (SAFETEA-LU), reauthorizing the surface transportation act. As part of this reauthorization, grantees under the Elderly Individuals and Individuals with Disabilities (Section 5310), Job Access and Reverse Commute (JARC) (Section 5316), and New Freedom Initiative (Section 5317) grant programs must meet certain requirements in order to receive funding for fiscal year (FY) 2007 (October 1, 2006) through FY 2009.

The multi-year authorization act that preceded SAFETEA-LU, the Transportation Equity Act for the 21st Century (TEA 21), was in effect through September 30, 2003.

From October 1, 2003 through August 9, 2005 the Federal transit and highway programs were authorized through 12 short-term extension acts.

SAFETEA-LU, Public Law (P.L.) 109-59, is the current law that establishes authority to appropriate General Revenues and Trust Fund monies for highways and transit by limiting annual obligations through FY 2009. SAFETEA-LU provided \$52.6 billion from FY 2003 through FY 2009. \$10.3 billion is guaranteed for FY 2009.

While the basic structure of the Section 5311 program remains the same, there were some important provisions in SAFETEA-LU that affect the transit industry. In fact, SAFETEA-LU substantially increased the authorized funding to States. The Section 5311 rural transit program's share of FTA formula grants increased from \$240 million in FY2004 to \$265 million in 2009. Since FY 2006, SAFETEA-LU has funded New Starts, Research and University Research Center programs, and FTA Administrative expenses from the General Fund. All other programs have been funded from the Mass Transit Account of the Highway Trust Fund.

An excellent resource of the transit provisions of SAFETEA-LU, developed by the American Public Transit Association (APTA), can be accessed from the APTA website:

[WWW.APTA.COM/GOVERNMENT\\_AFFAIRS/SAFETEA\\_LU/BROCHURE.CFM](http://WWW.APTA.COM/GOVERNMENT_AFFAIRS/SAFETEA_LU/BROCHURE.CFM)

### **INDOT ROLE IN PROGRAM ADMINISTRATION**

To the extent permitted by law, FTA gives the states maximum discretion in designing and managing the Section 5311 program to meet nonurbanized public transportation needs. Where possible, FTA defers to states and state instrumentalities in developing program standards, criteria, procedures, and

policies in order to provide the states flexibility to standardize their management of FTA assistance and related state programs. U.S. DOT regulations and "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," 49 CFR. Part 18 (sometimes referred to as the "common rule"), permit states to rely on their own laws and procedures instead of Federal procedures in the areas of financial management systems, equipment, and procurement and may pass these procedures down to subrecipients which are public entities.

The Governor designates a state agency that will have the principal authority and responsibility for administering the Section 5311 program. The Governor has designated INDOT as the state agency responsible for the administration of the Section 5311 program. INDOT's role includes: documenting the state's procedures in a state management plan; notifying eligible local entities of the availability of the program; soliciting applications; developing project selection criteria; reviewing and selecting projects for approval; forwarding an annual program of projects and grant application to FTA; certifying eligibility of applicants and project activities; ensuring compliance with Federal requirements by all subrecipients; monitoring local project activity; and overseeing project audit and closeout. In addition, the state agency may carry out a project directly.

In administering the program, INDOT is also responsible for the following:

- providing for appropriate technical assistance for nonurbanized areas;

- ensuring that there is a fair and equitable distribution of program funds within the state;
- ensuring a process whereby private transit operators are provided an opportunity to participate to the maximum extent feasible;
- expending funds for the support of intercity bus transportation to the extent required by law; and
- providing for maximum feasible coordination of public transportation services assisted by FTA with transportation services assisted by other Federal sources.

INDOT must include its Section 5311 apportionment, along with all other Federal highway and transit funds, in a Statewide Transportation Improvement Program (STIP) approved by FTA and the Federal Highway Administration (FHWA). FTA subsequently obligates Section 5311 funds and any flexible funds transferred to Section 5311 based on the program of projects included in the state's Section 5311 grant application. Before the state may expend Federal funds on behalf of a subrecipient, the state must enter into an agreement with the subrecipient, and the subrecipient must have met all statutory and program requirements. The state certifies to FTA annually that the state and subrecipients have met, or will meet, all Federal requirements.

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## Section II.

### Eligible Grantees, Services, and Funding

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## II. ELIGIBLE GRANTEES, SERVICES, AND FUNDING

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### INTRODUCTION

This section defines who is eligible to receive Section 5311 funds, what services are eligible for reimbursement under the program, and how eligible organizations can apply for funding.

### ELIGIBLE APPLICANTS

Applicants that are eligible to receive Section 5311 funding from INDOT must be a unit of government authorized under state law to provide and carry out a local public transportation project. Eligible applicants include:

The State of Indiana, counties, cities, or towns;

Public Transportation Corporations (PTC) as established under [Indiana Code \(I.C.\) 36-9-4-12 \(Attachment II-1\)](#), Regional Transportation Authorities (RTA) as established [under I.C. 36-9-3-2 \(Attachment II-2\)](#) or Regional Planning Commissions as established under [I.C. 36-7-7 \(Attachment II-3\)](#) to provide public transportation service and facilities; and with designation by formal resolution of the local governing board of an eligible public recipient, nonprofit organizations.

A more detailed explanation of eligibility requirements is provided directly following this section in [Attachment II-4](#).

### ELIGIBLE TRANSIT SERVICES

Eligible services which may be funded under the Section 5311 program include any transportation service provided by bus, shared-ride taxi, or other publicly or privately owned conveyance that serves the general public on a regular basis in primarily

nonurbanized areas. Eligible projects may constitute an entire public transit system, a particular service or function within that service, or an individual route or route segment. Service may include transportation to and from urbanized areas. However, such services should not include both pick-up and discharge operations within the urbanized area, particularly if the urbanized area is served by public transit. If Section 5311 funds are used in a joint urbanized and nonurbanized project, Section 5311 funds must be used primarily to assist the nonurbanized portion of the project. Urbanized/Nonurbanized services should be coordinated whenever possible (i.e., drop-offs/transfers from demand response providers at the urbanized fixed route stops).

Services not eligible for assistance include any exclusive ride taxi service and service to individuals or groups which exclude use by the general public.

### INDOT USE OF SECTION 5311 FUNDS

As noted in the program summary, FTA apportions Section 5311 funds to Indiana in accordance with a formula based on the percent of Indiana's nonurbanized population as a ratio of the total nonurbanized population in the U.S. The amount of funds so apportioned is dependent upon the annual appropriation of funds by the Congress.

INDOT allocates its annual apportionment of Section 5311 funds as set forth below.

### INDOT Administrative and Technical Assistance Program

Up to 15 percent of INDOT's annual apportionment may be assigned to administer the program and provide

technical assistance to applicants and existing transit systems. Technical assistance may include:

Project planning and development (including feasibility studies);  
Management and operations;  
Maintenance; and  
Coordination of public transportation resources and pro-grams (public and privately owned).

### **Intercity Bus Set-Aside**

The FTA Section 5311 Program provides a resource to help provide or preserve intercity bus service. Various combinations of capital, operating, and administrative assistance may be used to help preserve private bus service in communities seeking to keep it. Under [49 U.S.C. §5311\(f\) \(Volume II, Appendix A\)](#), each state is required to spend fifteen percent of its annual Section 5311 apportionment to carry out a program to develop and support intercity bus transportation. Assistance under Section 5311(f) must support intercity bus service in rural and small urban areas. FTA expects the coordinated planning process in rural areas to take into account human service needs that require intercity transportation.

Eligible activities include:

- planning and marketing for intercity bus services;
- capital grants for intercity bus shelters;
- joint-use stops and depots;
- operating grants through purchase of service agreements;
- user-side subsidies and demonstration projects; and
- Coordination of rural connections between small transit operations and intercity bus carriers.

Other activities may be determined eligible on a case-by-case basis by INDOT.

INDOT will allocate this set-aside unless the Governor certifies to FTA that intercity bus service needs of the state are being adequately met. If this is the case, any portion of the 15% intercity set-aside will then be allocated by formula with the remaining Section 5311 funds as indicated below.

### **Public Transit Project Funding Overview**

Once INDOT has allocated the necessary funds for administrative and technical assistance and has satisfied its obligations to fund intercity services, the remaining amount of INDOT's annual apportionment will be allocated by formula to existing grantees.

The factors used in this allocation are as follows:

Population – Service area population, as determined by the last decennial census, accounts for 30 percent.

Annual Passenger Boardings – Annual passenger boardings account for 30 percent.

Locally Derived Income (LDI) – Locally derived income is determined by adding a project's farebox revenue, local appropriation of funds, and cash grants. LDI accounts for 40 percent of the allocation weighting. LDI does not include contra-expenses or in-kind volunteer labor services.

#### **Formula Calculation**

Allocation factors are calculated by dividing each grantee's population, three-year average passenger boardings, and three-year average LDI by the total population, average passenger boardings, and average LDI, respectively, for all existing grantees.

Each allocation factor is multiplied by its weight factor, then all three factors are

added together to establish the grantee's Total Allocation Factor. Each grantee's Total Allocation Factor is then multiplied by the amount of Section 5311 funds available for public transit project funding for the year to calculate the amount of funding available for each grantee.

For additional information about the formula allocation, contact INDOT PTS.

#### Data Sources for Funding Calculations

INDOT will take all due care to ensure that inputs used in funding calculations are up-to-date and accurate. Population data will be derived from the current decennial census of population and housing prepared by the U.S. Bureau of the Census. The most recent three (3) years of data available from the Annual Public Transportation Reports will be used for annual passenger boardings and LDI. Data from the reports is verified annually by INDOT. Data that cannot be verified as accurate will not be used. INDOT, at its election, may use data from a recent previous year or a reasonable estimate thereof. If a grantee consistently provides INDOT with inaccurate data, INDOT reserves the right not to allocate funding to that grantee based on that allocation factor.

#### Unrequested Funding

Allocated funds that are not requested by a grantee will go into a program reserve balance. This funding will be available to all existing grantees for capital grants that cannot be funded through the formula allocation amount. Also, this funding will be available to new applicants requesting operating and/or capital assistance or planning/feasibility study funds

#### New Applicants and Allocation Formula

Any new applicant approved for funding will be added to the funding formula in its third year of operation. New systems are

required to collect data during the first two years of operation as a demonstration project. INDOT will use the operating data collected during the demonstration project when adding the new applicant to the funding formula.

#### Disposition of Fund Balance

In the event funding is left in the program reserve balance, it may be programmed as a reserve funding line item or carried forward and added to the next year's formula apportionment. Alternatively, fund balances may be used by INDOT to fund special projects or marketing studies, etc.

Using the flexible funding provisions originally authorized under ISTEA, the Governor is also permitted to transfer the reserve to urbanized areas under 200,000 population.

### **Participation Ratios and Local Share Requirements**

#### Capital Grants

INDOT will make Section 5311 funds available for capital expenses, which generally include the acquisition, construction, and improvement of public transit facilities and equipment.

Generally, Section 5311 funds may be used to fund up to eighty (80%) percent of the net capital cost of the improvement or acquisition.

Intercity capital projects funded under Section 5311(f) are also funded at the eighty percent level. Additionally, these grants may include planning and marketing activities.

## Operating Grants

INDOT will make Section 5311 funds available for operating expenses, which generally include salaries and wages, fringe benefits, purchase of transit service contracts, fuel, oil, lubricants, replacement parts, tires, vehicle insurance, licenses, and other expenses.

## Local Share

The non-Federal share of project expenses must be matched by local funds. The local share must be from non-FTA sources, and can include any local or state source. Additionally, in certain cases, other Federal funds that have been determined to be “unrestricted” Federal/state funds may be used as match to Section 5311 (a list of these funds can be found in [Attachment II-5](#)).

At least one-half of the required local share for Section 5311 grants must be provided in cash or cash equivalent, from other than unrestricted Federal/state funds. Examples of local cash or cash equivalent include, but are not necessarily limited to:

Local grants, appropriations, and dedicated tax revenues;  
Income derived from purchase of service contracts, including contracts where the purchaser utilizes unrestricted Federal funds to finance the purchase of transit service;  
State funds from the Public Mass Transportation Fund (PMTF), only after completing (2) year demonstration period;  
Other state funds eligible to match Federal funds. The appropriate state grantor agency must approve the use of the funds as match to other Federal funds; and  
In-kind contributions (cash equivalent) as defined in [49 CFR Part 18, “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments” \(Volume II, Appendix B\)](#).

Of critical importance in the INDOT decision to finance local transit projects through the Section 5311 program is the Federal requirement that Section 5311 funds be used to augment, rather than supplant, existing sources of passenger transit revenue. It is INDOT’s experience that local financial commitment is a primary factor in the long-term viability and success of the project.

## ELIGIBLE FUNDING CATEGORIES

### Capital Costs

Eligible capital items include, but are not necessarily limited to:

- Buses;
- Vans or other paratransit vehicles;
- Radios and communications equipment;
- Passenger shelters, bus stop signs, and similar passenger amenities;
- Wheelchair lifts and restraints;
- Vehicle rehabilitation;
- Operational support equipment, such as computer hardware and software;
- Installation costs, vehicle procurement, testing, inspection, and acceptance costs; and
- Construction or rehabilitation of transit facilities including design, engineering, and land acquisition.

### Operating, Maintenance, and Administrative Costs

INDOT considers all system operating, maintenance, and administrative costs to be project “operating” expenses.

Operating expenses are considered to be those costs directly related to system operations and include, but are not necessarily limited to:

- Fuel;
- Oil;

- Replacement tires and parts which do not meet the criteria for capital items;
- Extended warranties;
- Maintenance and repairs;
- Drivers' and mechanics' salaries
- Dispatcher salaries;
- Fringe benefits;
- Licenses;
- Salaries of the project director, secretary, and bookkeeper;
- Marketing expenses;
- Insurance premiums or payments to a self-insurance reserve;
- Office supplies;
- Facilities and equipment rental;
- Standard overhead rates (a grantee must have an approved cost allocation plan on file with INDOT for these costs to be eligible); and
- Administration of drug and alcohol testing.

Administrative costs for promoting and coordinating ridesharing may be eligible if the activity is part of a coordinated public transportation program. Interest on short-term loans for operating assistance is an eligible operating expense if the grantee has the prior approval of INDOT.

INDOT participation in operating costs is based on “net” operating costs.

Net operating expenses are those expenses that remain after operating revenues are subtracted from eligible operating expenses.

At a minimum, operating revenues must include farebox revenues. Farebox revenues include fares paid by riders who are later reimbursed by a human service agency, or other user-side subsidy arrangements, but do not include payments made directly to the transit provider by human service agencies. As noted above, this revenue may be used as local match.

## **OTHER INDOT ASSISTANCE**

### **Technical and Management Assistance**

INDOT provides management and technical assistance to eligible grantees. INDOT will assist in the development of transit programs that improve the knowledge base of rural and small urban management. Technical assistance may be provided in the areas of planning, funding, vehicle and equipment procurement, and vehicle maintenance training and is further explained below.

#### **Planning**

Planning assistance is available upon request from the INDOT Office of Public Transit and may include conduct of transit feasibility studies, ridership surveys, ridership estimation, routing and scheduling analyses, revenue and cost studies, and capital needs assessments.

#### **Financing**

INDOT will assist grantees and applicants for Section 5311 funding identify alternative funding sources to support rural passenger transportation.

#### **Vehicle and Equipment Procurement**

INDOT will assist with the procurement of grant related equipment. Vehicles must be purchased from the Indiana Qualified Allocation Plan (QAP). INDOT requires all grantees to adhere to the principles contained in FTA Circular 4220.1F. Grantees may follow their own local procurement procedures, provided that, at a minimum, the basic requirements of this circular are met.

#### **Vehicle Maintenance**

INDOT provides information and assistance in detailing vehicle maintenance procedures. The INDOT Guide to Preventive

Maintenance is available by contacting INDOT. INDOT also provides on-site maintenance assistance and training through

the Rural Transit Assistance Program (RTAP), which is explained later in this manual.

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**Attachment II-1:**

**Indiana Code 36-9-4**

**Urban Mass Transportation Systems; Public Transportation Corporations**

## IC 36-9-4

### Chapter 4. Urban Mass Transportation Systems; Public Transportation Corporations

#### IC 36-9-4-1

Sec. 1. This chapter applies to all municipalities.

*As added by Acts 1981, P.L.309, SEC.77.*

#### IC 36-9-4-2

Sec. 2. For purposes of this chapter, the "management" of an urban mass transportation system is:

- (1) the board of directors, for a corporation;
- (2) the majority of the partners, for a partnership in which the partners have equal rights in the management and control of the partnership business;
- (3) the partners having a controlling interest, for other partnerships;
- (4) the proprietor, for an individual proprietorship; or
- (5) the managers, if any, or members of a limited liability company.

*As added by Acts 1981, P.L.309, SEC.77. Amended by P.L.8-1993, SEC.518.*

#### IC 36-9-4-3

Sec. 3. The establishment of an urban mass transportation system under this chapter is a public use and purpose for which public money may be spent and private property may be acquired.

*As added by Acts 1981, P.L.309, SEC.77.*

#### IC 36-9-4-4

Sec. 4. (a) If the management of an urban mass transportation system in any municipality finds that the system is unable to render adequate service within the municipality or that there is imminent danger that the system will be unable to render that service, the management of the system may apply to the municipal legislative body for assistance under this chapter.

(b) On receipt of an application under subsection (a) the municipal legislative body may study whether the financial position of the transportation system is such that the system is unable to render adequate service within the municipality or that there is imminent danger that the system will be unable to render that service. The legislative body shall pay for these studies by appropriation from the general fund of the municipality, and the money need not be restored to the general fund.

*As added by Acts 1981, P.L.309, SEC.77.*

#### IC 36-9-4-5

Sec. 5. (a) The municipal legislative body may furnish the urban mass transportation system with the financial assistance necessary to enable the system to provide adequate service within the municipality, if the legislative body finds:

- (1) that the system is unable to render that service or that there is imminent danger that the system will be unable to render that service; and
- (2) that the system is:
  - (A) necessary to relieve traffic congestion in the municipality;
  - (B) necessary for the proper use of the factories, stores, warehouses, offices, schools, recreational facilities, and other places where members of the general public congregate;
  - (C) necessary to expand the economic and social opportunities available to residents of the municipality, especially those who cannot freely move about without the services of the system;
  - (D) a substantial factor in maintaining real property values in the municipality; or
  - (E) a substantial factor in providing public housing, redevelopment of blighted areas, and publicly owned off-street parking facilities.

(b) The municipal legislative body may furnish assistance under this section by:

- (1) making grants to the system;
- (2) purchasing buses or real property from the system or from any other source for lease to the system; or
- (3) making both grants and purchases.

*As added by Acts 1981, P.L.309, SEC.77.*

**IC 36-9-4-6**

Sec. 6. (a) If the municipal legislative body decides to make grants under section 5 of this chapter, it must enter into and confirm by ordinance a contract with the urban mass transportation system. The contract must provide for the payment of money by the municipality to the system in the amounts and at the times determined by the parties, and may include other terms and conditions determined by the parties. However, the contract may not:

- (1) require the system to repay the grants to the municipality;
- (2) exceed ten (10) years in duration; or
- (3) require the municipality to make grants to a system that has ceased operations within the municipality.

(b) The municipal legislative body may pay the grants by appropriation from the general fund of the municipality or from a special fund established for that purpose.

*As added by Acts 1981, P.L.309, SEC.77.*

**IC 36-9-4-7**

Sec. 7. (a) If the municipal legislative body decides to purchase buses or real property, or both, from the urban mass transportation system under section 5 of this chapter, it must enter into and confirm by ordinance a contract and lease requiring the municipality to:

- (1) purchase all or part of:
  - (A) the buses operated by the system; or
  - (B) the real property owned by the system; as determined by the parties; and
- (2) lease the buses or property purchased to the system for use in providing mass transportation within the municipality.

(b) The municipality must pay the system a sum equal to the fair value of the buses or real property purchased, less the amount outstanding under any mortgage, contract of sale, or other security device that may attach to the buses or real property. The municipality may immediately pay off any such outstanding amount or assume any such mortgage, contract of sale, or other security device.

(c) The fair value of the buses or real property shall be determined by three (3) appraisers experienced in the appraisal of buses or real property. One (1) of the appraisers shall be appointed by the municipality and one (1) by the system. These two (2) appraisers shall then appoint a third appraiser. However, if they are unable to do so, each shall submit the names of three (3) appraisers to the circuit court for the county in which the municipality is located and the court shall appoint the third appraiser from the names submitted.

(d) If the municipal legislative body decides to purchase both buses and real property for lease to an urban mass transportation system, three (3) appraisers shall be appointed to determine the fair value of the buses and an additional three (3) appraisers shall be appointed to determine the fair value of the real property. Each group of three (3) appraisers shall be appointed in the manner prescribed by subsection (c).

(e) Before making their appraisal, the appraisers must appear before the clerk of the legislative body and take an oath to make a just and true appraisal of the buses or real property.

(f) A lease of buses or real property by a municipality to a system under this section must incorporate provisions for rental and other terms and provisions that the municipal legislative body considers necessary under this chapter. The municipality and the system may enter into additional contracts and leases during the term of the lease. The term of a lease of buses under this section may not exceed twenty-five (25) years.

*As added by Acts 1981, P.L.309, SEC.77. Amended by Acts 1981, P.L.317, SEC.1.*

**IC 36-9-4-8**

Sec. 8. (a) If, under section 5 of this chapter, the municipal legislative body decides to purchase buses or real property, or both, for the urban mass transportation system from a source other than the system, it must enter into and confirm by ordinance a contract and lease requiring the municipality to:

- (1) purchase the buses or real property; or
- (2) lease the buses or property purchased to the system for use in providing mass transportation within the municipality.

(b) A lease of buses or real property by a municipality to a system under this section must incorporate provisions for rental and other terms and provisions that the municipal legislative body considers necessary under this chapter. The municipality and the system may enter into additional contracts and leases during the term of the lease. The term of a lease of buses under this section may not exceed twenty-five (25) years.

(c) The purchase of buses under this section is governed by the general statutes governing public purchases.

*As added by Acts 1981, P.L.309, SEC.77. Amended by Acts 1981, P.L.317, SEC.2.*

#### **IC 36-9-4-9**

Sec. 9. (a) If the management of an urban mass transportation system in any municipality finds that public acquisition of the system is necessary to enable the system to render adequate service within the municipality, the management of the system may request the municipal legislative body to determine whether the public should acquire the system. The management may withdraw this request only if:

- (1) at least six (6) months have passed since the date of the request; and
- (2) the municipal legislative body did not adopt an ordinance to acquire the system within six (6) months from the date of the request.

(b) On receipt of the request, the municipal legislative body shall study whether it is in the public interest that the public acquire the system. The legislative body shall pay for these studies by an appropriation from the general fund of the municipality, which need not be restored to the general fund.

*As added by Acts 1981, P.L.309, SEC.77.*

#### **IC 36-9-4-10**

Sec. 10. (a) If, as a result of its studies under section 9 of this chapter, the municipal legislative body finds that public acquisition of the system would fulfill one (1) or more of the conditions listed in section 5(a)(2) of this chapter, it may adopt an ordinance:

- (1) declaring that public acquisition of the system is in the public interest of the municipality;
- (2) providing for the creation of a public transportation corporation;
- (3) specifying the number of directors of the corporation; and
- (4) setting forth the boundaries of the taxing district of the corporation.

(b) The taxing district set forth in the ordinance may include only:

- (1) all territory inside the corporate boundaries of the municipality; and
- (2) the suburban territory, as defined in IC 36-9-1-9, that is served by the system at the time of acquisition.

*As added by Acts 1981, P.L.309, SEC.77. Amended by P.L.348-1983, SEC.2.*

#### **IC 36-9-4-11**

Sec. 11. (a) The legislative body of a municipality may study whether it is in the public interest that a system be established and maintained under this chapter by the municipality. The legislative body shall pay for these studies by an appropriation from the general fund of the municipality, which need not be restored to the general fund.

(b) If the legislative body finds as a result of its studies that the establishment and maintenance of a system would fulfill any one (1) or more of the conditions listed in section 5(a)(2) of this chapter, it may adopt an ordinance specifying the conditions that are fulfilled. The legislative body may then:

- (1) enter into a contract to make grants-in-aid to a system that will serve the municipality, under section 6 of this chapter;
- (2) enter into a contract to purchase buses and real property for lease to a system that will serve the municipality, under section 7 or 8 of this chapter; or
- (3) establish a public transportation corporation, under section 10 of this chapter.

*As added by Acts 1981, P.L.309, SEC.77. Amended by Acts 1982, P.L.217, SEC.1.*

#### **IC 36-9-4-12**

Sec. 12. A public transportation corporation is a separate municipal corporation, which shall be known as "\_\_\_\_\_ Public Transportation Corporation" (designating the name of the municipality).

*As added by Acts 1981, P.L.309, SEC.77.*

**IC 36-9-4-13**

Sec. 13. (a) After the creation of a public transportation corporation, territory may be added to the taxing district of the corporation only in accordance with this section.

(b) If the municipality finalizes an annexation or disannexation of territory, the boundaries of the taxing district of the corporation change so as to remain coterminous with the new boundaries of the municipality. Such a change takes effect when the annexation or disannexation takes effect.

(c) Upon written request by a majority of:

- (1) the resident freeholders in a platted subdivision; or
- (2) the owners of any unplatted lands;

in the same county as a public transportation corporation but not within a municipality, the board of directors of the corporation may, by resolution, incorporate all or part of the platted subdivision or unplatted lands into the taxing district. Such a request must be signed and certified as correct by the resident freeholders or landowners making the request, and the original must be preserved in the records of the board. The resolution of the board incorporating an area into the taxing district must be in writing and must include an accurate description of that area. A certified copy of the resolution, signed by the chairman and secretary of the board, together with a map showing the boundaries of the taxing district and the location of the additional areas, shall be delivered to the auditor of the county within which the corporation is located and shall be properly indexed and kept in the permanent records of the offices of the auditor.

(d) Upon written request by ten (10) or more resident freeholders of a platted subdivision or unplatted territory in the same county as a public transportation corporation but not within a municipality, the board of directors of the corporation may define the limits of an area that:

- (1) is within the county;
- (2) includes the property of the freeholders; and
- (3) is to be considered for incorporation into the taxing district.

Notice of the defining of the area by the board, and notice of the location and limits of the area, must be given by publication in accordance with IC 5-3-1. The area may then be incorporated into the taxing district upon request, in the manner prescribed by subsection (c).

(e) Property in territory added to the taxing district under subsection (c) or (d) is, as a condition of the special benefits it subsequently receives, liable for its proportion of all taxes subsequently levied by the public transportation corporation. The proportion of taxation shall be determined in the same manner as when territory is annexed by a municipality.

*As added by Acts 1981, P.L.309, SEC.77. Amended by Acts 1981, P.L.45, SEC.37; P.L.348-1983, SEC.3.*

**IC 36-9-4-13.5**

Sec. 13.5. (a) This section applies to a county having a population of more than two hundred thousand (200,000) but less than three hundred thousand (300,000).

(b) The taxing district of a public transportation corporation under this section includes all the territory inside the corporate boundaries of the two (2) cities in the county having the largest populations and such suburban territory as provided in section 13 of this chapter.

(c) This section applies upon the adoption of substantially identical ordinances approving subsection (b) by both:

- (1) the public transportation corporation incorporating the additional territory; and
- (2) the legislative body of the city being added to the taxing district of the public transportation corporation.

(d) Whenever the city in the county having the second largest population becomes a part of the public transportation corporation, then two (2) additional directors representing that city shall be appointed to the board of directors of the corporation. The directors must be residents of that city and are entitled to all of the rights, privileges, powers, and duties of directors under this chapter. The executive and the legislative body of that city shall each appoint one (1) director. These two (2) directors must not be of the same political party. The director appointed by the legislative body shall serve for a term of one (1) year, and the director appointed by the executive shall serve for a term of two (2) years. Upon the

expiration of the respective terms, successors shall be appointed in accordance with section 18 of this chapter.

(e) If the city in the county having the second largest population appropriates money to support the public transportation corporation in a particular year, and if the territory of that city subsequently becomes a part of the taxing district of the public transportation corporation in that year and is subject to a separate property tax levy for transportation services, the maximum permissible levy of that city for the year following the particular year used to compute the property tax levy limit under IC 6-1.1-18.5 is decreased, and the maximum permissible levy of the public transportation corporation for the particular year used to compute the property tax levy limit under IC 6-1.1-18.5 is increased, by an amount equivalent to the current contract amount to be paid by that city to the public transportation corporation for transportation services provided to that city in the particular year.

(f) The public transportation corporation shall establish a single property tax rate applicable to the taxing district of the public transportation corporation, including the territory of the city in the county having the second largest population that is included in the public transportation corporation under this section. The initial permissible levy to be raised by this rate equals the sum of the amount raised by the levy of the public transportation corporation in the previous taxable year plus an amount equivalent to the current contract amount to be paid in the calendar year 1982 by the city in the county having the second largest population to the public transportation corporation. The permissible levy for the subsequent years shall be computed in accordance with IC 6-1.1-18.5.

(g) If the city in the county having the second largest population is excluded from the public transportation corporation in a subsequent year, and that city is no longer subject to a separate property tax levy for transportation services, the maximum permissible levy of the public transportation corporation for that subsequent year used to compute the property tax levy limit under IC 6-1.1-18.5 is decreased, and the maximum permissible levy of that city for that subsequent year used to compute the property tax levy limit under IC 6-1.1-18.5 is increased, by the amount of the product of the public transportation property tax rate for that subsequent year multiplied by the assessed value in that subsequent year of all taxable property in that city that is excluded from the public transportation corporation.

*As added by Acts 1981, P.L.186, SEC.2. Amended by P.L.73-1983, SEC.20; P.L.12-1992, SEC.177.*

#### **IC 36-9-4-14**

Sec. 14. (a) A public transportation corporation is under the control of a board of directors, which shall exercise the executive and legislative powers of the corporation.

(b) Directors must be residents of the taxing district of the corporation.

*As added by Acts 1981, P.L.309, SEC.77.*

#### **IC 36-9-4-15**

Sec. 15. (a) The board of directors of a public transportation corporation in a city consists of either five (5) or seven (7) directors, as determined by the city legislative body.

(b) If the board of directors consists of five (5) directors, they are:

(1) two (2) directors appointed by the city executive, for terms of one (1) and two (2) years, respectively; and

(2) three (3) directors appointed by the city legislative body, for terms of two (2), three (3), and four (4) years, respectively.

(c) If the board of directors consists of seven (7) directors, they are:

(1) three (3) directors appointed by the city executive, for terms of one (1), two (2), and three (3) years, respectively; and

(2) four (4) directors appointed by the city legislative body, for terms of one (1), two (2), three (3), and four (4) years, respectively.

*As added by Acts 1981, P.L.309, SEC.77. Amended by Acts 1981, P.L.317, SEC.3.*

#### **IC 36-9-4-16**

Sec. 16. (a) The board of directors of a public transportation corporation in a town consists of either five (5) or seven (7) directors, as determined by the town legislative body. All the directors shall be appointed by the legislative body.

(b) If the board of directors consists of five (5) directors, they are:

- (1) one (1) director appointed for a term of one (1) year;
- (2) two (2) directors appointed for terms of two (2) years;
- (3) one (1) director appointed for a term of three (3) years; and
- (4) one (1) director appointed for a term of four (4) years.

(c) If the board of directors consists of seven (7) directors, they are:

- (1) two (2) directors appointed for terms of one (1) year;
- (2) two (2) directors appointed for terms of two (2) years;
- (3) two (2) directors appointed for terms of three (3) years; and
- (4) one (1) director appointed for a term of four (4) years.

*As added by Acts 1981, P.L.309, SEC.77. Amended by Acts 1981, P.L.317, SEC.4.*

#### **IC 36-9-4-17**

Sec. 17. The appointing authorities shall make appointments to the board of directors under section 15 or 16 of this chapter so that the number of directors belonging to either of the two (2) major political parties does not exceed the number belonging to the other by more than one (1). If the appointing authorities cannot agree on the manner in which this will be done, the municipal executive shall make the appointment that results in one (1) party having more directors than the other.

*As added by Acts 1981, P.L.309, SEC.77.*

#### **IC 36-9-4-18**

Sec. 18. (a) On the expiration of the term of office of a director of a public transportation corporation, the appointing authority shall appoint a director for a term of four (4) years and until his successor is appointed and qualified.

(b) If a director leaves office before his term has expired, the appointing authority shall appoint a new director to serve the remainder of the term.

*As added by Acts 1981, P.L.309, SEC.77.*

#### **IC 36-9-4-19**

Sec. 19. A director of a public transportation corporation may be impeached under IC 5-8-1.

*As added by Acts 1981, P.L.309, SEC.77.*

#### **IC 36-9-4-20**

Sec. 20. A director of a public transportation corporation is entitled to:

- (1) compensation of not more than one thousand two hundred dollars (\$1,200) annually, as determined in the budget; and
- (2) reimbursement for any expenses incurred in the interest of the board of directors.

*As added by Acts 1981, P.L.309, SEC.77.*

#### **IC 36-9-4-21**

Sec. 21. On the first day of the first month after their appointment, and annually after that, the directors of a public transportation corporation shall elect one (1) director as chairman of the board and one (1) director as secretary.

*As added by Acts 1981, P.L.309, SEC.77.*

#### **IC 36-9-4-22**

Sec. 22. (a) The board of directors of a public transportation corporation shall, by rule, provide for regular meetings to be held at designated intervals throughout the year.

(b) The board shall convene in a special meeting whenever such a meeting is called by the chairman or by a majority of the directors. Notice of a special meeting must be given by publication in accordance with IC 5-3-1.

(c) The board shall keep its meetings open to the public.

*As added by Acts 1981, P.L.309, SEC.77. Amended by Acts 1981, P.L.45, SEC.38.*

#### **IC 36-9-4-23**

Sec. 23. (a) A majority of the board of directors of a public transportation corporation constitutes a quorum for a meeting.

(b) The board may act officially by affirmative vote of a majority of those present at the meeting at which the action is taken.

(c) The board shall keep a written record of its proceedings available for public inspection in its office. The record must include the aye and nay vote on the passage of each item of business.

(d) The board shall adopt rules of procedure under which its meetings are to be held. The board may suspend these rules by unanimous vote of the members present at any meeting, but it may not suspend them beyond the meeting at which the suspension occurs.

(e) The board has the same power to supervise its internal affairs as other municipal administrative bodies.

*As added by Acts 1981, P.L.309, SEC.77.*

#### **IC 36-9-4-24**

Sec. 24. (a) A director of a public transportation corporation may introduce a proposed draft of an ordinance at a meeting of the board of directors. A director who introduces a proposed draft of an ordinance must provide, at the time of introduction, a written copy of the proposed draft. The board must place the date of introduction and a distinguishing number on each proposed draft of an ordinance.

(b) The board must publish a notice that the proposed ordinance is pending final action by the board. The notice must be published in accordance with IC 5-3-1. However, notice of an ordinance establishing a budget must be given in accordance with the statutes governing budgets of the municipality served by the corporation.

(c) The board must include in the notice reference to the subject matter of the proposed ordinance and the time and place a hearing on it will be held, and must indicate that the proposed draft of an ordinance is available for public inspection at the office of the board. The board may include in one (1) notice a reference to the subject matter of each draft of an ordinance that is pending and for which notice has not previously been given. The reference to the subject matter is adequate if it is sufficient to advise the public of the general subject matter of the proposed ordinance.

(d) The board must, not later than the date of notice of the introduction of a proposed ordinance, place five (5) copies of the proposed draft on file in the office of the board for public inspection.

*As added by Acts 1981, P.L.309, SEC.77. Amended by Acts 1981, P.L.45, SEC.39.*

#### **IC 36-9-4-25**

Sec. 25. (a) At a meeting for which notice has been given under section 24 of this chapter, the board of directors of a public transportation corporation may take final action on the proposed ordinance or may postpone final consideration of it to a designated meeting in the future without giving additional notice. Before adopting an ordinance, the board must give an opportunity to any person present at the meeting to give testimony or evidence for or against the proposed ordinance, under the rules as to the number of persons who may be heard and the time limits adopted by the board.

(b) Whenever the board adopts an ordinance, it shall designate the effective date of the ordinance at the same meeting. If the board fails to designate the effective date of the ordinance in the record of the proceedings of the board, the ordinance takes effect fourteen (14) days after its passage.

(c) Whenever the board adopts an ordinance, it shall cause copies of the ordinance to be made available to the public.

*As added by Acts 1981, P.L.309, SEC.77.*

#### **IC 36-9-4-26**

Sec. 26. The board of directors of a public transportation corporation may provide for the printing of all or part of the ordinances of the corporation in pamphlet form or in bound volumes, and may distribute them without charge or may charge the cost of printing and distribution.

*As added by Acts 1981, P.L.309, SEC.77.*

#### **IC 36-9-4-27**

Sec. 27. (a) The board of directors of a public transportation corporation shall appoint a qualified person to serve as controller. The controller is the chief fiscal officer of the corporation, and he must give

bond in the sum and with the conditions prescribed by the board and with surety to the approval of the board.

(b) All money payable to the public transportation corporation shall be paid to the controller, and he shall deposit it under IC 5-13-6. The controller shall deposit this money in the depositories and in the accounts that the board designates by ordinance.

(c) The controller shall keep an accurate account of all appropriations made and all taxes levied by the public transportation corporation, all money owing or due to the corporation, and all money received and disbursed by the corporation, and he shall preserve all vouchers for payments and disbursements.

(d) The controller shall issue all warrants for the payment of money from the funds of the public transportation corporation, but he may not issue a warrant for the payment of a claim until the claim has been allowed in accordance with the procedure prescribed by the rules of the board. All warrants must be countersigned by the chairman of the board.

(e) If the controller is called upon to issue a warrant, he may require evidence that the amount claimed is justly due, and for that purpose he may summon before him any officer, agent, or employee of the public transportation corporation and examine him on oath or affirmation relating to the warrant. The controller may administer the oath or affirmation.

(f) Notwithstanding subsections (d) and (e), the board may authorize the controller to pay a per diem in advance to a public transportation employee or board member who will attend a training session or other special business meeting required as a duty of the public transportation employee or board member.

(g) Each year, and more often if required by the board, the controller shall submit his records of account as controller for audit to the certified public accountant or firm of certified public accountants designated by the board. The certified public accountant or firm of certified public accountants shall submit to the board a certified report of the records of account, exhibiting the revenues, receipts, and disbursements, the sources from which the revenues and funds are derived, and the manner in which they have been disbursed.

*As added by Acts 1981, P.L.309, SEC.77. Amended by P.L.19-1987, SEC.53; P.L.327-1995, SEC.2.*

#### **IC 36-9-4-28**

Sec. 28. (a) The board of directors of the public transportation corporation and the management of the urban mass transportation system shall negotiate for the purchase of all the real and personal property, licenses, rights, and interests of the system by the corporation, unless the system shows that part of its property is not necessary for the proper operation of the system.

(b) If the parties agree upon the terms and conditions of the purchase, the board shall adopt an ordinance incorporating those terms and conditions.

(c) If the parties cannot agree upon the terms and conditions of the purchase, the board may adopt an ordinance directing the acquisition of the property that has been the subject of the negotiations through eminent domain proceedings under section 32 of this chapter.

*As added by Acts 1981, P.L.309, SEC.77.*

#### **IC 36-9-4-29**

Sec. 29. (a) Upon acquisition of the necessary property by a public transportation corporation, the board of directors of the corporation may:

- (1) operate and maintain the system;
- (2) lease the system to any operator; or
- (3) contract for the use of the system by any operator.

(b) The board may also contract with any organization that has executive personnel with experience and skill applicable to the superintendence of the operation and maintenance of an urban mass transportation system. The contract must require the organization to furnish its services and the services of its personnel for the superintendence of the system.

(c) The maximum term of a contract or lease executed under this section is twenty-five (25) years.

(d) A contract or lease executed under this section must be confirmed by ordinance of the board.

*As added by Acts 1981, P.L.309, SEC.77. Amended by Acts 1981, P.L.317, SEC.5.*

#### **IC 36-9-4-29.4**

Sec. 29.4. (a) This section does not apply to a public transportation corporation located in a county having a consolidated city.

(b) A public transportation corporation may provide regularly scheduled passenger service to specifically designated locations outside the system's operational boundaries as described in IC 36-9-1-9 if all of the following conditions are met:

- (1) The legislative body of the municipality approves any expansion of the service outside the municipality's corporate boundaries.
- (2) The expanded service is reasonably required to do any of the following:
  - (A) Enhance employment opportunities in the new service area or the existing service area.
  - (B) Serve the elderly, disabled, or other persons who are in need of public transportation.
- (3) The rates or compensation for the expanded service are sufficient, on a fully allocated cost basis, to prevent a property tax increase in the taxing district solely as a result of the expanded service.
- (4) The expanded service does not extend beyond the boundary of the county in which the corporation is located.
- (5) The corporation complies with sections 29.5 and 29.6 of this chapter.

(c) Notwithstanding section 39 of this chapter, a public transportation corporation may provide demand responsive service outside of the system's operational boundaries as described in IC 36-9-1-9 if the conditions listed in subsection (b) are met.

(d) The board may contract with a private operator for the operation of an expanded service under this section.

*As added by P.L.229-1991, SEC.1.*

#### **IC 36-9-4-29.5**

Sec. 29.5. (a) A public transportation corporation must hold a public hearing concerning proposed expanded service under section 29.4 of this chapter. The corporation must do the following:

- (1) Provide public notice of the hearing as provided in IC 5-3-1.
- (2) Make a good faith effort to deliver written notice of the hearing to all motor carriers that, in the reasonable opinion of the corporation:
  - (A) are authorized to and capable of providing the proposed transportation service; and
  - (B) may desire to provide the proposed transportation service due to geographic or other business related factors.

(b) A corporation must present the following information at a hearing held under subsection (a):

- (1) The specific purpose for the proposed transportation service, including a description of the intended users of the service and the address of the principal office of the users.
- (2) The proposed routes, schedules, rates or compensation, and the commencement date for the transportation service.
- (3) Any other information specifically relating to the proposed expanded service and reasonably required by other potential carriers to evaluate the carrier's ability to provide the proposed service.

(c) A hearing held under subsection (a) must be open to the public and shall be held at a time and place determined by the corporation. The corporation shall accept both written and oral testimony at the hearing.

*As added by P.L.229-1991, SEC.2.*

#### **IC 36-9-4-29.6**

Sec. 29.6. (a) A motor carrier authorized in Indiana to perform the transportation service described at a hearing under section 29.5 of this chapter is eligible to provide the service if the motor carrier does the following:

- (1) Files a written bid not later than ten (10) days after the hearing under section 29.5 of this chapter at the principal office of each intended user of the transportation service. However, a filing is not required under this subdivision if the intended user is an unassociated group of individuals or does not have a designated principal office.
- (2) Agrees in the bid to perform the transportation service in accordance with the routes, schedules, rates or compensation, commencement date, and other specific terms as proposed by the corporation under section 29.5(b) of this chapter.
- (3) Delivers a copy of the motor carrier's bid to the corporation within ten (10) days after the hearing under section 29.5 of this chapter.

(b) A bid complies with subsection (a)(2) if the transportation service contained in the bid substantially conforms with all of the terms proposed by the corporation under section 29.5(b) of this chapter and the service is reasonably designed to meet the specific needs of the intended users of the service.

(c) A corporation may provide the proposed expanded service described in section 29.5(b) of this chapter without further notice or hearing only if either of the following conditions exists:

(1) No bids in compliance with subsection (a) are received by the corporation within the time period provided in subsection (a).

(2) A motor carrier, having complied with subsection (a):

(A) fails to commence the transportation service by the later of:

(i) sixty (60) days after the hearing under subsection (a); or

(ii) the commencement date for the service as proposed by the corporation under section 29.5(b)(2) of this chapter; or

(B) fails to implement or perform the transportation service in strict compliance with the corporation's bid under subsection (a) and the failure continues for thirty (30) days after receipt of a written notice of noncompliance from the corporation.

*As added by P.L.229-1991, SEC.3.*

#### **IC 36-9-4-30**

Sec. 30. The board of directors of a public transportation corporation may:

(1) acquire by grant, purchase, gift, lease, or otherwise; and

(2) hold, use, sell, lease, or dispose of;

real and personal property, licenses, patents, rights, and interests necessary or convenient for the exercise of its powers under this chapter.

*As added by Acts 1981, P.L.309, SEC.77.*

#### **IC 36-9-4-31**

Sec. 31. The board of directors of a public transportation corporation may adopt a seal to be impressed upon its instruments and may provide for the impression of that seal by printed or lithographic facsimile. An executed instrument bearing the seal of the board is prima facie evidence of its execution by the board and that its execution was legally authorized by the board.

*As added by Acts 1981, P.L.309, SEC.77.*

#### **IC 36-9-4-32**

Sec. 32. The board of directors of a public transportation corporation may exercise the power of eminent domain for the condemnation of any interest in real or personal property for use within the taxing district of the corporation. Proceedings for the condemnation of property by the board are governed by IC 32-11-1 to the extent it is not in conflict with this chapter. The board may not institute such proceedings until it has adopted an ordinance generally describing the property to be acquired, declaring that the public interest and necessity require the acquisition by the corporation of the property involved, and declaring that the acquisition is necessary for the establishment, development, extension, or improvement of the system. The ordinance is conclusive evidence of the public necessity of the proposed acquisition and that the proposed acquisition is planned in a manner most compatible with the greatest public good and the least private injury.

*As added by Acts 1981, P.L.309, SEC.77.*

#### **IC 36-9-4-33**

Sec. 33. The board of directors of a public transportation corporation may contract with any person upon the terms and conditions the board considers best for the corporation including the following:

(1) Contracting for self-insurance protection of its property or liability under IC 34-4-16.5.

(2) Engaging in commissions or entering into agreements for the mutual insurance or sharing of risks for liability or property damage.

(3) Agreeing to join with other municipal corporations for the mutual risk sharing of losses due to casualty or acts of God.

*As added by Acts 1981, P.L.309, SEC.77. Amended by P.L.353-1987, SEC.1.*

**IC 36-9-4-34**

Sec. 34. The board of directors of a public transportation corporation may enter into agreements with any urban mass transportation system operating in territory contiguous to the taxing district of the corporation, for:

- (1) the operation and maintenance of that system, including the use, sale, or lease of the real and personal property necessary for operation of the system; or
- (2) the transfer of passengers between that system and the system owned by the corporation, with a special rate to be charged for those passengers.

*As added by Acts 1981, P.L.309, SEC.77.*

**IC 36-9-4-35****IC 36-9-4-35.1**

Sec. 35.1. The board of directors of a public transportation corporation shall, by ordinance, make rules governing the use, operation, and maintenance of the urban mass transportation system. The board may determine all rates, routings, and hours and standards of service and may change them whenever the board considers a change advisable. However, the board's powers under this section are subject to regulation by the department of state revenue as provided by section 58 of this chapter.

*As added by P.L.1-1990, SEC.369.*

**IC 36-9-4-36**

Sec. 36. The board of directors of a public transportation corporation may, in the name of the corporation, sue or be sued in court. Service of process shall be made by service upon the secretary of the board, and notice must be served upon the secretary in the manner and form required by IC 34-4-16.5.

*As added by Acts 1981, P.L.309, SEC.77.*

**IC 36-9-4-37**

Sec. 37. (a) The board of directors of a public transportation corporation may appoint or employ a general manager, accountants, attorneys, traffic engineers, drivers, clerks, secretaries, guards, laborers, and other employees, and may prescribe and define their duties, regulate their compensation, discharge them, and appoint or employ their successors. Employees shall be selected without regard to race, religion, or any personal affiliation. The board shall select the general manager on the basis of his fitness for the position, taking into account his executive ability and his knowledge of and experience in the field of mass public transportation.

(b) The board shall bargain collectively and enter into written contracts with authorized labor organizations representing employees other than executive, administrative, or professional personnel. These contracts may provide for the binding arbitration of disputes, wages, salaries, hours, working conditions, health and welfare, insurance, vacations, holidays, sick leave, seniority, pensions, retirement, and other benefits.

*As added by Acts 1981, P.L.309, SEC.77.*

**IC 36-9-4-38**

Sec. 38. The board of directors of a public transportation corporation may make traffic surveys, population surveys, and any other surveys and studies it considers useful in the operation of urban mass transportation systems.

*As added by Acts 1981, P.L.309, SEC.77.*

**IC 36-9-4-39**

Sec. 39. The board of directors of a public transportation corporation may establish and operate a "demand-responsive" or "dial-a-ride" transportation system as a part of its urban mass transportation system within the taxing district of the corporation. The rates and charges for the system and all related criteria are at the sole discretion of the board.

*As added by Acts 1981, P.L.309, SEC.77.*

**IC 36-9-4-40**

Sec. 40. The board of directors of a public transportation corporation may carry out the purposes of the corporation.

*As added by Acts 1981, P.L.309, SEC.77.*

**IC 36-9-4-41**

Sec. 41. (a) Whenever a public transportation corporation acquires an urban mass transportation system under this chapter, the employees of the system must be protected as follows:

- (1) The employees of the system must be retained to the fullest extent consistent with sound management, and those terminated or laid off must be assured priority of reemployment.
- (2) The individual employees must be retained in positions the same as, or no worse than, their positions before the acquisition of the system.
- (3) The rights, privileges, and benefits of the employees under any collective bargaining agreement are not affected, and the corporation shall assume the duties of the system under the agreement.
- (4) The rights, privileges, and benefits of the employees under any pension or retirement plan are not affected, and the corporation shall assume the duties of the system under the plan.

(b) If a public transportation corporation acquires and leases an urban mass transportation system, or enters into a contract for the operation of the system under this chapter, the lease or contract must provide for compliance with subsection (a).

*As added by Acts 1981, P.L.309, SEC.77.*

**IC 36-9-4-42**

Sec. 42. (a) A municipality or a public transportation corporation that expends money for the establishment or maintenance of an urban mass transportation system under this chapter may acquire the money for these expenditures:

- (1) by issuing bonds under section 43 or 44 of this chapter;
- (2) by borrowing money made available for such purposes by any source;
- (3) by accepting grants or contributions made available for such purposes by any source;
- (4) in the case of a municipality, by appropriation from the general fund of the municipality, or from a special fund that the municipal legislative body includes in the municipality's budget; or
- (5) in the case of a public transportation corporation, by levying a tax under section 49 of this chapter or by recommending an election to use revenue from the county option income taxes, as provided in subsection (c).

(b) Money may be acquired under this section for the purpose of exercising any of the powers granted by or incidental to this chapter, including:

- (1) studies under section 4, 9, or 11 of this chapter;
- (2) grants in aid;
- (3) the purchase of buses or real property by a municipality for lease to an urban mass transportation system, including the payment of any amount outstanding under a mortgage, contract of sale, or other security device that may attach to the buses or real property;
- (4) the acquisition by a public transportation corporation of property of an urban mass transportation system, including the payment of any amount outstanding under a mortgage, contract of sale, or other security device that may attach to the property;
- (5) the operation of an urban mass transportation system by a public transportation corporation, including the acquisition of additional property for such a system; and
- (6) the retirement of bonds issued and outstanding under this chapter.

(c) This subsection applies only to a public transportation corporation located in a county having a consolidated city. In order to provide revenue to a public transportation corporation during a year, the public transportation corporation board may recommend and the county fiscal body may elect to provide revenue to the corporation from part of the certified distribution, if any, that the county is to receive during that same year under IC 6-3.5-6-17. To make the election, the county fiscal body must adopt an ordinance before September 1 of the preceding year. The county fiscal body must specify in the ordinance the amount of the certified distribution that is to be used to provide revenue to the corporation. If such an ordinance is adopted, the county fiscal body shall immediately send a copy of the ordinance to the county auditor.

*As added by Acts 1981, P.L.309, SEC.77. Amended by P.L.84-1987, SEC.15; P.L.5-1988, SEC.221.*

**IC 36-9-4-43**

Sec. 43. If the legislative body of a municipality decides to issue bonds to obtain all or part of the money to be expended for the establishment and maintenance of an urban mass transportation system under this chapter, the legislative body may issue the bonds of the municipality in the same manner as bonds for the general purposes of the municipality. However, the bonds may be sold to the federal government at private sale and without a public offering.

*As added by Acts 1981, P.L.309, SEC.77.*

**IC 36-9-4-44**

Sec. 44. (a) If the board of directors of a public transportation corporation decides to issue bonds to obtain all or part of the money to be expended for the establishment and maintenance of an urban mass transportation system under this chapter, the board shall adopt an ordinance directing the issuance of the bonds. The board shall certify a copy of the ordinance to the controller of the corporation, who shall then prepare the bonds.

(b) The bonds must be executed by the chairman of the board and attested by the controller of the corporation.

(c) The controller is responsible for the sale of the bonds.

(d) Except as otherwise provided in this section, the bonds shall be issued in the same manner as bonds for the general purposes of the municipality served by the public transportation corporation. However, the bonds may be sold to the federal government at private sale and without a public offering.

(e) In addition to the general power to issue bonds for the establishment and maintenance of a system, the board may issue bonds specifically:

- (1) for the payment of any judgment against the corporation; and
- (2) to establish or maintain a program of self-insurance or mutual insurance.

*As added by Acts 1981, P.L.309, SEC.77. Amended by Acts 1981, P.L.317, SEC.6; P.L.353-1987, SEC.2.*

**IC 36-9-4-45**

Sec. 45. (a) Bonds issued under this chapter:

- (1) shall be issued in the denomination;
  - (2) are payable over a period not to exceed thirty (30) years from the date of the bonds; and
  - (3) mature;
- as determined by the ordinance authorizing the bond issue.

(b) All bonds issued under this chapter, the interest on them, and the income from them are exempt from taxation to the extent provided by IC 6-8-5-1.

(c) The provisions of IC 6-1.1-20 relating to filing petitions requesting the issuance of bonds and giving notice of those petitions, giving notice of a hearing on the appropriation of the proceeds of the bonds, the right of taxpayers to appear and be heard on the proposed appropriation, the approval of the appropriation by the state board of tax commissioners, and the right of taxpayers to remonstrate against the issuance of bonds apply to the issuance of bonds under this chapter.

(d) A suit to question the validity of bonds issued under this chapter or to prevent their issue and sale may not be instituted after the date set for the sale of the bonds, and the bonds are incontestable after that date.

*As added by Acts 1981, P.L.309, SEC.77.*

**IC 36-9-4-46**

Sec. 46. (a) The board of directors of a public transportation corporation that issues bonds under this chapter shall levy a special tax each year upon all the property within the taxing district of the corporation. The tax shall be levied in such a manner as to meet and pay the principal of the bonds as they mature, together with all accruing interest.

(b) The county treasurer shall collect the tax in the same manner as other taxes are collected. As the treasurer collects the tax, he shall remit it to the controller of the public transportation corporation.

(c) In determining the amount of the levy, the board of directors shall consider any surplus of accumulated revenue derived from the operation of the urban mass transportation system, above the sum

considered necessary to be applied upon or reserved for the payment of the operating and capital expenditures of the system, including expenditures for the replacement of and additions to the property of the system and reserves established for the depreciation of the property of the system. If the board finds that this surplus is sufficient, it may apply all or part of the surplus to the payment of the principal of the bonds, together with the interest on them.

*As added by Acts 1981, P.L.309, SEC.77.*

#### **IC 36-9-4-47**

Sec. 47. (a) The board of directors of a public transportation corporation may:

(1) borrow money in anticipation of receipt of the proceeds of taxes that have been levied by the board and have not yet been collected; and

(2) evidence this borrowing by issuing warrants of the corporation.

The money that is borrowed may be used by the corporation for payment of principal and interest on its bonds or for payment of current operating expenses.

(b) The warrants:

(1) bear the date or dates;

(2) mature at the time or times on or before December 31 following the year in which the taxes in anticipation of which the warrants are issued are due and payable;

(3) bear interest at the rate or rates and are payable at the time or times;

(4) may be in the denominations;

(5) may be in the forms, either registered or payable to bearer;

(6) are payable at the place or places, either inside or outside Indiana;

(7) are payable in the medium of payment;

(8) are subject to redemption upon the terms, including a price not exceeding par and accrued interest; and

(9) may be executed by the officers of the corporation in the manner;

provided by resolution of the board of directors. The resolution may also authorize the board to pay from the proceeds of the warrants all costs incurred in connection with the issuance of the warrants.

(c) The warrants may be authorized and issued at any time after the board of directors levies the tax or taxes in anticipation of which the warrants are issued.

(d) The warrants may be sold for not less than par value after notice inviting bids has been published in accordance with IC 5-3-1. The board of directors may also publish the notice inviting bids in other newspapers or financial journals.

(e) After the warrants are sold, they may be delivered and paid for at one (1) time or in installments.

(f) The aggregate principal amount of warrants issued in anticipation of and payable from the same tax levy or levies may not exceed eighty percent (80%) of the levy or levies, as the amount of the levy or levies is certified by the state board of tax commissioners, or as is determined by multiplying the rate of tax as finally approved by the total assessed valuation of taxable property within the taxing district of the public transportation corporation as most recently certified by the county auditor.

(g) For purposes of this section, taxes for any year are considered to be levied when the board of directors adopts the ordinance prescribing the tax levies for the year. However, warrants may not be delivered and paid for before final approval of a tax levy or levies by the county board of tax adjustment (or, if appealed, by the state board of tax commissioners) unless the issuance of the warrants has been approved by the state board of tax commissioners.

(h) The warrants and the interest on them are not subject to sections 43 and 44 of this chapter and are payable solely from the proceeds of the tax levy or levies in anticipation of which the warrants were issued. The authorizing resolution must pledge a sufficient amount of the proceeds of the tax levy or levies to the payment of the warrants and the interest.

(i) All actions of the board of directors under this section may be taken by resolution, which need not be published or posted. The resolution takes effect immediately upon its adoption by a majority of the members of the board of directors.

(j) An action to contest the validity of any tax anticipation warrants may not be brought later than ten (10) days after the sale date.

*As added by Acts 1981, P.L.309, SEC.77. Amended by Acts 1981, P.L.187, SEC.2.*

**IC 36-9-4-48a**

*Note: This version of section effective until 3-1-2001. See also following version of this section, effective 3-1-2001.*

Sec. 48. (a) A cumulative transportation fund to provide money for the acquisition of buses and for the planning, establishment, and maintenance of routes and schedules to assist in implementing this chapter may be established under IC 6-1.1-41 by:

(1) the legislative body of a municipality that:

(A) is making grants to an urban mass transportation system; or

(B) has purchased buses for operation under lease by an urban mass transportation system; or

(2) the board of directors of a public transportation corporation.

(b) In addition to other notices required under IC 6-1.1-41, notices of hearings under IC 6-1.1-41 must be given to the following:

(1) the municipal executive, for a tax levy by a municipality; and

(2) the chairman of the board of directors, for a tax levy by a public transportation corporation.

(c) A tax levy to finance the cumulative transportation fund may be levied in compliance with IC 6-1.1-41. The tax levied under this section may not exceed twenty cents (\$0.20) on each one hundred dollars (\$100) of taxable property within the corporate boundaries of the municipality or the taxing district of the public transportation corporation, as the case may be.

*As added by Acts 1981, P.L.309, SEC.77. Amended by Acts 1981, P.L.45, SEC.40; P.L.17-1995, SEC.24.*

*Note: See also following version of this section, effective 3-1-2001.*

**IC 36-9-4-48b**

*Note: This version of section effective 3-1-2001. See also preceding version of this section, effective until 3-1-2001.*

Sec. 48. (a) A cumulative transportation fund to provide money for the acquisition of buses and for the planning, establishment, and maintenance of routes and schedules to assist in implementing this chapter may be established under IC 6-1.1-41 by:

(1) the legislative body of a municipality that:

(A) is making grants to an urban mass transportation system; or

(B) has purchased buses for operation under lease by an urban mass transportation system; or

(2) the board of directors of a public transportation corporation.

(b) In addition to other notices required under IC 6-1.1-41, notices of hearings under IC 6-1.1-41 must be given to the following:

(1) the municipal executive, for a tax levy by a municipality; and

(2) the chairman of the board of directors, for a tax levy by a public transportation corporation.

(c) A tax levy to finance the cumulative transportation fund may be levied in compliance with IC 6-1.1-41. The tax levied under this section may not exceed six and sixty-seven hundredths cents (\$0.0667) on each one hundred dollars (\$100) of taxable property within the corporate boundaries of the municipality or the taxing district of the public transportation corporation, as the case may be.

*As added by Acts 1981, P.L.309, SEC.77. Amended by Acts 1981, P.L.45, SEC.40; P.L.17-1995, SEC.24; P.L.6-1997, SEC.216.*

*Note: See also preceding version of this section, effective until 3-1-2001.*

**IC 36-9-4-49**

Sec. 49. (a) For each year in which it is anticipated that the total amount available to a public transportation corporation will be insufficient to defray the expenses incurred by the corporation, the board of directors of the corporation shall levy a special tax upon all the property within the taxing district of the corporation at the rate required to defray such expenses. The tax must be based upon the budget formulated and filed by the board under this chapter.

(b) The county treasurer shall collect the tax levied under this section in the same manner as other taxes are collected. As the treasurer collects the tax, he shall remit it to the controller of the public transportation corporation.

*As added by Acts 1981, P.L.309, SEC.77.*

**IC 36-9-4-50**

Sec. 50. A municipality that establishes or acquires an urban mass transportation system under this chapter, or a municipality that has a privately owned urban mass transportation system and has received a request from the management of the system, may apply for aid from any federal or state government agency. A municipality acting under this section may:

(1) perform any act or acts lawfully required; or

(2) execute and perform agreements necessary or convenient;

to obtain the aid without limitation by the provisions of this chapter, except that a municipality may not interfere with any right, interest, or part of any other public transportation system without the consent of the other system.

*As added by Acts 1981, P.L.309, SEC.77.*

#### **IC 36-9-4-51**

Sec. 51. (a) The board of directors of a public transportation corporation shall prepare an annual budget for the expenditures of the corporation.

(b) This subsection applies only when a municipality, having operated an urban mass transportation system under a department of municipal government, establishes a public transportation corporation under section 10 of this chapter to maintain that system. The annual operating and maintenance budget for the corporation shall be subject to review and modification by the legislative body of the municipality.

(c) A public transportation corporation may not impose a property tax levy on property that it has not taxed before January 1, 1982, and that lies outside the corporate boundaries of the municipality without the approval of the fiscal body or county council of the county in which the municipality is located.

(d) The budget and any tax levies prepared by the board shall be prepared and submitted at the same time, in the same manner, and with the same notice as is prescribed by IC 6-1.1-17 for the annual budget of the municipality. The county tax adjustment board and the state board of tax commissioners may review the budget and tax levies in the same manner by which they review budgets and tax levies of the municipality.

*As added by Acts 1981, P.L.309, SEC.77. Amended by Acts 1982, P.L.217, SEC.2.*

#### **IC 36-9-4-52**

Sec. 52. Property acquired by a municipality or public transportation corporation under this chapter is exempt from property taxes.

*As added by Acts 1981, P.L.309, SEC.77.*

#### **IC 36-9-4-53**

Sec. 53. The books, accounts, records, and transactions of a public transportation corporation are subject to examination, audit, and supervision by the state board of accounts to the same extent as the books, accounts, records, and transactions of other municipal corporations and their officers and departments. However, in lieu of the system of accounts prescribed by the state board of accounts, a public transportation corporation may maintain its books, accounts, records, and transactions according to the financial accounting and reporting elements system, known as "Project Fare", that is established by the federal Urban Mass Transportation Administration.

*As added by Acts 1981, P.L.309, SEC.77*

#### **IC 36-9-4-54**

Sec. 54. An urban mass transportation system operating under this chapter may be used for the transportation of pupils to and from schools under a contract made with any school corporation having jurisdiction within the taxing district of the public transportation corporation. The system is solely responsible for the bus drivers' employment and actions, but the bus drivers must meet the qualifications for drivers of school buses as provided in IC 20-9.1-3. The buses used for the rendition of service under this section need not meet the requirements of the statutes relating to the construction, equipment, and painting of school buses.

*As added by Acts 1981, P.L.309, SEC.77.*

#### **IC 36-9-4-55**

Sec. 55. Whenever the same urban mass transportation system operates on regularly scheduled routes within two (2) or more municipalities, the legislative bodies of those municipalities may enter into an interlocal cooperation agreement under IC 36-1-7 for the purpose of implementing this chapter upon mutually agreeable terms and conditions. The legislative bodies of the municipalities may adopt a joint ordinance establishing a public transportation corporation encompassing:

- (1) the municipalities; and
- (2) their suburban territory, as defined in IC 36-9-1-9.

*As added by Acts 1981, P.L.309, SEC.77.*

#### **IC 36-9-4-56 Repealed**

*(Repealed by P.L.72-1988, SEC.10.)*

#### **IC 36-9-4-57**

Sec. 57. (a) The board of directors of a public transportation corporation may, by resolution, establish an improvement reserve fund for the purpose of accumulating money over two (2) or more fiscal years for the following:

- (1) The purchase of specified real property.
- (2) The purchase of specified major equipment, including buses.
- (3) The making of improvements to real property owned by the public transportation corporation.

(b) Transfers that are placed in an improvement reserve fund established under this section must be included in the annual budget of the public transportation corporation.

(c) The board of directors of a public transportation corporation may make an expenditure of money from an improvement reserve fund only after:

- (1) holding a public meeting in accordance with section 22 of this chapter;
- (2) the adoption by the board of a resolution under subsection (d); and
- (3) approval by the state board of tax commissioners.

(d) A resolution for expenditure from an improvement reserve fund established under this section must include the following:

- (1) The specific amount of the expenditure.
- (2) The specific use of the expenditure.
- (3) A finding by the board of directors that the proposed use of funds complies with the restrictions under subsection (a).

(e) The money in the improvement reserve fund may not be considered in determining the corporation's property tax levy under this chapter or IC 6-1.1.

(f) The money in the improvement reserve fund at the end of the fiscal year does not revert to the general fund.

*As added by P.L.317-1989, SEC.1.*

#### **IC 36-9-4-58**

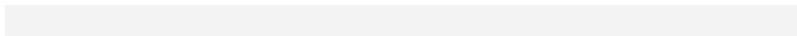
Sec. 58. An urban mass transportation system operating under this chapter is considered a common carrier not operating under a franchise or contract granted by a municipality and not regulated by ordinance, and is subject to the authority of the department of state revenue under IC 8-2.1 to the same extent as any other common carrier. However, in determining the reasonableness of the fares and charges of such a system, the department of state revenue shall consider, among other factors, the policy of this chapter to foster and assure the development and maintenance of urban mass transportation systems, and it is not necessary that the operating revenues of the system be sufficient to cover the cost to the system of providing adequate service.

*As added by P.L.99-1989, SEC.36.*

**Attachment II-2:**

**Indiana Code 36-9-3**

**Regional Transportation Authorities**



**IC 36-9-3**  
**Chapter 3. Regional Transportation Authorities**

**C 36-9-3**

Chapter 3. Regional Transportation Authorities

**IC 36-9-3-1 Application of chapter** Sec. 1. This chapter applies to all counties and municipalities. *As added by Acts 1981, P.L.309, SEC.76. Amended by P.L.235-1997, SEC.2.*

**IC 36-9-3-2 Establishment of authority; name** Sec. 2. (a) A fiscal body of a county or municipality may, by ordinance, establish a regional transportation authority (referred to as "the authority" in this chapter) for the purpose of acquiring, improving, operating, maintaining, financing, and generally supporting a public transportation system that operates within the boundaries of an area designated as a transportation planning district by the Indiana department of transportation. However, only one (1) public transportation authority may be established within an area designated as a transportation planning district by the Indiana department of transportation. (b) The ordinance establishing the authority must include an effective date and a name for the authority. Except as provided in subsection (c), the words "regional transportation authority" must be included in the name of the authority. (c) The words "regional bus authority" must be included in the name of an authority that includes a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000). *As added by Acts 1981, P.L.309, SEC.76. Amended by P.L.12-1983, SEC.23; P.L.18-1990, SEC.295; P.L.235-1997, SEC.3; P.L.214-2005, SEC.74.*

**IC 36-9-3-3 Expansion to include additional counties or municipalities; procedure** Sec. 3. Except as provided in section 3.5 of this chapter, the authority may be expanded to include one (1) or more additional counties or municipalities within the same planning district if resolutions approving the expansion are adopted by the fiscal bodies of: (1) the counties or municipalities to be added to the authority; and (2) a majority of the counties and municipalities already in the authority. *As added by Acts 1981, P.L.309, SEC.76. Amended by P.L.235-1997, SEC.4; P.L.70-2007, SEC.1.*

**IC 36-9-3-3.1 Transfer of urban mass transportation powers to public**

**transportation corporation** Sec. 3.1. If an existing public transportation corporation operates within the boundaries of an authority established under section 2 or 3 of this chapter, the legislative body that established the public transportation corporation may adopt an ordinance to shift any of the powers set forth under IC 36-9-4 to the authority. *As added by P.L.235-1997, SEC.5.*

**IC 36-9-3-3.5 Expansion to include certain counties and municipalities; procedure** Sec. 3.5. (a) This section applies to a county with a population of more than one hundred ten thousand (110,000) but less than one hundred fifteen thousand (115,000) and any second class city located in the county. (b) A county or city described in subsection (a) shall become a member of an authority described in section 5(c) of this chapter if the fiscal body of the county or city adopts a resolution authorizing the county or city to become a member of the authority and the board of the authority approves the membership of the county or city. *As added by P.L.70-2007, SEC.2.*

**IC 36-9-3-4 Removal of county or municipality from authority** Sec. 4. If the fiscal body of any county or municipality finds that the county or municipality should be removed from the authority, it shall adopt a resolution favoring the removal of that county or municipality from the authority. The resolution must establish a date upon which the membership ceases, but that date must be at least six (6) months after the date of the adoption of the resolution. Removal of the county or municipality from the authority does not relieve the county or municipality from any obligations incurred on the county's or municipality's behalf by the authority while the county or municipality was a member of the authority. *As added by Acts 1981, P.L.309, SEC.76. Amended by P.L.235-1997, SEC.6.*

**IC 36-9-3-5 Management by board; membership** Sec. 5. (a) An authority is under the control of a board (referred to as "the board" in this chapter) that, except as provided in subsections (b) and (c), consists of: (1) two (2) members appointed by the executive of each county in the authority; (2) one

(1) member appointed by the executive of the largest municipality in each county in the authority; (3) one (1) member appointed by the executive of each second class city in a county in the authority; and (4) one (1) member from any other political subdivision that has public transportation responsibilities in a county in the authority. (b) An authority that includes a consolidated city is under the control of a board consisting of the following: (1) Two (2) members appointed by the executive of the county having the consolidated city. (2) One (1) member appointed by the board of commissioners of the county having the consolidated city. (3) One (1) member appointed by the executive of each other county in the authority. (4) Two (2) members appointed by the governor from a list of at least five (5) names provided by the Indianapolis regional transportation council. (5) One (1) member representing the four (4) largest municipalities in the authority located in a county other than a county containing a consolidated city. The member shall be appointed by the executives of the municipalities acting jointly. (6) One (1) member representing the excluded cities located in a county containing a consolidated city that are members of the authority. The member shall be appointed by the executives of the excluded cities acting jointly. (7) One (1) member of a labor organization representing employees of the authority who provide public transportation services within the geographic jurisdiction of the authority. The labor organization shall appoint the member. (c) An authority that includes a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000) is under the control of a board consisting of the following twenty-one (21) members: (1) Three (3) members appointed by the executive of a city with a population of more than ninety thousand (90,000) but less than one hundred five thousand (105,000). (2) Two (2) members appointed by the executive of a city with a population of more than seventy-five thousand (75,000) but less than ninety thousand (90,000) (3) One (1) member jointly appointed by the executives of the following municipalities located within a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000): (A) A city with a population of more than five thousand one hundred thirty-five (5,135) but less than five thousand two hundred (5,200). (B) A city with a population of more than thirty-two thousand (32,000) but less than thirty-two thousand eight hundred (32,800). (4) One (1) member who is jointly appointed by the fiscal body of the following municipalities located within a county with a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000): (A) A town with a population of more than fifteen thousand (15,000) but less than twenty thousand (20,000). (B) A town with a population of more than twenty-three thousand (23,000) but less than twenty-four thousand (24,000). (C) A town with a population of more than twenty thousand (20,000) but less than twenty-three thousand (23,000). (5) One (1) member who is jointly appointed by the fiscal body of the following municipalities located within a county with a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000):

- (A) A town with a population of more than eight thousand (8,000) but less than nine thousand (9,000).
- (B) A town with a population of more than twenty-four thousand (24,000) but less than thirty thousand (30,000).
- (C) A town with a population of more than twelve thousand five hundred (12,500) but less than fifteen thousand (15,000).

(6) One (1) member who is jointly appointed by the following authorities of municipalities located in a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000):

- (A) The executive of a city with a population of more than nineteen thousand eight hundred (19,800) but less than twenty-one thousand (21,000).
- (B) The fiscal body of a town with a population of more than nine thousand (9,000) but less than twelve thousand five hundred (12,500).
- (C) The fiscal body of a town with a population of more than five thousand (5,000) but less than eight thousand (8,000).
- (D) The fiscal body of a town with a population of less than one thousand five hundred (1,500).
- (E) The fiscal body of a town with a population of more than two thousand two hundred (2,200) but less than five thousand (5,000).

(7) One (1) member appointed by the fiscal body of a town with a population of more than thirty thousand (30,000) located within a county with a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000).

(8) One (1) member who is jointly appointed by the following authorities of municipalities that are located within a county with a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000):

(A) The executive of a city having a population of more than twenty-five thousand (25,000) but less than twenty-seven thousand (27,000).

(B) The executive of a city having a population of more than thirteen thousand nine hundred (13,900) but less than fourteen thousand two hundred (14,200).

(C) The fiscal body of a town having a population of more than one thousand five hundred (1,500) but less than two thousand two hundred (2,200).

(9) Three (3) members appointed by the fiscal body of a county with a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000).

(10) One (1) member appointed by the county executive of a county with a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000).

(11) One (1) member of a labor organization representing employees of the authority who provide public transportation services within the geographic jurisdiction of the authority. The labor organization shall appoint the member. If more than one (1) labor organization represents the employees of the authority, each organization shall submit one (1) name to the governor, and the governor shall appoint the member from the list of names submitted by the organizations.

(12) The executive of a city with a population of more than twenty-seven thousand four hundred (27,400) but less than twenty-eight thousand (28,000), located within a county with a population of more than one hundred forty-five thousand (145,000) but less than one hundred forty-eight thousand (148,000), or the executive's designee.

(13) The executive of a city with a population of more than thirty-three thousand (33,000) but less than thirty-six thousand (36,000), located within a county with a population of more than one hundred forty-five thousand (145,000) but less than one hundred forty-eight thousand (148,000), or the executive's designee.

(14) One (1) member of the board of commissioners of a county with a population of more than one hundred forty-five thousand (145,000) but less than one hundred forty-eight thousand (148,000), appointed by the board of commissioners, or the member's designee.

(15) One (1) member appointed jointly by the township executive of the township containing the following towns: (A) Chesterton. (B) Porter. (C) Burns Harbor. (D) Dune Acres. The member appointed under this subdivision must be a resident of a town listed in this subdivision.

(16) One (1) member appointed jointly by the township executives of the following townships located in Porter County: (A) Washington Township. (B) Morgan Township. (C) Pleasant Township. (D) Boone Township. (E) Union Township. (F) Porter Township. (G) Jackson Township. (H) Liberty Township. (I) Pine Township.

The member appointed under this subdivision must be a resident of a township listed in this subdivision. If a county or city becomes a member of the authority under section 3.5 of this chapter, the executive of the county or city shall appoint one (1) member to serve on the board.

*As added by Acts 1981, P.L.309, SEC.76. Amended by P.L.235-1997, SEC.7; P.L.64-1998, SEC.1; P.L.90-1999, SEC.1; P.L.14-2000, SEC.85; P.L.170-2002, SEC.165; P.L.114-2005, SEC.1; P.L.1-2006, SEC.584; P.L.169-2006, SEC.79; P.L.1-2007, SEC.245; P.L.70-2007, SEC.3.*

**IC 36-9-3-6 Appointment of board members; time limits; term of office** Sec. 6. (a) Except as provided in subsection (d), the appointments required by section 5 of this chapter must be made as soon as is practical, but not later than sixty (60) days after the adoption of the ordinance establishing the authority. If any appointing authority fails to make the required appointment within the sixty (60) day time limit, the circuit court from the jurisdiction of the appointing authority shall make the appointment without delay. (b) The term of office of a member of the board is: (1) two (2) years, for a member of a board located in a county with a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000); and (2) four (4) years, for all other boards; and continues until the member's successor has qualified for the office. A member may be reappointed for successive terms. (c) A member of the board serves at the pleasure of the appointing authority (d) An appointment to an authority located in a county with a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000) must be made not later than sixty (60) days after the adoption of the ordinance establishing the authority, or for the purpose of reappointments, sixty (60) days after a scheduled reappointment. If the appointing authority designated in section 5(c)(3), 5(c)(4), 5(c)(5), 5(c)(6), or 5(c)(8) of this chapter fails to make an appointment, the appointment shall be made by the governor. If a county or city becomes a member of the authority under section 3.5 of this chapter and the executive of the county or city fails to make an appointment to the board within sixty (60) days after the county or city becomes a member of the authority, the appointment shall be made by

the governor. The governor shall select an individual from a list comprised of one (1) name from each appointing authority for that particular appointment. *As added by Acts 1981, P.L.309, SEC.76. Amended by P.L.90-1999, SEC.2; P.L.70-2007, SEC.4.*

**IC 36-9-3-7 Board; officers; records**

Sec. 7. (a) Except as provided in subsection (e), as soon as is practical, but not later than ninety (90) days after the authority is established, the members shall meet and organize themselves as a board. (b) Except as provided in subsection (f), at its first meeting, and annually after that, the board shall elect from its members a president, a vice president who shall perform the duties of the president during the absence or disability of the president, a secretary, and a treasurer. If the authority includes more than one (1) county, the president and vice president must be from different counties. (c) The regional planning commission staff or the metropolitan planning organization if the authority includes a consolidated city shall serve as staff to the board secretary for the purpose of recording the minutes of all board meetings and keeping the records of the authority. (d) The board shall keep its maps, plans, documents, records, and accounts in a suitable office, subject to public inspection at all reasonable times. (e) If the authority includes a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000), the first meeting of the board shall be at the call of the county council of the county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000). The president of the county council shall preside over the first meeting until the officers of the board have been elected. (f) If the authority includes a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000), the board shall first meet in January. At the first meeting the board shall elect from its members a president, a vice president who shall perform the duties of the president during the absence or disability of the president, a secretary, a treasurer, and any other officers the board determines are necessary for the board to function. *As added by Acts 1981, P.L.309, SEC.76. Amended by P.L.12-1992, SEC.175; P.L.235-1997, SEC.8; P.L.64-1998, SEC.2; P.L.90-1999, SEC.3.*

**IC 36-9-3-8 Board meetings** Sec. 8. (a) The board shall fix the time and place for holding regular meetings, and it must meet at least once during each calendar quarter of each calendar year. (b) Special meetings of the board may be called by the chairman or by five (5) members of the board upon written request to the secretary. The secretary must send to all members, at least forty-eight (48) hours in advance of a special meeting, a written notice fixing the time and place of the meeting. Written notice of a special meeting is not required if the time of the special meeting has been fixed in a regular meeting. *As added by Acts 1981, P.L.309, SEC.76.*

**IC 36-9-3-9 Board; quorum; approval of actions** Sec. 9. (a) A majority of the members appointed to the board constitutes a quorum for a meeting. (b) Except as provided in subsection (c), the board may act officially by an affirmative vote of a majority of those present at the meeting at which the action is taken. (c) If the authority includes a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000), then: (1) an affirmative vote of a majority of the board is necessary for an action to be taken; and (2) a vacancy in membership does not impair the right of a quorum to exercise all rights and perform all duties of the board. *As added by Acts 1981, P.L.309, SEC.76. Amended by P.L.90-1999, SEC.4; P.L.114-2005, SEC.2; P.L.1-2006, SEC.585; P.L.169-2006, SEC.80; P.L.1-2007, SEC.246.*

**IC 36-9-3-10 Board; compensation and expenses of members** Sec. 10. (a) Except as provided in subsection (b), the members of the board are not entitled to a salary but are entitled to an allowance for actual expenses and mileage at the same rate as other county officials. (b) If the authority includes a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000), a member of the board is entitled to reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties as provided: (1) in the procedures established by the department of administration and approved by the budget agency for state employee travel; or (2) by ordinance of the county fiscal body. *As added by Acts 1981, P.L.309, SEC.76. Amended by P.L.90-1999, SEC.5.*

**IC 36-9-3-11 Executive director** Sec. 11. The board shall appoint a qualified person to be executive director of the authority. The executive director is the chief executive officer of the authority. *As added by Acts 1981, P.L.309, SEC.76.*

**IC 36-9-3-12 Controller** Sec. 12. (a) The board shall appoint a person to act as controller for the authority. (b) The controller shall give bond in the sum and with the conditions prescribed by the board, and with surety to the approval of the board. The bond must be filed and recorded in the office of the county recorder for the county in which the office of the authority is located. (c) The term of office of the controller is one (1) year, and he may be appointed for additional terms of one (1) year each. (d) All money payable to the authority must be paid to the controller, who shall deposit it in the manner prescribed by IC 5-13-6. The money deposited may be invested under the applicable statutes, including IC 5-13-9. (e) The controller shall keep an accurate account of all appropriations made and all taxes levied by the authority, all money owing or due to the authority, and all money received and disbursed. (f) The board may authorize the controller to pay a per diem in advance to a public transportation employee or board member who will attend a training session or other special meeting required as a duty of the public transportation employee or board member. *As added by Acts 1981, P.L.309, SEC.76. Amended by P.L.19-1987, SEC.52; P.L.327-1995, SEC.1.*

**IC 36-9-3-12.5 Citizens advisory councils** Sec. 12.5. (a) This section applies only to an authority located in a county with a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000). (b) The board shall establish a citizens advisory council consisting of thirteen (13) members appointed as follows: (1) Three (3) members appointed by the executive of a city with a population of more than ninety thousand (90,000) but less than one hundred five thousand (105,000). (2) Two (2) members appointed by the executive of a city with a population of more than seventy-five thousand (75,000) but less than ninety thousand (90,000). (3) One (1) member appointed jointly by the executive of the following cities located within the county: (A) A city with a population of more than thirty-two thousand (32,000) but less than thirty-two thousand eight hundred (32,800). (B) A city with a population of more than five thousand one hundred thirty-five (5,135) but less than five thousand two hundred (5,200). (4) One (1) member selected from a list of citizens submitted by community based organizations which advocate for public transportation by the fiscal body of the county. (5) One (1) member selected from a list of citizens submitted by community based organizations which advocate for public transportation by the county executive of the county. (6) One (1) member who is jointly appointed by the following individuals or entities representing municipalities that are located within the county: (A) The executive of a city having a population of more than twenty-five thousand (25,000) but less than twenty-seven thousand (27,000). (B) The executive of a city having a population of more than thirteen thousand nine hundred (13,900) but less than fourteen thousand two hundred (14,200). (C) The fiscal body of a town having a population of more than one thousand five hundred (1,500) but less than two thousand two hundred (2,200). (7) One (1) member who is jointly appointed by the following authorities of municipalities located in a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000): (A) The executive of a city with a population of more than nineteen thousand eight hundred (19,800) but less than twenty-one thousand (21,000). (B) The fiscal body of a town with a population of more than nine thousand (9,000) but less than twelve thousand five hundred (12,500). (C) The fiscal body of a town with a population of more than five thousand (5,000) but less than eight thousand (8,000). (D) The fiscal body of a town with a population of less than one thousand five hundred (1,500). (E) The fiscal body of a town with a population of more than two thousand two hundred (2,200) but less than five thousand (5,000). (8) One (1) member who is jointly appointed by the fiscal body of the following municipalities located within a county with a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000): (A) A town with a population of more than fifteen thousand (15,000) but less than twenty thousand (20,000). (B) A town with a population of more than twenty-three thousand (23,000) but less than twenty-four thousand (24,000). (C) A town with a population of more than twenty thousand (20,000) but less than twenty-three thousand (23,000). (9) One (1) member who is jointly appointed by the fiscal body of the following municipalities located within a county with a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000): (A) A town having a population of more than twenty-four thousand (24,000) but less than thirty thousand (30,000). (B) A town having a population of more than twelve thousand five hundred (12,500) but less than fifteen thousand (15,000). (C) A town having a population of more than eight thousand (8,000) but less than nine thousand (9,000). (10) One (1) member appointed by the fiscal body of a town having a population of more than thirty thousand (30,000) located in a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000).

If a county or city becomes a member of the authority under section 3.5 of this chapter, the executive of

the county or city shall appoint one (1) member to serve on the citizens advisory council.

(c) A member of a citizens advisory council:

- (1) must live in the geographic area represented by the appointing authority;
- (2) may not be:
  - (A) an elected official; or
  - (B) a public employee of the appointing authority;
- (3) may serve a two (2) year term; and
- (4) may be reappointed to multiple terms.

(d) The citizens advisory council shall:

- (1) meet at least once every six (6) months;
- (2) review and make recommendations to the board on:
  - (A) the authority plan;
  - (B) the proposed route and time schedule changes of the regional transportation system;
  - (C) the authority budget; and
  - (D) the hiring of the authority director;
- (3) be responsible for assuring direct citizen input into the authority plan; and
- (4) refer all complaints and concerns of citizens to the appropriate person or committee within the

authority.

*As added by P.L.90-1999, SEC.6. Amended by P.L.14-2000, SEC.86; P.L.233-2001, SEC.1; P.L.170-2002, SEC.166; P.L.70-2007, SEC.5.*

**IC 36-9-3-13 Powers and duties of board** Sec. 13. The board may:

- (1) exercise the executive and legislative powers of the authority as provided by this chapter;
- (2) as a municipal corporation, sue and be sued in its name;
- (3) sell, lease, or otherwise contract for advertising in or on the facilities of the authority;
- (4) protect all property owned or managed by the board;
- (5) adopt an annual budget;
- (6) incur indebtedness in the name of the authority in accordance with this chapter;
- (7) acquire real, personal, or mixed property by deed, purchase, or lease and dispose of it for use in connection with or for administrative purposes;
- (8) receive gifts, donations, bequests, and public trusts, agree to conditions and terms accompanying them, and bind the authority to carry them out;
- (9) receive federal or state aid and administer that aid;
- (10) erect the buildings or structures needed to administer and carry out this chapter;
- (11) determine matters of policy regarding internal organization and operating procedures not specifically provided for by law;
- (12) adopt a schedule of reasonable charges and rents, and collect them from all users of facilities and services within the jurisdiction of the authority;
- (13) purchase supplies, materials, and equipment to carry out the duties and functions of the board, in accordance with procedures adopted by the board and under applicable statutes;
- (14) employ the personnel necessary to carry out the duties, functions, and powers of the board;
- (15) sell any surplus or unneeded real and personal property in accordance with procedures adopted by the board and under applicable statutes;
- (16) adopt rules governing the duties of its officers, employees, and personnel, and the internal management of the affairs of the board;
- (17) fix the compensation of the various officers and employees of the authority, within the limitations of the total personal services budget;
- (18) purchase public transportation services from public or private transportation agencies upon the terms and conditions set forth in purchase of service agreements between the authority and the transportation agencies;
- (19) acquire, establish, construct, improve, equip, operate, maintain, subsidize, and regulate public transportation systems within the jurisdiction of the authority;
- (20) after receiving a request for assistance from a public transportation system, enter into agreements with government agencies, political subdivisions, private transportation companies, railroads, and other persons providing for:
  - (A) construction, operation, and use by the other party of any public transportation system and equipment held or later acquired by the authority; and
  - (B) acquisition of any public transportation system and equipment of another party if all or part of the operations of that party take place within the jurisdiction of the authority;
- (21) rent or lease any real property, including air rights above real property owned or leased by a

transportation system, for transportation or other purposes, with the revenues from those rentals to accrue to the authority and to be used exclusively for the purposes of this chapter;

(22) negotiate and execute contracts of sale, purchase, or lease, or contracts for personal services, materials, supplies, equipment, or passenger transportation services;

(23) establish at or near its terminals and stations the off-street parking facilities and access roads that are necessary and desirable, and charge fees for or allow free use of those facilities;

(24) enter into agreements with other persons for the purpose of participating in transportation planning activities;

(25) administer any rail services or other use of rail rights-of-way that may be the responsibility of state or local government under the Federal Regional Rail Reorganization Act of 1973, as amended (45 U.S.C. sections 701-794);

(26) determine the level and kind of public transportation services that should be provided by the authority; and

(27) do all other acts necessary or reasonably incident to carrying out the purposes of this chapter. *As added by Acts 1981, P.L.309, SEC.76. Amended by P.L.235-1997, SEC.9.*

**IC 36-9-3-14 Repealed** (*Repealed by P.L.235-1997, SEC.18.*)

**IC 36-9-3-15 Standards for grants and purchase of service agreements; promotional programs**

Sec. 15. (a) The board shall, to the extent it considers feasible, adopt uniform standards for the making of grants and purchase of service agreements. These grant contracts or purchase of service agreements may be for the number of years or duration agreed to by the authority and the transportation agency. (b) If the authority provides grants for operating expenses or participates in any purchase of service agreement, the purchase of service agreement or grant contract must state the level and nature of fares or charges to be made for public transportation services, and the nature and standards of public transportation to be so provided. In addition, any purchase of service agreements or grant contracts must provide, among other matters, for: (1) the terms or cost of transfers or interconnections between different public transportation agencies; (2) schedules or routes of transportation service; (3) changes that may be made in transportation service; (4) the nature and condition of the facilities used in providing service; (5) the manner of collection and disposition of fares or charges; (6) the records and reports to be kept and made concerning transportation service; and (7) interchangeable tickets or other coordinated or uniform methods of collection of charges. The authority shall also undertake programs to promote use of public transportation and to provide ticket sales and passenger information. *As added by Acts 1981, P.L.309, SEC.76. Amended by P.L.235-1997, SEC.10.*

**IC 36-9-3-16 Provision of public transportation service by authority; fares and standards; discontinuance of service**

Sec. 16. (a) The authority may provide public transportation service by operating public transportation facilities only if the board finds that no public or private transportation agency or corporation is willing or able to provide public transportation service. (b) The authority may enter into operating agreements with any private or public person to operate transportation facilities on behalf of the authority only after the board has made an affirmative effort to seek out and encourage private owners and operators to provide the needed public transportation service. (c) Whenever the authority provides any public transportation service by operating public transportation facilities, it shall establish the level and nature of fares or charges to be made for public transportation services, and the nature and standards of public transportation service to be provided within the jurisdiction of the authority. (d) If the fiscal body of any county receives notice that any public transportation system intends to cease providing public transportation service within the county, the fiscal body shall approve or disapprove the cessation of service at its first regular meeting after receiving the notice. Failure of the fiscal body to take any action within thirty (30) days is considered to be approval of the cessation of service. If the fiscal body adopts a resolution disapproving the cessation of service, and the authority is negotiating with the public transportation system for continuation of service within the county, the county shall join the negotiations and participate in any program that results in a continuation of public transportation service within its boundaries. *As added by Acts 1981, P.L.309, SEC.76. Amended by P.L.235-1997, SEC.11.*

**IC 36-9-3-17 Acquisition and construction of transportation facilities**

Sec. 17. At the request of the public transportation system serving the territory of the authority, the authority may: (1) construct or acquire any public transportation facility for use by the authority or any transportation agency; and (2) acquire transportation facilities from any transportation agency, including: (A) reserve funds; (B)

employees' pension or retirement funds; (C) special funds; (D) franchises; (E) licenses; (F) patents; (G) permits; and (H) papers and records of the agency. In making acquisitions from a transportation agency, the authority may assume the obligations of the agency regarding its property or public transportation operations. *As added by Acts 1981, P.L.309, SEC.76.*

**IC 36-9-3-18 Acquisition of facilities within 100 yards of terminals** Sec. 18. The authority may acquire, improve, maintain, lease, and rent facilities, including air rights, that are within one hundred (100) yards of a terminal, station, or other facility of the authority. If these facilities generate revenues in excess of their cost to the authority, the authority must use the excess revenues to improve transportation services or reduce fares for the public. *As added by Acts 1981, P.L.309, SEC.76.*

**IC 36-9-3-19 Limitations and obligations of authority** Sec. 19. (a) In connection with any construction or acquisition, the authority shall make relocation payments in the manner prescribed by IC 8-23-17. (b) A private company lawfully providing public transportation service within the territory of the authority when the authority is established may continue to operate the same route or routes and levels of service as approved by the department of state revenue. (c) Only the proceedings prescribed by this chapter are required in connection with the granting of franchise contracts provided for in this chapter. (d) Notwithstanding section 13 of this chapter, the board may not act in a manner that would adversely affect a common carrier's freight operations. (e) The board may not exercise the power of eminent domain. *As added by Acts 1981, P.L.309, SEC.76. Amended by P.L.23-1988, SEC.119; P.L.18-1990, SEC.296; P.L.235-1997, SEC.12.*

**IC 36-9-3-20 Repealed** (*Repealed by P.L.72-1988, SEC.10.*)

**IC 36-9-3-21 Collective bargaining agreements; authorization** Sec. 21. The authority shall deal with and enter into written contracts with its employees through accredited representatives of those employees or representatives of any labor organization authorized to act for those employees concerning wages, salaries, hours, working conditions, and pension or retirement provisions. *As added by Acts 1981, P.L.309, SEC.76.*

**IC 36-9-3-22 Application of federal statutes to employees affected by actions of authority** Sec. 22. (a) The rights, benefits, and other employee protective conditions and remedies that: (1) are set forth in Section 13(c) of the Urban Mass

Transportation Act of 1964, as amended (49 U.S.C. section 1609(c)) and Section 405(b) of the Rail Passenger Service Act of 1970, as amended (45 U.S.C. section 565(b)); and (2) are prescribed by the United States secretary of labor under those statutes; apply to employees of the authority and employees of any public transportation agency affected by actions of the authority, including the acquisition and operation of public transportation facilities, the execution of purchase of service agreements with a public transportation agency, the coordination, reorganization, combining, leasing, or merging of operations or the expansion or curtailment of public transportation service or facilities under this chapter. (b) The authority may take any of the actions specified in subsection (a) only after meeting the requirements of this chapter. In addition, whenever the authority operates the public transportation facilities of a public transportation agency engaged as of April 25, 1975, in the transportation of persons by railroad, it may do so only in a manner that insures the continued applicability to the affected railroad employees of the federal statutes applicable on that date to them and the continuation of their collective bargaining agreements until those agreements can be renegotiated by representatives of the authority and the representatives of those employees designated under the Railway Labor Act, as amended (45 U.S.C. sections 151-188). *As added by Acts 1981, P.L.309, SEC.76. Amended by P.L.235-1997, SEC.13.*

**IC 36-9-3-23 Employees; retention of benefits after action of authority** Sec. 23. An employee of the authority is entitled to at least the same worker's compensation, pension, seniority, salary, wages, sick leave, vacation, health and welfare insurance, and other benefits that the employee enjoyed as an employee of the authority or of the public transportation agency before an action of the authority. *As added by Acts 1981, P.L.309, SEC.76. Amended by P.L.28-1988, SEC.117; P.L.235-1997, SEC.14.*

**IC 36-9-3-24 Displacement of employees as a result of new facilities; selection of employees to perform work**

Sec. 24. (a) Whenever the authority proposes to operate or to enter into a contract to operate a new public transportation facility that may result in the displacement of employees or the rearrangement of the working forces of the authority or of a public transportation agency, the authority must give at least ninety (90) days' written notice of the proposed operations to the representatives of the employees affected. (b) The authority must provide for the selection of forces to perform the work of the new facility on the basis of agreement between the authority and the representatives of the employees affected. (c) Immediately after receipt of the notice, the representatives of all parties interested in the intended changes shall agree on the date and place of a conference for the purpose of reaching agreements under this section. The conference must begin within ten (10) days after receipt of the notice. (d) If the parties fail to agree, the matter may be submitted by the authority or by any representative of the employees affected to final and binding arbitration by an impartial arbitrator to be selected by the American Arbitration Association from a current listing of arbitrators of the National Academy of Arbitrators. *As added by Acts 1981, P.L.309, SEC.76. Amended by P.L.235-1997, SEC.15.*

**IC 36-9-3-25 Labor disputes; arbitration procedure**

Sec. 25. (a) If a labor dispute involving the authority and its employees is not governed by the Federal Labor Management Relations Act, as amended (29 U.S.C. sections 141-197 and 557), or by the Railway Labor Act, as amended (45 U.S.C. sections 151-188), the authority shall offer to submit the dispute to an arbitration team composed of one (1) member appointed by the authority, one (1) member appointed by the labor organization representing the employees, and one (1) member agreed upon by the labor organization and the authority. The member agreed upon by the labor organization and the authority shall serve as chairman of the team. The determination of the majority of the arbitration team is final and binding on all matters in dispute. (b) If within the first ten (10) days after the date of the appointment of the arbitrators representing the authority and the labor organization, the third arbitrator has not been selected, then either arbitrator may request the American Arbitration Association to furnish from a current listing of the membership of the National Academy of Arbitrators the names of seven (7) members of the National Academy from which the third arbitrator shall be selected. After receipt of the list, the arbitrators appointed by the authority and the labor organization shall promptly determine by lot the order of elimination and then alternately eliminate one (1) name from the list at a time until only one (1) name remains. The remaining person on the list is the third arbitrator. (c) For purposes of this section, the term "labor dispute" shall be broadly construed and includes any controversy regarding the collective bargaining agreements and any grievance that may arise. (d) Each party shall pay one-half (1/2) of the expenses of arbitration under this section. *As added by Acts 1981, P.L.309, SEC.76.*

**IC 36-9-3-26 Pension systems and retirement benefits**

Sec. 26. (a) The authority may: (1) establish and maintain systems of pensions and retirement benefits for the officers and employees of the authority designated or described by resolution of the authority; (2) fix the classifications in those systems; (3) take the steps necessary to provide that persons eligible for admission to the pension systems as officers and employees of any other public transportation employer whose operations are financed in whole or in part by the authority retain eligibility for admission to or continued coverage and participation under Title II of the federal Social Security Act, as amended (42 U.S.C. sections 401-422), and the related provisions of the Federal Insurance Contributions Act, as amended (26 U.S.C. sections 3101-3125), or the federal Railroad Retirement Act (45 U.S.C. sections 231-231t), as amended, and the related provisions of the Railroad Retirement Tax Act, as amended (26 U.S.C. sections 3201-3233), whichever is applicable; and (4) provide in connection with the pension systems a system of benefits payable to the beneficiaries and dependents of any participant in the pension systems after that participant's death, whether or not the death is accidental or occurs in the performance of duty, and subject to the exceptions, conditions, restrictions, and classifications provided by resolution of the authority. (b) Pension systems established by the authority may be financed or funded in a manner that the authority finds to be economically feasible. *As added by Acts 1981, P.L.309, SEC.76.*

**IC 36-9-3-27 Acquisition of facilities from public transportation agency; obligations to employees**

Sec. 27. (a) Whenever the authority acquires the public transportation facilities of a public transportation agency and operates those facilities, all employees engaged in the operation of the facilities shall be transferred to and appointed as employees of the authority, subject to all the rights and benefits of this chapter, and the authority shall assume and observe all current labor contracts and pension obligations. (b) The authority must give the employees of any public transportation agency it acquires seniority credit, sick leave, vacation, insurance, and pension credits in accordance with the records or

labor agreements from the acquired transportation agency. Members and beneficiaries of any pension or retirement system or other system of benefits established by the acquired transportation agency continue to have rights, privileges, benefits, obligations, and status under that system. The authority must assume the obligations of the acquired public transportation agency regarding wages, salaries, hours, working conditions, sick leave, health and welfare, and pension or retirement provisions for employees. (c) The authority must assume the provisions of any collective bargaining agreement between a public transportation agency acquired by the authority and the representative of the employees of the acquired agency. The authority and the employees, through their representatives for collective bargaining purposes, may take whatever action is necessary to preserve the pension rights of the employees, including the transfer of pension trust funds under the joint control of the transportation agency and the participating employees through their representatives to the trust fund to be established, maintained, and administered jointly by the authority and the participating employees through their representatives. *As added by Acts 1981, P.L.309, SEC.76. Amended by P.L.235-1997, SEC.16.*

**IC 36-9-3-28 Audits; accounting forms and records** Sec. 28. The state board of accounts shall: (1) audit the records of the authority; and (2) prescribe or approve all accounting forms and records used by the authority. *As added by Acts 1981, P.L.309, SEC.76.*

**IC 36-9-3-29 Annual budget** Sec. 29. The board shall prepare an annual budget for the authority's operating and maintenance expenditures and necessary capital expenditures. Each annual budget is subject to review and modification by the: (1) fiscal body of the county or municipality that establishes the authority; and (2) county board of tax adjustment and the department of local government finance under IC 6-1.1-17. *As added by Acts 1981, P.L.309, SEC.76. Amended by P.L.233-2001, SEC.2; P.L.90-2002, SEC.503; P.L.224-2007, SEC.132; P.L.146-2008, SEC.785.*

**IC 36-9-3-30 Payment of organizational expenses** Sec. 30. (a) The county or municipality that establishes the authority shall pay the expenses incurred in the organization of the authority; however, the amount of expenses paid may not exceed the amount for authority expenses set by the fiscal body of the establishing county or municipality. (b) If two (2) or more counties or municipalities cooperate to establish the authority, the division of the costs incurred in the organization must be included in the agreement entered into by the counties or municipalities. (c) The board shall, from time to time, certify the items of expense to the county auditor, according to the terms of the agreement. (d) The authority shall fully reimburse each county or municipality out of the first proceeds of any special taxes levied for the purpose of this chapter. *As added by Acts 1981, P.L.309, SEC.76. Amended by P.L.235-1997, SEC.17; P.L.233-2001, SEC.3.*

**IC 36-9-3-31 Bonds** Sec. 31. (a) This section applies to an authority that includes a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000). (b) The authority may issue revenue or general obligation bonds under this section. (c) The board may issue revenue bonds of the authority for the purpose of procuring money to pay the cost of acquiring real or personal property for the purpose of this chapter. The issuance of bonds must be authorized by resolution of the board and approved by the county fiscal bodies of the counties in the authority before issuance. The resolution must provide for the amount, terms, and tenor of the bonds, and for the time and character of notice and mode of making sale of the bonds. (d) The bonds are payable at the times and places determined by the board, but they may not run more than thirty (30) years after the date of their issuance and must be executed in the name of the authority by an authorized officer of the board and attested by the secretary. The interest coupons attached to the bonds may be executed by placing on them the facsimile signature of the authorized officer of the board. (e) The president of the authority shall manage and supervise the preparation, advertisement, and sale of the bonds, subject to the authorizing ordinance. Before the sale of bonds, the president shall cause notice of the sale to be published in accordance with IC 5-3-1, setting out the time and place where bids will be received, the amount and maturity dates of the issue, the maximum interest rate, and the terms and conditions of sale and delivery of the bonds. The bonds shall be sold in accordance with IC 5-1-11. After the bonds have been properly sold and executed, the executive director or president shall deliver them to the controller of the authority and take a receipt for them, and shall certify to the treasurer the amount that the purchaser is to pay, together with the name and address of the purchaser. On payment of the purchase price the controller shall deliver the bonds to the purchaser, and the controller and executive director or president shall report their actions to the board. (f) General obligation bonds issued under this section are subject

to the provisions of IC 5-1 and IC 6-1.1-20 relating to the following: (1) The filing of a petition requesting the issuance of bonds. (2) The appropriation of the proceeds of bonds. (3) The right of taxpayers to appeal and be heard on the proposed appropriation. (4) The approval of the appropriation by the department of local government finance. (5) The right of: (A) taxpayers and voters to remonstrate against the issuance of bonds in the case of a proposed bond issue described by IC 6-1.1-20-3.1(a); or (B) voters to vote on the issuance of bonds in the case of a proposed bond issue described by IC 6-1.1-20-3.5(a). (6) The sale of bonds for not less than their par value. (g) Notice of the filing of a petition requesting the issuance of bonds, notice of determination to issue bonds, and notice of the appropriation of the proceeds of the bonds shall be given by posting in the offices of the authority for a period of one (1) week and by publication in accordance with IC 5-3-1. (h) The bonds are not a corporate indebtedness of any unit, but are an indebtedness of the authority as a municipal corporation. A suit to question the validity of the bonds issued or to prevent their issuance may not be instituted after the date set for sale of the bonds, and after that date the bonds may not be contested for any cause. (i) The bonds issued under this section and the interest on them are exempt from taxation for all purposes except the financial institutions tax imposed under IC 6-5.5 or a state inheritance tax imposed under IC 6-4.1. □ *As added by Acts 1981, P.L.309, SEC.76. Amended by Acts 1981, P.L.45, SEC.36; P.L.21-1990, SEC.56; P.L.12-1992, SEC.176; P.L.254-1997(ss), SEC.33; P.L.90-2002, SEC.504; P.L.219-2007, SEC.141; P.L.146-2008, SEC.786.*

**IC 36-9-3-32 □ Acceptance of federal or other funds □** Sec. 32. (a) The board may, on behalf of the authority, accept, receive, and receipt for federal monies and other public or private monies for the acquisition, construction, enlargement, improvement, maintenance, equipment, or operation of public transportation systems under the jurisdiction of the authority. The board may also comply with federal statutes and rules concerning the expenditure of federal monies for public transportation systems. □ (b) The board may apply to state and federal agencies for grants for public transportation development, make or execute representations, assurances, and contracts, enter into covenants and agreements with any state or federal agency relative to public transportation systems, and comply with federal and state statutes and rules concerning the acquisition, development, operation, and administration of public transportation systems. *As added by Acts 1981, P.L.309, SEC.76.*

**IC 36-9-3-33 Regulation by department of state revenue; administrative appeals and judicial review** Sec. 33. (a) This section does not apply to interurban or interstate public transportation service. (b) Service provided by the authority within the territory of the authority is exempt from regulation by the department of state revenue under IC 8-2.1. This exemption applies to transportation services provided by the authority directly or by grants or purchase of service agreements. (c) Service provided by the authority by contract or service agreements outside the territory of the authority is subject to regulation by the department of state revenue under IC 8-2.1. (d) The department of state revenue shall hear appeals concerning any regulatory action of the authority concerning service and rates, and, after making a finding based on the requirements of IC 8-2.1, issue an appropriate order. Judicial review of the commission decision may be obtained in the manner prescribed by IC 4-21.5-5. □ *As added by P.L.99-1989, SEC.34.*

**Attachment II-3:**

**Indiana Code 36-7-7**

**Regional Planning Commissions**

**IC 36-7-7**  
**Chapter 7. Regional Planning Commissions**

**IC 36-7-7**

Chapter 7. Regional Planning Commissions

**IC 36-7-7-1 Application of chapter** Sec. 1. This chapter applies to any area consisting of two (2) or more counties (referred to as a "region" in this chapter). *As added by Acts 1981, P.L.309, SEC.26.*

**IC 36-7-7-2 Establishment** Sec. 2. (a) The legislative bodies of all the counties in a region may, by concurrent resolutions, request the establishment of a regional planning commission (referred to as a "commission" in this chapter). Official copies of the resolutions must be forwarded to the governor, who shall then appoint himself or a member of his staff to immediately notify the other members of the commission and to act as temporary chairman for the election of officers. The commission shall, by resolution, designate a name for itself that reflects the commission's role and function and that may include the words "Regional Planning Commission". (b) This subsection applies to each commission established after July 1, 1978. A county participating in a commission is not subject to the tax imposed under section 12 of this chapter, unless all the concurrent resolutions establishing the commission accept the application of the tax. *As added by Acts 1981, P.L.309, SEC.26. Amended by P.L.144-1992, SEC.1.*

**IC 36-7-7-3 Counties transferring membership between commissions or joining existing commissions; procedure** Sec. 3. (a) A county may request a change in its participation from one commission to another, or request to join a commission if it is not participating, under subsection (b). (b) The legislative body of the county must, by resolution, request the inclusion of the county in the commission. The county auditor shall transmit a copy of the resolution to the governor, the chairman of the commission, and, if applicable, the chairman of the commission that the county is requesting to leave. (c) The commission to be joined may consider a request under subsection (b). It may, by a majority vote of all its members, adopt a resolution including the requesting county in the commission. (d) Whenever a resolution is adopted under subsection (c), the chairman of the commission shall call a meeting to organize the enlarged commission. He shall call to this meeting all members of the commission plus: (1) if the new county is changing its participation from one commission to another, the persons from that county who served on the commission that the county is leaving; or

(2) if the new county has not been participating, a representative of the executive of that county. *As added by Acts 1981, P.L.309, SEC.26.*

**IC 36-7-7-4 Members; appointment; compensation; certification; vacancies** Sec. 4. (a) The following members of the commission shall be appointed from each county in the region: (1) A representative of the county executive who may be either a member of the executive or a person appointed by it. (2) A representative of the county fiscal body who must be a member of the fiscal body. (b) The following members of the commission shall be appointed from each county in the region having a population of more than fifty thousand (50,000): (1) The county surveyor or a person appointed by the surveyor. (2) Two (2) persons appointed by the executive of each municipality having a population of more than fifty thousand (50,000). (3) One (1) person appointed by the executive of each of the seven (7) largest municipalities having a population of less than fifty thousand (50,000). If there are fewer than seven (7) municipalities, enough additional persons appointed by the county executive to bring the total appointed under this subdivision to seven (7). (c) The following members of the commission shall be appointed from each county in the region having a population of less than fifty thousand (50,000): (1) One (1) person appointed by the executive of each of the five (5) largest municipalities or of each municipality if there are fewer than five (5). (2) If there are fewer than five (5) municipalities, enough additional persons appointed by the county executive to bring the total appointed under this subsection to five (5). (d) One (1) voting member of the commission shall be appointed by the governor. (e) At least two-thirds (2/3) of the commission members must be elected officials. All persons appointed to the commission must be: (1) knowledgeable in matters of physical, social, or economic development of the region; and (2) residents of the municipality, county, or region that they represent. A member of the commission may also serve as a member of a plan commission in the region. (f) Members of the commission shall serve without salary but may be reimbursed for expenses incurred in the performance of their duties. (g) The respective appointing authorities shall

certify their appointments, and the certification shall be retained as a part of the records of the commission. (h) If a vacancy occurs by resignation or otherwise, the respective appointing authority shall appoint a member for the unexpired term. Members shall be certified annually, and their terms expire on December 31 of each year. *As added by Acts 1981, P.L.309, SEC.26. Amended by Acts 1981, P.L.310, SEC.63; P.L.144-1992, SEC.2; P.L.168-1994, SEC.1; P.L.165-2003, SEC.4.*

**IC 36-7-7-4.1 Repealed** (*Repealed by P.L.165-2003, SEC.7.*)

**IC 36-7-7-5 Officers; meetings; notice; rules; record of proceedings; quorum** Sec. 5. (a) At its first regular meeting in each year the commission shall elect from its members a chairman, vice chairman, secretary, and a treasurer, not more than two (2) of who may be from the same county. If the region is divided into subregions under section 10 of this chapter, there must be at least one (1) officer from each subregion. The vice chairman may act as chairman during the absence or disability of the chairman. (b) The commission shall fix the time and place for holding regular meetings, but it shall meet at least quarterly and at such other times as may be established by the commission or the executive board. Special meetings of the commission may be called by the chairman or by five (5) members of the commission upon written request to the secretary. The secretary shall send to all the members at least forty-eight (48) hours in advance of a special meeting a written notice fixing the time and place of the meeting. Written notice of a special meeting is not required if the time of the special meeting has been fixed in a regular meeting, or if all the members are present at the special meeting. Notice of any meeting may be waived by a member by a written waiver filed with the secretary. (c) The commission shall adopt rules for the transaction of business and shall keep a record of its resolutions, transactions, findings, and determinations, which is a public record. (d) A majority of members constitutes a quorum. An action of the commission is official, however, only if it is authorized by a majority of the commission at a regular or properly called special meeting with at least one (1) member from each county in the region present. *As added by Acts 1981, P.L.309, SEC.26. Amended by Acts 1981, P.L.310, SEC.64.*

**IC 36-7-7-6 Executive board** Sec. 6. (a) The commission shall elect from among its members an executive board consisting of: (1) the four (4) officers of the commission; (2) one (1) member of the commission from each county in the region; (3) one (1) additional member of the commission from each county in the region having a population of more than fifty thousand (50,000); and (4) the nonvoting member of the commission appointed by the governor. All members shall be elected by a vote of the full membership of the commission. (b) If a vacancy occurs in the executive board a successor shall be elected from among the members in the same manner as the member whose position has been vacated. (c) The executive board shall conduct the business of the commission, except for: (1) the adoption and amendment of bylaws, rules, and procedures for the operation of the commission; (2) the election of officers and members of the executive board as provided in this chapter; and (3) the adoption of the annual appropriation budget after review by the executive board. (d) The executive board shall meet regularly at least once each month, unless otherwise determined by its members. The executive board shall notify the full membership of the commission of all its meetings with copies of its preliminary or final agendas and shall report all its actions and determinations to the full membership of the commission. (e) A majority of members constitutes a quorum. An action of the executive board is official, however, only if it is authorized by a majority of the board at a regular or properly called special meeting. Any action of the executive board shall be reviewed at the next regular meeting of the commission following the executive board's action, and upon the written request of a member of the commission, the action shall be brought to a vote of the full commission. *As added by Acts 1981, P.L.309, SEC.26.*

**IC 36-7-7-7 Powers and duties** Sec. 7. (a) The commission shall institute and maintain a comprehensive policy planning and programming and coordinative management process for the region. It shall coordinate its activities with all units in the region and shall coordinate the planning programs of all units and the state. Except when a commission exercises powers under subsection (j), the commission shall act in an advisory capacity only. (b) The commission may provide technical assistance to any unit in the region that requests it. This technical assistance includes the provision of skills and knowledge for planning, developing, administering, improving, and securing: (1) public and private grants-in-aid; (2) cooperative arrangements between governments; and (3) the performance of governmental powers and duties. (c) The commission may divide its jurisdiction into subregions

under section 10 of this chapter for purposes appropriate to the study, analysis, or coordination of specific problems or concerns. The commission may conduct all necessary studies for the accomplishment of its duties. It may publicize and advertise its purposes, objectives, and findings and may distribute reports on them. It may provide recommendations when requested to the participating units and to other public and private agencies in matters relative to its functions and objectives and may act when requested as a coordinating agency for programs and activities of such agencies as they relate to its objectives. The commission may not implement, enter into an agreement for, or propose a program that includes interstate wastewater management or disposal. (d) The commission may adopt by resolution any regional comprehensive or functional plan, program, or policy as its official recommendation for the development of the region, subject to the power of a county to exempt itself under section 9 of this chapter. The commission shall make an annual report of its activities to the legislative bodies of the counties and municipalities in the region. (e) The commission may receive grants from federal, state, or local governmental entities or from individuals or foundations, and may enter into agreements or contracts regarding the acceptance or use of those grants and appropriations for the purpose of carrying out any of the activities of the commission. A county or municipality may, from time to time upon the request of the commission, assign or detail to the commission any employees to make special surveys or studies requested by the commission. (f) For the sole purpose of providing adequate public services, the commission may acquire by grant, gift, purchase, lease, devise, or otherwise and hold, use, improve, maintain, operate, own, manage, or lease (as lessor or lessee) such real or personal property as the commission considers necessary for that purpose. The commission may apply for, receive, and expend grants, loans, or any other form of financial assistance available under any federal grant program. (g) The commission may enter into coordinative arrangements with any adjacent county or municipality in Indiana or an adjoining state, or with an overlapping multicounty or interstate planning or development agency, state agency, or federal agency, as are appropriate to the achievement of its objectives or to address a common issue. However, the commission may not delegate any of its powers or duties. (h) The commission may appoint advisory committees to assist in the achievement of its objectives. Members of advisory committees are not entitled to compensation for their services but may be reimbursed for expenses incurred in the performance of their duties. (i) The commission shall act as the designated review agency and as the clearinghouse as described in federal Office of Management and Budget Circular A-95. (j) The commission may provide administrative, management, or technical services to a unit that requests the services. The unit and the commission may enter into a contract concerning the commission's provision of administrative, management, or technical services and the cost to the unit for the services. *As added by Acts 1981, P.L.309, SEC.26. Amended by P.L.145-1992, SEC.1.*

**IC 36-7-7-8 Agreements with other states** Sec. 8. Counties in the region may enter into agreements with other states, but these agreements do not affect other counties, subregions, or the region. One subregion may also contract with other subregions for services or programs. *As added by Acts 1981, P.L.309, SEC.26.*

**IC 36-7-7-9 Objections to program; petition** Sec. 9. Whenever the commission receives a petition signed by a majority of the commission members representing a county affected by a particular program, objecting to the establishment of the program within that county, the commission may not implement the program in that county. *As added by Acts 1981, P.L.309, SEC.26.*

**IC 36-7-7-10 Subregional committees** Sec. 10. (a) A commission may organize into not more than two (2) subregions and provide for the organization of two (2) sub regional planning committees, and for meetings and rules of procedure of those committees. These rules of procedure shall be adopted as a part of the rules and bylaws of the commission. (b) The actions of each sub regional committee shall be referred to the other for review. The executive director and staff of the commission shall serve both sub regional committees. Each sub regional committee shall consider problems that do not directly affect the other subregion. Each sub regional committee may hold meetings and elect a chairman and secretary from among its own members. *As added by Acts 1981, P.L.309, SEC.26.*

**IC 36-7-7-11 Executive director; powers and duties** Sec. 11. (a) The commission shall appoint an executive director who shall serve at the pleasure of the commission as reviewed and recommended by the executive board. The executive director must be qualified by training and experience in the management of public agencies and knowledgeable in planning. (b) The executive director is the chief

administrative officer and regular technical advisor of the commission. Subject to supervision by the commission, the executive director: (1) shall execute the commission functions; (2) shall appoint and remove the staff of the commission; (3) shall submit to the commission annually, or more often if required, a status report on the operation of the agency; (4) may, with the approval of the executive board, execute contracts, leases, or agreements on behalf of the commission with other persons; (5) is entitled, upon his written request, to be given access by all governmental agencies to all studies, reports, surveys, records, and other information and material in their possession that are required by him for the accomplishment of the activities and objectives of the commission; (6) shall propose annually a budget for the operation of the commission and administer the budget as approved by the commission; (7) shall keep the records and care for and preserve all papers and documents of the commission; and (8) shall perform other duties and may exercise other powers that the commission or the executive board delegates to him. *As added by Acts 1981, P.L.309, SEC.26.*

**IC 36-7-7-12 Annual appropriation budget; tax levy; use of funds** Sec. 12. (a) The commission shall prepare and adopt an annual appropriation budget for its operation, which shall be apportioned to each participating county on a pro rata per capita basis. After adoption, any amount that does not exceed an amount for each participating county equal to thirty cents (\$0.30) per capita shall be certified to the respective county auditor who shall advertise the amount and establish the rate in the same manner as other county budgets. Any amount of the adopted budget that exceeds an amount equal to thirty cents (\$0.30) per capita for each participating county is subject to review by the county fiscal body in the usual manner of budget review. The tax so levied and certified shall be estimated and entered upon the tax duplicates by the county auditor and shall be collected and enforced by the county treasurer in the same manner as other county taxes are estimated, entered, collected, and enforced. The tax, as collected by the county treasurer, shall be transferred to the commission. (b) In fixing and determining the amount of the necessary levy for the purpose provided in this section, the commission shall take into consideration the amount of revenue, if any, to be derived from the federal grants, contractual services, and miscellaneous revenues above the amount of those revenues considered necessary to be applied upon or reserved upon the operation, maintenance, and administrative expenses for working capital throughout the year. (c) After approval no sums may be expended except as budgeted unless the commission authorizes their expenditure. Before the expenditure of sums appropriated as provided in this section, a claim must be filed and processed as other claims for allowance or disallowance, for payment as provided by law. (d) Any two (2) of the following officers may allow claims: (1) Chairman. (2) Vice chairman. (3) Secretary. (4) Treasurer. The treasurer of the commission may receive, disburse, and otherwise handle funds of the commission subject to applicable statutes and procedures established by the commission. (e) The commission shall act as a board of finance under the statutes relating to the deposit of public funds by political subdivisions. (f) Any appropriated money remaining unexpended or unencumbered at the end of the year becomes part of a nonreverting cumulative fund to be held in the name of the commission. Unbudgeted expenditures from this fund may be authorized by vote of the commission and upon other approval as required by statute. The commission is responsible for the safekeeping and deposit of such sums, and the state board of accounts shall prescribe the methods and forms for keeping the accounts, records, and books to be used by the commission. The books, records, and accounts of the commission shall be periodically audited by the state board of accounts, and these audits shall be paid for as provided by statute. *As added by Acts 1981, P.L.309, SEC.26. Amended by P.L.144-1992, SEC.4; P.L.165-2003, SEC.5.*

**IC 36-7-7-13 Economic development districts; definition; payments by counties; use of funds** Sec. 13. (a) An economic development district is a group of adjacent counties that: (1) contains at least two (2) redevelopment counties; (2) includes an economic development growth center; and (3) has been officially designated as an economic development district by the federal government under Title 42, U.S.C. section 3171, on the recommendation of the state. (b) Counties may make payments to officially designated economic development districts. The board of directors of the economic development district shall determine the amount of the payments, which may be based on the assessed valuation or the population of each county, and the method of making the payments, subject to appropriations by the fiscal bodies of the counties comprising the economic development district. (c) The economic development district may receive and expend all sums appropriated or granted to it for purposes and activities authorized by law, and shall deposit these sums in its own name and follow all accounting, bonding, and auditing procedures required by law. (d) The economic development district is responsible for the administration, safekeeping, and deposit of any monies appropriated or granted to it, and may delegate all or part of that responsibility to a designated financial officer. (e) The

economic development district may receive grants from federal, state, or local governments for the purpose of carrying out any of the planning and development activities of the district. (f) Any sums appropriated to an economic development district that remain uncommitted at the end of the budget year revert on a pro rata basis to the general funds of the counties comprising the district. *As added by Acts 1981, P.L.309, SEC.26.*

**Attachment II-4:**

**Description of Eligibility Requirements for Nonprofit Agencies**  
**to Participate in the Section 5311 Program**

## Section 5311 Eligibility Policy

The Indiana Department of Transportation permits local public entities, public transportation corporations, regional commissions, and non-profit organizations that have been authorized to provide public transportation in the State of Indiana to be an eligible recipient of Section 5311 funds, with the following conditions and stipulations, consistent with INDOT program management practices:

- 1) The nonprofit organization must be designated, through formal resolution of the local governing board of an eligible recipient (see #2 below), as the public transportation provider in the service area.
- 2) An eligible public recipient includes:
  - a) The State of Indiana, counties, cities, or towns within the State.
  - b) Public Transportation Corporations (PTC) as established under I.C. 36-9-4-12 (Attachment II-1).
  - c) Regional Transportation Authorities (RTA) as established under I.C. 36-9-3-2 (Attachment II-2).
  - d) Regional Planning Commissions as established under I.C. 36-7-7 (Attachment II-3).
- 3) INDOT will continue its practice of only contracting with eligible public recipients. In the lower tier contract between these public entities and the service provider, the public entity must assign compliance responsibility for all applicable contract terms and conditions to the pass-through recipient. The lower tier contract must contain all applicable contract language as required by INDOT.
- 4) The eligible public agency will continue to be the responsible party for invoice submission, receipt of all payments from INDOT, and shall hold the title to all capital equipment that may be acquired under a Section 5311 grant.
- 5) Nothing in this guidance prohibits an eligible public entity from using competitive means to select an entity to manage and administer its public transportation program.
- 6) In order to minimize INDOT's project management burden, and in consideration to both FTA's and INDOT's objectives for local service coordination, an eligible public entity may only enter into one "pass-through" arrangement in a given county for a countywide rural public transit system.
  - a) If a public entity operates over a multi-county service area, one pass-through arrangement per county is permissible.
  - b) INDOT will permit a city or town in a nonurbanized area to operate its own public transportation within its political boundaries, even if such a system falls within the service area of a countywide rural public transit system. Under such circumstances, INDOT shall require the city or town and the public agency sponsoring countywide public transportation to coordinate services to the maximum extent possible.

**Attachment II-5.**

**List of Funds that Can be Used as Unrestricted Match**

**Under the Section 5311 Program**

## Section III

# Grant Application Procedures

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### III. GRANT APPLICATION PROCEDURES

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#### INTRODUCTION

This section reviews INDOT grant application requirements and procedures under the Section 5311 program. Procedures are subject to annual change. Existing and prospective grantee should refer to the INDOT Office of Transit application package that is produced each year for additional guidance.

#### FIRST TIME APPLICANTS: BEFORE YOU APPLY

INDOT encourages interested parties to meet with INDOT Office of Transit staff early in the planning process to discuss potential transit grant projects. Pre-planning meetings improve the applicant's understanding of the program requirements. First time applicants must have completed an approved feasibility study in order to apply for funding assistance. Each new system will be established as a demonstration project that INDOT is not obligated to fund beyond two years. INDOT will review the consistency between an applicant's feasibility study projections and two years data on vehicle miles, operating expenses, and passenger trips. Subsequent funding will be contingent upon INDOT findings regarding efficiency and productivity.

#### THE APPLICATION PROCESS

Section 5311 funds are made available to eligible applicants on a calendar year basis.

#### Grant Application Development

Completion of the grant application is the second step in the grants process. Applicants are notified of the acceptance of

their Letter of Intent and are sent a grant application package and instructions for completing the application. INDOT offers assistance to those applicants having difficulty completing the application.

The application generally includes the following items:

- (1) *A description of the project and the project budget.* The applicant must describe existing transportation services, service area, number of passengers served, existing vehicle inventory, type of service provided, capital needs, proposed operating and capital budgets, procurement systems, and system operation and performance. INDOT recommends that applicants begin small when establishing a transit system and plan for service expansion.
- (2) *Coordination with other groups.* The applicant must describe how coordination on the project will be achieved with the following groups:
  - Social Service Involvement: The applicant must make an effort to encourage social service agency transportation providers to participate in and coordinate with the project.
  - Public Involvement: Public involvement is essential to providing a service that addresses community needs. Efforts to involve the public should be made. INDOT strongly encourages applicants to establish a local transportation advisory committee or board. The transportation advisory board is expected to encourage

private sector participation to afford an opportunity for input in plan developments. Public hearings are required for all capital grant applications.

- Transportation Improvement Plans: Section 5311 transit systems that are located within metropolitan planning boundaries must submit their transit projects to the applicable Metropolitan Planning Organization (MPO) for inclusion in the current Transportation Improvement Plan.

(3) *Grant justification.* The applicant must provide evidence of need and how the services or equipment requested will meet that need. The applicant must also explain how the project complements existing services and resources.

(4) *Governing body authorization.* A resolution must be passed by the appropriate legislative body authorizing the applicant to pursue Section 5311 funding.

(5) *Federal Compliance Certifications and Standard Assurances.* Applicants must certify compliance with various Federal requirements, including:

- [Title VI](#)
- [Equal Employment Opportunity Act](#)
- [Section 504](#)
- [Americans with Disabilities Act](#)
- [Bus Testing Requirement](#)
- [Restrictions on Lobbying](#)
- [Disadvantaged Business Enterprise Program](#)
- [Section 5333\(b\)](#)
- [Charter Rule](#)
- [School Bus](#)
- [Environmental Protection](#)

- Evaluation of Flood Plain (for capital transit facilities only)
- Real Estate Acquisition and Relocation (for capital transit facilities only)
- [Buy America Provision](#)
- FTA's Safety Jurisdiction
- [Drug and Alcohol Testing](#)

## EVALUATION CRITERIA FOR GRANTS

### Operating Assistance for Existing Grantees

Existing grantees have already demonstrated satisfactory effort to operate their transit systems according to INDOT's guidelines. As such, the criteria used by INDOT to evaluate existing Section 5311 grantee applications are the completeness and thoroughness of the application. A checklist is used to verify that all pertinent items are submitted, complete, and adequate.

### First-time Applicants

First-time applicants are those who have never received Section 5311 funding. A feasibility study must be completed to be eligible to apply for Section 5311 funding assistance. At a minimum, first-time applicants feasibility study must address the following eight (8) evaluation factor criteria:

- (1) Identification of the need for public transit service;
- (2) Identification of potential trip generators;
- (3) Calculation of service demand (peak & off peak);
- (4) Identification of the most appropriate type of service;
- (5) Identification of capital requirements needed to meet demand;
- (6) Identification of projected operating costs;
- (7) Determination of degree of long-term local community support; and,
- (8) Identification of marketing effort required for start-up.

## Operating Assistance for New Applicants

Applications for funding from new applicants are reviewed by INDOT and RTAP. Seven (7) evaluation factor criteria are weighted according to its importance in fulfilling program goals. [Attachment III-1](#) is the new applicant operating application review and rating form. The new applicant application criteria include the following:

- (1) The completeness of the application and compliance with guidelines and requirements of the application process.

While INDOT will concentrate review time on the merits and technical aspects of the application, failure to adequately address every requirement will adversely effect the rating of the grant and may eliminate the grant from further consideration. INDOT public transit staff are available to assist applicants with the application process.

- (2) The ability of management to administer the grant and meet INDOT's program guidelines and requirement and operate a transit system.

New applicants will be evaluated on previous experience with similar grant programs, management structure, and accounting system. INDOT will examine compliance with other federal and state grant regulations and guidelines by reviewing the most recent audit of the applicant. The ability of the new applicant to operate a transit system will be evaluated based on the proposed organizational structure of the system, the experience of the personnel required to perform the system functions, and the applicant's

past experience in operating a transportation system.

- (3) The extent to which existing services, manpower, and equipment are used in the project.

INDOT requires that applicants make every effort possible to coordinate available resources under operating and capital grants. Applicants must encourage every possible transportation provider (including private-for-profit) to participate in the project. Successful coordination would include the commitment of other local agencies to purchase service, share resources, and use the transit system. New applicants will be evaluated based on the amount of coordination expected and planned for in the proposed transit system. If other providers are not interested in participating in the project, then the applicant must develop a transit system compatible with the other providers.

- (4) The appropriateness of type of service, planned improvements, expansion, and equipment.

The development of the transit system must be carefully planned and explained because the proposed cost and projected productivity are functions of the type of service established to meet the mobility needs. The new applicant should make these decisions after careful and appropriate consideration of the purpose and expectations of the service. If the purpose and expectations are not clearly defined, it will be impossible for the applicant to determine if the service is successful.

The grant justification should show the relationship between the transit service and the identified mobility needs and service area characteristics (e.g., geography, traffic patterns, population density, etc.). The applicant must make every reasonable effort to ensure that elderly and persons with disabilities will be able to use the public transit service.

The appropriateness of the type of service will be reviewed in part based on the following criteria:

*Fixed Route Service*

- Service area has few main activity centers, central business district is usually the primary activity center
- Trip needs may be met through fixed schedules
- Trip needs may be met by service over major streets
- Service area has relatively high population density
- Users have convenient access to routes

*Demand Responsive Services* (including Dial-a-Ride, advanced request, and shared-ride taxi):

- Trip needs are dispersed throughout the service area and throughout the day
- A significant proportion of users are those who have difficulty walking and standing (e.g., getting to fixed route type services)
- Service area has relatively low population density

New applicants will be evaluated based on the appropriateness of the type of service in terms of the aforementioned criteria and on the type of equipment to be used in relationship to the demand for

service. Careful consideration will be given to assessing the methods used by the applicant in selecting a particular type of service.

- (5) The actions previously implemented and/or planned to reduce operating costs and to improve operating revenue.

Since operating revenues do not cover total costs, it is imperative that management makes every effort to keep costs low. This is extremely important in view of the limited amount of governmental assistance available to finance transit. The applicant's ability to increase operating and other revenues will directly improve the financial stability of the transit system by decreasing its dependency on governmental assistance. The applicant must give consideration to an appropriate revenue recovery program for its transit system.

New applicants will be evaluated based on the reasonableness and appropriateness of expenses and revenue sources in relation to service characteristics. INDOT highly recommends that a formal fare structure be established.

- (6) The suitability of the existing and/or proposed promotional techniques and programs to reach riders and potential riders.

New applicants will be evaluated based on the appropriateness of planned marketing, public information, and promotional programs. These planned programs will be evaluated in relationship to objectives for reaching and maintaining projected ridership levels. At a minimum, INDOT

expects each applicant to design some basic public information (i.e., bus schedules, ride guides, etc.) and to develop a proposal for its dissemination.

## CAPITAL ASSISTANCE

Similar to applying for operating assistance, the capital assistance application is evaluated according to several weighted factors. The weights of the factors represent the importance of the factor in achieving program goals. [Attachment III-2](#) is the Capital Application Review and Rating Form that is used to evaluate capital assistance requests. The capital application review criteria include the following:

- (1) *Project Justification.* Are vehicles or equipment requests appropriate (i.e., does the vehicle mileage information justify replacement)? Are facilities, expansion, or equipment necessary for continued and/or improved operation?

In regard to capital assistance, INDOT will give replacement vehicle projects the highest priority. However, it is critical for approval that sufficient information on mileage, age, and condition of vehicles is provided. Projects will be prioritized for eligibility as follows:

- Replacement passenger vehicles for existing grantees
- Replacement of major equipment or maintenance items for existing grantees
- Passenger vehicles for expanded services for existing grantees and new applicant capital requests
- Facility rehabilitation
- Construction of new facilities

INDOT will consider projects for new facilities and expansion or rehabilitation of existing facilities. A project of this type

must be clearly justified. For example, in the case of a facility expansion project, a transit property may decide to wash buses in-house rather than pay for a third party service. This decision will require the addition of a bus wash bay to the transit facility. To justify this project, the applicant must provide documentation that it is more cost-effective to wash buses in-house.

- (2) *Administrative Capability.* The ability of management to administer the grant and meet INDOT's guidelines and requirements.

INDOT staff will look for staff with experience or access to personnel with experience in the fundamental aspects of procuring vehicles, equipment, and other capital assets, and in scheduling and implementing construction projects, if applicable.

- (3) *Utilization.* Extent to which existing area-wide services, manpower, and equipment are used in the project.

The applicant must demonstrate that that applicant has developed cooperative relationships with other agencies involved in providing transportation or other services that involve the use of resources similar to those required by the transit system. All capital projects will be reviewed in terms of the availability of opportunities to fulfill capital needs through cooperative relationships and sharing resources with outside agencies.

- (4) *Quality.* Completeness of the application and compliance with guidelines and requirement of the application process.

All applications must be complete and follow the requirements. The applicant must

provide adequate information for INDOT to evaluate the value and need for the project.

#### **APPLICATION REVIEW PROCESS**

The application review process is designed to identify projects of exceptional quality. Documented efforts to operate the transit system in the most effective and efficient manner possible, secure sources of local cash match, and establish a fare revenue policy consistent with local goals will be viewed positively by INDOT. However, due to the limited amount of Section 5311 funding, preference is given to existing Section 5311 grantees.

INDOT and RTAP will review and rate the operating applications of new applicants and all capital applications using the application Review and Rating forms provided in this

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section. Based on this ranking, INDOT will make project selections based on the highest scores and project priorities identified in this section.

#### **PROGRAM OF PROJECTS**

The selected applications and the existing grantees' operating applications will be compiled into INDOT's proposed Program of Projects (POP). Each capital and operating application will be listed as a separate line item and the funding amounts will be identified. The Program of Projects will then be presented to INDOT management. Upon approval, the Program of Projects will be incorporated into INDOT's annual application for Section 5311 funds to the Federal Transit Administration.

**Attachment III-1:**

**New Applicant Operating Application Review and Rating Form**

## NEW APPLICANT OPERATING APPLICATION REVIEW AND RATING FORM

APPLICANT'S NAME: \_\_\_\_\_

	Weight Factor	x	Rating =	Score
1.    Completeness of the application and compliance with guidelines and requirements of the application process.	20			
2.    Evidence of demand & local financial support.	15			
3.    Ability of management to administer the grant and meet INDOT's guidelines and requirements and operate a transit system.	20			
4.    Extent to which existing area-wide services, manpower, and equipment are used in the project.	15			
5.    Appropriateness of type of service, level of service, planned improvements/expansion, and equipment.	10			
6.    Actions previously implemented and/or planned to reduce operating costs and improve operating revenue.	10			
7.    Suitability of the existing and/or proposed promotional techniques and programs to reach riders and potential riders.	10			

**TOTAL SCORE (Total points possible: 300)** \_\_\_\_\_

Ratings: Excellent - 3 Good - 2 Adequate - 1 Poor - 0

REVIEWER'S NAME: \_\_\_\_\_

Please return form to INDOT, Office of Transit, 100 N. Senate Ave., Room N808 Indianapolis, IN. 46204-2219.

**NOTE:** This rating form will be used to evaluate New Applicant Operating requests only.

**Attachment III-2:**  
**Capital Application Review and Rating Form**



## Section IV.

# Financial Management

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## IV. FINANCIAL MANAGEMENT

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### INTRODUCTION

Receipt of a Section 5311 grant obligates the grantee to use funds it receives as specified in the project application and grant agreement. Execution of the grant agreement establishes a partnership between INDOT and the grantee wherein INDOT assumes an oversight role in the use of grant funds and retains a vested interest in the unused grant balances, improperly applied funds, and property and facilities purchased or otherwise acquired under the grant.

Grantees and third party contractors are responsible for establishing and maintaining adequate internal control over all the functions that relate to project administration and execution. These control systems must adhere to:

- [Indiana Code \(I.C.\) 5-11-1-2 \(Attachment IV-1\)](#)
- Applicable Federal requirements outlined in the [Common Rule \(Volume II, Appendix B\)](#) and [OMB Circular A-87 \(Volume II, Appendix C\)](#)
- Program specific guidance contained in [FTA Circular 9040.1F \(Volume II, Appendix D\)](#).

The overall objectives of the grantee's financial management system should be to:

- Operate efficiently and economically;
- Keep project obligations and costs within the limits authorized under the grant and with legal requirements, consistent with the scope of the project as outlined in the application;
- Safeguard project assets against waste, loss, and misuse;

- Ensure timely collection and proper accounting of the grantee's operating and contract revenue; and
- Assure accuracy and reliability in financial, statistical, and other required reports.

In order to achieve these objectives, grantees must have a system of internal control, an accounting system that meets certain standards, and an overall financial management process that meets the minimum requirements of [49 CFR 18.20\(b\) in the Common Rule \(Volume II, Appendix B\)](#).

### FINANCIAL MANAGEMENT SYSTEM

Grantees must establish and maintain an adequate financial management system that provides for:

- (1) The accumulation and reporting of accurate, current, and complete financial information for the Section 5311 grant;
- (2) The identification and recording of the source and application of funds for grant supported activities. This must include information about Federal awards and obligations, unobligated balances, assets, liabilities, outlays and income;
- (3) Control and accountability for all funds, property and other assets, including safeguards against unauthorized use;
- (4) Comparability of actual outlays with budgeted amounts for each grant-funded activity. Where appropriate, unit cost information should be

provided for productivity comparisons;

- (5) Procedures for determining reasonableness, eligibility and proper allocation of costs as required by OMB Circular A-87 (Volume II, Appendix C);
- (6) Accounting records that are supported by source documentation; and,
- (7) Procedures that assure timely and appropriate resolution of audit findings and recommendations.

### **Accounting Systems**

Grantee accounting systems must be complete and reliable. They must accurately represent the status of all funds, property, assets and liabilities, obligations, receipts and revenues, expenditures, disbursements, and costs. Accounting records appropriately include financial data as well as quantitative data so that planning, control, and other management tasks may be undertaken.

Financial transactions must be adequately supported in the grantee's files with all pertinent documents available for audit. All transactions must be recorded when made, in a manner that readily permits them to be traced from originating documents through summary records and financial reports.

### **Pre-Award Audit**

INDOT will conduct a pre-award audit of all new grantees prior to entering into a financial assistance agreement for Section 5311 funds. The purpose of this audit is to review the grantee's system of internal controls and financial management system.

INDOT will also review the grantee's most recent single audit report to identify any deficiencies in the grantee's accounting and

financial management practices that must be resolved prior to the award of the grant.

INDOT or representatives from the Indiana State Board of Accounts reserve the right to conduct an on-site review of the grantees accounting and financial management systems as part of the pre-award process. While the on-site reviews are usually limited to new grantees, INDOT or its representatives may also visit grantees who have received a major grant award or who have encountered difficulties in the administration of previous Federal and/or grants.

### **Chart of Accounts**

INDOT has adopted a standard chart of accounts ([Attachment IV-2](#)) that must be used in budgeting and reporting Section 5311 expenses. This chart of accounts is based on the Federal Transit Administration (FTA) required chart of accounts, which is used by FTA grantees in urbanized areas throughout the United States.

A grantee's decision whether to provide service directly or through a contract with another operator will have a significant impact on the complexity of its accounting records. Records for grantees providing service directly will be significantly more complex than those grantees that contract for services with another entity.

Grantees that contract service through competitive procurement are required to maintain and report their own administrative expenses plus amounts paid to the contract operator. Contract operators may continue to use their own accounting system, so long as that system reports financial information in accordance with INDOT's standardized account code structure. If the operator is paid on a fixed unit rate basis, the operator must be able to accurately maintain and report the number of service units provided and the amount of revenue(s) received.

## **Basis of Accounting**

Grantees may use a cash, modified cash, or accrual accounting system to maintain and report Section 5311 financial transactions. However, INDOT recommends the use of accrual accounting.

## **Accrual Accounting**

Accrual accounting is both the most difficult and the most accurate of the three financial reporting methods. It follows the principal that recognizes and records expenses when they are incurred and revenues when they are realized (earned), without regard to the time of payment or receipt of cash.

## **Cash Accounting**

Cash basis accounting is the simplest and easiest accounting method to understand. Under this method, cash flow determines when expenses and revenues are recorded. In other words, expenses are recorded only when cash is paid and revenues only when cash is received regardless of when incurred or earned.

While simple to understand in comparison to accrual accounting, cash accounting may not accurately reflect the true financial position of the transit organization.

## **Modified Cash Accounting**

The modified cash basis of accounting is a mixture of cash and accrual accounting. Expenses and revenues that result in transactions extending beyond the current year are divided into two parts. The entire portion of the expense or revenue attributable to the current year is immediately recorded as an expense or revenue (cash accounting). The remaining portion is recorded as either a prepaid expense (asset) or an unearned income (liability), and is deferred and recorded in

the next period to which it applies (accrual accounting).

## **Cost Centers, Indirect Costs, and In-Kind Contributions**

Grantees or service providers who provide other service functions in addition to their rural general public transportation service financed under Section 5311 must be able to segregate, accumulate, and allocate costs attributable only to the Section 5311 program.

As a general rule, grantees will establish transit as a separate cost center (department or fund within the accounting system) in order to track direct costs associated only with the program. In addition, the grantee should also develop a cost allocation plan in accordance with [OMB Circular A-87, "Cost Principles for State and Local Governments" \(Volume II, Appendix C\)](#), to equally distribute common or indirect costs between the Section 5311 program and other services.

Functions such as accounting and payroll are typical of shared functions utilized by a local government that operates a rural transit program. The costs associated with shared functions are an eligible expense under the Section 5311 program as an indirect cost to the extent they reflect the indirect cost rate developed by the grantee and as approved by the grantee's cognizant Federal agency. A copy of the grantee's cost allocation plan must be on file with INDOT if these costs are to be claimed under the Section 5311 program.

"Indirect costs" are those costs incurred for a common or joint purpose benefiting more than one department or fund and that is not readily assignable to the transit program without effort disproportional to the results achieved.

“Cognizant agency” means the Federal agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals on behalf of all Federal agencies in accordance with [OMB Circular A-133 \(Volume II, Appendix E\)](#).

Grantees may also periodically benefit from donated goods or services provided by volunteers, outside professional and technical personnel, consultants, and other skilled and unskilled labor. The value of these services is not reimbursable either as a direct or indirect expense under Section 5311. However, the value of the donation may be used to meet the matching requirements of the program (cash equivalent) where permitted by INDOT. Contact INDOT before using donated services.

Consistent with the cost principals outlined in [OMB Circular A-87 \(Volume II, Appendix C\)](#), INDOT requires that the value of the donated service be supported by the same methods used by the governmental organization to support other direct expenses.

## **Allowable Costs**

### **General Guidelines**

Costs, consistent with the approved project budget, are allowable to the extent they meet the following criteria. The cost must be:

- Necessary and reasonable for proper and efficient performance or administration of the transit program;
- Allocable to the Section 5311 program;
- Recognized in the approved project budget and not be prohibited under the Indiana Codes;
- In conformance with the principles, limitations, and exclusions in [OMB A-87 \(Volume II, Appendix C\)](#);

- Consistently treated in accordance with the procedures that apply to the unit of local government;
- Accorded consistent treatment by the local government in terms of classification (*e.g.*, an indirect cost under one Federal grant is considered an indirect cost under all Federal grants received by the governmental unit);
- Determined in accordance with generally accepted accounting principles;
- Excluded as a cost used to meet local matching requirements for other Federal grants;
- Net of all applicable credits; and
- Adequately documented.

### **Special Items**

Grantees should also be aware of special conditions regarding the allowability of costs, as follows:

*Advertising* – Advertising and public relations costs incurred by the grantee to promote the transit system are allowable under the Section 5311 program, even though [OMB Circular A-87 \(Volume II, Appendix C\)](#) indicates that most advertising costs for these purposes would be unallowable.

*Advisory Councils* – Reasonable expenses of advisory councils (costs incurred by advisory councils or committees) are generally allowable.

*Bad Debts* – Any losses arising from uncollectible accounts and other claims, and related costs, are unallowable.

*Donated Services* – The value of donated or volunteer services is not reimbursable either as a direct or indirect cost. However, the value of donated services may be used to meet cost sharing or matching requirements in accordance with the provisions of the Common Rule.

*Contingencies* – Expenses for contingencies or capital reserve accounts are unallowable, however, INDOT may specifically allow a contingency for certain capital acquisitions. Such expenses must be a part of the approved project budget.

*Contributions and Donations* - Contributions and donations, including cash, property, and services, by governmental units to others, regardless of the recipient, are unallowable according to OMB Circular A-87.

*Depreciation* – Depreciation of facilities or equipment purchased with Federal or state capital funds is unallowable. Depreciation of private assets is allowable as long as the rate used is applicable for income tax purposes.

*Income Taxes* – Federal, state, and local income taxes paid by private operators under contract are unallowable.

*Related Activities* – Expenses for indirect transportation-related activities performed by regional or local entities as a normal function of general public administration are unallowable. An example would be expenses incurred by a city council while considering transit matters.

*Intangible Assets* – Amortization of intangible assets is unallowable.

*Memberships* – Costs associated with memberships in business, professional, or technical organizations are allowable. Memberships in organizations substantially engaged in lobbying are unallowable.

**Project Invoicing and Reporting**

Rural Transit grantees are required to submit the Quarterly Operating Data Report form to INDOT within 45 days after the conclusion of the quarter.

Failure to submit the quarterly operating data report forms may result in INDOT withholding future reimbursement payments.

**INDOT Operating Report Schedule**

Quarter	Operating Data Report Due Date
January 1 to March 31	May 15
April 1 to June 30	August 15
July 1 to September 30	November 15
October 1 to December 31	February 15

Using the information contained in the quarterly data reports, INDOT develops performance measures, which are provided to the grantees. INDOT uses these measures for evaluation purposes, such as time trend analyses and to conduct peer group analyses among the rural transit systems. The information from the quarterly reports is also used for compiling the annual report of the transit systems in the state.

**Operating Funds**

This section provides an overview of INDOT’s procedures for requesting reimbursement of PMTF/Section 5311 operating funds.

Requests for reimbursements are made to INDOT on a quarterly basis. Grant funds are provided on a reimbursement basis only; meaning that the grantee must incur the expense, and then seek reimbursement from INDOT.

Grantees submit five forms as part of this process ([Attachment IV-2](#)):

- (1) Contract Invoice Voucher;
- (2) Quarterly Operating Data Report;

(3) Quarterly Operating Financial Status Report;

(4) DBE Work Sheet; and

(5) Trip Denial Form.

**Quarterly Operating Data Report** – This form is used to provide transit system operating data to INDOT. Grantees should indicate the transit system name, the calendar year quarter to which the report applies, year, and operating data, by mode of service, for the system. Requested operating data include:

- Passenger boardings;
- Total vehicle miles;
- Revenue vehicle miles;
- Gallons of fuel used;
- Number of road calls;
- Operating income; and
- Total expenses.

This data must be reported by service mode (fixed route, demand response, and/or charter). Fixed route is transit service that is operated along a prescribed route according to a fixed schedule in accordance with the definition found in [49 CFR Part 37.3](#). Demand response is all other transit service that cannot be defined as fixed route. Charter service is defined in [49 CFR Part 604](#) as transportation provided by a recipient at the request of a third party for the exclusive use of a bus or van for a negotiated price. INDOT exclusively prohibits charter service. The following features may be characteristic of charter service:

- A third party pays the transit provider a negotiated price for the group;
- Any fares charged to individual members of the group are collected by a third party;
- The service is not part of the transit provider's regularly scheduled service, or is offered for a limited period of time;

- A third party determines the origin and destination of the trip as well as scheduling; or,
- Transportation provided by a recipient to the public for events or functions that occur on an irregular basis or for a limited duration and:
  - A premium fare is charged that is greater than the usual or customary fixed route fare; or
  - The service is paid for in whole or in part by a third party.

**Quarterly Operating Financial Status Report** – With this report, the grantee provides INDOT with quarterly financial data regarding the system. The report also assists the grantee in determining the appropriate amount of funds to invoice under PMTF/Section 5311.

The form requests information in the following areas:

- System identification;
- Total expenses;
- Operating income;
- Net expense;
- Federal share;
- Local cash grants and reimbursements; and
- PMTF share.

INDOT will record the Purchase Order Number, Project Number(s) on the form before it is distributed to the grantee.

*Total expenses* for the quarter should be drawn from the grantee's accounting system and represent the total eligible costs for the reporting period. Total expenses must equal total revenues (Operating Income + FTA Share + Local Cash + PMTF) = Total Expense.

*Operating income* represents income from the operation of transit services and includes passenger fares, special fares, revenues from charter services, other revenues, and contra-

expenses. Operating income is deducted from Total Expenses to yield *Net Expense*.

*FTA share* is computed at 50 percent of net expenses (however, at no time may the total FTA reimbursements exceed the contract amount specified by INDOT). The amount computed on this line should be transferred to the Contract Invoice Voucher.

*Local cash grants and reimbursements* are computed based on the monies eligible to be used as match for PMTF, such as taxes levied directly by the transit system, general fund appropriations, unrestricted Federal and/or state funds, and monies not eligible for PMTF match, such as in-kind labor.

State PMTF share is calculated as total expenses minus the Federal share minus contra-expenses minus in-kind labor, divided by 2. Like Section 5311 funding, the total amount of PMTF reimbursement may not exceed the amount specified in the contract. PMTF may not exceed 100 percent of Locally Derived Income (LDI). This amount should also carry over to the Contract Invoice Voucher.

An electronic, unsigned copy of the Quarterly Operating Status Financial Report should be submitted to INDOT with the Contract Invoice Voucher (State Form 3211). Grantees are required to keep the original, signed Contract Invoice Voucher on file.

Quarterly Invoice Vouchers should be accompanied by the grantee's Public Transportation Annual Report data.

## **CAPITAL FUNDS**

This section provides an overview of INDOT procedures for requesting reimbursement of PMTF/Section 5311 capital funds.

Requests for capital reimbursement may be made to INDOT at any time or whenever necessary to assist the grantee in meeting project obligations (*e.g.*, invoices from equipment vendors). However, only one (1) invoice will be accepted for any given reporting time period (*e.g.*, monthly, quarterly, *etc.*).

Like operating grants, funds are provided on a reimbursement basis only, meaning that the grantee must incur the expense, as evidenced by documentation from the equipment vendor, and then seek reimbursement from INDOT. Grantees may submit the invoice to INDOT once they receive the vehicle and invoice from the vendor.

Grantees should submit the Capital Financial Status Report along with the Contract Invoice Voucher in seeking reimbursements. Data to complete the Capital Financial Status Report is derived directly from the approved project budget.

The Federal share cannot exceed 80 percent of total costs and cannot exceed the amount specified in the grant award.

PMTF funding is one-half of the non-Federal share of project costs, or an amount equal to LDI (whichever is less).

A blank copy of the Capital Financial Status Report is found in [Attachment IV-3](#).

## **BUDGET REVISION PROCEDURES**

During the course of a project, it may be necessary to revise the approved grant budget. A budget revision is defined as any change to line item amounts, funding amounts, or the quantity or type of capital items to be purchased under the scope of work. Revisions to the budget fall into one of three (3) categories:

- Revisions that can be undertaken by the grantee with INDOT notification (but not requiring INDOT approval);
- Revisions that require INDOT approval; and
- Revisions that require a contract amendment.

### **Budget Revisions that Do Not Require INDOT Prior Approval**

Generally, contract amendments are not required for minor changes that will not affect the total amount of the project or affect changes in the scope of the project. Such minor changes include the transfer of funds between approved line items, increases or decreases in line item quantities, and the addition or deletion of non-major line items.

If the budget revision falls into this category, grantees should notify the Office of Transit when the next invoice is submitted. The grantee should provide INDOT with a revised budget and quarterly line item balances.

### **Budget Revisions that Require INDOT Prior Approval**

Budget changes that are not considered minor and, therefore, require the *prior* approval of INDOT include:

- The cumulative transfer of funds between line items where the total equals or exceeds ten (10) percent of the total project cost. No transfers are permitted that will cause Section 5311 or State funds to be used for purposes other than those specified in the grant contract;
- The transfer of funds between indirect and direct line items in operating grants and the transfer of funds between non-construction and construction line items in a capital grant; and
- The increase or decrease of capital line item quantities.

When the budget revision falls into this category, the grantee should write to INDOT indicating:

- A detailed description of the changes;
- Justification for the changes; and,
- A revised budget in the required format.

INDOT Office of Transit will take action on budget revisions requests within 30 days. The Office of Transit will return a signed copy of the budget revision to the grantee if the request is approved. If disapproved, the Office of Transit will transmit a letter to the grantee indicating the reasons for disapproval.

### **Budget Revisions that Require Grant Contract Amendment**

A contract amendment is required when the grantee requests a change that represents a major change in scope of the project or when the change will require a change in the amount of Federal and state funds in the project.

Examples of major budget revisions include changing to new construction from acquisition of an existing building for a transit facility. If a grantee is unsure whether the scope of the change constitutes a major or minor change, the grantee should contact INDOT for a determination.

When making budget changes that require a contract amendment, the grantee must request the change in writing, including the following elements in the letter of request:

- Identify, explain, and justify the changes in scope;
- Submit a revised budget in the required format; and
- Identify and verify that additional local match is available (if the change results in a net increase in project cost).

INDOT will review the budget revision and will determine if the change in scope is significant enough to warrant a new public hearing, additional environmental impact determinations, and/or whether additional project documentation is necessary. INDOT approval will be based on the weight of the submitted evidence, the adequacy of the justification, and the availability of funds. Concurrent with the written approval of the revision, INDOT may authorize, under certain conditions, the grantee to proceed with the revised scope of work prior to execution of the contract amendment.

#### Deadlines for Submission

Operating grant budget revisions must be submitted on or before December 1 of the grant contract period. Capital grant budget revisions must be submitted at least 60 calendar days prior to the end of the grant contract period.

In some circumstances, INDOT may consider a budget revision after the end of the contract period if the revision does not require a contract amendment, and only if:

- The grantee can demonstrate why the request could not have been submitted in accordance with the deadlines noted above; and
- There is a sufficient balance of funds in the contract to fund the revision.

#### **Audit, Resolution, and Project Close-Out Single Audit**

[OMB Circular A-133 \(Volume II, Appendix E\)](#) implements the provisions of the "Single Audit Act of 1984," establishing the single annual audit requirement for State/local governments and other public bodies that receive Federal assistance.

The purpose of the single annual audit report is to determine whether the grantee:

- (1) Has prepared financial statements that fairly present its financial position and the results of its financial operations in accordance with generally accepted accounting principles;
- (2) Has in place internal accounting and other control systems to provide reasonable assurance that it is managing Federal financial assistance programs in compliance with applicable laws and regulations;
- (3) Has complied with laws and regulations that may have material effect on its financial statements; and on each of its major Federal assistance programs (as defined according to the sliding scale discussed in [OMB Circular A-133\) – Volume II, Appendix E](#)).

The legally authorized auditing body for all grantees is the State Board of Accounts. Grantees that contract with private companies for transit service must require that these companies provide them with their annual audit. The grantee is responsible for reviewing all subcontractors' audit reports and appropriately resolving any findings. The subcontractors' audits must be available for review by INDOT, upon request.

#### **Resolution of Audit Findings**

Grantees and subgrantees are responsible for prompt resolution of all audit findings and recommendations. This responsibility requires that the grantee:

- (1) Promptly evaluate the report;
- (2) Determine the appropriate follow-up actions and establish a date for their completion; and

- (3) Complete all required actions within the established period of time.

Deficiencies or opportunities for improvement identified in an audit must be resolved by the grantee. The resolution of audit findings begins with INDOT's report to the grantee and continues until the grantee corrects identified deficiencies, implements needed improvements, or demonstrates that the findings or recommendations are not valid or do not warrant management action.

The audit is not resolved until INDOT concurs in the documentation of steps taken to implement any needed corrective actions.

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The status of outstanding audit findings and recommendations should be monitored and reported by the grantee in quarterly progress reports and, where appropriate, significant events reported.

### **Close-Out**

The close-out of a Section 5311 grant will occur after INDOT has received, reviewed, and accepted the audit report (and/or accepted the grantee's resolution of audit findings), accepted the final grant reports, and notified the grantee in writing of such acceptance.

**Attachment IV-1.**

**Indiana Code 5-11-1-2**

**IC 5-11**  
**ARTICLE 11. ACCOUNTING FOR PUBLIC FUNDS**

**IC 5-11**

**ARTICLE 11. ACCOUNTING FOR PUBLIC FUNDS**

**IC 5-11-1**

Chapter 1. State Board of Accounts Created

**IC 5-11-1-1 Establishment; members; appointment; qualifications; terms; tenure** Sec. 1. There is established a state board of accounts. The board consists of the state examiner and two (2) deputy examiners as provided in this section. The principal officer of the board is the state examiner, who shall be appointed by the governor and who shall hold office for a term of four (4) years from the date of appointment. The state examiner must be a certified public accountant with at least three (3) consecutive years of active experience as a field examiner with the state board of accounts that immediately precedes the appointment as state examiner. The governor shall also appoint two (2) deputy examiners, who must have the same qualifications as the state examiner, be of different political parties, and be subordinate to the state examiner. The deputy examiners shall be appointed for terms of four (4) years. The state examiner and the deputy examiners are subject to removal by the governor for incompetency or for misconduct of the office, after a hearing upon due notice and upon stated charges in writing. An appeal may be taken by the officer removed to the circuit or a superior court of Marion County. □(Formerly: Acts 1909, c.55, s.1; Acts 1915, c.72, s.1; Acts 1941, c.110, s.1; Acts 1943, c.236, s.1; Acts 1945, c.176, s.1.) As amended by Acts 1980, P.L.30, SEC.1; P.L.3-1986, SEC.7; P.L.39-1996, SEC.1; P.L.246-2005, SEC.53.

**IC 5-11-1-2 System of accounting and reporting** Sec. 2. (a) The state board of accounts shall formulate, prescribe, and install a system of accounting and reporting in conformity with this chapter, which must comply with the following: (1) Be uniform for every public office and every public account of the same class and contain written standards that an entity that is subject to audit must observe. (2) Exhibit true accounts and detailed statements of funds collected, received, obligated, and expended for or on account of the public for any and every purpose whatever, and by all public officers, employees, or other individuals. (3) Show the receipt, use, and disposition of all public property and the income, if any, derived from the property. (4) Show all sources of public income and the amounts due and received from each source. (5) Show all receipts, vouchers, contracts, obligations, and other documents kept, or that may be required to be kept, to prove the validity of every transaction.

The state board of accounts shall formulate or approve all statements and reports necessary for the internal administration of the office to which the statements and reports pertain. The state board of accounts shall approve all reports that are published or that are required to be filed in the office of state examiner. The state board of accounts shall from time to time make and enforce changes in the system and forms of accounting and reporting as necessary to conform to law. (b) Notwithstanding subsection (a), the state board of accounts may not require a municipality to use an electronic, automated, or computerized system of accounting and reporting. However, if a municipality elects to use an electronic, automated, or computerized system of accounting, the system must conform to the requirements of this chapter. □(Formerly: Acts 1909, c.55, s.2; Acts 1945, c.176, s.2.) As amended by Acts 1980, P.L.30, SEC.2; P.L.3-1986, SEC.8; P.L.39-1996, SEC.2.

**IC 5-11-1-3 Separate accounts** Sec. 3. Separate accounts shall be kept for every appropriation or fund of the state or any municipality. Separate accounts shall also be kept for each department, undertaking, enterprise, institution, and public service industry. □(Formerly: Acts 1909, c.55, s.3.) As amended by Acts 1980, P.L.30, SEC.3.

**IC 5-11-1-4 Financial reports** Sec. 4. (a) The state examiner shall require from every municipality and every state or local governmental unit, entity, or instrumentality financial reports covering the full period of each fiscal year. Except as provided by subsection (b), these reports shall be prepared, verified, and filed with the state examiner not later than thirty (30) days after the close of each fiscal year. (b)

The following shall prepare, verify, and file the reports required under subsection (a) not later than sixty (60) days after the close of each fiscal year: (1) A municipal government. (2) A public library. (3) A district (as defined in IC 13-11-2-58(a)) that owns a landfill (as defined in IC 13-11-2-116(c)). (Formerly: Acts 1909, c.55, s.4.) As amended by Acts 1980, P.L.30, SEC.4; P.L.3-1986, SEC.9; P.L.44-1991, SEC.1; P.L.50-2000, SEC.2; P.L.189-2005, SEC.1.

**IC 5-11-1-5 Repealed** (Repealed by Acts 1980, P.L.30, SEC.19.)

#### **IC 5-11-1-6**

**Forms of report** Sec. 6. The state board of accounts shall formulate, prescribe, and approve the forms for reports required to be made by this chapter. The state examiner shall annually furnish to the officers required to make reports by this chapter such printed blanks and forms, on which shall be indicated the information required, together with suitable printed instructions for filling out the same. (Formerly: Acts 1909, c.55, s.6.) As amended by Acts 1980, P.L.30, SEC.5.

**IC 5-11-1-7 Field examiners; private examiners** Sec. 7. (a) The state examiner shall appoint assistants not exceeding the number required to administer this article. The assistants are to be known as "field examiners" and are at all times subject to the order and direction of the state examiner. Field examiners shall inspect and examine accounts of all state agencies, municipalities, and other governmental units, entities, or instrumentalities. (b) The state examiner may engage or allow the engagement of private examiners to the extent the state examiner determines necessary to satisfy the requirements of this article. These examiners are subject to the direction of the state examiner while performing examinations under this article. (c) The state examiner may engage experts to assist the state board of accounts in carrying out its responsibilities under this article. (Formerly: Acts 1909, c.55, s.7.) As amended by Acts 1980, P.L.30, SEC.6; P.L.3-1986, SEC.10.

**IC 5-11-1-8 Field examiners; examinations** Sec. 8. Such field examiners shall be appointed from applicants who shall have successfully passed an open, competitive examination for testing their fitness for appointment. Such examinations shall be given under the direction of the board after due announcement in the public press, and shall be practical in their character, and, as far as may be, shall relate to those matters which will fairly test the relative capacity and fitness of the persons examined to discharge the duties of the office. All appointments of field examiners shall be made solely upon the ground of fitness and without regard to the political affiliation of the appointee, excepting that no more than one-half (1/2) of the number of field examiners employed at any one (1) time shall belong to any one (1) political party. The state board of accounts is empowered to make and establish, and from time to time alter and amend, by-laws, rules and regulations for the proper enforcement of the provisions of this article and other laws placing duties and responsibilities on the state board of accounts. (Formerly: Acts 1909, c.55, s.8.) As amended by Acts 1980, P.L.30, SEC.7.

**IC 5-11-1-9 Financial examinations; required inquiries; inefficiencies encountered; witnesses; records; process** Sec. 9. (a) The state examiner, personally or through the deputy examiners, field examiners, or private examiners, shall examine all accounts and all financial affairs of every public office and officer, state office, state institution, and entity. (b) An examination of an entity deriving: (1) less than fifty percent (50%); or (2) at least fifty percent (50%) but less than one hundred thousand dollars (\$100,000) if the entity is organized as a not-for-profit corporation; of its disbursements during the period of time subject to an examination from appropriations, public funds, taxes, and other sources of public expense shall be limited to matters relevant to the use of the public money received by the entity. (c) The examination of an entity described in subsection (b) may be waived or deferred by the state examiner if the state examiner determines in writing that all disbursements of public money during the period subject to examination were made for the purposes for which the money was received. However, the: (1) Indiana economic development corporation created by IC 5-28-3 and the corporation's funds, accounts, and financial affairs; and (2) department of financial institutions established by IC 28-11-1-1 and the department's funds, accounts, and financial affairs; shall be examined biennially by the state board of accounts. (d) On every examination under this section, inquiry shall be made as to the following: (1) the financial condition and resources of each municipality, office, institution, or entity. (2) Whether the laws of the state and the uniform compliance guidelines of the state board of

accounts established under section 24 of this chapter have been complied with. (3) The methods and accuracy of the accounts and reports of the person examined. The examinations shall be made without notice. (e) If during an examination of a state office under this chapter the examiner encounters an inefficiency in the operation of the state office, the examiner may comment on the inefficiency in the examiner's report. (f) The state examiner, deputy examiners, any field examiner, or any private examiner, when engaged in making any examination or when engaged in any official duty devolved upon them by the state examiner, is entitled to do the following: (1) Enter into any state, county, city, township, or other public office in this state, or any entity, agency, or instrumentality, and examine any books, papers, documents, or electronically stored information for the purpose of making an examination (2) Have access, in the presence of the custodian or the custodian's deputy, to the cash drawers and cash in the custody of the officer. (3) During business hours, examine the public accounts in any depository that has public funds in its custody pursuant to the laws of this state. (g) The state examiner, deputy examiner, or any field examiner, when engaged in making any examination authorized by law, may issue subpoenas for witnesses to appear before the examiner in person or to produce books, papers, or other records (including records stored in electronic data processing systems) for inspection and examination. The state examiner, deputy examiner, and any field examiner may administer oaths and examine witnesses under oath orally or by interrogatories concerning the matters under investigation and examination. Under the authority of the state examiner, the oral examinations may be transcribed with the reasonable expense paid by the examined person in the same manner as the compensation of the field examiner is paid. The subpoenas shall be served by any person authorized to serve civil process from any court in this state. If a witness duly subpoenaed refuses to attend, refuses to produce information required in the subpoena, or attends and refuses to be sworn or affirmed, or to testify when called upon to do so, the examiner may apply to the circuit court having jurisdiction of the witness for the enforcement of attendance and answers to questions as provided by the law governing the taking of depositions. (Formerly: Acts 1909, c.55, s.9; Acts 1945, c.176, s.3.) As amended by Acts 1978, P.L.2, SEC.506; Acts 1980, P.L.30, SEC.8; P.L.3-1986, SEC.11; P.L.63-1989, SEC.1; P.L.70-1995, SEC.1; P.L.39-1996, SEC.3; P.L.50-1999, SEC.1; P.L.4-2005, SEC.25; P.L.213-2007, SEC.2; P.L.217-2007, SEC.2.

**IC 5-11-1-9.5 Grounds for examination; retaliation for making sworn statement prohibited** Sec. 9.5.

(a) The state examiner may not undertake an examination of a public office, officer, or institution based on the allegation of an individual, organization, or institution that a violation of the law has occurred unless: (1) the individual or representative of the organization or institution makes the allegation in the form of a sworn statement that the individual or representative believes the allegation to be true; or (2) the state examiner has probable cause to believe that a violation of the law has occurred. (b) A public office, officer, or institution may not retaliate against an employee of the state or a political subdivision for making the sworn statement described in subsection (a). (As added by P.L.51-1985, SEC.1.

**IC 5-11-1-9.7 Withdrawal or removal of counties from solid waste management districts** Sec. 9.7.

(a) The state examiner, personally or through the deputy examiners, field examiners, or private examiners, shall examine the division under IC 13-21-4-4 of the responsibility for legal obligations entered into by a joint solid waste management district upon the withdrawal or removal of a county from the district. (b) Not later than one hundred twenty (120) days after the effective date of the withdrawal or removal, the state examiner shall issue a report of the examination under subsection (a) to: (1) the board of directors of the joint solid waste management district; and (2) the executive of the county that withdrew or was removed from the joint solid waste management district. (c) A report under this section may be used as evidence in an action seeking to enforce the payment of legal obligations entered into by a joint solid waste management district. As added by P.L.74-2002, SEC.1.

**IC 5-11-1-10 Failure to file report; interference with examiners; offense** Sec. 10. A public officer who: (1) fails to make, verify, and file with the state examiner any report required by this chapter; (2) fails to follow the directions of the state examiner in keeping the accounts of the officer's office; (3) refuses the state examiner, deputy examiner, field examiner, or private examiner access to the books, accounts, papers, documents, cash drawer, or cash of the officer's office; or (4) interferes with an examiner in the discharge of the examiner's official duties; commits a Class B infraction and forfeits office. (Formerly: Acts 1909, c.55, s.10.) As amended by Acts 1978, P.L.2, SEC.507; P.L.3-1986, SEC.12.

**IC 5-11-1-11 Records of money collected; public inspection** Sec. 11. There shall be kept in the office of each public officer, board, commission, agency, instrumentality, and institution in this state, a record of money collected for the public treasury, the forms and records for which, for each class of offices, shall be devised and formulated by the state board of accounts. Such records as are provided for in this section shall be public records and must be accessible to the public during regular office hours. (Formerly: Acts 1909, c.55, s.11.) As amended by Acts 1980, P.L.30, SEC.9.

**IC 5-11-1-12 Repealed**

(Repealed by Acts 1980, P.L.30, SEC.19.)

**IC 5-11-1-13 Warrants or checks of state or municipality; receipts or quietus; correctness of claims** Sec. 13. Each officer having authority to draw the warrant or check of the state or of any municipality referred to in this chapter in disbursing its funds, or who has authority to execute the receipt or quietus of the state or of such municipality in settlement with public officers or with debtors, before presenting the same for allowance to the board or other authority required to pass upon the same, shall make an examination of all claims as to their form, the authentication thereof as required by law, whether they are based upon contract or statutory authority, and as to their apparent correctness, and upon presenting the same to file therewith his certificate in writing as to such matters in respect to each and all of such claims. Where the authority to pass upon and allow such claim is lodged in such officer, he shall, before drawing a warrant or check therefore, certify to the correctness thereof over his official signature. Before issuing the receipt or quietus of the state or municipality to any debtor or any officer making settlement, he shall examine the report, account or settlement sheet upon which settlement is made, and require of such debtor or officer, or to otherwise secure, all such information, accounts, vouchers or exhibits as shall be necessary to satisfy such officer issuing such receipt or quietus of the correctness of such report, account or settlement sheet, and to certify thereon that he has made such examination and is satisfied as to its correctness, and no such warrant, check, receipt, or quietus shall be issued by any such officer until such certificate shall have been executed and filed with such claim, report, account or settlement sheet. Where it is not practical for the officer to certify to the correctness of each revenue or claim document, the state board of accounts may prescribe other methods of preaudit to be performed before approval by the officer or his employees. □ (Formerly: Acts 1909, c.55, s.13.) As amended by Acts 1980, P.L.30, SEC.10.

**IC 5-11-1-14 Salaries and traveling expenses of state examiner, deputies, and assistants** Sec. 14. The salaries and necessary traveling expenses of the state examiner, his deputies, and assistants when engaged in the business of the state shall be paid as otherwise provided by law. (Formerly: Acts 1909, c.55, s.15.) As amended by Acts 1980, P.L.30, SEC.11.

**IC 5-11-1-15 Bonds and crime policies for faithful performance** Sec. 15. (a) The state examiner, deputy examiners, and field examiners shall each give bond for the faithful performance of the examiner's duties, as follows: (1) The state examiner in the sum of five thousand dollars (\$5,000), to be approved by the governor. (2) Each deputy examiner in the sum of three thousand dollars (\$3,000), to be approved by the governor. (3) Each field examiner in the sum of one thousand dollars (\$1,000), to be approved by the state examiner. However, field examiners may be covered by a blanket bond or crime insurance policy endorsed to include faithful performance under IC 5-4-1-15.1 subject to approval of the state examiner. (b) The commissioner of insurance shall prescribe the form of the bonds or crime policies required by this section. (Formerly: Acts 1909, c.55, s.16; Acts 1967, c.268, s.1.) As amended by P.L.3-1986, SEC.13; P.L.49-1995, SEC.6.

**IC 5-11-1-16 Definitions** Sec. 16. (a) As used in this article, "municipality" means any county, township, city, town, school corporation, special taxing district, or other political subdivision of Indiana. (b) As used in this article, "state" means any board, commission, department, division, bureau, committee, agency, governmental subdivision, military body, authority, or other instrumentality of the state, but does not include a municipality. (c) As used in this article, "public office" means the office of any and every individual who for or on behalf of the state or any municipality or any public hospital holds, receives, disburses, or keeps the accounts of the receipts and disbursements of any public funds. (d) As used in this article, "public officer" means any individual who holds, receives, disburses,

or is required by law to keep any account of public funds or other funds for which the individual is accountable by virtue of the individual's public office. (e) As used in this article, "entity" means any provider of goods, services, or other benefits that is: (1) maintained in whole or in part at public expense; or (2) supported in whole or in part by appropriations or public funds or by taxation. The term does not include the state or a municipality (as defined in this section). (f) As used in this article, a "public hospital" means either of the following: (1) An institution licensed under IC 16-21 and which is owned by the state or an agency of the state or one which is a municipal corporation. A hospital is a municipal corporation if its governing board members are appointed by elected officials of a municipality. (2) A state institution (as defined in IC 12-7-2-184). *(Formerly: Acts 1909, c.55, s.17.) As amended by Acts 1980, P.L.30, SEC.12; P.L.3-1986, SEC.14; P.L.2-1992, SEC.52; P.L.2-1993,*

*SEC.44.*

**IC 5-11-1-17 Repealed** *(Repealed by Acts 1978, P.L.2, SEC.521.)*

**IC 5-11-1-18 Examinations without notice; disclosure; offense** Sec. 18. All examinations under this chapter shall be made without notice to the officers whose accounts are to be examined, and without notice to any clerk, deputy, employee, or other person employed in or connected with the office or the business of such an officer. A person who recklessly communicates knowledge of any proposed examination of any public account to the officer in charge of the account or to any other unauthorized person commits a Class B misdemeanor. *(Formerly: Acts 1909, c.55, s.19.) As amended by Acts 1978, P.L.2, SEC.509.*

**IC 5-11-1-19 Copyrighting uniform bookkeeping system; purchase of public office supplies** Sec. 19. No system for uniform bookkeeping or any book, record, or form which may be adopted after April 5, 1909, shall be copyrighted unless it shall be deemed expedient by the governor that a copyright be procured in the name of the state, and if any such copyright be procured, the acceptance by the state or by any municipality of any bid for printed supplies of any sort shall operate as a license from the state to the successful bidder to manufacture any such copyrighted books, records, or forms included in such bid for public use without payment of royalty. All public books, records, and stationery used in the offices for which examination is provided in this chapter shall be purchased by the state, municipality, or institution after the manner provided by law. *(Formerly: Acts 1909, c.55, s.20.) As amended by P.L.25-1986, SEC.36.*

**IC 5-11-1-20 Repealed** *(Repealed by Acts 1980, P.L.30, SEC.19.)*

**IC 5-11-1-21Mandatory adoption of uniform system; refusal to adopt or failure to use; offense; penalty** Sec. 21. All public officers shall adopt and use the books, forms, records, and systems of accounting and reporting adopted by the state board of accounts, when directed so to do by the board, and all forms, books, and records shall be purchased by those officers in the manner provided by law. An officer who refuses to provide such books, forms, or records, fails to use them, or fails to keep the accounts of his office as directed by the board commits a Class C infraction and forfeits his office. *(Formerly: Acts 1909, c.55, s.22.) As amended by Acts 1978, P.L.2, SEC.510.*

**IC 5-11-1-22 Existing duties; effect of chapter** Sec. 22. The provisions of this chapter shall not be construed to relieve any officer of any duties required by law of him on April 5, 1909, with relation to the auditing of public accounts or the disbursement of public funds, but the provisions of this chapter shall be construed to be supplemental to all provisions of law existing on April 5, 1909, safeguarding the care and disbursement of public funds; and provided further, that the provisions of this chapter shall not be construed to limit or curtail the power of the governor of the state under laws existing on April 5, 1909, to make examination or investigation of any public office or to require reports therefrom. *(Formerly: Acts 1909, c.55, s.23.) As amended by P.L.25-1986, SEC.37.*

**IC 5-11-1-23 Repealed** *(Repealed by P.L.5-1988, SEC.35.)*

**IC 5-11-1-24 Uniform compliance guidelines for examinations and reports** Sec. 24. (a) The state

board of accounts shall establish in writing uniform compliance guidelines for the examinations and reports required by this chapter. The uniform compliance guidelines must include the standards that an entity must observe to avoid a finding that is critical of the entity for a reason other than the entity's failure to comply with a specific law. (b) The state board of accounts may not establish guidelines for the auditing of an entity that are inconsistent with any federal audit guidelines that govern the entity. (c) The state board of accounts must distribute the uniform compliance guidelines to each entity that the state board of accounts may audit. (d) If the state board of accounts engages or authorizes the engagement of a private examiner to perform an examination under this chapter, the examination and report must comply with the uniform compliance guidelines established under subsection (a). If a person subject to examination under this chapter engages a private examiner, the contract with the private examiner must require the examination and report to comply with the uniform compliance guidelines established under subsection (a). (e) The state or a municipality may not request proposals for performing examinations of an entity that is subject to examination under this chapter unless the request for proposals has been submitted to and approved by the state board of accounts. (f) The state or a municipality may not enter into a contract with an entity subject to examination under this chapter if the contract does not permit the examinations and require the reports prescribed by this chapter. *As added by P.L.3-1986, SEC.15. Amended by P.L.39-1996, SEC.4.*

**IC 5-11-1-25 Annual examinations; biennial examinations** Sec. 25. (a) Examinations under this chapter shall be conducted annually for the following: (1) The state. (2) Cities. (3) Counties. (4) Towns with a population greater than five thousand (5,000). (5) Public hospitals. (b) Subject to section 9 of this chapter, examinations under this chapter shall be conducted biennially for: (1) municipalities; and (2) entities; that are not listed in subsection (a). *As added by P.L.3-1986, SEC.16. Amended by P.L.2-1991, SEC.27.*

**IC 5-11-1-26 Examination reports; requisites; powers of board** Sec. 26. (a) If a state office, municipality, or other entity has authority to contract for the construction, reconstruction, alteration, repair, improvement, or maintenance of a public work, the state board of accounts shall include in each examination report concerning the state office, municipality, or entity: (1) an opinion concerning whether the state office, municipality, or entity has complied with IC 5-16-8; and (2) a brief description of each instance in which the state office, municipality, or entity has exercised its authority under IC 5-16-8-2(b) or IC 5-16-8-4. (b) The state board of accounts may exercise any of its powers under this chapter concerning public accounts to carry out this section, including the power to require a uniform system of accounting or the use of forms prescribed by the state board of accounts. *As added by P.L.63-1987, SEC.1.*

**Attachment IV-2:**

**Five Required Forms For Operating Funds Reimbursement**

**INDIANA DEPARTMENT OF TRANSPORTATION  
CONTRACT INVOICE - VOUCHER**

State Form 3211(R6/6-02) Approved by State Board of Accounts - July 1, 2002

**CONTRACTOR'S NAME & ADDRESS**

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<b>SERVICE DATE:</b>	<b>1099 IND:</b>	<b>NO</b>
----------------------	------------------	-----------

**TO: INDIANA DEPARTMENT OF TRANSPORTATION**

**CARE OF:** Indiana Department of Transportation  
100 N. Senate Ave., Room N808  
Indianapolis, Indiana 46204-2219

**ADDRESS:**

<b>DOC I.D:</b> PV 800	<b>DATE</b>
<b>VENDOR CODE</b> 0	<b>PV TYPE</b>

<b>AUDITOR: DOC #</b> 0		
<small>Date of P.O. (MM,DD,YY)</small>		
<b>PURCHASE ORDER NUMBER</b>		
<b>PO #</b>		
<b>FUND</b> 4900	<b>OBJECT</b> 572500	<b>CENTER</b> 109110
<b>STATE AGENCY:</b> DEPARTMENT OF TRANSPORTATION 800		
<small>Appro. Name</small>		
<small>STATE SHARE: .....</small>		
<small>FEDERAL SHARE: .....</small>		
<small>TOTAL DISBURSEMENT: .....</small> \$0.00		
<b>CONTRACTOR LEAVE BLANK</b>		
<small>GROSS AMT.</small>		
<small>AMT. LIQ.</small>		
<small>DISCOUNT</small>		
<small>AMT. PAID</small>		
<small>Debit (B)</small>	<small>Dr. Amount (Black)</small>	
<small>Credit (R)</small>	<small>Cr. Amount (Red)</small>	
<b>Approved Payment</b>		

ACCOUNTING LINE DISTRIBUTION													
LN	PO NUMBER	LN	INVOICE NUMBER	FUND	OBJ	CENTER	DEPT	BUD REF	CLASS	PRODUCT	PROJECT	AMOUNT	P/F
01				4900	57270	10911	065285		070	81818			
02													
03													
04													
05													
06													

**DESCRIPTION**

<b>RECOMMENDED FOR APPROVAL</b>	<b>DATE</b>	Pursuant to the provision and penalties of Indiana Code 5-11-10-1 I hereby certify that the foregoing account is just and correct, that the amount claimed is legally due, after allowing all just credits, and that no part of the same has been paid.  DATE (MM,DD,YY) _____  (FILL OUT ORIGINAL COPY COMPLETELY)  (Firm Name)  (Personal Signature) _____ (Title)  (Street or R.F.D.)  (City) _____ (State)
1. PROJECT ENGINEER		
2. OFFICE ADMIN. ENGINEER, CENTRAL OFFICE		
3. DIVISION CHIEF		
4. COMMISSIONER Payment Approved as to Funds Available and Account No.		
5. INDOT DIVISION OF ACCOUNTING AND CONTROL		
I certify that this claim is correct and valid, and is a proper charge against the Indiana Department of Transportation.		
INDIANA DEPARTMENT OF TRANSPORTATION (PERSONAL SIGNATURE)		

# QUARTERLY OPERATING DATA REPORT

Indiana Department of Transportation/Office of Transit

Grantee: 
 Year: 
 CALENDAR YEAR QUARTER
   
 Quarter:

DATA ITEM	Fixed Route	Demand Response	Charter	Total
1. Passenger Boardings				0
2. Total Vehicle Miles				0
3. Revenue Vehicle Miles				0
4. Revenue Vehicle Hours				0
5. Gallons of Fuel Used				0
6. Number of Road Calls				0
7. Operating Income				0
8. Total Expenses				0

\* Revenue Vehicle Hours is the sum of the number of hours each vehicle is scheduled to be in revenue service during the quarter. This excludes non-service hours (deadhead, training, etc.); charter hours; exclusive school bus hours and time lost due to missed runs.

Prepared by:  Date:

*Note: Quarterly Data Report is due 45 days following the end of a quarter.*

## QUARTERLY OPERATING FINANCIAL STATUS REPORT

Remit To:	<input style="width: 90%;" type="text"/>
Remit To Address:	<input style="width: 90%;" type="text"/>
Reimbursement Period:	<input style="width: 45%;" type="text"/> <input style="width: 5%; text-align: center;"/> ▼ <input style="width: 45%;" type="text"/> <input style="width: 5%; text-align: center;"/> ▼
INDOT Purchase Order #:	<input style="width: 90%;" type="text"/>

**A. TOTAL EXPENSES** \_\_\_\_\_  
*(Total Expenses = Operating Income + FTA Share + Local Cash + PMTF)*

**B. OPERATING INCOME** \_\_\_\_\_

(Itemized according to approved budget)

Farebox -

Special Transit Fares -

Aux. Non-trans. Revenue -

School Bus Service -

Contra-expenses -

**C. NET EXPENSE** *(total expenses - operating income)* \_\_\_\_\_

**D. FEDERAL FTA SHARE** Total: \_\_\_\_\_  
*= (Net expense x .5)*  
*Federal share may not exceed contract amount*

**E. LOCAL CASH GRANTS AND REIMBURSEMENTS**  
*= (PMTF - (Operating Income - Contra Expenses) + In Kind)*

(itemized according to approved budget)

Funds eligible for state PMTF match

  General Fund -

  Unrestricted Federal -

  Unrestricted State -

                  subtotal:

Funds *not* eligible for state PMTF match

  In-Kind Labor -

Total: \_\_\_\_\_

**F. STATE PMTF SHARE** Total: \_\_\_\_\_  
*= (Total Expenses - Federal Share - Contra Expenses - Inkind labor)/2*  
*State share may not exceed contract amount*

I certify that the above information is correct and that there are sufficient local funds to match federal and/or state funds requested.

\_\_\_\_\_  
 Person submitting claim \_\_\_\_\_  
 Date





**Attachment IV-3:**  
**Capital Financial Status Report**

**INDIANA DEPARTMENT OF TRANSPORTATION  
CONTRACT INVOICE - VOUCHER**

State Form 3211(R6/6-02) Approved by State Board of Accounts - July 1, 2002

**CONTRACTOR'S NAME & ADDRESS**

--

<b>SERVICE DATE:</b>	<b>1099 IND:</b>	<b>NO</b>
----------------------	------------------	-----------

**TO: INDIANA DEPARTMENT OF TRANSPORTATION**

**CARE OF:** Indiana Department of Transportation  
100 N. Senate Ave., Room N808  
Indianapolis, Indiana 46204-2219

**ADDRESS:**

<b>DOC I.D.: PV 800</b>	<b>DATE</b>
<b>VENDOR CODE</b> 0	<b>PV TYPE</b>

<b>AUDITOR: DOC #</b> 0		
Date of P.O. (MM,DD,YY)		
<b>PURCHASE ORDER NUMBER</b>		
<b>PO #</b>		
<b>FUND</b> 4900	<b>OBJECT</b> 572500	<b>CENTER</b> 109110
<b>STATE AGENCY:</b> DEPARTMENT OF TRANSPORTATION 000		
Appro. Name		
STATE SHARE .....		
FEDERAL SHARE .....		
TOTAL DISBURSEMENT..... \$0.00		
<b>CONTRACTOR LEAVE BLANK</b>		
AMT. LIQ.		GROSS AMT.
		DISCOUNT
		AMT. PAID
Debit (B)	Dr. Amount (Black)	
Credit (R)	Cr. Amount (Red)	
		Approved Payment

ACCOUNTING LINE DISTRIBUTION													
LN	PO NUMBER	LN	INVOICE NUMBER	FUND	OBJ	CENTER	DEPT	BUD REF	CLASS	PRODUCT	PROJECT	AMOUNT	P/F
01				4900	57250	10911	065285		070	81818			
02													
03													
04													
05													
06													

DESCRIPTION

<b>RECOMMENDED FOR APPROVAL</b>	<b>DATE</b>	Pursuant to the provision and penalties of Indiana Code 5-11-10-1 I hereby certify that the foregoing account is just and correct, that the amount claimed is legally due, after allowing all just credits, and that no part of the same has been paid.  DATE (MM,DD,YY) _____  (FILL OUT ORIGINAL COPY COMPLETELY)  (Firm Name)  (Personal Signature) _____ (Title)  (Street or R.F.D.)  (City) _____ (State)
1. PROJECT ENGINEER		
2. OFFICE ADMIN. ENGINEER, CENTRAL OFFICE		
3. DIVISION CHIEF		
4. COMMISSIONER Payment Approved as to Funds Available and Account No.		
5. INDOT DIVISION OF ACCOUNTING AND CONTROL		
I certify that this claim is correct and valid, and is a proper charge against the Indiana Department of Transportation.		
INDIANA DEPARTMENT OF TRANSPORTATION (PERSONAL SIGNATURE)		

## CAPITAL FINANCIAL STATUS REPORT (Rural Systems)

Remit To:  
 Remit Address:  
 Reimbursement Period:  
 INDOT Purchase Order Number:

	▼

### Approved Capital Expenses or Budget Revision

Activity Code*	Capital Items	Total	Federal	State	Local	
		Totals:	0	0	0	0

\* Activity Code may be obtained from grant budget

### Breakdown of Capital Items Per This Claim

Activity Code	Capital Items Purchased	Total	Federal**	State**	Local	
		Totals:	0	0	0	0

\*\* Federal/state share may not exceed grant award

### Cumulative Record

	Total	Federal	State	Local
<b>Total Contract Amount:</b>				
<u>Drawdowns:</u>				
Claim #1 Breakdown				
Claim #2 Breakdown				
Claim #3 Breakdown				
Claim #4 Breakdown				
Claim #5 Breakdown				
Claim #6 Breakdown				
Totals:	0	0	0	0
Balance:	0	0	0	0

I certify that the above information is correct and that there are sufficient local funds to match the federal and/or state funds requested.

\_\_\_\_\_  
*Persons submitting claim*

\_\_\_\_\_  
*Date*

## Section V.

# Property Management

### Table of Contents

<b>V. Property Management</b> .....	<b>V - 1</b>
Introduction.....	V - 1
Vehicle & Equipment Use.....	V - 1
Facility Construction and Renovation.....	V - 2
Disposition.....	V - 2
Vehicle Disposition.....	V - 3
Passenger Vehicle Classification and Useful Life Standards.....	V - 4
Attachment V-1: Indiana Code 36-1-11.....	V - 7

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## V. PROPERTY MANAGEMENT

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### INTRODUCTION

This section defines property management standards that must be exercised by Section 5311 grantees who purchase and use equipment and real property acquired with Federal funds. It is the responsibility of the grantee to manage the State and Federal capital investment in the system. The grantee must ensure that State and Federal property inventory and disposition procedures are followed.

### VEHICLE & EQUIPMENT USE

#### Use of Project Equipment

Equipment is defined as tangible, non-expendable, personal property having a useful life of more than one year and a unit price of \$300.00 or more.

Typically, equipment includes such items as major spare parts, computer systems, communication system, major maintenance tools, passenger shelters, etc.

Vehicles and equipment shall be used in the program for which it was acquired for as long as it is needed. This is true even if Section 5311 funding does not continue to fund the program. All grantees are required to submit an “annual certificate of use” for all vehicles and equipment acquired under the Section 5311 Program.

The grantee may make vehicles or equipment available for use in other programs or projects currently or previously supported by federal funds. However, this use may not interfere with the work on the program or project for which it was originally acquired. User fees shall be considered in this situation. Federally funded vehicles and equipment may not be

used to provide services for a fee to compete unfairly with private companies.

Section 5311 grantees may not use FTA funded vehicles for exclusive school bus or charter service (Refer to [Section IX](#)).

INDOT prohibits rural transit systems from providing any charter service. Similarly a grantee may not engage in exclusive school bus service in competition with private school bus operators. FTA is currently proposing to amend its school bus operations regulations to clarify several definitions, amend the school bus operations complaint procedures, and implement Section 3023 (f) of SAFETEA-LU. When FTA finalizes its school bus regulations, INDOT will provide an amendment to this manual. Guidance on eligible school bus operation is provided in [49 CFR 605 \(Volume II, Appendix F\)](#). INDOT will monitor grantees for compliance with Charter Service and School Bus Operations regulations annually through the Section 5311 application process and its compliance review process.

#### Satisfactory Continuing Control/Inventory

A grantee must maintain satisfactory continuing control over facilities and equipment and ensure that they are used in transit service. A grantee must demonstrate control and use as required in [FTA Circular 5010.1D \(Volume II, Appendix G\)](#). The grantee must be listed as the owner on vehicle titles. INDOT will monitor these stipulations through the compliance reviews, which are conducted every four (4) years. Any change in the use of vehicles or equipment must be approved by INDOT.

The grantee shall provide management records of all vehicles and equipment used

to provide rural transit services, whether or not it was purchased with rural transit funds. For example, a vehicle is purchased with United Way funds and is used to provide transportation through the rural transit program. These records must include:

- (1) Description of vehicle or equipment;
- (2) Serial or identification number;
- (3) Purchase date and cost;
- (4) Grant number;
- (5) Title holder (owner);
- (6) Percentage of Federal participation in the cost;
- (7) Physical location;
- (8) Current use and condition;
- (9) Useful life;
- (10) Disposal data; and
- (11) Disposal price.

The following additional items also apply to a grantee's property management system:

- A physical inventory of vehicles and equipment must be taken and the results reconciled with the control records at least once a year. A grantee must maintain a listing of a vehicle inventory, peak vehicle requirements, and active vehicles. Peak vehicle requirement is defined as the number of vehicles that are providing service during the busiest time(s) of a day. Completing a vehicle utilization chart will provide the system with the number of vehicles used during peak times. A vehicle utilization chart template may be obtained from INDOT. Active vehicles include the peak vehicles plus the back-up vehicles.
- A control system must be developed to safeguard against loss, damage, or theft of vehicles and equipment. Each grantee must maintain documentation of its insurance coverage.

Adequate maintenance procedures and programs must be developed to keep vehicles and equipment in good working condition. Preventive maintenance (PM) programs are required for all Section 5311 funded vehicles. INDOT requires a written preventive maintenance plan for all vehicles. Indiana Department of Transportation Rural and Specialized Transit Guide to Preventive Maintenance, (Volume II, Appendix H) is provided to assist systems in the development of a preventive maintenance plan.

Cleanliness of vehicles is a high priority for INDOT, and a cleaning schedule should be included in each grantee's maintenance plan.

#### **FACILITY CONSTRUCTION AND RENOVATION**

Facility is defined as any building that was constructed in whole or in part with Federal Transit Administration funds. Please refer to Chapter VII for facility and construction requirements and guidance.

#### **DISPOSITION**

##### **Planned Disposition**

When vehicles, equipment, and/or real property are no longer needed for the original project or program, disposition of said items must be in accordance with [Indiana Code \(I.C.\) 36-1-11, Disposal of Real or Personal Property \(Attachment V-1\)](#). Real property is defined as land and buildings, including any accessories added to the land or buildings.

INDOT must be notified of all disposition actions. Real property and items of equipment with a current per-unit fair market value of less than \$5,000 must be

disposed of in accordance with Indiana Code with no further obligation to INDOT.

Real property and equipment with a current per-unit fair market value of \$5,000 or greater must also be disposed of in accordance with the Indiana Code. However, a written disposition plan must be submitted to INDOT for review. This plan will detail how income from the disposition will be retained by the grantee for the transit program. INDOT will track equipment transfers in the Program of Project reports that are submitted to the Federal Transit Administration.

## **VEHICLE DISPOSITION**

### **Vehicles with Remaining Useful Life**

The preferred method of disposition is the transfer of vehicles to another INDOT grantee. When INDOT is notified that vehicles are available for disposition, INDOT will mail a notice of availability of these vehicles to all current INDOT grantees. The vehicles will be available for 30 days for transfer to other INDOT grantees, in accordance with [I.C. 36-1-11](#). Under a transfer arrangement, the grantee disposing of the vehicles shall receive payment for their pro-rata share of their local investment. This shall be based on the fair market value of the vehicles multiplied by the percent of local match paid at time of acquisition. If no other grantee is interested in the vehicles, then the grantee may dispose of the vehicle. FTA requires that the proceeds of any disposition actions be used to reduce the gross project cost of any FTA eligible capital transit grants. This arrangement is consistent [with I.C. 36-1-11](#) and [FTA Circular 5010.1D \(Volume II, Appendix G\)](#).

### **Mid-Life Sale of Vehicles (“Like-kind Exchange”)**

Grantees requesting a like-kind exchange must contact INDOT. INDOT will evaluate the request on a case-by-case basis.

The FTA defines “Like-Kind” as a bus for a bus with similar service life. According to the FTA, under the Like-Kind Exchange Policy, proceeds from the vehicle sales are re-invested in acquisition of the like-kind replacement vehicle. If sales proceeds are less than the amount of the Federal interest in the vehicle at the time it is being replaced, the grantee is responsible for providing the difference, along with the grantee’s local share of the cost of the replacement vehicle.

### **Rehabilitation of Vehicles**

Due to the size and type of vehicles used in the Section 5311 program, INDOT does not allow vehicles to be rehabilitated as a capital expense.

### **Insurance Settlements**

In the event of loss due to accident, casualty, fire, or theft, the insurance settlement may be used toward the replacement of the lost items. If the items are determined to be no longer necessary, then the settlement shall be used for the transit program. Documented evidence that the settlement is being used for the transit program must be provided to INDOT. An estimate of the insurance settlement must be provided to INDOT to determine settlement value of the items.

### **Determination of Fair Market Value**

The fair market value for vehicles and equipment may be determined using straight-line depreciation or by the

averaging of two independent appraisals. If straight-line depreciation is used for valuing vehicles, then it should be based on the useful life years specified in Exhibit 1. INDOT recommends that all vans be valued using straight-line depreciation. The fair market value (from independent appraisals) may be used if the vehicle is totaled in an accident or the system is trading the vehicle in before the useful life has been attained.

INDOT does not allow systems to charge depreciation to the Rural Transit Program. This includes the depreciation of vehicles and equipment purchased with local funds as well as vehicles and equipment purchased with Federal or state funding.

## **PASSENGER VEHICLE CLASSIFICATION AND USEFUL LIFE STANDARDS**

### **Vehicle Classification**

INDOT has developed the following passenger vehicle classifications for the Section 5311 program. If a system requests a larger vehicle that is not included in the following list, INDOT must be contacted for further guidance. All vehicles are purchased using INDOT's consolidated purchasing program.

- Van: There are four sub-categories:
  - Mini-Van: Vans with seven passengers or less and which are commercially available from automobile manufacturers as a part of their standard vehicle production line. These vehicles are not wheelchair accessible.
  - Low Floor Minivan A modified minivan is a standard production

minivan which has been modified by lowering the floor. It can accommodate up to two wheelchairs and two permanent seats. The vehicle is equipped with a ramp for access by riders using mobility devices.

- Modified Van A modified van is a standard van or maxi-van that has undergone some body or structural change. Typical changes include: a raised top, widened passenger entry door, extended stepwell at passenger entrance and wheelchair lift. INDOT classifies the modified vans as either a Type B, which is a raised roof van without a lift, and a Type C, which is a Type B van with a lift.
- Body On Van Chassis (BOVC) This vehicle is also known as a Light Transit Vehicle (LTV). A passenger vehicle built on a van chassis, BOVC's have wider and/or longer bodies installed on a van chassis. Typically, these vehicles are built by school bus and recreational vehicle manufacturers.
- Body On Truck Chassis (BOTC): This passenger vehicle is similar to the BOVC in that the body is attached to an existing chassis, however, this vehicle is a heavier duty vehicle because it is built on a truck chassis. It is for this reason it is classified separately from a van. This vehicle may require a Commercial Driver's License (CDL) depending on the number of passengers the vehicle was designed to transport.

## Vehicle Useful Life

INDOT has developed the following vehicle useful life policy for the purpose of evaluating vehicle disposition requests and capital replacement applications. The useful life policy is shown in Exhibit 1. However, merely obtaining sufficient miles and years on a vehicle does not guarantee federal capital assistance for its replacement.

Section 5311 capital applications are evaluated competitively based on project justification, coordination, fiscal capabilities, and capital project priorities.

The primary criterion in determining the vehicle useful life is mileage. The age of the vehicle will be considered only after the vehicle's mileage has been determined to be at or greater than the mileage categories listed below.

---

### Exhibit 1: Vehicle Useful Life Policy

<u>Vehicle Classification</u>	<u>Miles</u>	<u>Years</u>
Vans:		
- Mini-Van	100,000	4
- Standard	100,000	4
- Modified	100,000	4
- Body on Van Chassis (BOVC)	100,000	4
- Body on Truck Chassis (BOTC)	150,000	6

---

The age of the vehicle is calculated from the date the vehicle is actually placed into service, and not from the vehicle model year. On rare occasions, a grantee may have a vehicle that needs replacement prior to reaching its designated mileage. INDOT will consider these exceptions on a case-by-case basis.

Grantees should select replacement vehicles that are appropriate for their service, reviewing the pros and cons for each vehicle selection. INDOT, Indiana RTAP and other program operators can provide their experience with vehicles to assist a grantee with its selection.

## Vehicle Replacement Planning

Grantees are required to develop and submit to INDOT a passenger vehicle replacement plan. The plan shall use the vehicle useful life mileage as the basis for determining the replacement of vehicles. The plan shall cover a five-year period and be updated biennially (after the original submission, an updated plan will be due every other year). The plan must indicate the number, classification, and the estimated cost of the vehicles to be replaced or added.

If a rural system's service area is included in any urbanized area, then the operating and capital related improvements must be included in the urbanized area's Transportation Improvement Plan (TIP) which is completed by the Metropolitan Planning Organization (MPO).

## ADA Vehicle Compliance

INDOT requires a grantee's fleet to be 50% wheelchair accessible or more. Back-up

vehicles must be at the same percentage. However, INDOT encourages a grantee's total fleet to be at least 67% wheelchair accessible.

### **Spare Ratio**

Standard industry practice is to have 20% of the fleet available as back-up. For small systems, with a peak-hour fleet requirement

of one to ten vehicles, the spare ratio is two back-up vehicles.

[Return to the Beginning of this Section](#)

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**Attachment V-1:**

**Indiana Code 36-1-11**

**IC 36-1-11**  
**Chapter 11. Disposal of Real or Personal Property**

**IC 36-1-11**

Chapter 11. Disposal of Real or Personal Property

**IC 36-1-11-1 Application of chapter**

Sec. 1. (a) Except as provided in subsection (b), this chapter applies to the disposal of property by: (1) political subdivisions; and (2) their agencies. (b) This chapter does not apply to the following: (1) The disposal of property under an urban homesteading program under IC 36-7-17. (2) The lease of school buildings under IC 20-47. (3) The sale of land to a lessor in a lease-purchase contract under IC 36-1-10. (4) The disposal of property by a redevelopment commission established under IC 36-7. (5) The leasing of property by a board of aviation commissioners established under IC 8-22-2 or an airport authority established under IC 8-22-3. (6) The disposal of a municipally owned utility under IC 8-1.5. (7) The sale or lease of property by a unit to an Indiana nonprofit corporation organized for educational, literary, scientific, religious, or charitable purposes that is exempt from federal income taxation under Section 501 of the Internal Revenue Code or the sale or reletting of that property by the nonprofit corporation. (8) The disposal of surplus property by a hospital established and operated under IC 16-22-1 through IC 16-22-5, IC 16-22-8, IC 16-23-1, or IC 16-24-1. (9) The sale or lease of property acquired under IC 36-7-13 for industrial development. (10) The sale, lease, or disposal of property by a local hospital authority under IC 5-1-4. (11) The sale or other disposition of property by a county or municipality to finance housing under IC 5-20-2. (12) The disposition of property by a soil and water conservation district under IC 14-32. (13) The disposal of surplus property by the health and hospital corporation established and operated under IC 16-22-8. (14) The disposal of personal property by a library board under IC 36-12-3-5(c). (15) The sale or disposal of property by the historic preservation commission under IC 36-7-11.1. (16) The disposal of an interest in property by a housing authority under IC 36-7-18. (17) The disposal of property under IC 36-9-37-26. (18) The disposal of property used for park purposes under IC 36-10-7-8. (19) The disposal of textbooks that will no longer be used by school corporations under IC 20-26-12. (20) The disposal of residential structures or improvements by a municipal corporation without consideration to: (A) a governmental entity; or (B) a nonprofit corporation that is organized to expand the supply or sustain the existing supply of good quality, affordable housing for residents of Indiana having low or moderate incomes. (21) The disposal of historic property without consideration to a nonprofit corporation whose charter or articles of incorporation allows the corporation to take action for the preservation of historic property. As used in this subdivision, "historic property" means property that is: (A) listed on the National Register of Historic Places; or (B) eligible for listing on the National Register of Historic Places, as determined by the division of historic preservation and archeology of the department of natural resources. (22) The disposal of real property without consideration to: (A) a governmental agency; or (B) a nonprofit corporation that exists for the primary purpose of enhancing the environment; when the property is to be used for compliance with a permit or an order issued by a federal or state regulatory agency to mitigate an adverse environmental impact. (23) The disposal of property to a person under an agreement between the person and a political subdivision or an agency of a political subdivision under IC 5-23. (24) The disposal of residential real property pursuant to a federal aviation regulation (14 CFR 150) Airport Noise Compatibility Planning Program as approved by the Federal Aviation Administration. □ *As added by Acts 1981, P.L.57, SEC.37. Amended by Acts 1982, P.L.208, SEC.1; P.L.16-1983, SEC.21; P.L.182-1985, SEC.15; P.L.214-1986, SEC.1; P.L.2-1987, SEC.49; P.L.214-1989, SEC.5; P.L.336-1989(ss), SEC.44; P.L.162-1991, SEC.4; P.L.2-1993, SEC.198; P.L.98-1993, SEC.11; P.L.1-1994, SEC.172; P.L.165-1994, SEC.1; P.L.1-1995, SEC.79; P.L.310-1995, SEC.1; P.L.82-1995, SEC.7; P.L.49-1997, SEC.69; P.L.76-1998, SEC.1; P.L.1-2005, SEC.234; P.L.184-2005, SEC.37; P.L.2-2006, SEC.188.*

**IC 36-1-11-2 Definitions**

Sec. 2. The following definitions apply throughout this chapter: (1) "Disposal" means sale, exchange,

transfer, or lease of property. (2) "Disposing agent" means the board or officer of a political subdivision or agency having the power to award contracts for which public notice is required, with respect to property of the political subdivision or agency. (3) "Key number" has the meaning set forth in IC 6-1.1-1-8.5. (4) "Operating agreement" has the meaning set forth in IC 5-23-2-7. (5) "Person" means any association, corporation, limited liability company, fiduciary, individual, joint venture, partnership, sole proprietorship, or any other legal entity. (6) "Property" means all fixtures and real property to be included in a disposal. (7) "Tract" has the meaning set forth in IC 6-1.1-1-22.5. *As added by Acts 1981, P.L.57, SEC.37. Amended by P.L.60-1988, SEC.23; P.L.82-1995, SEC.8; P.L.49-1997, SEC.70.*

### **IC 36-1-11-3 Approval**

Sec. 3. (a) This section does not apply to the disposal of real property under section 5, 5.5, 5.9, or 8 of this chapter. (b) Disposal of real property under this chapter is subject to the approval of: (1) the executive of the political subdivision or agency; or (2) the fiscal body of the political subdivision or agency, if there is no executive. The executive or fiscal body may not approve a disposal of property without conducting a public hearing after giving notice under IC 5-3-1. However, in a municipality the executive shall designate a board or commission of the municipality to give notice, conduct the hearing, and notify the executive of its recommendation. (c) Except as provided in section 3.2 of this chapter, in addition, the fiscal body of a unit must approve: (1) every sale of real property having an appraised value of fifty thousand dollars (\$50,000) or more; (2) every lease of real property for which the total annual rental payments will be twenty-five thousand dollars (\$25,000) or more; and (3) every transfer of real property under section 14 or 15 of this chapter. *As added by Acts 1981, P.L.57, SEC.37. Amended by Acts 1982, P.L.208, SEC.2; P.L.331-1985, SEC.1; P.L.330-1985, SEC.3; P.L.35-1990, SEC.43; P.L.82-1995, SEC.9; P.L.124-1998, SEC.11; P.L.27-2008, SEC.1.*

#### **IC 36-1-11-3.1 Sale of residential real property; disapproval**

Sec. 3.1. (a) In addition to any other reason for disapproving a disposal of property under section 3 of this chapter, the executive of a consolidated city may disapprove a sale of a tract of residential property to any bidder who does not by affidavit declare that: (1) the bidder will reside on that property for at least one (1) year after the bidder obtains possession of it; and (2) the bidder is eligible to purchase the property under section 16 of this chapter. (b) When the executive exercises disapproval under this section, the property may be sold to the highest bidder who also presents an affidavit declaring that: (1) the bidder will reside on that property for a one (1) year period after the bidder obtains possession; and (2) the bidder is eligible to purchase the property under section 16 of this chapter. *As added by Acts 1981, P.L.306, SEC.1. Amended by P.L.60-1988, SEC.24.*

#### **IC 36-1-11-3.2 Approval of sale, lease, or transfer of real property in certain cities**

Sec. 3.2. (a) This section applies to a city having a population of: (1) more than ninety thousand (90,000) but less than one hundred five thousand (105,000); (2) more than thirty-two thousand (32,000) but less than thirty-two thousand eight hundred (32,800); or (3) more than seventy-five thousand (75,000) but less than ninety thousand (90,000). (b) Notwithstanding section 3(c) of this chapter, the fiscal body of a city must approve: (1) every sale of real property having an appraised value of ten thousand dollars (\$10,000) or more; (2) every lease of real property for which the total annual rental payments will be five thousand dollars (\$5,000) or more; and (3) every transfer of real property under section 14 or 15 of this chapter. *As added by P.L.124-1998, SEC.12. Amended by P.L.170-2002, SEC.138.*

#### **IC 36-1-11-4 Sale or transfer of real property; procedure**

Sec. 4. (a) A disposing agent who wants to sell or transfer real property must comply with this section, except as permitted by section 4.1, 4.2, 5, 5.5, 5.7, 5.9, 8, 14, or 15 of this chapter. (b) The disposing

agent shall first have the property appraised by two (2) appraisers. The appraisers must be: (1) professionally engaged in making appraisals; (2) licensed under IC 25-34.1; or (3) employees of the political subdivision familiar with the value of the property. The appraisers shall make a joint appraisal of the property. (c) After the property is appraised, the disposing agent shall publish a notice in accordance with IC 5-3-1 setting forth the terms and conditions of the sale and, when subsection (e) is employed, may engage an auctioneer licensed under IC 25-6.1 to advertise the sale and to conduct a public auction. The advertising conducted by the auctioneer is in addition to any other notice required by law and shall include a detailed description of the property to be sold stating the key numbers, if any, of the tracts within that property. If the disposing agent determines that the best sale of the property can be made by letting the bidders determine certain conditions of the sale (such as required zoning or soil or drainage conditions) as a prerequisite to purchasing the property, the disposing agent may permit the bidders to specify those conditions. The notice must state the following: (1) Bids will be received beginning on a specific date. (2) The sale will continue from day to day for a period determined by the disposing agent of not more than sixty (60) days. (3) The property may not be sold to a person who is ineligible under section 16 of this chapter. (4) A bid submitted by a trust (as defined in IC 30-4-1-1(a)) must identify each: (A) beneficiary of the trust; and (B) settlor empowered to revoke or modify the trust. (d) A bid must be open to public inspection. A bidder may raise the bidder's bid, and subject to subsection (e), that raise takes effect after the board has given written notice of that raise to the other bidders. (e) The disposing agent may also engage an auctioneer licensed under IC 25-6.1 to conduct a sale by public auction. The auction may be conducted either at the time for beginning the sale in accordance with the public notice or after the beginning of the sale. The disposing agent shall give each bidder who has submitted a bid written notice of the time and place of the auction. (f) The disposing agent may, before expiration of the time set out in the notice, sell the property to the highest and best bidder. The highest and best bidder must have complied with any requirement under subsection (c)(4). However, the disposing agent may sell the property for less than ninety percent (90%) of the appraised value of the tracts only after having an additional notice of the sale published in accordance with subsection (c). The disposing agent may reject all bids. (g) If the disposing agent determines that, in the exercise of good business judgment, the disposing agent should hire a broker or auctioneer to sell the property, the disposing agent may do so and pay the broker or auctioneer a reasonable compensation out of the gross proceeds of the sale. However, the disposing agent must still comply with the procedural requirements of this section. The disposing agent may hire one (1) of the appraisers as the broker or auctioneer. *As added by Acts 1981, P.L.57, SEC.37. Amended by Acts 1982, P.L.208, SEC.3; P.L.32-1983, SEC.10; P.L.331-1985, SEC.2; P.L.330-1985, SEC.4; P.L.60-1988, SEC.25; P.L.336-1989(ss), SEC.45; P.L.165-1994, SEC.2; P.L.188-2007, SEC.2; P.L.27-2008, SEC.2.*

#### **IC 36-1-11-4.1 Sale or transfer of real property, including provision for leaseback; notice; bids**

Sec. 4.1. (a) This section applies to a disposing agent who wants to sell or transfer real property, and as a condition of sale, includes a provision for a leaseback or leaseback with option to repurchase. (b) The disposing agent shall publish notice in accordance with IC 5-3-1 setting forth the terms and conditions of the sale. The notice must state the following: (1) Bids will be received beginning on a specific date. (2) The sale will continue from day to day for a period determined by the disposing agent of not more than sixty (60) days. (3) The property may not be sold or transferred to a person who is ineligible under section 16 of this chapter. (4) A bid submitted by a trust (as defined in IC 30-4-1-1(a)) must identify each: (A) beneficiary of the trust; and (B) settlor empowered to revoke or modify the trust. (c) A bid must be open to public inspection. (d) After the period for receiving bids has expired, a disposing agent may sell the property to the highest and best eligible bidder. The highest and best eligible bidder must have complied with any requirement under subsection (b)(4) (e) IC 36-1-10 does not apply to this section. *As added by Acts 1982, P.L.208, SEC.4. Amended by P.L.60-1988, SEC.26; P.L.336-1989(ss), SEC.46.*

#### **IC 36-1-11-4.2 Sale or transfer of real property not acquired through eminent domain to promote an economic development project or facilitate compatible land use planning**

Sec. 4.2. (a) This section applies to a disposing agent who wants to sell or transfer real property not acquired through eminent domain procedures for any of the following purposes: (1) To promote an economic development project. (2) To facilitate compatible land use planning. (b) The disposing agent shall first have the property appraised by two (2) appraisers. The appraisers must be: (1) professionally engaged in making appraisals; (2) licensed under IC 25-34.1; or (3) employees of the political subdivision familiar with the value of the property. The appraisers shall make a joint appraisal of the property. (c) The disposing agent may: (1) negotiate a sale or transfer; and (2) dispose of the real property; at a value that is not less than the appraised value determined under subsection (b). *As added by P.L.165-1994, SEC.3.*

### **IC 36-1-11-5 Sale of real property having certain value or less; rights of abutting landowners; procedures**

Sec. 5. (a) As used in this section, "abutting landowner" means an owner of property that: (1) touches, borders on, or is contiguous to the property that is the subject of sale; and (2) does not constitute a: (A) public easement; or (B) public right-of-way. (b) As used in this section, "offering price" means the appraised value of real property plus all costs associated with the sale, including: (1) appraisal fees; (2) title insurance; (3) recording fees; and (4) advertising costs. (c) If the assessed value of a tract of real property to be sold is less than fifteen thousand dollars (\$15,000), based on the most recent assessment of the tract or of the tract of which it was a part before it was acquired, the disposing agent may proceed under this section. (d) The disposing agent may determine that: (1) the highest and best use of the tract is sale to an abutting landowner; (2) the cost to the public of maintaining the tract equals or exceeds the estimated fair market value of the tract; or (3) it is economically unjustifiable to sell the tract under section 4 of this chapter. (e) Within ten (10) days after the disposing agent makes a determination under subsection (d), the disposing agent shall publish a notice in accordance with IC 5-3-1 identifying the tracts intended for sale by legal description and, if possible, by key number and street address. The notice must also include the offering price and a statement that: (1) the property may not be sold to a person who is ineligible under section 16 of this chapter; and (2) an offer to purchase the property submitted by a trust (as defined in IC 30-4-1-1(a)) must identify each: (A) beneficiary of the trust; and (B) settlor empowered to revoke or modify the trust. At the time of publication of notice under this subsection, the disposing agent shall send notice by certified mail to all abutting landowners. This notice shall contain the same information as the published notice. (f) The disposing agent shall also have each tract appraised. The appraiser must be professionally engaged in making appraisals, a person licensed under IC 25-34.1, or an employee of the political subdivision who is familiar with the value of the tract. However, if the assessed value of a tract is less than six thousand dollars (\$6,000), based on the most recent assessment of the tract or of the tract of which it was a part before it was acquired, the disposing agent is not required to have the tract appraised. (g) If, within ten (10) days after the date of publication of the notice under subsection (e), the disposing agent receives an eligible offer to purchase a tract listed in the notice at or in excess of the offering price, the disposing agent shall conduct the negotiation and sale of the tract under section 4(c) through 4(g) of this chapter. (h) Notwithstanding subsection (g), if within ten (10) days after the date of publication of the notice under subsection (e) the disposing agent does not receive from any person other than an abutting landowner an eligible offer to purchase the tract at or in excess of the offering price, the disposing agent shall conduct the negotiation and sale of the tract as follows: (1) If only one (1) abutting landowner makes an eligible offer to purchase the tract, then subject to section 16 of this chapter and without further appraisal or notice, the disposing agent shall offer to negotiate for the sale of the tract with that abutting landowner. (2) If more than one (1) eligible abutting landowner submits an offer to purchase the tract, the other eligible abutting landowners who submit offers shall be informed of the highest offer received and be given an opportunity to submit one (1) additional offer. The tract shall be sold to the eligible abutting landowner who submits the highest offer for the tract and who complies with any requirement under subsection (e)(2). (3) If no eligible abutting landowner submits an offer to purchase the tract, the disposing agent may sell the tract to any person who submits the highest offer for the tract, except a person who is ineligible to purchase the tract under section 16 of this chapter. *As added by Acts 1981, P.L.57, SEC.37. Amended by P.L.47-1983, SEC.5; P.L.332-1985, SEC.1; P.L.333-1985,*

*SEC.1; P.L.60-1988, SEC.27; P.L.336-1989(ss), SEC.47; P.L.165-1994, SEC.4; P.L.170-2003, SEC.17.*

#### **IC 36-1-11-5.5 School corporations; sale or transfer of real property or tangible or intangible personal property or licenses**

Sec. 5.5. Notwithstanding IC 5-22-22 and sections 4, 4.1, 4.2, and 5 of this chapter, a disposing agent of a school corporation may sell or transfer: (1) real property; or (2) tangible or intangible personal property, licenses, or any interest in the tangible or intangible personal property or licenses that are used in, or related to, the operation of a radio station by a school corporation; for no compensation or a nominal fee to a not-for-profit corporation created for educational or recreational purposes unless the corporation is subject to section 16 of this chapter. *As added by Acts 1982, P.L.208, SEC.5. Amended by P.L.215-1986, SEC.1; P.L.60-1988, SEC.28; P.L.342-1989(ss), SEC.36; P.L.165-1994, SEC.5; P.L.49-1997, SEC.71.*

#### **IC 36-1-11-5.6 Sale or transfer of property to a nonprofit corporation**

Sec. 5.6. Notwithstanding IC 5-22-22 and sections 4, 4.1, 4.2, and 5 of this chapter, a disposing agent of a county having a population of more than fifty-five thousand (55,000) but less than sixty-five thousand (65,000) may sell or transfer: (1) real property; or (2) tangible or intangible personal property, licenses, or any interest in the tangible or intangible personal property; for no compensation or a nominal fee to a nonprofit corporation created for agricultural, educational, or recreational purposes. *As added by P.L.10-2001, SEC.1. Amended by P.L.170-2002, SEC.139.*

#### **IC 36-1-11-5.7 Sale or transfer of real property or tangible or intangible personal property or licenses to volunteer fire department, fire protection district, or fire protection territory**

Sec. 5.7. (a) As used in this section, "fire department" refers to any of the following: (1) A volunteer fire department (as defined in IC 36-8-12-2). (2) The board of fire trustees of a fire protection district established under IC 36-8-11. (3) The provider unit of a fire protection territory established under IC 36-8-19. (b) Notwithstanding IC 5-22-22 and sections 4, 4.1, 4.2, and 5 of this chapter, a disposing agent of a political subdivision may sell or transfer: (1) real property; or (2) tangible or intangible personal property, licenses, or any interest in the tangible or intangible personal property or licenses; without consideration or for a nominal consideration to a fire department for construction of a fire station or other purposes related to firefighting. *As added by P.L.188-2007, SEC.3. Amended by P.L.128-2008, SEC.6.*

#### **IC 36-1-11-5.9 Sale or transfer of real property acquired by tax default; rights of abutting landowners; procedures**

Sec. 5.9. (a) As used in this section, "abutting landowner" has the meaning set forth in section 5(a) of this chapter. (b) As used in this section, "real property acquired by tax default" means the following: (1) Real property for which a county holds a tax deed issued under IC 6-1.1-25. (2) Real property acquired by a political subdivision from a county under section 8 of this chapter if at the time of transfer the county held a tax deed issued under IC 6-1.1-25 for the real property. (c) Notwithstanding sections 4, 4.1, 4.2, and 5 of this chapter, and subject to the procedures described in subsections (d) and (e), a disposing agent of a political subdivision may sell or transfer real property acquired by tax default without consideration or for a nominal consideration to an abutting landowner. (d) A disposing agent who desires to transfer real property acquired by tax default to an abutting landowner shall send notice by certified mail to all abutting landowners. The notice must identify the tracts intended for sale by legal description and, if possible, by key number and street address. The notice must also include a statement that: (1) the disposing agent is authorized to transfer the property for no consideration or for nominal consideration; (2) the property may not be sold to a person who is ineligible under section 16 of this chapter; and (3) an offer to purchase the property submitted by a trust (as defined in IC 30-4-1-1(a)) must identify each: (A) beneficiary of the trust; and (B) settlor empowered to revoke or modify the trust. (e)

Not earlier than fourteen (14) days after a disposing agent sends the notice described in subsection (d) to the abutting landowners of a tract, the disposing agent shall conduct the negotiation and sale of the tract under this section as follows: (1) If only one (1) eligible abutting landowner makes an offer to purchase the tract, then subject to section 16 of this chapter and without appraisal or further notice, the disposing agent shall offer to negotiate for the sale of the tract with that abutting landowner. (2) If more than one (1) eligible abutting landowner submits an offer to purchase the tract, the other eligible abutting landowners who submit offers shall be informed of the highest offer received and be given an opportunity to submit one (1) additional offer. The tract shall be sold to the eligible abutting landowner who submits the highest offer for the tract and who complies with any requirement under subsection (d)(3). *As added by P.L.27-2008, SEC.3. IC 36-1-11-6 Repealed (Repealed by P.L.49-1997, SEC.86.)*

**IC 36-1-11-7 Exchange of property with persons other than governmental entity; procedure** Sec. 7. (a) A disposing agent who exchanges property must proceed under this section, except as permitted by section 8 of this chapter. (b) An exchange may be made with a person who is: (1) not a governmental entity; and (2) eligible under section 16 of this chapter; only after advertisement following as nearly as practical the procedure prescribed by section 4 of this chapter, with the property the disposing agent conveys to be partial or full payment for the property the disposing agent receives. *As added by Acts 1981, P.L.57, SEC.37. Amended by P.L.60-1988, SEC.29.*

**IC 36-1-11-8 Exchange of property with governmental entity** Sec. 8. A transfer or exchange of property may be made with a governmental entity upon terms and conditions agreed upon by the entities as evidenced by adoption of a substantially identical resolution by each entity. Such a transfer may be made for any amount of real property, cash, or other personal property, as agreed upon by the entities. *As added by Acts 1981, P.L.57, SEC.37.*

**IC 36-1-11-9 Trade or exchange as part of purchase price of new property**

Sec. 9. Whenever a disposing agent purchases new property with a condition that property of a similar nature is to be traded in or exchanged as part of the purchase and in reduction of the purchase price, the exchange or trade-in may be made without compliance with section 7 of this chapter but must comply with section 16 of this chapter. *As added by Acts 1981, P.L.57, SEC.37. Amended by P.L.60-1988, SEC.30.*

**IC 36-1-11-10 Lease of property; procedure**

Sec. 10. (a) A disposing agent may lease property rather than sell, transfer, or exchange it under this chapter only if the disposing agent determines that a lease rather than a sale, transfer, or exchange would be in the best interest of the disposing agent's political subdivision or agency and the public. Except as provided in section 12 of this chapter, the disposing agent must proceed under this section in leasing property. (b) The disposing agent shall first have the property appraised in the manner prescribed in section 4(b) of this chapter, except that the appraisers shall determine the fair market rental value of the property. (c) The disposing agent shall receive bids in the manner prescribed in section 4 of this chapter and lease the property to the highest and best bidder. However, the disposing agent may lease the property for less than ninety percent (90%) of the appraised fair market rental value only after having an additional notice of the lease published in accordance with section 4(c) of this chapter. (d) The disposing agent shall determine the terms and conditions of any lease under this section, which may include options to renew and options to purchase. The property may not be leased to a person who is ineligible under section 16 of this chapter. (e) The terms of a lease with option to purchase may provide that all or part of the rental payments under the lease apply to the purchase price. The purchase price must be equal to at least the minimum sale price determined under section 4(f) of this chapter. (f) Property owned by a political subdivision or agency may be leased for a term longer than three (3) years if the lease is approved by the fiscal body of the political subdivision. *As added by Acts 1981, P.L.57, SEC.37. Amended by P.L.339-*

1983, SEC.1; P.L.60-1988, SEC.31.

#### **IC 36-1-11-11 Execution of deed or other instrument**

Sec. 11. Whenever: (1) there is a dispute concerning the interest in any property of a political subdivision, and the executive considers the dispute not frivolous; or (2) it would facilitate the establishment of title to any property; a deed or other instrument may be executed on behalf of the political subdivision to a person who is eligible to receive the deed or instrument under section 16 of this chapter for any consideration that the disposing agent considers fair and in the public interest. *As added by Acts 1981, P.L.57, SEC.37. Amended by P.L.60-1988, SEC.32.*

#### **IC 36-1-11-12 Lease of property; alternative procedure**

Sec. 12. The following procedure may be used instead of that in section 10 of this chapter if the disposing agent makes a written determination (which must include the disposing agent's reasons) that the use of section 10 of this chapter is not feasible, and authorization to use this procedure is granted by the executive of the political subdivision or agency: (1) Proposals to develop specifications shall be solicited through a request for proposals, which must include all of the following: (A) The factors or criteria that will be used in evaluating the proposals, including a statement that: (i) the property may not be leased to a person who is ineligible under section 16 of this chapter; and (ii) a proposal submitted by a trust (as defined in IC 30-4-1-1(a)) must identify each beneficiary of the trust and each settlor empowered to revoke or modify the trust. (B) A statement concerning the relative importance of price and the other evaluation factors. (C) A statement concerning whether the proposal must be accompanied by a certified check or other evidence of financial responsibility. (D) A statement concerning whether discussions may be conducted with the offerors for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. (2) Notice of the request for proposals shall be given by publication in accordance with IC 5-3-1. (3) As provided in the request for proposals, discussions may be conducted with the offerors for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. (4) Eligible offerors must be accorded fair and equal treatment with respect to any opportunity for discussion and revisions of proposals. (5) After the procedures outlined in this section have been completed, the disposing agent shall make a determination as to the most appropriate response to the request for proposals and shall dispose of the subject property in accordance with that response. (6) Access to the proposals under this chapter shall be determined in accordance with the provisions of IC 5-23-7. (7) The person submitting the successful proposal is not responsible for the requirements set forth in IC 5-22 with regard to the purchase of supplies if the purchase of supplies was included within the proposal or the supplies are not paid for with public funds. *As added by P.L.339-1983, SEC.2. Amended by P.L.60-1988, SEC.33; P.L.336-1989(ss), SEC.48; P.L.82-1995, SEC.10; P.L.49-1997, SEC.72.*

#### **IC 36-1-11-13 Restrictions on lease of county-owned property**

Sec. 13. Notwithstanding any other law, a disposing agent for a county may not lease county-owned property at a rate that deviates more than five percent (5%) from the average square footage rate charged for similar property in that county. *As added by P.L.38-1984, SEC.3.*

#### **IC 36-1-11-14 Gift of tract; reconveyance**

Sec. 14. If a tract was originally transferred to a political subdivision as a gift and public funds have not been expended to improve the property since the original transfer, the disposing agent may convey it back to the original grantor or the grantor's successors with their consent without consideration upon a determination by the disposing agent that: (1) the property is surplus; and (2) the original grantor or the grantor's successors are eligible to receive the tract under section 16 of this chapter. *As added by P.L.331-*

1985, SEC.3. Amended by P.L.60-1988, SEC.34.

**IC 36-1-11-15 Tract transferred as gift by not-for-profit corporation or organization; reconveyance**

Sec. 15. If a tract was originally transferred to a political subdivision as a gift by a not-for-profit corporation or organization, the disposing agent may convey it back to the original grantor or the grantor's successors with their consent without consideration upon a determination by the disposing agent that: (1) the property is surplus; and (2) the original grantor or the grantor's successors are eligible to receive the tract under section 16 of this chapter. *As added by P.L.330-1985, SEC.5. Amended by P.L.60-1988, SEC.35.*

**IC 36-1-11-16 Purchase, receipt, or lease of property by ineligible persons; eligible persons; effect of ineligibility**

Sec. 16. (a) This section applies to the following: (1) A person who owes delinquent taxes, special assessments, penalties, interest, or costs directly attributable to a prior tax sale on a tract of real property listed under IC 6-1.1-24-1. (2) A person who is an agent of the person described in subdivision (1). (b) A person subject to this section may not purchase, receive, or lease a tract that is offered in a sale, exchange, or lease under this chapter. (c) If a person purchases, receives, or leases a tract that the person was not eligible to purchase, receive, or lease under this section, the sale, transfer, or lease of the property is void and the county retains the interest in the tract it possessed before the sale, transfer, or lease of the tract. *As added by P.L.60-1988, SEC.36. Amended by P.L.342-1989(ss), SEC.37; P.L.98-2000, SEC.18.*

**IC 36-1-11-17 Terms of reconveyance or return**

Sec. 17. If property disposed of under this chapter is to be reconveyed or automatically returned to the political subdivision or an agency of a political subdivision that disposed of the property, the terms of the reconveyance or return shall be as agreed to before the disposal. If the terms of the reconveyance are not set forth before the disposal, the political subdivision shall obtain at least two (2) appraisals and pay not more than the average of the two (2) appraisals. *As added by P.L.82-1995, SEC.11.*

# Section VI.

## Procurement

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## VI. PROCUREMENT

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### INTRODUCTION

On October 1, 1994, the Office of Management and Budget (OMB) issued the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," otherwise known as the ["Common Rule" \(Volume II, Appendix B\)](#). The purpose of the Common Rule is to establish uniform administrative rules for Federal grants and cooperative agreements and subawards to State, local, and Indian tribal governments.

[FTA Circular 4220.1F, "Third Party Contracting Guidelines," \(Volume II, Appendix I\)](#) provide procurement instructions for all FTA grantees and subgrantees who contract with outside sources for goods and services.

These two documents, the ["Common Rule"](#) and FTA Circular 4220. 1F, require grantees to establish local procurement procedures that reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law.

Occasionally, USDOT administrative policy deviates from the provision of the Common Rule. These deviations, though, are minor and should not confuse grantees who are trying to interpret the new regulations.

In order to be in compliance with FTA Circular 4220.1F ([Volume II, Appendix I](#)), grantees must implement written procurement procedures. A grantee may adopt local (city or county) procurement procedures as long as they contain the provisions listed in this chapter.

### REQUIRED PROCUREMENT STANDARDS

#### Competition

All procurements will be conducted in a manner providing for full and open competition.

#### Examples of Restrictive Practices

Some of the situations considered to be restrictive of competition include, but are not limited to:

- (1) Unreasonable requirements placed on firms in order for them to qualify to do business;
- (2) Unnecessary experience and excessive bonding requirements;
- (3) Noncompetitive pricing practices between firms or between affiliated companies;
- (4) Noncompetitive awards to any person or firm on retainer contracts;
- (5) Organizational conflicts of interest. An organizational conflict of interest means that because of other activities, relationships, or contracts, a contractor is unable, or potentially unable, to render impartial assistance or advice to the grantee; a contractor's objectivity in performing the contract work is or might be otherwise impaired; or a contractor has an unfair competitive advantage;
- (6) The specification of only a "brand name" product without listing its salient characteristics and not allowing "an equal" product to be offered; and

- (7) Any arbitrary action in the procurement process.

### Prohibition Against Geographic Preferences

Grantees must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. This does not preempt State licensing laws. However, geographic location may be a selection criterion in procurements for architectural and engineering (A&E) services provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

### Written Procurement Selection Procedures

Grantees must have written selection procedures for procurement transactions.

All solicitations shall incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description should not, in competitive procurements, contain features that unduly restrict competition. The description may include a statement of the qualitative nature of the material, product, or service to be procured and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use.

Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical

requirements, a "brand name or equal" description may be used.

A grantee shall use a "brand name or equal" description only when it cannot provide an adequate specification or more detailed description, without performing an inspection and analysis, in time for the acquisition under consideration. Further, a grantee wishing to use "brand name or equal" must carefully identify its minimum needs and clearly set forth those salient physical and functional characteristics of the brand name product in the solicitation.

The grant should identify all requirements that offerors must fulfill and all other factors to be used in evaluating bids or proposals.

### Pre-Qualification Criteria

Grantees should ensure that all lists of pre-qualified persons, firms, or products that are used in acquiring goods and services are current and include enough qualified sources to ensure maximum full and open competition. Also, grantees must not preclude potential bidders from qualifying during the solicitation period, which is from issuance of the solicitation to its closing date.

### Code of Conduct

Grantees must have a written code of conduct governing the performance of their employees engaged in the award and administration of contracts. Employees of the grantee shall not participate in the selection, award, or administration of a contract supported by Federal and State funds if a conflict of interest, either real or apparent, is involved.

Such a conflict would arise when an employee, officer or agent, any member of

their immediate family, their partners, or any organization which employs, or is about to employ any of the above, has financial or other interest in the firm selected for award.

The grantee's officers, employees, agents, or board members will neither solicit nor accept gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by state or local law or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary action for violation of such standards by the grantee's officers, employees, or agents, or by contractors or their agents.

To the extent permitted by state or local law or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary action for violation of such standards by the grantee's officers, employees or agents, or by contractors or their agents.

The written policy must include procedures for identifying and preventing real and apparent organizational conflicts of interest. An organizational conflict of interest exists when the nature of the work to be performed under a proposed contract may, without some restriction on future activities, result in an unfair competitive advantage to the contractor or impair the contractor's objectivity in performing the contract work.

### **Purchase Review**

Grantees must develop a process for reviewing purchases to avoid unnecessary and duplicate items. Consideration must be

given to the most economical purchase. Where appropriate, an analysis of lease versus purchase alternatives shall be made to determine the most economical approach.

All grantees are encouraged to use state and local intergovernmental procurement agreements, where possible. Grantees are also encouraged to jointly procure goods and services with other grantees, where possible. When obtaining goods or services in this manner, grantees must ensure all federal requirements, required clauses, and certifications (including Buy America) are properly followed and included.

### **Price or Cost Analysis**

Grantees must perform a cost or price analysis in connection with every procurement action, including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals.

#### **Cost Analysis**

A cost analysis must be performed when the offeror is required to submit the elements (*i.e.*, labor hours, overhead, materials, *etc.*) of the estimated cost, typical of professional consulting and architectural and engineering services contracts.

A cost analysis is necessary when adequate price competition is lacking or for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or on the basis of prices set by law or regulation.

## Price Analysis

A price analysis may be used in all other instances to determine the reasonableness of the proposed contract price.

## Contract Awards

Grantees shall only make contract awards to responsible and responsive bidders. “Responsible” means a bidder who is capable of performing the contract requirements fully and who has the integrity and reliability that will assure good faith performance. “Responsive” means a bidder who has submitted a bid or quotes conforming in material respects to the bid terms, conditions, and specifications.

Federal regulations prohibit the use of contractors who have been debarred or suspended. INDOT will monitor adherence to this regulation by way of its periodic compliance reviews and by reviewing procurement documents for the presence of the Debarment and Suspension Certification (49 CFR Part 29 – Volume II, Appendix J).

## Contracts

All contracts must include all applicable Federal and State clauses. Most of these are identified in the Section 5311 grant assistance contracts between INDOT and the grantees. A complete listing of these clauses, as they currently exist, is provided later in this section. It is each grantee’s responsibility, however, to ensure that it includes all current and applicable State and Federal clauses in its procurements.

## Contract Administration

Grantees must maintain a contract administration system that ensures that contractors perform in accordance with the

terms, conditions, and specifications of all purchases.

## Contract Records

Grantees shall maintain written records to sufficiently detail the procurement history. At a minimum this should include the rationale for the method of procurement, selection of contract type, reasons for contractor selection or rejection, and the basis for the contract price.

## Disputes and Protests

Grantees are responsible for resolving all contractual and administrative issues arising out of procurements. Violations of law should be referred to the proper local authority having jurisdiction. If there is no local authority, the matter should be referred to INDOT. Grantees must have written protest procedures to handle and resolve disputes relating to their procurement. A protester must exhaust all administrative remedies with the grantee before pursuing protest with INDOT.

## METHODS OF PROCUREMENT

Most purchases and leases (procurement) made under the Section 5311 program will be made through Sealed Bid (formal advertising) method. All procurements must be conducted in accordance with [Indiana Code \(I.C.\) 5-22-7 Competitive Bidding. \(Attachment VI-1\)](#).

An exception to the formal procurement method is the case of purchases under \$2,500 (i.e., micro-purchases), or other lower threshold that grantees may set as they deem appropriate for purchases. Purchases below that threshold may be made without obtaining competitive quotations.

For micro-purchases, INDOT requires the grantee to, at a minimum, justify that the price for the procurement is fair and reasonable, and maintain written documentation about how that determination was derived. INDOT believes that determination may be completed quickly and efficiently in several ways. One possible method would be for the official tasked to review and authorize payment of a bill to annotate a finding such as “I have examined the expenditures reflected on this bill and determine that each reflects a reasonable price based on market price offered by vendors to the general public.”

### **Invitation For Bids (IFBs) - Procurement by Sealed Bids**

State law ([I.C. 5-22-7 – Attachment VI-1](#)) requires purchasing by IFB, or Sealed Bids, for purchases and leases over \$150,000. The formal advertisement notice must be published in accordance with [I.C. 5-3-1 Publication of Notices \(Attachment VI-2\)](#). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the lowest responsible, responsive bidder. In addition to the published notice, INDOT strongly recommends direct solicitation to known vendors.

The grantee is responsible for preparing the bid contract and specification, advertising and soliciting bids, receiving and reviewing bids, and awarding the contract to the lowest responsible and responsive bidder. Bids will be opened only at a time and place listed in the solicitation, and at least one (1) witness must be present.

An exception to the sealed bid requirement is for the solicitation of professional services. This is described in the request for proposals (RFP) method of procurement.

### **Procurement By Small Purchase Procedures**

Purchases and leases of at least \$50,000 and not more than \$150,000 are considered small purchases, therefore, relatively simple and informal procurement methods may be used.

If the grantee has small purchases procedures which meet the intent of [I.C. 5-22-8 \(Attachment VI-3\)](#), or which are more strict, then the grantee’s procedures may be followed. If the grantee does not have small purchase procedures, then they may invite quotes from at least three vendors known to deal in the type of purchase or lease being made. A copy of the specification should be mailed to the vendor not less than seven days before the deadline for receiving written quotes.

A quotation should be solicited from other than the previous supplier before placing a repeat order. Whether quotations are solicited orally or in writing, the purchase record file should contain the following abstract information:

- Name, address, and telephone number;
- Pertinent details on the offered items (make, model, etc.);
- Unit price and total price;
- Discount terms;
- Delivery times;
- FOB point;
- Small, minority, and disadvantaged business information as appropriate;
- The person who provided the quote; and
- The time and date of the quote.

If the grantee receives a satisfactory quote, the grantee shall award the contract to the lowest responsible and responsive offeror. The grantee may reject all quotes.

## Request for Proposals-Procurement By Competitive Proposals

A Request For Proposals (RFP) is the method generally used when conditions are not appropriate for the use of sealed bids and when it is allowed by State law ([I.C. 5-22-9 – Attachment VI-4](#)). One situation mentioned earlier is for the development of specifications. Also, a grantee may use the RFP method for the procurement of architectural, engineering, program management, construction management, planning and feasibility studies, and land surveying services. Services of architects, engineers, and land surveyors must be procured in accordance with [I.C. 5-16-11.1 \(Attachment VI-5\)](#).

If the RFP method is used, the following requirements apply:

- The request must identify all evaluation factors and their relative importance, including cost as a factor. Please note that cost may not be used as an evaluation factor for architectural and engineering services, in accordance with the Brooks' Amendment;
- Any bonding requirements or other evidence of financial responsibility;
- Solicitation of an adequate number of qualified vendors;
- Grantee must have a written method for conducting technical evaluation for the proposals; and
- Contract award will be made to the responsible vendor whose proposal is determined in writing to be the most advantageous to the program.

### Sole Source Procurement

Procurement by noncompetitive negotiation may be used only when the award of a contract is not feasible under small purchase

procedures, sealed bids, or competitive proposals and at least one of the following circumstances exists:

- The item is available only from a single source;
- A public urgency or emergency for the item exists which will not permit a delay resulting from competitive solicitation;
- INDOT authorizes noncompetitive negotiations;
- After solicitation of a number of sources, competition is determined inadequate; or
- The item is an associated capital maintenance item as defined in [49 USC 5307\(a\)\(1\) et seq. \(Volume II, Appendix A\)](#) that is procured directly from the original manufacturer or supplier of the item to be replaced. The grantee must first certify to INDOT that such manufacturer or supplier is the only source for the item and the price of the item is no higher than the price paid for item by like customers; and
- Cost analysis, *i.e.*, verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of cost and profit, is required.

### PRE-AWARD AND POST-DELIVERY AUDITS OF VEHICLE PURCHASES

It is the responsibility of INDOT to conduct a pre-award and post-delivery audit of vehicles purchased with FTA funds. The three sections of both audits are: Buy America, Bid Specifications, and Federal Motor Vehicle Safety Standards. Documentation of all pre-award and post-delivery audits is maintained by INDOT. Grantees may request a copy of the documentation from INDOT for their files.

## **Pre-Award Audits**

INDOT must ensure that audits are complete before the grantee enters into a formal purchase contract for vehicles.

## **Buy America**

For vehicle purchases in excess of \$100,000, INDOT must review documentation from the bidder as to the cost of the vehicle's major components and primary sub-components, their country of origin, the location of final assembly, and any activities that will take place at the location ([49 CFR Part 661 – Volume II, Appendix K](#)). Cost information is used to determine whether a vehicle meets the Buy America regulation and that 60% of the vehicles' components are domestically produced. All information resulting from this audit must be kept on file by INDOT. It will be made available to the grantee, upon request.

If the vehicle does not have to meet Buy America regulations, then INDOT must have the Federal waiver letter on file.

This audit cannot be performed by the bidder or manufacturer. INDOT must conduct the necessary review and certification or hire an independent third party contractor to conduct the review and certification.

## **Bid Specifications**

INDOT must assure that the vehicle(s) proposed is the same vehicles(s) as described in the bid specifications. Also, INDOT must certify that the bidder is a "responsive manufacturer with the capability to produce" the specified vehicle.

When the purchase is for eleven or more vehicles for a single recipient, INDOT must

also provide a resident inspector on-site where the vehicles are being manufactured. This inspector must certify that he or she was on-site throughout the manufacturing process, monitored the vehicles' manufacturing, and must prepare a report about the manufacturing process.

## **Federal Motor Vehicle Safety Standards (FMVSS)**

If the vehicles being purchased are subject to FMVSS, INDOT must ask for a certification from the bidder stating that the vehicles being acquired meet all applicable standards. The bidder's self-certification must be kept on file at INDOT.

If the vehicles are not subject to FMVSS, the bidder must provide certification stating this. This certification must also be kept on file by INDOT. Therefore, the burden of proof is on the bidder to comply with this regulation.

## **Post-delivery Audits**

INDOT must ensure that audits are completed before vehicle titles are transferred to the grantee.

## **Buy America**

This is a certification that Buy America regulations (after change orders or other revisions) are still being met. If the vehicle does not have to meet Buy America regulations, then INDOT must have the waiver letter on file.

## **Federal Motor Vehicle Safety Standards**

INDOT must maintain on file the FMVSS certification by the bidder. If the vehicle(s) is not subject to FMVSS, then INDOT must

maintain on file the bidder's certification that FMVSS do not apply.

### Bus Testing

Any new bus model must be tested at the FTA test facility in Altoona, Pennsylvania in accordance with Federal regulation [49 CFR Part 665 \(Volume II, Appendix L\)](#). This requirement covers all medium and heavy duty body-on-chassis and purpose built buses of 25 feet or greater. INDOT must require that the bidder/manufacture provide the testing report before final acceptance of the vehicle(s). It is INDOT's responsibility in dealing with the bidder/manufacture to determine if the vehicle is subject to these requirements. The cost of testing is paid for by FTA and the manufacturer.

### REQUIRED CONTRACT CLAUSES

Adequate terms and conditions must be present in every contract. The purchasing and contracting staff should meet with grant and legal personnel to determine the appropriate clauses to be included in third party contracts based on the information contained in [FTA Circular 9040.1F \(Volume II, Appendix D\)](#), [FTA Circular 4220.1F \(Volume II, Appendix I\)](#), the grant agreement between INDOT and the grantee, and any statutory or regulatory requirements required by INDOT.

### Remedies for Breach of Contract

All contracts, other than those awarded under small purchase procedures, are to include provision or conditions which stipulate remedies available to the grantee if the contractor violates or breaches the terms of the contract.

These provisions must allow for either administrative, contractual or legal

remedies, and provide for appropriate sanctions and penalties.

### Contract Termination

All contracts exceeding \$10,000 must include provisions that stipulate the conditions under which the grantee may terminate the contract for either default or convenience.

In a termination for default the contractor must fail to comply with certain terms and conditions of the contract. The contractor is paid only for supplies delivered and accepted by the grantee or for the services performed in agreement with the grantee.

If there is a good reason beyond the contractor's control that prevents compliance with the contract provisions, the contractor may be allowed to continue work or the contract can be terminated for convenience. For convenience terminations, the contractor should be paid all closeout costs and a partial fee as provided in the contract.

### Equal Employment Opportunity (EEO)

All contracts exceeding \$10,000 must include a clause which requires the contractor to take positive action to ensure that persons employed or seeking employment are treated without bias regarding race, religion, color, sex, or national origin. Federal and State EEO requirements require the contractor to post notices to this effect in conspicuous locations within the plant or worksite. EEO conditions must be stated in all RFPs and IFBs issued by the grantee.

### **Copeland Anti-Kickback**

All construction or repair contracts must include provisions which require the contractor to comply with the Copeland Anti-Kickback Act which prohibits the contractor from inducing anyone employed on the project to give up any portion of their pay. Further, the provision requires the grantee to report all suspected or reported violations.

### **Davis-Bacon Act**

All construction contracts exceeding \$2,000 must stipulate that the contractor will pay all laborers and mechanics employed on the project at least once a week at a rate not less than the minimum wage specified in the wage determination formally issued by the Secretary Of Labor. A copy of this determination is to be included in each solicitation, and the award of the contract is conditional, pending the contractor's acceptance of the terms of the wage determination schedule. Further, grantees are required to report all suspected or reported violations.

### **Contract Work Hours and Safety Standard Acts**

All construction contracts exceeding \$2,000 and all other contracts exceeding \$2,500 that employ laborers and mechanics must include a provision requiring the contractor to pay the mechanics and laborers on the basis of a standard 8-hour workday and a 40-hour workweek. Any work in excess of 8 hours a day or 40 hours a week must be compensated at a rate not less than 1.5 times the worker's base rate. In addition, no workers will be required to work in surroundings or working conditions that are unsanitary, hazardous or dangerous as

determined under the standards established by the Secretary of Labor.

### **Discovery and Invention/Patent Rights**

Any research, development, experimental or demonstration contract must include a provision stipulating FTA's requirements and regulations regarding all patent rights, copyrights and rights to data related to any discovery or invention made by the contractor.

### **Access to Contractor's Records**

All negotiated contracts, except small purchases, must include a provision stipulating that the grantee, INDOT, FTA, Comptroller General, or any authorized agent of these four parties, are to be granted access to any of the contractor's books, documents, papers, and records directly related to the contract. The contractor must maintain all records for three years following contract closeout to allow for audits, examinations, excerpts and transcriptions of the contractor's files.

### **Clean Air and Clean Water Acts**

All contracts exceeding \$100,000 must include a provision that commits the contractor to comply with the requirements of Section 508 of the Clean Water Act and Section 306 of the Clean Air Act. These regulations prohibit the use of facilities included in the EPA "List of Violating Facilities" under exempt Federal contracts. In addition, grantees must report all suspected violations.

### **Energy Efficiency**

All contracts must recognize the mandatory standards and policies relating to energy efficiency that are contained in Indiana's

Energy Policy. That policy is outlined in the state's strategic energy plan, Hoosier Homegrown Energy.

### **Disadvantaged Business Enterprise**

All contracts must include a provision which stipulates that the contractor will take affirmative steps to assure that disadvantaged businesses are utilized whenever possible as sources of supplies, equipment, construction and services, including the following actions:

- Placing qualified disadvantaged businesses on solicitation lists;
- Assuring that disadvantaged businesses are solicited whenever they are potential sources;
- Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by disadvantaged businesses;
- Establishing delivery schedules, where the procurement requirements permit, that encourage participation by disadvantaged businesses;
- Using the services and assistance of the Office of Disadvantaged Business Enterprise of the Department of Transportation, Division of Economic Opportunity; and
- Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed above.

### **Cargo Preference**

To ensure fair and reasonable participation by privately owned U.S. flag vessels in transporting cargoes that are subject to the Merchant Marine Act of 1936 - including equipment, materials or commodities procured, contracted for or otherwise obtained within or outside the U.S. with

funds made by or on behalf of the U.S. - appropriate clauses must be inserted in all third party contracts where the possibility exists for ocean transportation of such items. The clauses must provide that a least 50% of the gross tonnage generated by the contract be transported on U.S. flag vessels.

### **Bonding**

For construction or facility improvement contracts or subcontracts exceeding \$100,000, INDOT may accept the bonding policy and requirements of the grantee, provided INDOT determined that the policy and requirements adequately protect the Federal interests. FTA has established the following minimum criteria:

- A bid guarantee from each bidder equal to 5% of the bid price;
- A performance bond for 100% of the contract price; and
- A payment bond for 50% payment of the contract price if the contract is not more than \$1 million; 40% if the contract price is more than \$1 million but not more than \$5 million; or, \$2.5 million if the contract price is more than \$5 million.

A grantee must seek INDOT approval of its bonding policy and requirements if it does not comply with these criteria.

### **Compliance with Laws and Permits**

The Contractor shall give all notices and comply with all existing and future federal, state, and municipal laws, ordinances, rules, regulations, and orders of any public authority bearing on the performance of the contract, including, but not limited to, the laws referred to in these provision of the contract and other contract documents. If the contract documents are at a variance

therewith in any respect, any necessary changes shall be incorporated by appropriate modification. Upon request, the Contractor shall furnish all certificates of compliance with all such laws, order, and regulations.

#### **Other Contract Clauses**

The grantee must be aware of other Federal and State regulations or laws that may affect the contractual relationship with the contractor. For example, Drug & Alcohol Testing, Bloodborne Pathogens, and ADA Requirements may affect the contract.

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#### **INDOT REVIEW**

All bid contracts, IFBs and RFPs for purchases or leases of \$50,000 or greater must be submitted to INDOT for review. In addition, grantees must make all technical specifications available for review, when INDOT believes such a review is needed to ensure that the purchase or lease specified is consistent with grant award. Also, grantees must make available all procurement documentation upon request by INDOT.

**Attachment VI-1:**  
**Indiana Code 5-22-7**

**IC 5-22-7**  
**Chapter 7. Competitive Bidding**  
*Effective 2-4-09.*

**IC 5-22-7-1 Compliance with chapter required**

Sec. 1. A purchasing agent shall follow the procedure described in this chapter in awarding a contract for supplies, unless another purchasing method is required or authorized by this article. *As added by P.L.49-1997, SEC.1.*

**IC 5-22-7-2 Invitation for bids**

Sec. 2. (a) A purchasing agent shall issue an invitation for bids.

(b) An invitation for bids must include the following:

- (1) A purchase description.
- (2) All contractual terms and conditions that apply to the purchase.
- (3) A statement of the evaluation criteria that will be used, including any of the following:
  - (A) Inspection.
  - (B) Testing.
  - (C) Quality.
  - (D) Workmanship.
  - (E) Delivery.
  - (F) Suitability for a particular purpose.
  - (G) The requirement imposed under IC 5-22-3-5.
- (4) The time and place for opening the bids.
- (5) A statement concerning whether the bid must be accompanied by a certified check or other evidence of financial responsibility that may be imposed in accordance with rules or policies of the governmental body.
- (6) A statement concerning the conditions under which a bid may be canceled or rejected in whole or in part as specified under IC 5-22-18-2. *As added by P.L.49-1997, SEC.1.*

**IC 5-22-7-3 Objective measurement of evaluation criteria**

Sec. 3. Evaluation criteria that will:

- (1) affect the bid price; and
- (2) be considered in the evaluation for an award; must be objectively measurable. *As added by P.L.49-1997, SEC.1.*

**IC 5-22-7-4 Criteria for bid evaluation**

Sec. 4. Only criteria specified in the invitation for bids may be used in bid evaluation. *As added by P.L.49-1997, SEC.1.*

**IC 5-22-7-5 Notice of invitation for bids**

Sec. 5.

- (a) The purchasing agency shall give notice of the invitation for bids in the manner required by IC 5-3-1.
- (b) The purchasing agency for a state agency shall also provide electronic access to the notice through the computer gateway administered by the office of technology.
- (c) The purchasing agency for a political subdivision may also provide electronic access to the notice through:
  - (1) the computer gateway administered by the office of technology; or
  - (2) any other electronic means available to the political subdivision. *As added by P.L.49-1997, SEC.1. Amended by P.L.251-1999, SEC.5; P.L.31-2002, SEC.3; P.L.93-2004, SEC.8; P.L.177-2005, SEC.22.*

**IC 5-22-7-6 Public opening of bids**

Sec. 6. The purchasing agency shall open bids publicly in the presence of one (1) or more witnesses at the time and place designated in the invitation for bids. *As added by P.L.49-1997, SEC.1.*

**IC 5-22-7-7 Bids; acceptance; evaluation** Sec. 7. Bids must be:

- (1) unconditionally accepted without alteration or correction, except as provided in sections 11 through 13 of this chapter; and
- (2) evaluated based on the requirements provided in the invitation for bids. *As added by P.L.49-1997, SEC.1.*

**IC 5-22-7-8 Awarding of contract** Sec. 8. A contract must be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder. *As added by P.L.49-1997, SEC.1.*

**IC 5-22-7-9 Maintenance of information by purchasing agency** Sec. 9.

- (a) The purchasing agency shall maintain the following information:
  - (1) The name of each bidder.
  - (2) The amount of each bid.
  - (3) Other information required by this article and rules adopted under this article.
- (b) The information described in subsection (a) is subject to public inspection after each contract award. *As added by P.L.49-1997, SEC.1.*

**IC 5-22-7-10 Rules; policies** Sec. 10.

- (a) The governmental body may adopt rules or establish policies to allow any of the following:
  - (1) Correction or withdrawal of inadvertently erroneous bids before or after award.
  - (2) Cancellation of awards or contracts based on a mistake described in subdivision (1).
- (b) Except as provided in a rule or policy, a purchasing agency must make a written decision to:
  - (1) permit the correction or withdrawal of a bid; or
  - (2) cancel awards or contracts based on bid mistakes. *As added by P.L.49-1997, SEC.1.*

**IC 5-22-7-11 Prohibited changes after bid opening** Sec. 11. A purchasing agency may not permit changes in:

- (1) bid prices; or
- (2) other provisions of bids prejudicial to the interest of the governmental body or fair competition; after bid opening. *As added by P.L.49-1997, SEC.1.*

**IC 5-22-7-12 Proposed additions to contract** Sec. 12. If a bidder inserts contract terms or bids on items not specified in the invitation for bids, the purchasing agent shall treat the additional material as a proposal for addition to the contract and may do any of the following:

- (1) Declare the bidder nonresponsive.
- (2) Permit the bidder to withdraw the proposed additions to the contract in order to meet the requirements and criteria provided in the invitation for bids.
- (3) Accept any of the proposed additions to the contract, subject to section 13 of this chapter. *As added by P.L.49-1997, SEC.1.*

**IC 5-22-7-13 Acceptance of proposed additions to contract; permitted changes to requirements of invitation for bids**

Sec. 13.

- (a) The purchasing agent may not accept proposed additions to the contract that are prejudicial to the interest of the governmental body or fair competition.
- (b) A decision of the purchasing agent to permit a change to the requirements of the invitation for bids must be supported by a written determination by the purchasing agency. *As added by P.L.49-1997, SEC.1.*

**Attachment VI-2:**

**Indiana Code 5-3-1**

**IC 5-3**  
**ARTICLE 3. PUBLICATION OF NOTICES**

**IC 5-3-1**

Chapter 1. Publication Procedures

**IC 5-3-1-0.4 "Newspaper" defined** Sec. 0.4. As used in this chapter, "newspaper" refers to a newspaper: (1) that: (A) is a daily, weekly, semiweekly, or triweekly newspaper of general circulation; (B) has been published for at least three (3) consecutive years in the same city or town; (C) has been entered, authorized, and accepted by the United States Postal Service for at least three (3) consecutive years as malleable matter of the periodicals class; and (D) has at least fifty percent (50%) of all copies circulated paid for by subscribers or other purchasers at a rate that is not nominal; or (2) that: (A) is a daily, weekly, semiweekly, or triweekly newspaper of general circulation; (B) has been entered, authorized, and accepted by the United States Postal Service as mail able matter of the periodicals class; (C) has at least fifty percent (50%) of all copies circulated paid for by subscribers or other purchasers at a rate that is not nominal; and (D) meets the greater of the following conditions: (i) The newspaper's paid circulation during the preceding year is equal to at least fifty percent (50%) of the paid circulation for the largest newspaper with a periodicals class permit located in the county in which the newspaper is published, based on the average paid or requested circulation for the preceding twelve (12) months reported in the newspaper's United States Postal Service Statement of Ownership published by the newspaper in October of each year or based on the newspaper's initial application for a permit from the United States Postal Service. (ii) The newspaper has an average daily paid circulation of one thousand five hundred (1,500) based on the average paid or requested circulation for the preceding twelve (12) months reported in the newspaper's United States Postal Service Statement of Ownership published by the newspaper in October of each year or based on the newspaper's initial application for a permit from the United States Postal Service.

*As added by P.L.64-1995, SEC.1. Amended by P.L.38-1997, SEC.1; P.L.169-2006, SEC.1.* **IC 5-3-1-0.6 Place of publication** Sec. 0.6. (a) For purposes of this chapter, a newspaper or qualified publication is published at the place where the newspaper or qualified publication has its original entry for mail privileges authorized by the United States Postal Service. (b) For purposes of this chapter, a newspaper or qualified publication is considered published at only one (1) place. The place of publication does not include places at which additional entry offices have been established with the authorization of the United States Postal Service. *As added by P.L.64-1995, SEC.2. Amended by P.L.38-1997, SEC.2.*

**IC 5-3-1-0.7 "Qualified publication" defined** Sec. 0.7. (a) As used in this chapter, "qualified publication" means a publication that: (1) is published daily, weekly, semiweekly, or triweekly; (2) is of general circulation to the public; (3) has been published for at least three (3) consecutive years in the same city or town; (4) has continuity as to title and general nature of content from issue to issue; (5) contains news of general or community interest, community notices, or editorial commentary; (6) contains advertisements from unrelated advertisers in each issue; (7) has, in more than one-half (1/2) of its issues published during the previous twelve (12) month period, not more than seventy-five percent (75%) advertising content; (8) has a known office location in the county in which it is published; and (9) has been entered, authorized, and accepted by the United States Postal Service as malleable matter of standard mail (A) class for the time published. (b) A publication is not a qualified publication if any of the following apply: (1) The publication is owned by, or under the control of, the owners or lessees of a shopping center or a merchant's association. (2) The publication is owned by, or under the control of, a business that sells property or services (other than advertising) and the predominant advertising in the publication is advertising for the business's sales of property or services. (3) The publication is a mail order catalog or other catalog, advertising flier, travel brochure, house organ, theater program, telephone directory, restaurant guide, shopping center

advertising sheet, or other similar publication. (4) The publication is primarily devoted to matters of specialized interest such as a labor, fraternal, society, political, religious, sporting, or trade news publication or journal. (5) The publication is a magazine, racing form, or tip sheet. *As added by P.L.64-1995, SEC.3. Amended by P.L.38-1997, SEC.3.*

**IC 5-3-1-1 Cost of advertising; form of legal advertisements; determination of circulation** Sec. 1.

(a) The cost of all public notice advertising which any elected or appointed public official or governmental agency is required by law to have published, or orders published, for which the compensation to the newspapers or qualified publications publishing such advertising is drawn from and is the ultimate obligation of the public treasury of the governmental unit concerned with the advertising shall be charged to and collected from the proper fund of the public treasury and paid over to the newspapers or qualified publications publishing such advertising, after proof of publication and claim for payment has been filed. (b) The basic charges for publishing public notice advertising shall be by the line and shall be computed based on a square of two hundred and fifty (250) ems at the following rates: (1) Before January 1, 1996, three dollars and thirty cents (\$3.30) per square for the first insertion in newspapers or qualified publications plus one dollar and sixty-five cents (\$1.65) per square for each additional insertion in newspapers or qualified publications. (2) After December 31, 1995, and before December 31, 2005, a newspaper or qualified publication may, effective January 1 of any year, increase the basic charges by five percent (5%) more than the basic charges that were in effect during the previous year. However, the basic charges for the first insertion of a public notice in a newspaper or qualified publication may not exceed the lowest classified advertising rate charged to advertisers by the newspaper or qualified publication for comparable use of the same amount of space for other purposes. An additional charge of fifty percent (50%) shall be allowed for the publication of all public notice advertising containing rule or tabular work. (c) All public notice advertisements shall be set in solid type not larger than the type used in the regular reading matter of the newspaper or qualified publication, without any leads or other devices for increasing space. All public notice advertisements shall be headed by not more than two (2) lines, neither of which shall total more than four (4) solid lines of the type in which the body of the advertisement is set. Public notice advertisements may be submitted by an appointed or elected official or a governmental agency to a newspaper or qualified publication in electronic form, if the newspaper or qualified publication is equipped to accept information

in compatible electronic form. (d) Each newspaper or qualified publication publishing public notice advertising shall submit proof of publication and claim for payment in duplicate on each public notice advertisement published. For each additional proof of publication required by a public official, a charge of one dollar (\$1) per copy shall be allowed each newspaper or qualified publication furnishing proof of publication. (e) The circulation of a newspaper or qualified publication is determined as follows: (1) For a newspaper, by the circulation stated on line 10.C. (Total Paid and/or Requested Circulation of Single Issue Published Nearest to Filing Date) of the Statement of Ownership, Management and Circulation required by 39 U.S.C. 3685 that was filed during the previous year. (2) For a qualified publication, by a verified affidavit filed with each governmental agency that has public notices the qualified publication wants to publish. The affidavit must: (A) be filed with the governmental agency before January 1 of each year; and (B) attest to the circulation of the qualified publication for the issue published nearest to October 1 of the previous year. (Formerly: Acts 1927, c.96, s.1; Acts 1957, c.16, s.1; Acts 1967, c.89, s.1.) As amended by Acts 1979, P.L.33, SEC.1; P.L.52-1987, SEC.1; P.L.64-1995, SEC.4.

**IC 5-3-1-2 Public hearings or meetings, elections, and other events; requirements for publication of notice; posting instead of publication** Sec. 2.

(a) This section applies only when notice of an event is required to be given by publication in accordance with IC 5-3-1. (b) If the event is a public hearing or meeting concerning any matter not specifically mentioned in subsection (c), (d), (e), (f), (g), or (h) notice shall be published one (1) time, at least ten (10) days before the date of the hearing or meeting. (c) If the event is an election, notice shall be published one (1) time, at least ten (10) days before the date of the election. (d) If the event is a sale of bonds, notes, or warrants, notice shall be published two (2) times, at least one (1) week apart, with: (1) the first publication made at least fifteen (15) days before the date of the sale; and (2) the second publication made at least three (3) days before the date of the sale. (e) If the event is the receiving of bids, notice shall be published two (2) times, at least one (1) week apart, with the second publication made at least seven (7) days before the date the bids will be received. (f) If the event is the establishment of a cumulative or sinking fund, notice of the proposal and of the public hearing that is required to be held by the political subdivision shall be published two (2)

times, at least one (1) week apart, with the second publication made at least three (3) days before the date of the hearing. (g) If the event is the submission of a proposal adopted by a political subdivision for a cumulative or sinking fund for the approval of the department of local government finance, the notice of the submission shall be published one (1) time. The political subdivision shall publish the notice when

directed to do so by the department of local government finance. (h) If the event is the required publication of an ordinance, notice of the passage of the ordinance shall be published one (1) time within thirty (30) days after the passage of the ordinance. (i) If the event is one about which notice is required to be published after the event, notice shall be published one (1) time within thirty (30) days after the date of the event. (j) If the event is anything else, notice shall be published two (2) times, at least one (1) week apart, with the second publication made at least three (3) days before the event. (k) In case any officer charged with the duty of publishing any notice required by law is unable to procure advertisement at the price fixed by law, or the newspaper refuses to publish the advertisement, it is sufficient for the officer to post printed notices in three (3) prominent places in the political subdivision, instead of advertisement in newspapers. (l) If a notice of budget estimates for a political subdivision is published as required in IC 6-1.1-17-3, and the published notice contains an error due to the fault of a newspaper, the notice as presented for publication is a valid notice under this chapter. (m) Notwithstanding subsection (j), if a notice of budget estimates for a political subdivision is published as required in IC 6-1.1-17-3, and if the notice is not published at least ten (10) days before the date fixed for the public hearing on the budget estimate due to the fault of a newspaper, the notice is a valid notice under this chapter if it is published one (1) time at least three (3) days before the hearing. *(Formerly: Acts 1927, c.96, s.2.) As amended by Acts 1981, P.L.45, SEC.1; P.L.23-1984, SEC.6; P.L.36-1986, SEC.1; P.L.53-1987, SEC.1; P.L.54-1987, SEC.1; P.L.10-1989, SEC.19; P.L.1-1990, SEC.49; P.L.64-1995, SEC.5; P.L.153-1999, SEC.1; P.L.90-2002, SEC.14.*

**IC 5-3-1-2.3 Validity of notice containing errors or omissions; correction of errors and omissions**

Sec. 2.3. (a) A notice published in accordance with this chapter or any other Indiana statute is valid even though the notice contains errors or omissions, as long as: (1) a reasonable person would not be misled by the error or omission; and (2) the notice is in substantial compliance with the time and publication requirements applicable under this chapter or any other Indiana statute under which the notice is published.

(b) This subsection applies if: (1) a county auditor publishes a notice concerning a tax rate, tax levy, or budget of a political subdivision in the county; (2) the notice contains an error or omission that causes the notice to inaccurately reflect the tax rate, tax levy, or budget actually proposed or fixed by the political subdivision; and (3) the county auditor is responsible for the error or omission described in subdivision (2) Notwithstanding any other law, the department of local government finance may correct an error or omission described in subdivision (2) at any time. If an error or omission described in subdivision (2) occurs, the county auditor must publish, at the county's expense, a notice containing the correct tax rate, tax levy, or budget as proposed or fixed by the political subdivision. *As added by P.L.1-1990, SEC.50. Amended by P.L.169-2006, SEC.2.*

**IC 5-3-1-2.5 Repealed** *(Repealed by P.L.31-1992, SEC.2.)*

**IC 5-3-1-3 Cities, towns, and school corporations; publication of annual reports of receipts and expenditures**

Sec. 3. (a) Within sixty (60) days after the expiration of each calendar year, the fiscal officer of each civil city and town in Indiana shall publish an annual report of the receipts and expenditures of the city or town during the preceding calendar year. (b) Not earlier than August 1 or later than August 15 of each year, the secretary of each school corporation in Indiana shall publish an annual financial report. (c) In the annual financial report the school corporation shall include the following: (1) Actual receipts and expenditures by major accounts as compared to the budget advertised under IC 6-1.1-17-3 for the prior calendar year. (2) The salary schedule for all certificated employees (as defined in IC 20-29-2-4) as of June 30, with the number of employees at each salary increment. However, the listing of salaries of individual teachers is not required. (3) The extracurricular salary schedule as of June 30. (4) The range of rates of pay for all noncertificated employees by specific classification. (5) The number of employees who are full-time certificated, part-time certificated, full-time noncertificated, and part-time noncertificated. (6) The lowest, highest, and average salary for the administrative staff and the number of administrators without a listing of the names of particular administrators. (7) The number of students enrolled at each grade level and the total enrollment.

(8) The assessed valuation of the school corporation for the prior and current calendar year. (9) The tax rate for each fund for the prior and current calendar year. (10) In the general fund, capital

projects fund, and transportation fund, a report of the total payment made to each vendor for the specific fund in excess of two thousand five hundred dollars (\$2,500) during the prior calendar year. However, a school corporation is not required to include more than two hundred (200) vendors whose total payment to each vendor was in excess of two thousand five hundred dollars (\$2,500). A school corporation shall list the vendors in descending order from the vendor with the highest total payment to the vendor with the lowest total payment above the minimum listed in this subdivision. (11) A statement providing that the contracts, vouchers, and bills for all payments made by the school corporation are in its possession and open to public inspection. (12) The total indebtedness as of the end of the prior calendar year showing the total amount of notes, bonds, certificates, claims due, total amount due from such corporation for public improvement assessments or intersections of streets, and any and all other evidences of indebtedness outstanding and unpaid at the close of the prior calendar year. (d) The school corporation may provide an interpretation or explanation of the information included in the financial report. (e) The department of education shall do the following: (1) Develop guidelines for the preparation and form of the financial report. (2) Provide information to assist school corporations in the preparation of the financial report. (f) The annual reports required by this section and IC 36-2-2-19 and the abstract required by IC 36-6-4-13 shall each be published one (1) time only, in accordance with this chapter. (g) Each school corporation shall submit to the department of education a copy of the financial report required under this section. The department of education shall make the financial reports available for public inspection. □(Formerly: Acts 1927, c.96, s.3; Acts 1929, c.200, s.1; Acts 1959, c.262, s.1.) As amended by Acts 1981, P.L.45, SEC.2; P.L.36-1986, SEC.2; P.L.342-1989(ss), SEC.1; P.L.1-1991, SEC.30; P.L.19-1992, SEC.2; P.L.38-1993, SEC.2; P.L.1-1994, SEC.17; P.L.24-1994, SEC.1; P.L.340-1995, SEC.40; P.L.34-1996, SEC.1; P.L.98-2000, SEC.1; P.L.102-2001, SEC.1; P.L.1-2005, SEC.73.

**IC 5-3-1-4 Notices by political subdivisions and school corporations; requirements; notice in multiple counties; supplementary notices**

Sec. 4. (a) Whenever officers of a political subdivision are required to publish a notice affecting the political subdivision, they

shall publish the notice in two (2) newspapers published in the political subdivision. (b) This subsection applies to notices published by county officers. If there is only one (1) newspaper published in the county, then publication in that newspaper alone is sufficient. (c) This subsection applies to notices published by city, town, or school corporation officers. If there is only one (1) newspaper published in the municipality or school corporation, then publication in that newspaper alone is sufficient. If no newspaper is published in the municipality or school corporation, then publication shall be made in a newspaper published in the county in which the municipality or school corporation is located and that circulates within the municipality or school corporation. The notice shall be posted: (1) at or near the city or town hall or school administration building; or (2) at the: (A) public building where the governing body of the respective city, town, or school corporation meets; or (B) post office in the municipality or school corporation (or at the bank if there is no post office); if the municipality does not have a city or town hall, or the school corporation does not have an administration building. (d) This subsection applies to notices published by officers of political subdivisions not covered by subsection (a) or (b), including township officers. If there is only one (1) newspaper published in the political subdivision, then the notice shall be published in that newspaper and if another newspaper is published in the county and circulates within the political subdivision in the other newspaper. If no newspaper is published in the political subdivision, then publication shall be made in a newspaper published in the county and that circulates within the political subdivision. (e) This subsection applies to a political subdivision, including a city, town, or school corporation. Notwithstanding any other law, if a political subdivision has territory in more than one (1) county, public notices that are required by law or ordered to be published must be given as follows: (1) By publication in two (2) newspapers published within the boundaries of the political subdivision. (2) If only one (1) newspaper is published within the boundaries of the political subdivision, by publication in that newspaper and in some other newspaper: (A) published in any county in which the political subdivision extends; and (B) that has a general circulation in the political subdivision. (3) If no newspaper is published within the boundaries of the political subdivision, by publication in two (2) newspapers that: (A) are published in any counties into which the political subdivision extends; and (B) have a general circulation in the political subdivision. (4) If only one (1) newspaper is published in any of the counties into which the political subdivision extends, by publication in that newspaper if it circulates within the political subdivision. (f) A political subdivision may, in its discretion, publish public notices in a qualified publication or additional newspapers to provide supplementary notification to the public. The cost of publishing supplementary notification is a proper expenditure of the political subdivision.

*(Formerly: Acts 1927, c.96, s.4.) As amended by Acts 1981, P.L.45, SEC.3; Acts 1981, P.L.46, SEC.1; Acts 1982, P.L.33, SEC.1; P.L.48-1983, SEC.1; P.L.5-1988, SEC.30; P.L.1-1990, SEC.51; P.L.35-1990, SEC.5; P.L.64-1995, SEC.6; P.L.38-1997, SEC.4; P.L.98-2000, SEC.2.*

**IC 5-3-1-5 Repealed** *(Repealed by Acts 1981, P.L.45, SEC.105.)*

**IC 5-3-1-6 Notices published in newspapers or by state; electronic access** Sec. 6. (a) In all cases where notices are required by law to be published in the public newspaper by or under the supervision of any state officer, board, commission, or institution of the state of Indiana, said notices are hereby required to be published in each of two (2) daily newspapers published in the city of Indianapolis and in such other cities as is required by law, said notices to be in all cases published in two (2) newspapers in each city where they are required to be published. In all cases where the officer, board, commission, or institution making said publication is located outside of the city of Indianapolis, said notices shall also be published in newspapers published within the county where said officer, board, commission, or institution maintains its office. The rate charged for all such notices and advertising shall be the same as is set out in section 1 of this chapter. □ (b) In addition to the requirements of subsection (a), a state officer, board, commission, or institution of the state of Indiana that is required by law to publish a notice of a public meeting shall also provide electronic access to the notice through the computer gateway administered by the office of technology established by IC 4-13.1-2-1. *(Formerly: Acts 1927, c.96, s.6.) As amended by P.L.25-1986, SEC.12; P.L.251-1999, SEC.3; P.L.177-2005, SEC.13.*

**IC 5-3-1-7 Repealed** *(Repealed by Acts 1981, P.L.45, SEC.105.)*

**IC 5-3-1-8 Utility regulatory commission hearings; notice** Sec. 8. Whenever the utility regulatory commission shall order a hearing in any city, town, county, or township of the state, notice of such hearing shall be published in two (2) newspapers of general circulation in such city, town, county, or township, by one (1) publication in each of such newspapers, not less than ten (10) days prior to the day on which such hearing will be held. *(Formerly: Acts 1927, c.96, s.8.) As amended by P.L.23-1988, SEC.6.*

**IC 5-3-1-9 Violations; offense** Sec. 9. A person who fails to comply with this article commits a Class C infraction. *(Formerly: Acts 1927, c.96, s.9.) As amended by Acts 1978, P.L.2, SEC.504.*

**Attachment VI-3:**

**Indiana Code 5-22-8**

## IC 5-22-8

### Chapter 8. Small Purchases

*Effective 2-4-09.*

#### **IC 5-22-8-1 Applicability of chapter**

Sec. 1. (a) This chapter applies only to a purchase expected by the purchasing agent to be less than one hundred fifty thousand dollars (\$150,000).

(b) Purchase requirements may not be artificially divided so as to constitute a small purchase under this chapter. *As added by P.L.49-1997, SEC.1. Amended by P.L.7-1998, SEC.1; P.L.195-2007, SEC.1.*

#### **IC 5-22-8-2 Purchases below \$50,000**

Sec. 2. (a) This section applies only if the purchasing agent expects the purchase to be less than fifty thousand dollars (\$50,000).

(b) A purchasing agent may make a purchase under small purchase policies established by the purchasing agency or under rules adopted by the governmental body. *As added by P.L.49-1997, SEC.1. Amended by P.L.7-1998, SEC.2; P.L.195-2007, SEC.2.*

#### **IC 5-22-8-3 Purchases between \$50,000 and \$150,000**

Sec. 3. (a) This section applies only if the purchasing agent expects the purchase to be:

- (1) at least fifty thousand dollars (\$50,000); and
- (2) not more than one hundred fifty thousand dollars (\$150,000).

(b) A purchasing agent may purchase supplies under this section by inviting quotes from at least three (3) persons known to deal in the lines or classes of supplies to be purchased.

(c) The purchasing agent shall mail an invitation to quote to the persons described in subsection (b) at least seven (7) days before the time fixed for receiving quotes.

(d) If the purchasing agent receives a satisfactory quote, the purchasing agent shall award a contract to the lowest responsible and responsive offeror for each line or class of supplies required.

(e) The purchasing agent may reject all quotes.

(f) If the purchasing agent does not receive a quote from a responsible and responsive offeror, the purchasing agent may purchase the supplies under IC 5-22-10-10.  *As added by P.L.7-1998, SEC.3. Amended by P.L.195-2007, SEC.3.*

**Attachment VI-4:**  
**Indiana Code 5-22-9**

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**IC 5-22-9**  
**Chapter 9. Request for Proposals**  
*Effective 2-4-09.*

**IC 5-22-9-1IC 5-22-9-1 Use of request for proposals** Sec. 1. Subject to the policies of the purchasing agency, a purchasing agent may award a contract using the procedure provided by this chapter. *As added by P.L.49-1997, SEC.1. Amended by P.L.160-2006, SEC.8; P.L.195-2007, SEC.4.*

**IC 5-22-9-2 Request for proposals; contents** Sec. 2. The purchasing agent shall solicit proposals through a request for proposals, which must include the following: (1) The factors or criteria that will be used in evaluating the proposals. (2) A statement concerning the relative importance of price and the other evaluation factors. (3) A statement concerning whether the proposal must be accompanied by a certified check or other evidence of financial responsibility, which may be imposed in accordance with rules of the governmental body. (4) A statement concerning whether discussions may be conducted with responsible offerors, who submit proposals determined to be reasonably susceptible of being selected for award. *As added by P.L.49-1997, SEC.1.*

**IC 5-22-9-3 Public notice of request for proposals** Sec. 3. (a) The purchasing agency shall give public notice of the request for proposals in the manner required by IC 5-3-1. (b) The purchasing agency for a state agency shall also provide electronic access to the notice through the computer gateway administered by the office of technology. (c) The purchasing agency for a political subdivision may also provide electronic access to the notice through the electronic gateway administered by the office of technology. *As added by P.L.49-1997, SEC.1. Amended by P.L.251-1999, SEC.6; P.L.31-2002, SEC.4; P.L.177-2005, SEC.23.*

**IC 5-22-9-4 Opening of proposals** Sec. 4. Proposals must be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. *As added by P.L.49-1997, SEC.1.*

**IC 5-22-9-5 Register of proposals; contents**

Sec. 5. (a) A register of proposals must be:

- (1) prepared; and
- (2) open for public inspection after contract award.
- (b) The register of proposals must contain the following:
  - (1) A copy of the request for proposals.
  - (2) A list of all persons to whom copies of the request for proposals were given.
  - (3) A list of all proposals received, which must include all of the following:
    - (A) The names and addresses of all offerors.
    - (B) The dollar amount of each offer.
    - (C) The name of the successful offeror and the dollar amount of that offeror's offer.
    - (4) The basis on which the award was made.
    - (5) The entire contents of the contract file except for proprietary information included with an offer, such as trade secrets, manufacturing processes, and financial information that was not required to be made available for public inspection by the terms of the request for proposals. □ *As added by P.L.49-1997, SEC.1.*

**IC 5-22-9-6 Responsible offerors; discussions; final offers** Sec. 6. As provided in the request for proposals or under the rules or policies of the governmental body, discussions may be conducted with, and best and final offers obtained from, responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award. *As added by P.L.49-1997, SEC.1.*

**IC 5-22-9-7 Award** Sec. 7.

- (a) Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the governmental body, taking into consideration price and the other evaluation factors set forth in the request for proposals.
- (b) If provided in the request for proposals, award may be made to more than one (1) offeror whose proposals are determined in writing to be advantageous to the governmental body, taking into consideration price and other evaluation factors set forth in the request for proposals. *As added by P.L.49-1997, SEC.1.*

**IC 5-22-9-8 Rules; policies** Sec. 8. The governmental body may provide by rule or policy that:

- (1) it is either not practicable or not advantageous to the governmental body to purchase specified types of supplies by competitive sealed bidding; and

(2) receiving proposals is the preferred method for purchase of that type of supply. *As added by P.L.49-1997, SEC.1.*

**IC 5-22-9-9 Fair and equal treatment of offerors**

Sec. 9. (a) Offerors must be accorded fair and equal treatment with respect to any opportunity for discussion and revisions of proposals. (b) In conducting discussions with an offeror, information derived from proposals submitted by competing offerors may be used in discussion only if the identity of the offeror providing the information is not disclosed to others. The purchasing agency must provide equivalent information to all offerors with which the purchasing agency chooses to have discussions. *As added by P.L.49-1997, SEC.1. Amended by P.L.160-2006, SEC.9; P.L.195-2007, SEC.5.*

**IC 5-22-9-10 Evaluation; factors and criteria**

Sec. 10. The only factors or criteria that may be used in the evaluation of proposals are those specified in the request for proposals. *As added by P.L.49-1997, SEC.1.*

**Attachment VI-5:**

**Indiana Code 5-16-11.1**

## IC 5-16-11.1

### Chapter 11.1. Procurement of Services of Architects, Engineers, and Land Surveyors

**IC 5-16-11.1-1 "Firm" defined** Sec. 1. As used in this chapter, "firm" means an individual, partnership, limited liability company, corporation, association, joint venture, or any other form of unincorporated enterprise. *As added by P.L.24-1985, SEC.16. Amended by P.L.8-1993, SEC.68.*

**IC 5-16-11.1-2 "Professional services" defined** Sec. 2. As used in this chapter, "professional services" means those services that are: (1) within the scope of practice specified by IC 25-4 for architecture, IC 25-31 for professional engineering, or IC 25-21.5 for land surveying; or (2) performed by any licensed architect, professional engineer, or land surveyor in connection with his professional employment or practice. *As added by P.L.24-1985, SEC.16. Amended by P.L.23-1991, SEC.2.*

**IC 5-16-11.1-3 "Public agency" defined** Sec. 3. As used in this chapter, "public agency" includes a: (1) political subdivision as defined in IC 36-1-2-13; (2) municipally owned utility; (3) lessor corporation leasing a school building to a school corporation under IC 20-47-2 or IC 20-47-3; or (4) lessor corporation constructing a public facility to be leased to a political subdivision. *As added by P.L.24-1985, SEC.16. Amended by P.L.2-2006, SEC.32.*

**IC 5-16-11.1-4 Notice of requirement of professional services** Sec. 4. (a) When professional services are required for a project, a public agency may: (1) publish notice in accordance with IC 5-3-1; (2) provide for notice (other than notice in accordance with IC 5-3-1) as it determines is reasonably calculated to inform those performing professional services of a proposed project; (3) provide for notice in accordance with both subdivisions (1) and (2); or (4) determine not to provide any notice. (b) If the public agency provides for notice under subsection (a)(1), (a)(2), or (a)(3), each notice must include: (1) the location of the project; (2) a general description of the project; (3) the general criteria to be used in selecting professional services firms for the project; (4) the place where any additional project description or specifications are on file; (5) the hours of business of the public agency; and (6) the last date for accepting statements of qualifications from interested parties. *As added by P.L.24-1985, SEC.16. Amended by P.L.51-1988, SEC.1.*

**IC 5-16-11.1-5 Basis for contracts; compensation** Sec. 5. A public agency may make all contracts for professional services on the basis of competence and qualifications for the type of services to be performed and negotiate compensation that the public agency determines to be reasonable. *As added by P.L.24-1985, SEC.16.*

## Section VII.

# Facility Construction and Renovation Guidelines

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## VII. FACILITY CONSTRUCTION AND RENOVATION GUIDELINES

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### INTRODUCTION

As addressed in [Section II](#) of this Manual, the acquisition, construction or renovation of transit facilities including design, engineering, and land acquisition is an eligible expense under the Section 5311 Program. Section 5311 funds may be used to fund up to 80 percent of the net capital cost of the facility improvement or acquisition. Due to the limited funding available in any given fiscal year, INDOT reserves the right to limit the number and type of facility projects to be considered for financial assistance.

Transit facilities are defined as:

- Facilities that support transit operations, such as administrative buildings, maintenance garages and vehicle storage buildings; and Facilities that provide passenger amenities such as bus terminals, stations, shelters and park-and-ride lots.

Facility projects are required to adhere to the same Federal policies that apply to other capital procurements as addressed in the Procurement Section of this Manual. For facility projects, due to their complexity and project variety, there is no single Federal document that provides all the information that is needed to comply with all the regulations. The following FTA documents provide valuable information regarding FTA – assisted facility projects.

- [FTA Circular 9040.1F](#) – Nonurbanized Area Formula Program Guidance and Grant Application Instructions

- Available at [www.fta.dot.gov](http://www.fta.dot.gov) – Go to Legislation, Regulation and Guidance, click on FTA Circulars.
- [FTA Circular 4220.1F](#) - Third Party Contracting Guidance.
  - Available at [www.fta.dot.gov](http://www.fta.dot.gov) - Go to Legislation, Regulation and Guidance, click on FTA Circulars.
- [FTA Circular 9300.1B](#) - Capital Investment Program Guidance and Application Instructions.
  - Available at [www.fta.dot.gov](http://www.fta.dot.gov) – Go to Legislation, Regulation and Guidance, click on FTA Circulars.
- [Best Practices Procurement Manual](#) - Prepared to assist grantee in meeting standards of FTA Circular 4220.1F
  - Available at [www.fta.dot.gov](http://www.fta.dot.gov) - Go to Reports/Publications, click on Other Reports.
- [FTA Construction Project Management Handbook](#), Revision 1, April 2007.
  - Available at [www.fta.dot.gov](http://www.fta.dot.gov) – Type “Construction Project Management Handbook” in the search window, click on [Construction Project Management Handbook](#) (April 2007).
- [23 CFR part 771 - Environmental Impact and Related Procedures](#) – Available at [http://www.fta.dot.gov/documents/N\\_EPA\\_reg\\_clean.pdf](http://www.fta.dot.gov/documents/N_EPA_reg_clean.pdf).

There are two primary types of facility funding requests: 1) new facility and 2) facility renovation. Renovation includes

expansion, maintenance, repair and remodeling of an existing facility. All facility projects will require an INDOT review of the project plan and/or a Facility Feasibility Study. Further information regarding this requirement is addressed later in this chapter.

## **PROJECT PLANNING AND IMPLEMENTATION**

Facility projects are considered to be those that involve new construction, purchase and renovation of an existing facility and improvements or renovations to existing facilities. Improvements or renovations include the following:

- Facility expansion;
- Construction of detached buildings on existing facility site; and,
- Repair and remodeling of an existing facility.

### **STEP-BY-STEP PROCESS**

#### **Step 1: Feasibility Stage**

The applicant should hold initial discussions with local governments and other program supporters to determine the need for the proposed project. Local and regional planning documents should be analyzed to determine if the project supports the local goals and objectives. Discussions could include such issues as opportunities for purchasing an existing facility for renovation, availability of land for construction of a new facility, and appropriate opportunities to share the proposed facility with another transit system or government agency. Further, the applicant should document the current facility conditions of the transit system and how the project would improve these conditions, the need for

the facility improvement(s), and a description of the proposed facility project.

#### **Step 2: Feasibility Analysis**

It is recommended that the transit system director consult with INDOT staff regarding facility needs well in advance of the Section 5311 application period. This will allow time for a determination to be made of the merits of the proposed project, determination of whether the project is considered major or minor in scope, and enable the applicant to apply for Section 5311 funding.

It is the general policy of FTA to provide financial assistance for transit facilities that are adequate for the applicant's present needs and realistically address future growth. In those situations where land acquisition is required, it may be justifiable to procure enough land to meet future expansion needs.

For those proposed projects that would require considerable new construction such as the construction of a new administrative and maintenance facility or purchasing an existing building for renovation into a transit facility, a Facility Feasibility Study would be required to determine the merits of the project, clearly define the project and determine its estimated cost. It is important that the current and anticipated spatial needs of a transit system be determined prior to initiating construction. Elements would include the following:

- A determination of transit demand and other use;

- An evaluation of existing facilities or sites to satisfy existing and future transit needs;
- Evaluation and selection of preferred site(s) if a new facility is warranted;
- Preliminary concept design including space needs, circulation, and facility components;
- Cost estimate of the transit facility and financing plan; and,
- Operating cost estimate of new or renovated facility.

An outline of the scope of work for a Facility Feasibility Study can be found in [Appendix VII-1](#) to this chapter. Typically approximately six months should be allowed for completion of the study. Planning funds are available for preparation of the study at an 80 percent federal participation level. The subrecipient should consult with INDOT staff regarding the need to conduct a Facility Feasibility Study.

At the conclusion of the feasibility step, all project documentation must be submitted to INDOT.

**INDOT Oversight Action:** At this point in the study process, all project descriptive material, feasibility analyses, and cost estimates must be submitted to INDOT for review and approval. INDOT staff will review the proposed project (or use the services of its technical assistance consultant to critically evaluate the feasibility analysis and project cost estimates. If the project is deemed feasible and that funding is likely to be available for the project, INDOT will formally authorize the applicant to proceed with the environmental phase of the project.

### **Step 3: Designation of Project Manager**

If INDOT approves a project under Step 2, the applicant at this point must identify a proposed Project Manager who will have responsibility for oversight of the project from concept initial land acquisition (if applicable) to project completion.

This individual must possess the requisite capabilities and/or have the relevant project experience in procurement of architectural/engineering services to bidding and construction management.

If these services do not exist within the applicant's organization, the applicant may utilize the services of other governmental personnel (*e.g.*, a nonprofit operator may utilize the services of a County Engineer). If these services cannot be obtained locally, then the project application must contain a request to procure these services through a third party contracting arrangement.

**INDOT Oversight Action:** The applicant must submit a resume and a history of the proposed Project Manager's qualifications for approval to INDOT prior to proceeding to the application phase. INDOT must approve the qualifications of the proposed Project Manager and/or concur in the applicant's decision to procure these services through third party contracting.

### **Step 4: Project Application**

Contingent upon the determination to proceed with the project, the eligible

applicant should proceed with development of the project application through the process identified in [Section III](#) – Grant Application Procedures of this manual. The necessary procedures include application for planning funds to conduct a Facility Feasibility Study and/or facility construction funds. Note that if land purchase is required prior to facility construction, it may be necessary to request funds in different phases/stages of the project such as the land acquisition, facility design and construction phases.

### **Step 5: INDOT Review of the Project Application**

INDOT has established the following selection criteria for consideration of facility projects to be recommended for funding with Section 5311 funds.

#### New Construction

- Presentation of deed of site ownership by grantee;
- Condition of existing facility and utility for future needs;
- Anticipated system growth;
- Justification for requested size facility;
- System operational performance;
- Local financial support of transit system;
- Local agency support of system;
- Local/regional transit coordination status;
- System compliance with federal/state regulations;
- Impact on system operations;
- Cost analysis/effectiveness of new facility;
- Accommodates future expansion needs;

- Capability of grantee to manage project;
- Implementation timeline; and,
- Project listed in TIP, if applicable, and STIP

#### Expansion of Existing Facility

- Presentation of deed of facility ownership by grantee;
- Justification for facility expansion;
- Anticipated system growth;
- Impact on system operations;
- Cost effectiveness of expansion;
- Allows operations to continue during construction;
- Capability of grantee to manage project;
- Implementation timeline; and,
- Project listed in TIP, if applicable, and STIP

#### Renovation/Rehabilitation

- Presentation of deed of facility ownership by grantee;
- Structural soundness of existing facility;
- Justification for facility modification;
- Cost effectiveness of improvements;
- Implementation timeline; and,
- Project listed in TIP, if applicable, and STIP

The award of facility project grants will be based on funding availability and INDOT project evaluation criteria.

**INDOT Oversight Action:** INDOT will take a formal approval action on the project application. Contracts and notice to proceed with implementation will be issued by INDOT, outlining the terms and conditions the will govern the

applicant's implementation of the project.

INDOT authorization and contracting authority will be done in phases, as follows:

1. Environmental Assessments
2. Design
3. Construction

A project cannot proceed to a phase unless INDOT has concurred with the actions of the preceding phase.

#### **Step 6: Phase I Site Assessment (optional)**

If the proposed project requires the applicant to acquire land in order to construct a new facility, INDOT may request that the applicant conduct a Phase 1 Site Assessment of the preferred property/site. The purpose of this assessment is to identify potential or existing environmental contamination liabilities that may be associated with the site. If such problems are identified with an applicant's preferred site, it is generally advised that such sites be excluded from consideration for a Federally assisted transit project under the INDOT Section 5311 program (as mitigation measures may not make the project feasible from a cost perspective).

**INDOT Oversight Action:** INDOT will take a formal concurrence action on the Phase I Site Assessment report before the grantee/operator may proceed with any land acquisition activities.

#### **Step 7: Environmental Process**

FTA's environmental review process has two primary objectives: to fully disclose

the probable environmental impacts resulting from a proposed project and to develop measures that will avoid or mitigate adverse environmental effects.

Facility projects, depending on their complexity and location, may have a wide range of environmental effects and, thus, require varying levels of documentation and review.

Due to their relative minor complexity, most facility projects funded through the Section 5311 program do not normally involve significant environmental impacts. These projects are termed "Categorical Exclusions (CEs)" and are therefore excluded from the requirement to prepare an environmental impact statement. Nevertheless, before the Federal Transit Administration can make this recommendation, FTA requires that all projects complete a "Documented Categorical Exclusion Worksheet" which can be found in [Appendix VII-2](#).

FTA's environmental impact regulation classifies categorical exclusion projects into two groups.

The first group, described in 23 CFR 771.117(c), contains activities and projects which have very limited or no environmental effects at all. Due to the minimal environmental impacts of these activities, no environmental documentation is required beyond the Documented Categorical Exclusion Worksheet. The following types of projects would fall into this exempted group:

- Engineering to define the elements of a proposed action or alternatives so that social, economic, and environmental effects can be assessed;

- Approval of utility installations along or across a transportation facility;
- Construction of bicycle and pedestrian lanes, paths, and facilities;
- Landscaping;
- Installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, and railroad warning devices where no substantial land acquisition or traffic disruption will occur;
- Acquisition of scenic easements; and,
- Alterations to facilities or vehicles in order to make them accessible for elderly and handicapped persons.

There is also a second group of facility or facility-related projects that involve more construction and greater potential for off-site impacts. However, experience has indicated that many such facility projects can be constructed and operated without causing significant environmental impact. FTA may approve the designation of these construction projects as categorical exclusions if the applicant provides documentation which clearly demonstrates that the project is compatible with non-residential land use, the primary access roads are adequate to handle the additional vehicle traffic and that no significant adverse environmental effects will result.

Under Indiana environmental laws, local projects must undergo a review by various state agencies before INDOT can authorize/fund construction of a project. Under these procedures, the approved applicant of the project initiates the early coordination process with a letter to various state and Federal agencies and Section 106 consulting

parties to provide them with project information and to receive specific information regarding the probable impacts of the various alternatives.

Included in the early coordination letter (ECL) should be the following information:

- Description of the existing conditions of the project area, deficiencies, alignment, right-of-way, and current land use.
- A description of the purpose and need of the project.
- Maps of the project location.
- Aerial and site location photographs with views from all compass directions of the site.
- Facility concept schematics, if available.
- Project schedule.

INDOT can provide letter templates and contact information and additional technical assistance in preparing and transmitting ECLs.

Part of the early coordination process is conducted with the Indiana Department of Environmental Management, State Historic Preservation Officer (SHPO). Under Section 106 of the National Historic Preservation Act, the project must assess its potential impact on historic properties. The essential steps to Section 106 include the following:

1. Establish an Area of Potential Effect (APE).
2. Identify historic properties and archaeological sites within the APE.
3. Make preliminary determinations of APE, Eligibility Determination, and Effect Finding.

4. Identify Consulting Parties/invite Consulting Parties and the Indiana SHPO to participate in consultation.
5. Review responses from Consulting Parties, hold Section 106 Consultation Meetings if necessary.
6. Prepare APE, Eligibility Determination, and Effect Finding; these will then be forwarded to INDOT for review, and if appropriate, approval.
7. Distribute the approved APE, Eligibility Determination, Effect Finding, and documentation to consulting parties and present to the general public through public notices.
8. Revise the APE, Eligibility Determination, Effect Finding, and supporting documentation based on Consulting Party and public comments.
9. Resolve any adverse effects on historic properties.

**Grantees should note that consistent with INDOT practices, only pre-qualified consultants are permitted to prepare environmental/Section 106 documents.**

If the applicant does not possess the requisite expertise to prepare such ECLs or DCE Worksheet, INDOT will provide a pre-qualified third party contractor support to prepare these documents on behalf of the applicant.

There is no formal public review for these types of environmental studies (the public participation requirements will have been met through the project application process). Once completed, the documents are sent to INDOT.

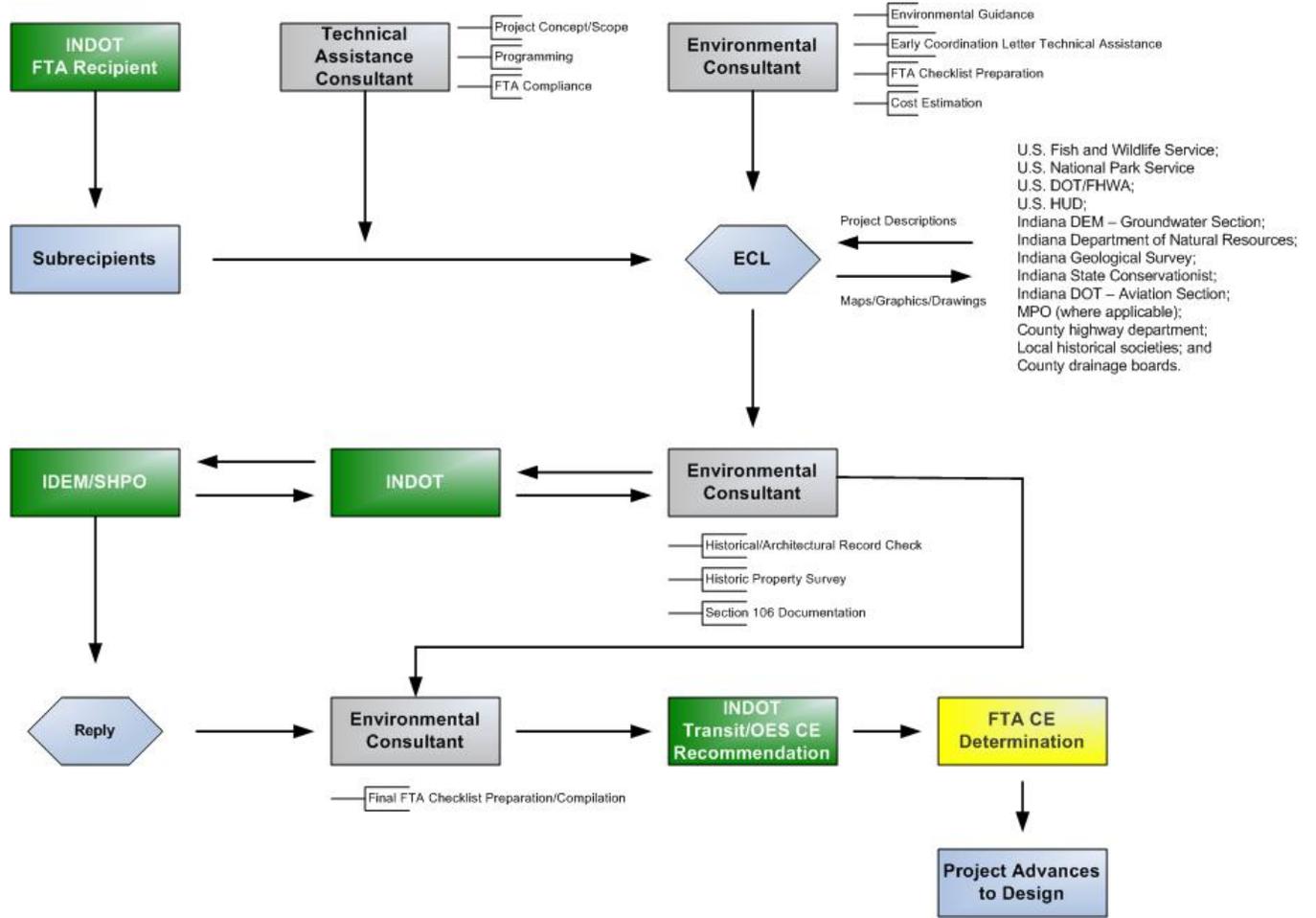
INDOT (utilizing in-house resources (INDOT/Office of Environmental Services) or those provided by third party services) will review the documents and determine if the project meets the requirements for a CE determination. INDOT will then forward DCE Checklist with recommendations to FTA.

FTA reviews this information and determines if a Categorical Exclusion is appropriate. Such facility projects include:

For any project not meeting the conditions for a categorical exclusion, the applicant may have to prepare an Environmental Assessment (EA) which documents the impacts of the proposed project and considers alternatives to the proposed site or design. An EA is subject to public comment. In the unlikely event that significant environmental impacts are identified for a Section 5311 project, an Environmental Impact Statement (EIS) will be required. While experience has indicated that it will be very unusual for any INDOT Section 5311 supported facility projects to not receive a categorical exclusion classification,

The environmental/Section 106 process is graphically depicted in Exhibit VII-1. This process depicts a scenario where INDOT, through its technical assistance contractor, provides pre-qualified consultants to work on the project.

# Exhibit VII-1. DCE Worksheet Preparation Process



Expanded information about the environmental protection requirements can be found in FTA Circular 9300.1B, Chapter VI.

### **Air Quality**

The Clean Air Act Amendments of 1990 established stringent air quality conformity standards in areas currently in violation of national air quality standards ("nonattainment" areas) and maintenance areas. Maintenance areas are those geographic areas that had a history of nonattainment, but are now consistently meeting the National Ambient Air Quality Standard (NAAQS) and have been re-designated by the U.S. Environmental Protection Agency (EPA) from "nonattainment" to "attainment with a maintenance plan." The 1990 Amendments also ensure that federally-assisted transportation projects support State (air quality) Implementation Plans (SIPs). The SIPs include the strategies developed by state air quality agencies for attaining the air quality standards. FTA must find that capital projects needing FTA assistance conform to the applicable SIP before the projects may be advanced to construction. If applicable, the projects must also be included in metropolitan transportation plans and programs (TIPs) that have also been found to conform to the SIP.

The procedures and criteria governing the conformity review process are specified in EPA conformity regulations at 40 C.F.R. Part 93. While these regulatory requirements can be complex, the EPA regulation also establishes a list of transit capital projects that are exempt from the process outlined above. These are projects presumed to have insignificant emissions effects and

normally they can proceed without regard to the conformity requirements.

A number of smaller transit projects are covered under the list of exemptions at 40 C.F.R. § 93.126. Regardless of the type of project being considered, early consultation with FTA is essential to lay out the applicable Clean Air Act requirements in nonattainment and maintenance areas. The FTA regional office can also provide information on selected provisions of other laws that support clean air objectives. Below are some facility or facility related projects that are exempt from conformity review.

- Purchase of office, shop, and operating equipment for existing facilities;
- Construction or renovation of power, signal, and communications systems;
- Construction of small passenger shelters and information kiosks;
- Reconstruction or renovation of transit buildings and structures (*e.g.*, rail or bus buildings, storage and maintenance facilities, stations, terminals, and ancillary structures); and,
- Construction of new bus or rail storage/maintenance facilities categorically excluded in 23 CFR part 771.

**INDOT Oversight Action:** A project cannot commence until INDOT formally notifies a project that FTA has rendered a Categorical Exclusion determination. Only after such action will INDOT release funds to commence design of the facility project.

## **Step 8: Design**

At this stage of the project, the grantee may now procure Architectural/Engineering (A/E) services to design the facility.

For projects related to or leading to construction, a grantee must use the qualifications-based procurement procedures of 40 U.S.C. Chapter 11 (Brooks Act procedures) when contracting for A&E services and other services described in 49 U.S.C. Section 5325(b), which include program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, or related services.

INDOT prefers that grantees use a “design-bid-build” process under the Section 5311 program. Other options may be presented to INDOT for consideration, consistent with FTA Circular 4220.1F.

INDOT also requires that grantees use a “design within limitations” clause in the design contract to ensure design services result in a building that will be built within programmed budgetary limitations.

**INDOT Oversight Action:** To ensure compliance with this requirement, INDOT must approve the draft Request of Qualifications statement prior public advertising and/or release of the RFQ to prospective offerors.

Additionally, INDOT must concur with the final award decision and must approve the third party contract between the grantee and the design firm.

## **Step 9: Construction Bidding**

The architectural/engineering firm selected for the design is responsible for preparing construction bid documents.

**INDOT Oversight Action:** INDOT must approve the construction bid documents prior to public advertising and/or release of the Invitation to Bid (IFB) to prospective offerors.

## **Step 10: Construction and Close-Out**

During this phase of the project, the grantee’s project manager will have primary responsibility for oversight of the contractor(s), ensuring the materials and products used in construction meet specification, ensuring the work is performed on schedule, and the quality of workmanship meets industry standards.

INDOT also requires that the grantee’s designated project manager be responsible for ensuring compliance with all associated labor requirements, including Davis-Bacon and all Fair Labor Standards Act requirements.

**INDOT Oversight Action:** To ensure compliance, INDOT may conduct periodic inspections of on-going construction projects to examine records, documents, etc. with respect to wage and hour requirements. Where this is not possible, the grantee’s agent responsible for design and/or construction management oversight may be designated to perform these reviews.

**REQUIREMENTS ASSOCIATED WITH ALL FACILITY PROJECTS**

All facility projects that are financially supported with Federal funds must follow all applicable Federal guidelines and regulations. All applicable State guidelines and laws must be followed if State funds are utilized as match for the facility.

**INCOME FROM PROPERTY**

Transit facilities that are constructed, purchased, improved or renovated utilizing Federal and/or State funds shall be the property of the applicant for the expected life of the facility or for as long as the facility is used for public transportation purposes. Any income received from the authorized incidental use of any portion of the facility, such as leasing an unused portion to another organization, may be retained by the grantee (without returning the Federal share) if the income is used for eligible transit capital and operating expenses. This income cannot be used as part of the local share of the grant from which the facility was obtained. However, the income may be used as part of the local share for another FTA grant.

**PROPERTY DISPOSITION**

If the grantee determines that the facility is no longer needed, FTA may approve use of the property for other purposes without the reimbursement of funds to FTA. This may include use in other Federal grant programs or in non-Federal programs that have consistent purposes with those authorized for support by FTA.

-OR-

If the grantee or subgrantee no longer needs the facility for any transit purpose and is disposing of the facility acquired with grant funds and acquiring/constructing a replacement transit property, FTA may permit the net proceeds from the disposition of the original property to be used as an offset to the cost of the replacement property. If there are any excess proceeds from the disposition of the original property, these funds must be returned to FTA in accordance with 49 CFR 18.31.

-OR-

If the property is no longer needed for transit purposes and the grantee or subgrantee has determined to not acquire or construct a replacement property, the grantee must request disposition instructions from FTA. The property would be competitively marketed and sold, with FTA obtaining the greater of its share of the fair market value of the property or the straight line depreciated value of the improvements plus land value. FTA's share of the fair market value is the percentage of FTA participation in the original grant multiplied by the best obtainable price, net of reasonable sales costs.

It should be noted that grantees or subgrantees are strongly encouraged to consult with INDOT staff and/or FTA regarding the disposition of transit property acquired with Federal funds.

**PROJECT INCLUSION IN METROPOLITAN TIP AND/OR STIP**

Consistent with other transit projects supported with FTA funds, proposed facility projects that are within metropolitan planning boundaries must

be included in the Metropolitan Transportation Improvement Program (TIP) approved by the metropolitan planning organization (MPO) and the Governor and in a Statewide Transportation Improvement Program (STIP) that has been approved by FTA and the Federal Highway Administration. Applications should identify the latest approved STIP (or amendments) containing the project(s), the appropriate page numbers, and a statement identifying the date that FTA and FHWA approved the STIP (or STIP amendment) that contains the proposed project(s). Projects listed in the TIP and STIP must be derived from and consistent with the State's long range transportation plan.

#### **LAND APPRAISAL**

For land to be purchased pursuant to a transit facility project or used as local "in-kind" match toward the cost of the facility, a professional appraisal must be acquired. The appraisal should be provided in the form of an Appraisal Report which would be submitted to INDOT. [Appendix VII-3](#) of this chapter includes a "Guide to Preparing an Appraisal" which was prepared by the FTA Office of Program Review/Real Estate.

#### **Davis-Bacon Wage Requirements**

The Davis-Bacon Act provides that all construction contracts exceeding \$2,000 in which Federal funds are involved must contain a clause that no laborer or mechanic employed directly upon the site of the work shall receive less than the prevailing rates in the project's geographical area as determined by the Secretary of Labor. A copy of this determination is to be included in each

solicitation and ensuing contract. The Wage and Hour Division of the U.S. Department of Labor is responsible for publication of the wage determinations. Further information regarding this requirement can be found in the Procurement Section of the Manual.

#### **INDEPENDENT COST ESTIMATE**

FTA Circular 4220.1F, Chapter VI-page 19, stipulates that grantees must perform a cost or price analysis in connection with every procurement action, including contract modifications. The objective is to ultimately pay a reasonable price for the contracted work. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. For facility projects, local construction costs must be reviewed to complete the Independent Cost Estimate.

FTA's Best Practices Procurement Manual – Appendix B.20, provides a format and guidance for in-house estimators that should be helpful in developing the cost estimate. The form is more complex than what may be needed for rural and small urban projects, but it provides a good overview of the process.

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**APPENDIX VII-1**

**FACILITY FEASIBILITY STUDY GENERIC SCOPE OF WORK**

## APPENDIX VII-1

### Facility Feasibility Study Generic Scope of Work

#### **Overview**

Prior to the preparation of a facility grant application, it may be necessary to prepare a Facility Feasibility Study to determine whether the facility is warranted and other details regarding the project. Note that this is a generic scope of work and would need to be refined for a particular transportation system and type of facility, such as administrative, operations, maintenance, multi-modal transit center, a combination of these alternatives and consideration of whether a new facility would be constructed or an existing facility purchased and renovated. INDOT should be consulted to determine if a Facility Feasibility Study is needed for the proposed project and the process to have the study completed.

#### **Study Tasks**

##### **Task 1 – Analysis of Current Situation**

To develop an understanding of the current public transportation environment, it is necessary to complete the following tasks:

- Identify existing public and private transit service and collect and analyze operating and service data;
- Develop a demographic profile of the population in the study area to determine existing geographical concentration of transit dependency or need from existing MPO, census, and transit survey data sources;
- Develop an employer profile from existing MPO and other employer-based data;
- Identify existing major traffic generators and high traffic corridors including major transit attractors and generators;
- Survey existing transit users within the community, (public and private) for assessing existing and future transit services; and
- Identify opportunities for increased transit services to attract non-transit dependent trips.

##### **Task 2 – Validation of Space Needs**

The transit system would identify local officials and organizations whose input is needed in the study. Based on interviews with the system staff and information obtained from INDOT, the following information would be compiled on each functional area:

- Transit system(s) mission and function;
- Staff by type and number – current and historic;
- Current space allocations and unmet space needs;
- Equipment with significant impact on space needs;
- Degree of automation and communication;
- Data/record storage practices and requirements;
- Relationship to general public access and visitation; and
- Parking needs and traffic generation characteristics.

Average square foot space needs per employee, by individual component/personnel classification, will be defined, along with space needs for specialized equipment, meeting rooms, and other non-personnel space needs. The net square footage requirement for each component of the proposed facility will be determined. The total quantity of land required to accommodate the proposed facility will be determined by identifying the following:

- Total square footage required for structures such as administrative/operations facility, maintenance area, fueling bays, etc.;
- On-site vehicle and equipment storage;
- Employee and patron parking requirements;
- Vehicular access and maneuvering; and
- Future expansion requirements.

### **Task 3 – Identification of Alternative Sites**

If possible, three potential choices for the location of the transit facility should be determined. Note that it may be helpful to initiate the assistance of a local commercial real estate broker to assist in compiling a list of potential sites. A profile of each potential site will be developed utilizing the following criteria:

- Location of site;
- Total acreage;
- Amount of usable space;
- Physical advantages/disadvantages;
- Geographical advantages/disadvantages;
- Environmental concerns including water and air quality impacts;
- Street access and traffic issues;
- Cost projections for land procurement, site preparation, and all other aspects of facility development;
- Potential constraints impacting development and/or facility operation;
- Compatibility with surrounding land uses;
- Local codes and zoning regulations;
- Special requirements impacting site development and/or facility operations;
- Accessibility and convenience for other transportation providers/modes;
- Allowance for future growth and expansion; and
- Availability and ease of land acquisition.

### **Task 4 – Public Involvement**

It is essential that public input be received during the site consideration process. This can be accomplished by:

- Establishing two-way communication with the local community in order to gather input on transit needs and to discuss transit service alternatives;
- Determining approach to identify different constituent groups;
- Establishing time schedule for conducting public meetings;
- Identifying mechanism for including public comments into final recommendations;
- Meeting with constituencies that represent transportation disadvantaged individuals and transit access issues;
- Surveying potential consumers and agencies; and
- Conducting public hearing and recording results.

### **Task 5– Site Selection**

Evaluation criteria and a ranking system for each potential site based upon those criteria would be developed. The focus of the selection criteria for determining the most viable transit facility site would concentrate on the following factors:

- Access – Highway/street system, traffic congestion;
- Physical/Geographic Features - Total site size, configuration (ratio of length to width); contiguity, soil bearing capacity, slope, drainage, flood plains, wetlands, easements, hazardous wastes, and zoning and land use;
- Availability of Utilities - Electricity, water, sewer;
- Availability and Cost - Publicly owned land, privately owned land, local tax base impact, projected land cost; and
- Public Opinion - Determined through meetings and surveys.
- Adverse Impact on Minority or Low-Income Populations – Where effects are disproportionately high, site selection may only be carried out if further mitigation measures or alternatives that would reduce the disproportionately high and adverse effects are not practicable. In determining whether a mitigation measure or alternative is “practicable,” the social, economic (including costs) and environmental effects of avoiding or mitigating adverse effects will be taken into account.

Note that it may be helpful to prepare a site evaluation matrix. A ranking system, based on local considerations and priorities, should be devised with weighted scores for each evaluation criteria due to some factors being more critical than others in the successful development of the proposed facility. A site recommendation would be made using the evaluation criteria and ranking system. The recommended site would be presented to the governing body of the transit system.

### **Task 6 - Implementation Plan**

Once a decision on the facility site has been made, the facility implementation plan will be developed including the following:

- Proposed space plan;
- Adjacency diagrams indicating the spatial relationships between functional elements of the facility;
- Total facility and site size recommendations;
- Renovation and/or development costs, as appropriate;
- Recommended project budget, including A/E fees, impact fees and other costs;
- Estimate of operation costs and revenue sources;
- If applicable, develop a cost allocation methodology to establish an equitable distribution of costs commensurate with benefits;
- Possible funding partners;
- Preliminary assessment on the potential environmental determination request to be made by the project; and
- Project implementation schedule.

A project final report would be prepared incorporating the findings and results of the previous tasks. The final report would be presented to the local governing body.

**APPENDIX VII-2**

**ENVIRONMENTAL REVIEW WORKSHEET FOR POTENTIAL CATEGORICAL EXCLUSIONS**

## APPENDIX VII-2

### Environmental Review Worksheet for Potential Categorical Exclusions

Note: The purpose of this worksheet is to assist applicants in gathering and organizing materials for environmental analysis required under the National Environmental Policy Act (NEPA), particularly for projects that may qualify as a documented Categorical Exclusion. Submission of the worksheet by itself does not meet NEPA requirements. If the project qualifies as a Documented Categorical Exclusion, it must receive written concurrence from all participating agencies (FTA, FHWA, and INDOT). One Federal Agency could sign with e-mail concurrences from the other agencies.

Right-of-way, final design, and construction activities may not begin until this process is complete.

Sponsoring Agency	Date Submitted	Federal Aid Project Number(s)
Project Title		
Project Description ( <i>brief</i> )		
Project Location (Include County, City, and Street Address)		
Project Contact: Name	Phone	E-mail Address (if available)

### I. PROJECT SUMMARY

### II. NEPA CLASS OF ACTION

Answer the following questions to determine the project's potential class of action.

**A. Will the project significantly impact the natural, social and / or economic environment?**

YES  NO

Actions that will significantly impact the environment require preparation of an Environmental Impact Statement. These projects typically include construction or extension of fixed transit/highway facilities.

**B. Is the significance of the project's social, economic or environmental impacts unknown?**

YES  NO

**Do other Federal regulations, such as Section 4(f) (parklands, refuges, historic properties), require consideration of alternatives?**

YES  NO

**Is the project likely to require detailed evaluation of more than a few potential impacts?**

YES  NO

**Is the project likely to generate intense public discussion or concern, even though it may be limited to a relatively small subset of the community?**

YES  NO

**Is the project included in the local Metropolitan Transportation Plan?**

YES  NO

**C. Does the project appear on the following list of potential Categorical Exclusions (Class II(c))?**

YES (if so circle the number(s) that apply and proceed to signature block IV on last page)  NO

1. Activities not involving or directly leading to construction (e.g., technical studies, planning, preliminary engineering).
2. Utility installations along or across a transit facility.
3. Construction of bicycle and pedestrian facilities excluding those requiring land acquisition and construction (such as new right-of-way).
4. Activities included in the State's *highway safety plan* under 23 U.S.C. 402.  
\* Resurfacing and Restriping
5. Transfer of federal lands pursuant to 23 U.S.C. 317 when the subsequent action is not an FTA/FHWA action.
6. Installation of noise barriers or alterations to existing publicly owned buildings to provide for noise reduction.
7. Landscaping.
8. Installation of fencing, signs, pavement markings, toll facilities, control centers, vehicle test centers, small passenger shelters, traffic signals, railroad warning devices, and signal controls with no substantial land acquisition or traffic disruption.
9. Emergency repairs under 23 USC 125.
10. Acquisition of scenic easements.
11. Determination of payback under 23 CFR part 480 for property previously acquired with Federal-aid participation.
12. Improvements to existing rest areas and truck weigh stations.

13. Ridesharing activities.
14. Bus, ferry, and rail car rehabilitation (including conversions to alternative fuels).
15. Alterations to facilities or vehicles to make them accessible to elderly or handicapped persons.
16. Program administration (including safety programs), technical assistance, and operating assistance to continue existing service or increase service to meet routine changes in demand.
  - \* Routine maintenance
17. Purchase and lease of vehicles and equipment for use on existing facilities or new facilities that are also a Categorical Exclusion (including the capital cost of contracts for transportation services).
18. Track, railbed, and wayside system maintenance and improvements when carried out in existing right-of-way.
19. Installation of ITS equipment to be located solely within the transportation facility and with no significant off-site impacts.
  - \* Mitigation banking
20. Promulgation of rules, regulations, and directives.

These transportation projects are generally categorical exclusions under 23 CFR § 771.177 (c) and do not require further documentation unless certain circumstances exist, such as the presence of wetlands, historic buildings and structures, parklands, or floodplains in the project area. If land is to be altered and/or such circumstances exist or may exist, contact the transit system or the Regional Indiana DOT office.

**D. Circle the Categorical Exclusions below that apply to your project.**

The applicant shall submit documentation which demonstrates that the specific conditions or criteria for the CEs are satisfied and that significant environmental effects will not result. Examples of such actions include BUT ARE NOT Limited to:

1. Modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders or adding auxiliary lanes (i.e. parking, weaving, turning, climbing).
2. Highway safety or traffic operations improvement projects including the installation of ramp metering control devices and lighting.
3. Grade separations requiring land acquisition to replace existing at-grade railroad crossings and bridge rehabilitation (including approaches to bridges and excluding historic bridges or bridges providing access to ecologically sensitive areas).
4. Corridor Fringe Parking facilities (generally located adjacent to an Interstate highway system).

5. Construction of new truck weigh stations or rest areas.
6. Approvals for disposal of excess right-of-way or for joint or limited use of right-of-way, without significant impacts.
7. Approval for changes in access control.
  - \* Carpool programs and activities requiring land acquisition and construction.
  - \* Safety improvements including seismic retrofit and mitigation of wildlife hazards.
8. Construction of new bus storage and maintenance facilities and of new ITS control centers in areas used predominantly for industrial or transportation purposes where such construction is consistent with existing zoning and located on a street with adequate capacity to handle anticipated traffic.
9. Rehabilitation or reconstruction of existing rail and bus buildings and ancillary facilities where only minor amounts of additional land are required and there is not a substantial increase in the number of users.
10. Construction of bus transfer facilities (an open area consisting of passenger shelters, boarding areas, kiosks, and related street improvements) when located in a commercial area or other high activity center in which there is adequate street capacity for projected bus traffic.
11. Construction of rail storage and maintenance facilities (or other similarly sized support facilities) in areas used predominantly for industrial or transportation purposes where such construction is consistent with existing zoning and where there is no significant noise impact on the surrounding community.
  - \* Area-wide coordination of multiple ITS elements.
12. Advance land acquisition including:
  - Acquisition of underutilized private railroad rights-of-way (ROW) to ensure that adjacent land uses remain generally compatible with the continued transportation use of the ROW.
  - Provisions under 23 CFR Section 771.117 (d)(12)
  - Provisions under 23 CFR Section 771.117 (d)(12)
13. Other (please describe):

*(Note: The eligibility of hardship and protective buys is very limited and must be approved, in writing, by the Regional INDOT office before proceeding with any acquisition activities. Failure to do so will render the project ineligible for Federal participation.)*

**These projects may be categorical exclusions under 49 CFR § 771.177 (d), but require additional documentation in order for such a determination to be made.**

### **III. INFORMATION REQUIRED FOR DOCUMENTED CATEGORICAL EXCLUSIONS**

Provide the following information if, based on the answers in Part II, the proposed project appears to be eligible as a documented Categorical Exclusion.

The following maps are required to assist in the review:

- . Site Map
- . Zoning Map
- . Vicinity Map
- . Proposed Project Map
- . Flood Map

**A. Detailed Project Description**

**B. Location --** On an attached scale map or diagram, to scale, identifying the location of the project site and surrounding land uses. Note any critical resource areas, potential historic sites, and sensitive noise receptors such as schools, hospitals, and residences.

**C. Zoning --** Briefly describe the existing zoning of the project area.

**D. Traffic –** Motorized and Non-motorized - Describe potential traffic and parking impacts, including whether the existing roadways have adequate capacity to handle increased bus or other vehicular traffic. Include a map or diagram if the project will modify existing roadway configurations. Identify parking stall increase/decrease and replacement lots.

**E. RESOURCES** - Describe any natural, cultural, recreational, historic or other resources that might be located in the vicinity of the proposed project. Include ESA or MSA species list(s), if applicable. Indicate whether the project will have a significant impact on the following resources:

Natural  Cultural  Recreational  Historical  Other

**F. Noise / Water / Air Quality** Describe whether the project will involve noise, vibration, air or water quality impacts. Note if the project is located in a nonattainment area.

Significant Impact (Describe):

Air Quality  Noise (Provide map identifying sensitive receptors)  Vibration  
 Water

Non-attainment Area:  Carbon Monoxide (CO)  Ozone (O<sub>3</sub>)  Particulate Matter (PM<sub>10</sub>)

Hot Spot Analysis:  Carbon Monoxide (CO)  Ozone (O<sub>3</sub>)  Particulate Matter (PM<sub>10</sub>)

**G. Public Notification** -- Briefly describe any public outreach efforts undertaken on behalf of the project. Indicate opportunities for public hearings (e.g., Board meetings, open houses, special hearings). Indicate any significant concerns expressed by agencies or the public regarding the project.

**H. Hazardous Materials** -- Prior to acquiring land or a facility, a hazardous materials survey must be conducted (Phase I). Describe the steps taken or planned to determine whether hazardous materials are present on the project site. Also note the mitigation and clean-up measures that will be taken to remove any hazardous materials from the project site.

**I. Property Acquisition** -- If property is to be acquired for the project, indicate whether the acquisition will result in relocation of businesses or individuals. **Note: to ensure eligibility for Federal participation, grantees may not acquire property with either local or Federal funds prior to completing the NEPA process and receiving written concurrence in both the NEPA recommendation and property appraisals.**

**J. Environmental Justice** -- Indicate whether the project will have a disproportionately high and adverse effect on minority or low-income populations. Describe any potential adverse effects. Describe outreach efforts targeted specifically at minority or low-income populations.

**K. Related Federal and State/Local Actions** -- Indicate whether the proposed project is likely to require actions by other Agencies (e.g., permits) and attach materials submitted to them, and other Federal, State and Local regulations as applicable.

- \_\_\_ **Section 4(f)** *Parklands, Recreation Areas, Refuges, Historic Properties*
- \_\_\_ **Section 106** *Historic and Culturally Significant Properties*
- \_\_\_ **Section 404** *Wetlands and Water*
- \_\_\_ **Executive Orders** *Wetlands, Floodplains, Environmental Justice*
- \_\_\_ **Clean Air Act** *Air Quality*
- \_\_\_ **Endangered Species Act** *Threatened and Endangered Biological Resources*
- \_\_\_ **Magnuson-Stevens Fishery Conservation and Management Act** *Essential Fish Habitat*
- \_\_\_ **State and Local Requirements** (Describe)

**L. Mitigation Measures** -- Describe all measures to be taken to mitigate project impacts.

**IV. SUBMITTED BY:**

<b>Sponsoring Agency</b>	<b>Date:</b>
<b>Indiana DOT</b>	<b>Date:</b>

**V. APPROVED BY:**

<b>Federal Transit Administration</b>	<b>Date:</b>
<b>Federal Highway Administration</b>	<b>Date:</b>

**APPENDIX VII-3**

**GUIDE TO PREPARING AN APPRAISAL**

## APPENDIX VII-3

### Guide To Preparing An Appraisal

Prepared by FTA Office of Program Review/Real Estate

*This document would be provided to a professional appraiser to ensure that correct procedures are followed and required information is reported.*

#### **Scope of Work**

The Scope of Work is a written set of expectations that form an agreement or understanding between the appraiser and the agency as to the specific requirements of the appraisal, resulting in a report to be delivered to the agency by the appraiser. It includes identification of the intended use and intended user; definition of market value; statement of assumptions and limiting conditions; and certifications. It should specify performance requirements, or it should reference them from another source, such as the agency's approved Right-Of-Way Manual. The Scope of Work must address the unique, unusual and variable appraisal performance requirements of the appraisal. Either the appraiser or the agency may recommend modification to the initial Scope of Work, but both parties must approve changes.

The appraiser must, at a minimum:

1. Provide an appraisal meeting the agency's definition of an appraisal. For Federal-aid projects the definition must be compatible with the definition found at 49 CFR 24.2(a)(3).
2. Afford the property owner or the owner's designated representative the opportunity to accompany the appraiser on the inspection of the property.
3. Perform an inspection of the subject property. The inspection should be appropriate for the appraisal problem and the Scope of Work should address:
  - a. The extent of the inspection and description of the neighborhood and proposed project area.
  - b. The extent of the subject property inspection, including interior and exterior areas.
  - c. The level of detail of the description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, the remaining property).

#### **Appraisal Report**

The Appraisal Report should as a minimum:

1. Include a sketch of the property and provide the location and dimensions of any improvements.
2. Include adequate photographs of the subject property and comparable sales and provide location maps of the property and comparable sales.
3. Include items required by the acquiring agency, usually including the following list:
  - a. The value being appraised (usually fair market value) and its definition.
  - b. The property right(s) to be acquired, e.g. fee simple, easement, etc.
  - c. Appraised as if free and clear of contamination (or as specified)
  - d. The date of the appraisal report and the date of valuation
  - e. A realty/personalty report is required per 49 CFR 24.103(a)(2)(i).
  - f. The known and observed encumbrances, if any.
  - g. Title information
  - h. Location
  - i. Zoning
  - j. Present use, and

- k. At least a 5 year sales history of the property.
4. Identify the highest and best use. If highest and best use is in question or different for the existing use, provide an appropriate analysis identifying the market-based highest and best use. (Some FTA transit projects may use the highest and best use for transit. This should be explained.)

### **Additional Requirements**

1. Present and analyze relevant market information. Specific requirements for market information should include research, analysis, and verification of comparable sales. Inspection of comparable sales should also be specified.
2. In developing and reporting the appraisal, disregard and decrease or increase in the fair market value of the real property caused by the project for which the property is to be acquired or by the likelihood that the property would be acquired for the project. (If necessary, the appraiser may cite the Jurisdictional Exception or Supplemental Standards Rules under USPAP to ensure compliance with USPAP while following this Uniform Act requirement)
3. Report his or her analysis, opinion, and conclusions in the appraisal report.
4. Explain the Intended Use: An example might be “this appraisal is to estimate the fair market value of the property, as of the specified date of the valuation, for the proposed acquisition of the property rights.”
5. Explain the Intended User: Such as “the intended user of this appraisal report is primarily the acquiring agency. However, its funding partners may review the appraisal as part of their program oversight activities.”

### **Definition of Market Value**

Market Value is determined by State law, but includes the following:

1. Buyer and seller are typically motivated.
2. Both parties are well informed or well advised, each acting in what he or she considers his or her own best interest.
3. A reasonable time is allowed for exposure in the open market.
4. Payment is made in terms of cash in US dollars or in terms of financial arrangements comparable thereto; and
5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

### **Assumptions and Limiting Conditions**

The appraiser shall state all relevant assumptions and limiting conditions. In addition, the acquiring agency may provide other assumptions and conditions that may be required for the particular appraisal assignment such as:

1. The data search requirements and parameter that may be required for the project t.
2. Identification of the technology requirements, including approaches to value to be used to analyze the data.
3. Need for machinery and equipment appraisals, soil studies, potential zoning changes, etc.
4. Instruction to the appraiser to appraise the property “As Is” or subject to repairs or corrective action.
5. As applicable, include any information on property contamination to be provided and considered by the appraiser in making the appraisal.

## **Section VIII.**

### **Civil Rights Compliance**

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## VIII. CIVIL RIGHTS COMPLIANCE

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### INTRODUCTION

All grantees are responsible for compliance with all civil rights requirements applicable to transit related projects, including the:

- Nondiscrimination prohibitions [of 49 U.S.C. § 5332](#), and of Title VI of the Civil Rights Act of 1964, as amended;
- Equal Employment Opportunity (EEO) requirements of Executive Order No. 11246 as amended by Executive Order No. 11375;
- [FTA's Disadvantaged Business Enterprise program requirements and regulations \(Volume II, Appendix M\)](#); and,
- Non-discrimination provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990, as amended (ADA).

FTA reserves the right to instruct INDOT to defer provision of Section 5311 funds to any grantee whose civil rights compliance comes into question, until FTA finds the subrecipient in compliance satisfactory to FTA standards.

The specific civil rights obligations of Section 5311 grantees in each area of civil rights compliance are summarized in this section. For further guidance, refer to the Federal laws, regulations, and executive orders cited in this chapter. Also, in some compliance areas, such as with the Americans with Disabilities Act, specific handbooks and guides have been developed to assist in grantee implementation.

### CIVIL RIGHTS COMPLIANCE ELEMENTS

#### Nondiscrimination

[49 U.S.C. § 5332 \(Volume II, Appendix A\)](#) states that "a person (defined broadly) may not be excluded from participating in, denied a benefit of, or discriminated against under, a project, program, or activity receiving financial assistance (from FTA) because of race, color, creed, national origin, sex, or age." The statute gives FTA responsibility and authority for enforcing compliance with this provision and Title VI of the Civil Rights Act of 1964, as amended, by withholding financial assistance or referring the matter for civil action by the Attorney General.

#### Submission of Standard Assurance

INDOT requires that each applicant for funds annually execute a set of standard assurances ([Attachment VIII-1](#)), including provisions for compliance with Title VI.

#### General Requirements

In addition to the language contained in the Standard Assurance, each grantee must file the following information with INDOT. Any changes or updates to this information must be included in the annual Section 5311 grant application and/or submitted to INDOT as requested for submission to FTA. Civil Rights information will also be reviewed during the INDOT management compliance review process conducted every four (4) years. The required information includes:

- (1) An explanation of the posting and notice to the public that indicates the recipient complies with Title VI, and

informs members of the public of the protections against discrimination afforded to them by Title VI;

- (2) A concise description of any lawsuits or complaints alleging discrimination in service delivery filed against the grantee within the past year, together with a statement of status or outcome of each such complaint or lawsuit.
- (3) A copy of the agency's notice to the public that it complies with the Title VI/EEO and instructions to the public on how to file a discrimination complaint.
- (4) A public participation plan that includes an outreach plan to engage minority and Limited English Proficient (LEP) populations, as well as a summary of outreach efforts made since the last Title VI program submission; this potentially includes a copy of the agency's alternative framework for providing language assistance.
- (5) A table depicting racial composition of membership of any non-elected planning boards, advisory councils or committees, or similar bodies and a description of efforts made to encourage the participation of minorities on such committees or councils.
- (6) A Board of Directors resolution or meeting minutes demonstrating the board approved Title VI program.
- (7) A description of fare or service adjustments, or policy or activity changes as conducted by the recipient which would have a disproportionately high and adverse

effect on minority or low-income populations as required by Environmental Justice requirements. This should include an explanation of what mitigation measures or alternative actions were evaluated or implemented to reduce the effects with regard to the social, economic and environmental impacts to minority and low-income populations as well as assurances that all potentially affected communities had full and fair participation in the transportation decision-making process.

- (8) An analysis of any environmental and/or social impacts as the result of proposed construction projects, including the impact on minority communities (including participation of minority and low-income populations in site selection). This information is required only for those projects that do not qualify as categorical exclusions in the environmental Process (See Environmental Impacts in [Chapter VII](#) of this Manual).

### **Equal Employment Opportunity (EEO)**

Grantees may not discriminate in employment on the basis of race, color, creed, national origin, sex, age, or disability.

The grantee is responsible for its own compliance and for assuring INDOT that it is compliant with all EEO provisions. If the grantee received more than \$1,000,000 or more in the previous Federal fiscal year, and has more than 50 mass transit-related employees, it must submit an EEO program to INDOT.

## **Disadvantaged Business Enterprise (DBE)**

Grantees and their subcontractors are subject to the U.S. Department of Transportation rules regarding the participation of disadvantaged business enterprises in DOT-assisted contracts.

The Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21) substantially amended, but did not end, the Federal approach to the DBE program. The rules, effective March 4, 1999 ([Volume II, Appendix M](#)), are designed to create a level playing field and foster equal opportunity for disadvantaged business enterprises competing for DOT-assisted contracts. The new program also more narrowly tailors the program to fit applicable law.

There are two basic discriminatory actions spelled out in the rule:

- A grantee may not exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract on the basis of race, color, sex, or national origin.
- In administering the DBE program, a grantee cannot, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of objectives of the program with respect to individuals of a particular race, color, sex, or national origin.

A DBE is defined as a small business concern which:

- Is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged, or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and,
- Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals.

For the definition of socially and economically disadvantaged, please refer to 49 CFR part 26.5 ([Volume II, Section M](#)).

### Requirements

*General.* All recipients of Section 5311 funds must agree to at least three provisions of FTA's DBE requirements, regardless of the dollar amount of Federal financial assistance.

- All grantees must continue to provide data on the DBE program to INDOT, as directed; and,
- All grantees must create and maintain a bidders list, consisting of all firms bidding on prime contracts and bidding or quoting on subcontracts or DOT-assisted contracts. For every firm, the following information must be included:
  - Firm name;
  - Firm address;
  - First status as a DBE or non-DBE;
  - Age of the firm; and,
  - Annual gross receipts of the firm.

Each contract signed between a grantee and a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

*The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.*

#### Obligation

All grantees must submit a quarterly DBE Goal Calculation/Contract Opportunities Worksheet, which projects potential DBE utilization goals ([Attachment VIII-2](#)) in the annual grant application.

Note that FTA excludes the purchase of vehicles from DBE goal calculations.

Grantees who receive over \$250,000 in contractual obligations, in a Federal fiscal year must prepare a DBE program pursuant to [49 CFR part 26, Subpart B](#), Section 26.21. Section 5311 recipients who fall into this category should contact the INDOT Office of Transit for guidance on DBE program preparation.

All prospective DBE firms must be certified in the State of Indiana. The Indiana Department of Transportation, Economic Opportunity Division (EOD) certifies firms under the State of Indiana program. Lists of certified firms are available in both written form and at [http://www.in.gov/indot/files/dbe\\_list.xls](http://www.in.gov/indot/files/dbe_list.xls). Grantees should note that only firms that are “certified” (not “registered”) conform to U.S. DOT requirements.

#### Americans with Disabilities Act

On July 26, 1990, the Americans with Disabilities Act of 1990 (ADA) was signed into law. The law addresses civil rights issues for individuals with disabilities, and extends coverage to both the public and private sectors that are open to public accommodation (refer to [Volume II, Appendix N](#) for information regarding Nondiscrimination requirements under [49 CFR Part 37](#)). Subsequent to the passage of ADA, FTA issued Final Rules in two areas relating to transit accessibility. [49 CFR Part 37](#) outlines the transportation requirements of the ADA (Volume II, Appendix N). Another regulation, issued the same day ([49 CFR Part 38](#)), defines the requirements for accessible vehicles (Volume II, Section O). Additionally, the Department of Justice, the Equal Opportunity Employment Commission, and the Architectural and Transportation Barriers Compliance Board (Access Board) have all issued regulations to implement the employment and accessible facility design (this component includes all transit vehicles) features of the ADA.

The statute provides a comprehensive national mandate with enforceable standards to prohibit discrimination against individuals with disabilities. The law is intended to provide for a strong Federal role in the establishment of enforcement standards and to "invoke the sweep of congressional authority" to address areas of discrimination faced by people with disabilities. The term "disability" is defined as an individual with a "physical or mental impairment that substantially limits one or more of the major life activities of such individuals; having a record of such an impairment; or being regarded as having such an impairment." The Act had substantial impact on the provision of public transportation services

by both public agencies and private corporations.

The regulation concerning transportation ([49 CFR Part 37 – Volume II, Appendix N](#)) is divided into subparts, summarized as follows. All components of the regulation are applicable to the Section 5311 program, unless the regulation specifically excludes coverage. A summary of this complex regulation is provided in [Attachment VIII-3](#).

### General Provisions

This section details the nondiscrimination requirements that must be met by all entities engaged in transportation. They include:

- No entity may discriminate against a person with disabilities in the provision of transit service;
- No entity shall deny access to general public service, notwithstanding any specialized service, if the individual is capable of using that service;
- No entity shall require an individual to use designated priority seating if an individual chooses not to use them;
- No entity shall impose special charges on individuals with disabilities;
- No entity shall require an individual to be accompanied by an attendant;
- Private entities must make reasonable accommodation in removing barriers to transportation services;
- No entity shall be permitted to deny service because of conditions imposed by the entity's insurance company; and

- Procedures should be in place to ensure that emergency preparedness, disaster response and disaster recovery planning and operations comply with Federal ADA and civil rights requirements.

49 CFR part 37 also specifies the source for standards for accessible vehicles and facilities.

### Applicability

This section specifies the regulatory coverage of the rule. Public entities, private entities that provide specified public transportation, and private entities not primarily engaged in the business of transporting people, but operate demand response or fixed route transportation, are covered under this regulation.

Contractors who provide service on behalf of a covered entity listed above are obligated to meet the requirements of the covered entity.

### Transportation Facilities

New transportation facilities must be accessible. The alteration of existing facilities that substantially alters the usability of that facility must be made accessible to the extent feasible.

### Acquisition of Accessible Vehicles

Various requirements are imposed on all covered entities regarding the purchase or lease of new or used transit vehicles. The requirements vary by type of entity and the mode of service provided.

Generally, any Section 5311 grantee operating fixed route services must acquire accessible vehicles. Any Section 5311 grantee operating demand response service

must acquire accessible vehicles, unless the system, when viewed in its entirety, affords a level of service to persons with disabilities, including wheelchair users, equivalent to persons without disabilities. If this condition is met, non-accessible vehicles may be purchased. "Equivalent" service is determined based on six (6) service characteristics:

- Response time;
- Fares;
- Geographic area of coverage;
- Hours and days of service;
- Restrictions based on trip purpose;
- Availability of information and reservations capability; and
- Constraints on capacity or service availability.

#### Complementary Paratransit

All public entities operating fixed route systems must also provide paratransit (or other special service) that is comparable to the level of service provided to non-disabled individuals who utilize the entity's fixed route system.

These requirements include provisions for the establishment of national eligibility standards, the creation of eligibility determination process, the establishment of service criteria for the provision of complementary paratransit, the necessity to prepare a paratransit plan, and provisions to request an undue financial burden waiver of the requirements.

#### Provision of Services

Miscellaneous other provisions directly related to the operation of services are included in this final subpart. Among the requirements applicable to all entities:

- Transportation providers must keep all accessibility features in good working order;
- All wheelchairs and occupants must be transported if the lift and vehicle can physically accommodate them, unless doing so is inconsistent with legitimate safety requirements;
- Standees on lifts are permitted; and,
- Requiring individuals to transfer from a wheelchair to another seat is prohibited.

#### Standards for Accessible Facilities

As an appendix to the regulations ([49 CFR Part 37 – Volume II, Appendix N](#)), USDOT simultaneously published the standards for accessible buildings and facilities. These standards are applicable to facilities subject to coverage under either Title II or Title III of the ADA. These standards are commonly referred to as the ADA Accessibility Guidelines (referred to as "ADAAG").

Generally, the technical specifications contained in ADAAG are the same as the American National Standards Specification for Making Buildings and Facilities Accessible to and Usable by, the Physically Handicapped (referred to as "ANSI 117.1"). However, there are differences between the old and the new standards. 49 CFR part 37.9 clearly indicates that ADAAG is the standard to be followed, unless the facility alteration began before January 26, 1992 and the modification complied with ANSI 117.1 or the Uniform Federal Accessibility Standard (UFAS).

#### Accessible Vehicles Specifications

The regulation concerning accessible vehicles ([49 CFR Part 38 – Volume II, Appendix O](#)) provides the minimum design specifications for accessible transportation vehicles. In some cases, there are different

specifications for vehicles with less than 30,000 pound Gross Vehicle Weight Rating. A summary of this regulation is found in [Attachment VIII-4](#).

All new, used, or re-manufactured buses and vans acquired after August 25, 1990 must meet these requirements to be considered accessible.

All vehicles must have a level change device (lift or ramp) and sufficient clearance inside the vehicle to permit wheelchair user access to the securement location. At least two (2) mobility device securement locations shall be provided on vehicles in excess of 22 feet in length. At least one (1) securement location shall be provided on vehicles less than 22 feet in length.

Other technical specifications address:

- Doors, steps, and thresholds;
- Priority seating signs;
- Interior circulation, handrails and stanchions;
- Lighting;
- Fareboxes;

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- Public information system;
- Stop request system; and,
- Destination and route signs.

#### Additional Information and Training

Easter Seals Project Action was originally commissioned in 1988 as a research and demonstration project to improve access to public transportation for people with disabilities. After passage of the ADA, their goals expanded to help transportation operators implement the ADA transportation provisions. Easter Seals Project Action is funded through a cooperative agreement with the U.S. DOT and FTA. It promotes cooperation between the transportation industry and the disability community to increase mobility for people with disabilities under the ADA and beyond. Project Action offers numerous resources, as well as training and technical assistance, in an effort to make the ADA work for everyone, everyday. More information about the training and information offered through Project Action is available online at <http://projectaction.easterseals.com>.

**Attachment VIII-1.**

**INDOT Standard Assurances**

**CERTIFICATIONS AND ASSURANCES REQUIRED OF EACH SECTION 5311**  
**APPLICANTS**

**Each Applicant for Federal Section 5311 funds awarded through the Indiana Department of Transportation must make all applicable certifications and assurances in this section. Accordingly the Federal Transit Administration may not award any Federal assistance until the Applicant provides assurances of compliance by selecting the applicable Categories on the signature page at the end of this section. Please be aware, this process ONLY excludes you from submitting documents with your application, NOT from collecting documents and having them on file.**

**Debarment, Suspicion, and Other Responsibility Matters -- Primary Covered Transactions**

As required by U.S. DOT regulations on Government wide Debarment and Suspension (Nonprocurement) at 49 CFR 29.510:

- (1) The Applicant (Primary Participant) certifies to the best of its knowledge and belief, that it and its principals:
  - (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal debarment or agency;
  - (b) Have not within a three year period preceding this proposal been convicted or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) transaction or contract under a public transaction; violation of Federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, state, or local) with commission of any of the offenses listed in paragraph (2) of this certification; and
  - (d) Have not within a three year period preceding this certification had one or more public transactions (Federal, state, or local) terminated for cause or default.
- (2) The Applicant also certifies that if later it becomes aware of any information contradicting the statements of paragraphs (a) through (d) above, it will promptly provide that information to FTA.
- (3) If the Applicant (Primary Participant) is unable to certify to the statements within paragraphs (1) and (2) above, it shall indicate so on its Signature Page and provide a written explanation to FTA.

**Drug-Free Workplace Certification**

As required by U.S. DOT regulations on Drug-Free Workplace Requirements (Grants) at 49 CFR 29.630, the Applicant certifies that it will provide a drug-free workplace by:

- (1) Publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Applicant's workplace and specifying the actions that will be taken against its employees for violation of that prohibition;
- (2) Establishing an ongoing drug-free awareness program to inform its employees about: (a) the dangers of drug abuse in the workplace; (b) the Applicant's policy of maintaining a drug-free workplace; (c) any available drug counseling, rehabilitation, and employee assistance programs; and (d) the penalties that may be imposed upon its employees drug abuse violations occurring in the workplace;
- (3) Making it a requirement that each of its employees be engaged in the performance of the grant or cooperative agreement be given a copy of the statement required by paragraph (1);
- (4) Notifying each of its employees in the statement required by paragraph (1) that, as a condition of employment financed with Federal assistance provided by the grant or cooperative agreement, the employee will: (a) abide by the terms of the statement, and (b) notify the employer (Applicant) in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than 5 calendar days after that conviction;
- (5) Notifying FTA in writing, within 10 calendar days after receiving notice required by paragraph (4)(b) above from an employee or otherwise receiving actual notice of that conviction. The Applicant, which is the employer of any convicted employee, must provide notice, including position title, to every project officer or other designee on whose project activity the Applicant's convicted employee was working. Notice shall include the identification number(s) of each affected grant or cooperative agreement.
- (6) Taking one of the following actions within 30 calendar days of receiving notice under paragraph (4)(b) above with respect to any employee who is so convicted: (a) by taking appropriate personnel action against that employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended, or (b) by requiring that employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, state, or local health, law enforcement, or other appropriate agency;
- (7) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (1), (2), (3), (4), (5), and (6) above. The Applicant has or will provide to FTA a list identifying its headquarters location and each workplace it maintains in which projects activities supported by FTA are conducted.

#### Intergovernmental Review Assurance

The Applicant assures that each application for Federal assistance submitted to FTA has been or will be submitted, as required by each state, for intergovernmental review to the appropriate state and local agencies. Specifically, the Applicant assures that it has fulfilled or will fulfill the obligations imposed on FTA by U.S. DOT regulations, "Intergovernmental Review or Department of Transportation Programs and Activities," 49 CFR part 17.

#### Nondiscrimination Assurance

As required by 49 U.S.C. 5332, Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C 2000d, and U.S. D.O.T. regulations, "Nondiscrimination in Federally assisted Programs of the Department of Transportation--Effectuation of Title VI of the Civil Rights Act, "49 CFR Part 21.7. the Applicant assures that it will comply with all requirements of 49 CFR Part 21; FTA Circular 4702.1, "Title VI Program Guidelines for Federal Transit Administration recipients", and other applicable directives, so

that no person in the United States, on the basis of race, color national origin, creed, sex, or age will be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any program or activity (particularly in the level and quality of transportation services and transportation related benefits) for which the Applicant receives Federal assistance awarded by the U.S. DOT or FTA as follows:

- (1) The Applicant assures that each project will be conducted, property acquisitions will be undertaken, and project facilities will be operated in accordance with all applicable requirements of 49 U.S.C. 5332 and 49 CFR Part 21, and understands that this assurance extends to its entire facility and to facilities operated in connection with the project.
- (2) The Applicant assures that it will take appropriate action that any transferee receiving property financed with Federal assistance derived from the FTA will comply with the applicable requirements of 49 U.S.C. 5332 and 49 CFR Part 21.
- (3) The Applicant assures that it will promptly take the necessary actions to effectuate this assurance, including notifying the public that complaints of discrimination in the provision of transportation-related services or benefits may be filed with the U.S. D.O.T. or FTA. Upon request by U.S. D.O.T or FTA, the Applicant assures that it will submit the required information pertaining to its compliance with these requirements.
- (4) The Applicant assures that it will make any changes in its 49 U.S.C 5332 and Title VI implementing procedures as U.S. D.O.T. or FTA may request.
- (5) As required by 49 CFR 21.7(a)(2), the Applicant will include appropriate clauses in each third party or subagreement to impose the requirements of 49 CFR Part 21 and third party contract or subagreement to impose the requirements of 49 CFR Part 21 and 49 U.S.C 5332, and include appropriate provisions imposing those requirements in deeds and instruments recording the transfer of real property, structures, improvements.

#### Assurance of Nondiscrimination on the Basis of Disability

As required by U.S. D.O.T. regulations, “Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance” at 49 CFR 27.9, implementing the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990, the Applicant assures that, as a condition to the approval or extension of any Federal assistance awarded by the FTA, no otherwise qualified person with a disability shall be solely by reason of that disability, excluded from participation in, denied the benefits of or otherwise subjected to discrimination in any program or activity receiving or benefiting from Federal assistance administered by the FTA or any entity within the U.S. D.O.T. The Applicant assures that the project implementation and operations so assisted will comply with all applicable requirements of Americans with Disabilities Act of 1990, and any later amendments thereto, at 49 CFR Parts 27, 37, and 38, and any applicable regulations and directives issued by other Federal departments or agencies.

#### Procurement Compliance

The Applicant certifies that its procurements and procurement systems will comply with all applicable requirements imposed by Federal laws, executive orders, or regulations and the requirements of FTA Circular 4220.1E, “Third Party Contracting Requirements,” and other implementing requirements FTA may issue. The Applicant certifies that it will include in its contracts financed in whole or in part with

FTA assistance all clauses required by Federal laws, executive orders, or regulations, and will ensure that each subrecipient and contractor will also include in its subagreements and contracts financed in whole or in part with FTA assistance all applicable clauses required by Federal laws, executive orders, or regulations.

**LOBBYING CERTIFICATION REQUIRED FOR  
EACH APPLICATION EXCEEDING \$100,000**

**An Applicant that submits, or intends to submit this fiscal year, an application for Federal assistance exceeding \$100,000 must provide the following certification. FTA may not provide Federal assistance for an application exceeding \$100,000 until the Applicant provides this certification by selecting Category II on the Signature Page.**

- A. As required by U.S. D.O.T. regulations, “New Restrictions on Lobbying” at 49 CFR 20.110, the Applicant’s authorized representative certifies to the best of his or her knowledge and belief that for each application for a Federal assistance exceeding \$100,000: (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Applicant, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress pertaining to the award of any Federal assistance, or the extension, continuation or renewal, amendment, or modification of any Federal grant or cooperative agreement; and (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any application to FTA for Federal assistance, the Applicant assures that it will complete and submit Standard Form -LLL, “Disclosure Form to Report Lobbying” including the information required by the form’s instructions.
- B. The Applicant understands that this certification is a material representation of fact upon which reliance is placed and that submission of this certification Is a prerequisite for providing Federal assistance for a transaction covered by 31 U.S. C 1352. The Applicant also understands that any person who fails to file a required certification shall be subject to a penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**EFFECTS ON PRIVATE MASS TRANSPORTATION COMPANIES**

**An Applicant that is a state or local government seeking Federal assistance under 49 U.S.C. chapter 53 to acquire property or an interest in property of a private mass transportation company or operate mass transportation equipment or a facility in competition with or in addition to transportation service provided by an existing mass transportation company must provide the following certification by selecting Category III on the Signature Page.**

As required by 49 U.S.C. 5323(a)(1)(B) or 5323(a)(1)(C), the Applicant certifies that before it acquires property or an interest in property of a private mass transportation company or operates mass transportation equipment or a facility in competition with or in addition to transportation service provided by an existing mass transportation company it has or will have:

- A. Provide for the participation of private mass transportation companies to the maximum extent feasible; and
- B. Paid or will pay just compensation under state or local law to a private mass transportation company for its franchises or property acquired.

**PUBLIC HEARING CERTIFICATION REQUIRED FOR EACH PROJECT  
(EXCEPT URBANIZED AREA FORMULA PROJECTS) THAT WILL  
SUBSTANTIALLY AFFECT A COMMUNITY OR ITS TRANSIT SERVICE**

**An Applicant for Capital Program assistance or other Federal assistance (except Urbanized Area Formula Program assistance) that will substantially affect a community or its transit service must provide the following certification. FTA may not award that Federal assistance until the Applicant provides this certification by selecting Category IV on the Signature Page.**

As required by 49 U.S.C. 5323(b), the Applicant certifies that it has, or before submitting its application, will have:

- A. Provided an adequate opportunity for a public hearing with adequate prior notice of the proposed project published in a newspaper of general circulation in the geographic area to be served;
- B. Held that hearing and provided FTA a transcript or detailed report summarizing the issues and responses, unless no one with a significant economic, social, or environmental interest requests a hearing;
- C. Considered the economic, social, and environmental effects of the project; and
- D. Determined the project to be consistent with official plans for developing the urban area.

**CERTIFICATION OF PRE-AWARD AND POST-DELIVERY ROLLING STOCK  
REVIEWS REQUIRED FOR EACH APPLICANT SEEKING TO PURCHASE  
ROLLING STOCK FINANCED WITH FEDERAL ASSISTANCE AWARDED BY FTA**

**An Applicant seeking assistance to purchase rolling stock must make the following certification. FTA may not provide assistance for any rolling stock acquisition until the Applicant provides this certification by selecting Category IV on the Signature Page.**

As required by 49 U.S.C. 5323(1), and implementing FTA regulations at 49 CFR 663.7, the Applicant certifies that it will comply with the requirements of 49 CFR part 663.7, in the course of purchasing revenue service rolling stock. Among other things, the Applicant will conduct or cause to be conducted the prescribed pre-award and post-delivery reviews, and will maintain on file the certifications required by 49 CFR 663, subparts B, C and D.

## **BUS TESTING CERTIFICATION REQUIRED FOR NEW BUSES**

**An Applicant seeking FTA assistance to acquire new buses must make the following certification. FTA may not provide assistance for the acquisition of new Buses until the Applicant provides this certification by selecting Category V on the Signature page.**

As required by FTA regulations, “Bus Testing” at 49 CFR 665.7, the Applicant certifies that before expending any Federal assistance to acquire the first bus of any new bus model or any bus model with a new major change in configuration or components or authorizing final acceptance of that bus (as described in 49 CFR Part 665):

- A. The model of the bus will have been tested at a bus testing facility approved by FTA; and
- B. It will have received a copy of the test report prepared on the bus model.

## **CHARTER SERVICE AGREEMENT**

**An Applicant seeking FTA assistance to acquire buses must enter into the following charter bus agreement. FTA may not provide assistance for bus projects until the Applicant enters into this agreement by selecting Category VI on the Signature Page. New charter rules were published in the Federal Register on January 14, 2008. The effective date of the regulation was April 30, 2008.**

- A. As required by 49 U.S.C. 5323(d) and FTA regulations, “Charter Service” at 49 CFR 604.7, the Applicant agrees that it and its recipients will: (1) provide charter service that uses equipment or facilities acquired with Federal assistance authorized for 49 U.S. C. 5307,5309,5211 or Title 23 U.S.C., only to the extent that there are no private charter service operators willing and able to provide the charter service that it or its recipients desire to provide, unless one or more of the exceptions in 49 CFR 604. 9 applies, and (2) comply with the provisions of 49 CFR part 604 before they provide any charter service using equipment or facilities acquired with Federal assistance authorized for the above statutes.
- B. The Applicant understands that the requirements of 49 CFR Part 604 will apply to any charter service provided, the definitions in 49 CFR Part 604 apply to this agreement, and violation of this agreement may require corrective measures and imposition of penalties, including debarment from the receipt of further Federal assistance for transportation.

## **CERTIFICATION REQUIRED FOR THE DIRECT AWARD OF FTA ASSISTANCE TO AN APPLICANT FOR ITS DEMAND RESPONSIVE SERVICE**

**An Applicant seeking Federal assistance to support its demand responsive service must provide the following certification. FTA may not award Federal assistance directly to an Applicant to**

**support its demand responsive service until the Applicant provides this certification by selecting Category VII on the Signature page.**

As required by U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” at CFR 37.77, the Applicant certifies that its demand responsive service offered to persons with disabilities, including persons who use wheelchairs, is equivalent to the level and quality of service offered to persons without disabilities. When viewed in its entirety, its service for persons with disabilities is provided in the most integrated setting feasible and is equivalent with respect to: (1) response time, (2) fares, (3) geographic service area, (4) hours and days of service, (5) restrictions on trip purpose, (6) availability of information and (7) constraints on capacity or service availability.

### **SCHOOL TRANSPORTATION AGREEMENT**

**An Applicant seeking FTA assistance to acquire or operate transportation facilities and equipment acquired with Federal assistance authorized by 49 U.S.C. Chapter 53 must agree as follows. FTA may not provide assistance for transportation facilities until the Applicant enters into this Agreement by selecting Category VIII on the Signature Page.**

- A. As required by 49 U.S.C. 5323(f) and FTA regulations, “School Bus Operations,” at 49 CFR 605.14, the Applicant agrees that it and all its recipients will: (1) engage in school transportation operations in competition with private schools transportation operators only to the extent permitted by an exception provided by 49 U.S.C. 5323(f), and implementing regulations, and (2) comply with the requirements of 49 CFR Part 605 before providing any school transportation using equipment or facilities acquired with Federal assistance authorized by 49 U.S.C. Chapter 53 or Title 23 U.S.C. awarded by FTA for transportation projects.
- B. The Applicant understands that the requirement of 49 CFR Part 605 will apply to any school transportation it provides, the definitions of 49 CFR Part 605 apply to this school transportation agreement, and a violation of this agreement may require corrective measures and the imposition of penalties, including debarment from the receipt of further Federal assistance for transportation.

### **SUBSTANCE ABUSE CERTIFICATIONS**

**Title 49 Code of Federal Regulations (49 CFR), [s. 655.81] requires that each grantee including states, ensure that recipients of funds under 49 U.S.C. 5307, 5309, 5311, or 23 U.S.C. 1039(e)(4) comply with this part. The regulation [s. 655.82(c)] also requires that each state certify compliance on behalf of its subrecipients of these funding programs. In order to provide the certification, the state must ensure that each subrecipient is in compliance with the regulations, the state may suspend its funding.**

FTA does not specify what actions must be taken by states to ensure subrecipient compliance, however states are encouraged to develop a compliance oversight program. These procedures provide a reasonable level of confidence that subrecipients are complying with *Federal Regulations 49 CFR*,

**Parts 40 and 655.** For purposes of these procedures, **Section 5311** transit systems are considered subrecipients.

A. Alcohol Testing Certification

As required by FTA regulations, “Prevention of Alcohol Misuse in Transit Operations” at 49 CFR 40, the Applicant certifies that it has or will have, established and implemented an alcohol misuse prevention program complying with the requirements of 49 CFR 40; and if the Applicant has employees regulated by the Federal Railroad Administration (FRA), the Applicant also certifies that it has for those employees an alcohol misuse prevention program complying with the requirements of FTA’s regulations.

B. Anti-Drug Program Certification

As required by FTA regulations, “Prevention of Prohibited Drug Use in Transit Operations” at 49 CFR 655, the Applicant certifies that it has or will have established and implemented an anti-drug program and has conducted employee training complying with the requirements of 49 CFR Part 655; and if the Applicant has employees regulated by FRA, the Applicant also certifies that it has for those employees an anti-drug program complying with the requirements of FTA’s regulations.

**ASSURANCES REQUIRED FOR PROJECTS INVOLVING REAL PROPERTY**

**The Applicant must provide the following assurance in connection with each application for Federal assistance to acquire (purchase or lease) real property. FTA may not award Federal assistance for a project involving real property until the Applicant provides these assurances shown by selecting Category XI on the Signature Page.**

Relocation and Real Property Acquisition Assurance

As required by U.S. D.O.T. regulations, “Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs,” at 49 CFR 24.4, and sections 210 and 305 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Relocation Act), 42 U.S.C. 4630 and 4655, the Applicant assures that it has the requisite authority under applicable state and local law and will comply with the requirements of the Uniform Relocation Act, 42 U.S.C. 4601 *et seq.*, and U.S. DOT regulations, “Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs,” 49 CFR Part 24 including, but not limited to the following:

- (1) The Applicant will adequately inform each affected person of the benefits, policies, and procedures provided for in 49 CFR Part 24;
- (2) The Applicant will provide fair and reasonable relocation payments and assistance required by 42 U.S.C. 4622, 4623, and 4624; 49 CFR Part 24; and any applicable FTA procedures, to or for families, individuals, partnerships, corporations or associations displaced as a result of any project financed with FTA assistance;

- (3) The Applicant will provide relocation assistance programs offering the services described in 42 U.S.C. 4625 to such displaced families, individuals, partnerships, corporations, or associations in the manner provided in 49 CFR part 24 and FTA procedures;
- (4) Within a reasonable time before displacement, the Applicant will make available comparable replacement dwellings to displaced families and individuals as required by 42 U.S.C. 4625(c)(3);
- (5) The Applicant will carry out the relocation process in such a manner as to provide displaced persons with uniform and consistent services, and will make available replacement housing in the same range of choice with respect to such housing to all displaced persons regardless of race, color religion, or national origin; and
- (6) In acquiring real property, acquisition policies of 42 U.S.C. 4651 and 4652;
- (7) The Applicant will pay or reimburse property owners for necessary expenses as specified in 42 U.S.C. 4653 and 4654, understanding that FTA will participate in the Applicant's cost of providing those payments and that assistance for the project as required by 42 U.S.C. 4631;
- (8) The Applicant will execute such amendments to third party contracts and subagreements financed with FTA assistance and execute, furnish, and be bound by such additional documents as FTA may determine necessary to effectuate or implement the assurance provided herein; and
- (9) The Applicant agrees to make these assurances part of or incorporate them by reference into any third party contract or subagreement, or any amendments thereto, relating to any project financed by FTA involving relocation or land acquisition and provide in any affected document that these relocation and land acquisition provisions shall supersede any conflicting provisions.

#### Flood Insurance Coverage

As required by section 102(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4012a(a), the Applicant assures that in the course of implementing each project financed with Federal assistance, the Applicant will obtain appropriate insurance for any real estate acquired or construction undertaken thereon within any special flood hazard area as identified by the Federal Insurance Administrator. The Applicant understands that such insurance is available in the participating area through the U.S. Federal Emergency Management Agency's National Flood Insurance Program.

#### Seismic Assurance

As required by U.S. D.O.T. regulations, "Seismic Safety," 49 CFR 41.117(d), the Applicant assures that before it accepts delivery of any building financed with Federal assistance provide by FTA, the Applicant will obtain a certificate of compliance with the seismic design and construction requirements of 49 CFR Part 41.

**CERTIFICATIONS AND ASSURANCES FOR THE  
NONURBANIZED AREA FORMULA PROGRAM**

**An Applicant that intends to administer, on behalf of the state, the Nonurbanized Area Formula Program must provide the following certifications and assurances. FTA may not award Nonurbanized Area Formula Program assistance to the Applicant until the Applicant provides these certifications and assurances shown by selecting Category XIV on the Signature Page.**

Based on its own knowledge and, as necessary, on information submitted by the subrecipient, the Applicant administering on behalf of the state the Nonurbanized Area Formula Program authorized by 49 U.S.C. 5311 certifies that the following requirements and conditions will be fulfilled:

- A. The state organized serving as the Applicant and each subrecipient has or will have the necessary legal, financial, and managerial capability to apply for, receive and disburse Federal assistance authorized for 49 U.S.C. 5311; and to implement and manage the project.
- B. The state assures that sufficient non-Federal funds have been or will be committed to provide the required local share.
- C. The subrecipient has, or will have by the time of delivery, sufficient funds to operate and maintain the vehicles and equipment purchased with Federal assistance authorized for this project.
- D. The state assures that before issuing the state's formal approval of the project, its Nonurbanized Area Formula Program is included in the Statewide Transportation Improvement Program as required by 23 U.S.C. 135; to the extent applicable, projects are included in a metropolitan Transportation Improvement Program, and it has obtained from the prospective subrecipient of capital assistance a certification that an opportunity for a public hearing has been provided.
- E. The state has provided for a fair and equitable distribution of Federal assistance authorized for 49 U.S.C. 5311 within the state, including Indiana reservations within the state.
- F. The subrecipient is in compliance with all applicable civil rights requirements, and has signed the Nondiscrimination Assurance. (See Category I, "Certifications and Assurances Required of Each Applicant.")
- H. The subrecipient will comply with applicable requirements of U.S. DOT regulations of participation of disadvantage business enterprise in U.S. D.O.T. programs.
- I. The state will comply with all existing Federal requirements regarding transportation of elderly Nondiscrimination on the Basis of Disabilities. The subrecipient has provided to the state an Assurance of Nondiscrimination on the Basis of Disability, as set forth in the Certifications and Assurances required of each Applicant for FTA assistance in Category I of this document. If non-accessible vehicles are being purchased for use by a public entity in demand responsive service for the general public, the state will obtain from the subrecipient a "Certification of Equivalent Service," which states that the public entity's demand responsive service offered to persons with disabilities, including persons who use wheelchairs, is equivalent: (1) response time, (2) fares (3) geographic

service area, (4) hours and days of services, (5) restrictions and restraints on trip purpose, (6) availability of information and reservation capability, and (7) constraints on capacity or service availability, (See Category IX, "Certifications Required for the Direct Award of FTA Assistance to an Applicant for its Demand Responsive Service.")

- J. The subrecipient has complied with the transit employee protective provisions of 49 U.S.C. 5333(b), by one of the following actions: (1) signing the Special Warranty for the Nonurbanized Area Formula Program, (2) agreeing to alternative comparable arrangements approved by the Department of Labor (DOL), or (3) obtaining a waiver from DOL; and the state has certified the subrecipient's compliance to DOL.
- K. The subrecipient has certified to the state that it will comply with 49 CFR Part 604 in the provision of any charter service provided with equipment or facilities acquired with FTA assistance, and will also comply with applicable provisions of 49 CFR Part 605 pertaining to school transportation operations. (See Charter Service Agreement," and "School Transportation Agreement.")
- L. Unless otherwise noted, each of the subrecipient's projects qualifies for a categorical exclusion and does not require further environmental approvals, as described in the joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," at 23 CFR 771.11(c). This state certifies that financial assistance will not be provided for any project that does not qualify for a categorical exclusion described in 23 CFR 771.117(c) until FTA has made the required environmental finding. The state further certifies in accordance with the Environmental Protection Agency's Clean Air Conformity regulations at 40 CFR Parts 51 and 93, until FTA makes the required conformity finding.
- M. The subrecipient has submitted (or will submit) all certifications and assurances currently required, including but not limited to: a certification that its procurements and procurement systems will comply with all applicable requirements imposed by Federal laws, executive orders, or regulations and the requirements of FTA Circular 4220.1E, "Third Party Contracting Requirements," and other implementing requirements FTA may issue, a certification that its project provides for the participation of private mass transportation companies to the maximum extent feasible; a certification it has paid or will pay just compensation under the project; a nonprocurement suspension and debarment certification; a bus testing certification for each application exceeding \$100,000; and if required by FTA, an anti-drug program certification and an alcohol testing certification. Certifications and assurances applicable to and submitted by the subrecipient should be substantially similar to the text of parallel certifications and assurances text of Categories I-XI of this document, but modified as necessary to accommodate the subrecipient's circumstances.
- N. The state will enter into a written agreement with each subrecipient stating the terms and conditions of assistance by which the project will be undertaken and completed.
- O. The state recognizes FTA's authority to conduct audits to verify compliance with the foregoing requirements and stipulations.
- P. As required by 49 U.S.C. 5311(f) it will expend not less than fifteen percent for the Federal assistance authorized for 49 U.S.C. 5311(f) it receives during this fiscal year to carry out a program

to develop and support intercity bus transportation, unless the chief executive officer of the state of his or her duly authorized designee certifies that the intercity bus services needs of the state are being adequately met.

The following list summarizes the statutes, regulations, Executive Orders and administrative requirements provided in this Attachment and are part of this Assurance.

**LISTS OF STATUTES, REGULATIONS, EXECUTIVE ORDERS,  
AND ADMINISTRATIVE REQUIREMENTS APPLICABLE TO  
SECTION 5311 PROGRAM**

**STATUTES**

18 U.S.C. 1001

which provides criminal sanctions for those who knowingly and willfully provide false information to the Federal Government.

Section 5323(b) of the FT Act, 49 U.S.C. 5301 et. seq.

which requires, among other things, the recipient to provide a certification in the case of capital projects that it:

- (1) Has afforded an adequate opportunity for public hearings pursuant to adequate prior notice, and held such hearings unless no one with a significant economic, social, or environmental interest in the matter, request a hearing;
- (2) Has considered the economic and social effects of the project and its impact on the environment; and
- (3) Has found that the project is consistent with official plans for the comprehensive development of the urban area.

Section 5323(a)(1) of the FT Act, 49 U.S.C. 5301 et. seq.

which requires, among other things, the recipient to provide to the maximum extent feasible for the participation of private mass transportation companies.

Section 5323(d) of the FTA Act, 49 U.S.C. 5301 et. seq.

which requires, among other things, the recipient to enter into an agreement with FTA not to provide charter service that will foreclose private operators.

Section 5323(f) of the FTA Act, 49 U.S.C. 5301 et. seq.

which requires, among other things, the recipient to enter into an agreement with FTA not to provide exclusive school bus operations.

Section 5302 of the FTA Act, 49 U.S.C. 5301 et. seq.  
which provides definitions applicable to the use of grant funds.

Section 5333 of the FTA Act, 49 U.S.C. 5301 et. seq.  
which requires, among other things, the recipient to comply with applicable labor requirements.

Section 5311 of the Federal Transit Act, as amended, 49 U.S.C. 5301 et. seq.

Section 5332 of the FTA Act, 49 U.S.C. 5301 et. seq.  
which, among other things, prohibits discrimination on the basis of race, color, creed, national origin, sex or age.

Section 5310 of the FTA Act, 49 U.S.C. 5301 et. seq.  
which provides, among other things, for the planning and design of mass transportation facilities to meet the special needs of elderly persons and persons with disabilities.

Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000(d)  
which, among other things, prohibits discrimination on the basis of race, color or national origin by recipients of Federal financial assistance.

Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000(e)  
which, among other things, prohibits discrimination in employment.

Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794  
which, among other things, prohibits discrimination on the basis of handicap by recipients of Federal financial assistance.

"Hatch Act", 5 U.S.C. 1501, et seq.  
which, among other things, imposes certain restrictions on political activities of recipients of Federal financial assistance.

"Buy America Requirements", Section 165 of the Surface Transportation Assistance Act of 1982, P.L. 97-424 which, among other things, requires that steel, and manufactured products procured under FTA-funded contracts of a certain size be of domestic manufacture or origin (with four exceptions).

Davis-Bacon Act, as amended, 40 U.S.C. 276a, et seq.  
which requires, among other things, that all mechanics and laborers working on federally assisted construction projects (in excess of \$2,000 contract value) be paid not less often than once a week, at wage rates computed at an amount not less than the prevailing wages for similar work in the same geographic area of the project.

Copeland "Anti-Kickback" Act. 40 U.S.C. 874  
which, among other things, prohibits payroll deductions from the wages of employees who are covered by the Davis-Bacon Act for any reason except those specifically stated in the Copeland Act.

Contract Work and Safety Standards Act, 40 U.S.C. 327-332

which, among other things, establishes the required basis and conditions for hours of work and for overtime pay of laborers and mechanics, and directs the Department of Labor to formulate construction safety and health standards.

National Environmental Policy Act of 1969, 42 U.S.C. 4321, et seq.

which, among other things, prohibits Federal assistance that will adversely affect the quality of the environment.

Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4610, et seq. which, among other things, establishes the terms and conditions for compensation to property owners and occupants who are displaced as a result of federally assisted projects.

Archaeological and Historic Preservation Act of 1966, 16 U.S.C. 469a-1, et seq.

which provides protection for historically valuable property.

National Historic Preservation Act of 1966, 16 U.S.C. 470, et seq.

which, among other things, provides for the protection of national historic sites.

Federal Water Pollution Control Act, As amended by the Clean Water Act of 1977, 33 U.S.C. 1251, et seq. which, among other things, sets limits on pollutants discharged in international waterways and requires safeguard against spills from oil storage facilities.

Clean Air Act of 1955, as amended 42 U.S.C. 7402, et seq.

which, among other things, establishes national standards for vehicle emissions.

Energy Policy and Conservation Act, 42 U.S.C. 6321

which, among other things, authorizes development and implementation of State energy conservation plans.

National Flood Insurance Act of 1968, 42 U.S.C. 4011, et seq.

which, among other things, authorizes a national flood insurance program.

Flood Disaster Protections Act of 1973, 42 U.S.C. 4012a, et seq.

which, among other things, requires the purchase of flood insurance by recipients of Federal financial assistance who are located in areas having special flood hazards.

Single Audit Act 1984, P.L. 98-502

which establishes audit requirements for State and local governments that receive Federal aid.

## **REGULATIONS**

49 C.F.R. Part 600, et seq.

regulations promulgated by FTA

49 C.F.R. Parts 21, 23, 25, 27, 37 and 38

regulations promulgated by the Department of Transportation governing Title VI of the Civil Rights Act of 1964, Minority Business Enterprise, Relocation and Land Acquisition, Nondiscrimination on the Basis of Handicap, and the Americans with Disabilities Act, respectively.

36 C.F.R. Part 800

regulations promulgated by the Advisory Council on Historic Preservation.

46 C.F.R. Part 381

regulations promulgated by the Maritime Administration governing cargo preference requirements.

31 C.F.R. Part 205

regulations promulgated by the Department of Treasury governing letter of credit.

40 C.F.R. Part 15

regulations promulgated by the Environmental Protection Agency pertaining to administration of Clean Air and Water Pollution requirements of grantees.

29 C.F.R. Parts 5 and 215

regulations promulgated by the Department of Labor pertaining to construction labor and transit employee protections.

### **EXECUTIVE ORDERS**

E.O. 11246

which establishes requirements in construction activities for contracts over \$10,000.

E.O. 11988

which establishes certain specific requirements related to flood protection and control.

E.O. 12372

which rescinds OMB Circular A-95 and establishes new procedures for State review of Federally funded projects.

### **ADMINISTRATIVE REQUIREMENTS**

Office of Management and Budget (OMB) Circular A-87

which provides cost principles applicable to grants and contracts with State and local governments.

Office of Management and Budget (OMB) Circular A-102

which provides uniform requirements for assistance to State and local governments.

Office of Management and Budget (OMB) Circular A-128

which applies to audits of State and local governments.



**Attachment VIII-3.**

**49 CFR Part 37: Transportation for Individuals with Disabilities:**

**Regulatory Summary**

## **49 CFR Part 37: Transportation for Individuals with Disabilities Regulatory Summary**

The implementing regulations for the ADA were promulgated in the same rulemaking action as the revisions to Section 504. The rulemaking was comprehensive and had substantial impact on the transit industry.

The key components of the regulations are summarized below, by section:

### **Subpart A - General**

**49 CFR Part 37.5: Nondiscrimination** - This section states basic service features that must be offered or provided by all transportation providers, regardless of public/private status, mode of service, or whether they receive Federal financial assistance.

**49 CFR Part 37.7: Standards for Accessible Vehicles** - This section defines accessible vehicles as meeting the requirements of 49 CFR Part 38 and introduces the concept of “equivalent facilitation.”

**49 CFR Part 37.9: Standards for Accessible Facilities** - This section defines accessible facilities as those meeting the specifications contained in Appendix A to 49 CFR Part 37. This appendix incorporates architectural guidelines developed by the Access Board. Bus stops are considered transportation facilities under the ADA regulations.

This section also requires that public entities ensure the construction of new bus stop pads are in compliance with Appendix A specifications, *to the extent construction specifications are within their control (emphasis added)*.

### **Subpart B: Applicability**

**49 CFR Part 37.21: Applicability (General)** - This section specifies the regulatory coverage of the rule. Unlike Section 504, the provisions of the ADA are applicable to virtually all entities engaged in transportation. This section also contains the so-called “stand-in-the-shoes” provision, meaning that any covered entity must insure that its contractors adhere to the same requirements as would apply to the covered entity.

### **Subpart C: Transportation Facilities**

**49 CFR Part 37.41: Construction of New Transportation Facilities by Public Entities** - This section requires that any transit facility where construction began on or after January 15, 1992 must meet the accessibility requirements of the rule or, in the case of intercity rail or commuter train stations, October 7, 1991.

**49 CFR Part 37.43: Alternation of Transportation Facilities by Public Entities** - This section specifies that when a public agency alters an existing transportation facility, or a part of an

existing facility used in providing public transportation that alters the usability of that facility, the entity must make the alterations so that, to the maximum extent feasible, the altered portions of the altered facility are readily accessible to persons with disabilities, including wheelchair users, provided the costs of doing so would not be disproportionate to the total cost of the renovation.

This section defines facility usability and specifies the minimum level of improvements that should be undertaken to assure usability.

***49 CFR Part 37.45: Construction and Alternation of Transportation Facilities by Private Entities*** - This section spells out that private entities that construct or alter transportation facilities are governed by regulations issued by the Department of Justice (28 CFR part 36) implementing Title III of the ADA.

***49 CFR Part 37.47 - 53: Key Stations in Light Rail and Commuter Rail Systems*** - These sections define requirements for light rail and commuter rail system station access.

***49 CFR Part 37.55: Intercity Rail Accessibility*** – This section requires that all intercity rail stations be made accessible to and usable by persons with disabilities, including wheelchair users, by July 26, 2010 and specifies that alterations to existing facilities must still adhere to the 49 CFR part 37.43.

#### **Subpart D: Acquisition of Accessible Vehicles by Public Entities**

***49 CFR Part 37.71: Purchase or Lease of New Non-Rail Vehicles by Public Entities Operating Fixed Mode Systems*** - All vehicles to be operated on a fixed route system for which a solicitation is made after August 25, 1990 must be accessible.

Waivers may be granted to this provision through petition to the FTA Administrator. If a waiver is requested, the waiver applicant must hold a public hearing concerning the request. The request may be granted if:

- the initial solicitation for new buses specified that all vehicles were to be lift-equipped (this section applies primarily to purchase options exercised on a solicitation made prior to August 25, 1990);
- wheelchair lifts could not be provided by the manufacturer in sufficient time to comply with the solicitation requirements; and
- further delay in the delivery of accessible buses would significantly impair the delivery of transportation service in the community.

Waiver requests must include documentation of the solicitation procedures and evidence of good faith efforts on the part of vehicle manufacturers to obtain wheelchair lifts.

Waivers will apply to specific bus deliveries and are not a general condition applied to a particular system.

***49 CFR Part 37.73: Purchase or Lease of Used Non-Rail Vehicles by Public Entities Operating Fixed Mode Systems*** - Purchase or lease of used vehicles after August 25, 1990 for

use by public agencies in fixed route services must be accessible. This requirement can be set-aside if the system makes good faith efforts to find, but fails to secure, an accessible vehicle. Good faith efforts include: (a) inclusion in the initial solicitation a request for accessible vehicles; (b) conduct of a nationwide search; (c) advertisement in trade journals; and (d) retention of documentation relative to good faith efforts for a two year period.

***49 CFR Part 37.75: Remanufacture of Non-Rail Vehicles and Purchase or Lease of Remanufactured Non-Rail Vehicles by Public Entities Operating Fixed Route Systems*** - This section applies to any public entity operating a fixed route system. It specifies that if the useful life of a vehicle is extended for five years or more, or where the purchase or lease of a remanufactured vehicles occurs after August 25, 1990, the vehicle must be accessible. Entities must, to the maximum extent feasible, make vehicles readily accessible to persons with disabilities, during the remanufacturing process. If a public entity operates a fixed route system, any segment of which is included on the National Register of Historic Places, and if making a vehicle of historic character used solely on such segment readily accessible to and usable by individuals with disabilities would significantly alter the historic character of such vehicle, the public entity has only to make (or purchase or lease a remanufactured vehicle with) those modifications to make the vehicle accessible which do not alter the historic character of such vehicle, in consultation with the National Register of Historic Places.

***49 CFR Part 37.77: Purchase or Lease of New Non-Rail Vehicles by Public Entities Operating a Demand Response System for the General Public*** - Vehicles purchased or leased by public entities after August 25 1990 for use in demand response service must be accessible. If the system, when viewed in its entirety, affords a level of service to persons with disabilities, including wheelchair users, equivalent to persons without disabilities, vehicles that are not accessible may be purchased or leased.

Service must be "equivalent" with respect to the following service characteristics: (a) response time; (b) fares; (c) geographic area of coverage; (d) hours and days of service; (e) restrictions based on trip purpose; (f) availability of information and reservations capability; and (g) constraints on capacity or service availability.

Any Section 5311 or Section 5310 recipient that purchases non-accessible vehicles must first file with the state administering agency a certificate that it provides equivalent service meeting the standards listed above. Certifications are procurement specific and are not valid longer than one (1) year.

Waivers, in accordance with the same provisions established for fixed route services, may be granted.

***49 CFR Part 37.79 - 37.95: Purchase or Lease of Rail Vehicles*** - These sections deal with the purchase or lease of new, used and remanufactured vehicles for light rail, commuter rail, and intercity rail.

### **Subpart E: Acquisition of Accessible Vehicles by Private Entities**

***49 CFR Part 37.101: Purchase or Lease of Vehicles by Private Entities Not Primarily Engaged in the Business of Transporting People*** - Any solicitation made after August 25,

1990, by a private for-profit or private nonprofit organization that is not engaged as its primary business the transport of individuals, must purchase or lease accessible vehicles, if the vehicle to be acquired is operated in fixed route service and is in excess of 16-passenger capacity, including the driver. Vehicles purchased or leased after August 25, 1990 for use in fixed route service that are less than 16-passenger capacity shall be accessible, unless the system, when viewed in its entirety, is accessible to persons with disabilities, including wheelchair users, at an equivalent level to service to persons without disabilities. The following characteristics shall be used to determine equivalent levels of service: (a) schedules/headways; (b) fares; (c) geographic area of coverage; (d) hours and days of service; (e) availability of information; and (f) constraints on capacity or service availability.

Vehicles purchased or leased after August 25, 1990 for use in demand response service that are greater than 16-passenger capacity shall be accessible, unless the system, when viewed in its entirety, is accessible to persons with disabilities, including wheelchair users, at an equivalent level of service to persons without disabilities. The following characteristics shall be used to determine equivalent levels of service: (a) schedules/headways; (b) fares; (c) geographic area of coverage; (d) hours and days of service; (e) availability of information; and (f) constraints on capacity or service availability.

There are no requirements for demand response systems purchasing vehicles with less than 16-passenger capacity. However, the general requirements contained in 49 CFR part 37.5 would still apply.

***49 CFR Part 37.103: Purchase or Lease of New Non-Rail Vehicles by Private Entities***

***Primarily Engaged in the Business of Transporting People*** - Any vehicle purchased or leased after August 25, 1990 (except an automobile, van with a seating capacity less than 8 persons, including the driver, or an over-the-road coach) for use in providing specified public transportation must be accessible.

Non-accessible vehicles may be acquired for use solely in demand response service if the entity can demonstrate that when viewed in its entirety, the service affords a level of service to persons with disabilities, including wheelchair users, equivalent to service provided to persons without disabilities. The following characteristics shall be used to determine equivalent levels of service: (a) response time; (b) fares; (c) geographic area of coverage; (d) hours and days of service; (e) restrictions on trip purpose; (f) availability of information and reservations capability; and (g) constraints on capacity or service availability.

Solicitations for the purchase or lease of vans with less than 8-passenger capacity after September 25, 1992 shall be accessible. However, vans with less than 8-passenger capacity need not be accessible if the system, when viewed in its entirety, affords a level of service to persons with disabilities, including wheelchair users, equivalent to service provided to persons without disabilities. The following characteristics shall be used to determine equivalent levels of service: (a) response time (if the system is demand response) or schedules/headways (if the system is fixed route); (b) fares; (c) geographic area of coverage; (d) hours and days of service; (e) restrictions on trip purpose; (f) availability of information and reservations capability; and (g) constraints on capacity or service availability.

***49 CFR Part 37.107: Acquisition of Passenger Rail Cars by Private Entities Primarily Engaged in the Business of Transporting People*** - This section establishes requirements for private entities that acquire rail cars and their business is primarily the transport of people.

### **Subpart F: Paratransit as a Complement to Fixed Route Service**

***49 CFR Part 37.121: Requirement for Comparable Complementary Paratransit Services*** - Among the most controversial provisions of the ADA were requirements for public entities operating fixed route systems to also provide paratransit or other special services that is comparable to the level of service provided to non-disabled individuals who utilize the entity's fixed route system.

***49 CFR Part 37.123: ADA Paratransit Eligibility: Standards*** - This section defines the eligibility criteria for use of complementary paratransit services. It is intended to narrowly define eligibility and create a national standard for eligibility so that an individual certified as eligible in one community could access services in another community.

This section creates three (3) scenarios for eligibility. Category I eligibility includes all persons who cannot independently use or navigate the fixed route system. Persons falling into this category would generally always be eligible for paratransit. Category II includes individuals who could use and independently navigate the fixed route system, but because the fixed route system is not accessible (in whole or in part), the individual is precluded from travel. FTA envisions this category to diminish over time as inaccessible vehicles are replaced with accessible vehicles through routine capital replacements. Category III includes individuals with a specific impairment that limits access to a bus stop or rail station, combined with environmental factors that work together with the individual's impairment to include access. For example, a wheelchair user might be able to access a bus stop in normal weather, but might not be able to do so if there is a foot of snow on the ground. Under the second circumstance, the environmental factor (snow), combined with the disability, would result in eligibility to the user for that trip.

The eligibility criteria specifically are designed to incorporate a trip-by-trip eligibility process. That is, individuals may be eligible for paratransit under some circumstances but not others. This section also specifies that personal care attendants and other traveling companions be permitted to ride complementary paratransit along with the certified user.

***49 CFR Part 37.125: ADA Paratransit Eligibility: Process*** - A standardized process for making eligibility determinations, along with prescribed times frames and an appeals process, is established in this section.

This section also allows a public entity to develop an administrative process to temporarily suspend complementary paratransit services to an individual who establishes a pattern of missed trips.

***49 CFR Part 37.125: Complementary Paratransit Services for Visitors*** - All visitors to the service area who present documentation that they are ADA paratransit eligible in the jurisdiction in which they reside are automatically granted paratransit eligibility for at least 21 days.

**49 CFR Part 37.131: Service Criteria for Complementary Paratransit** - This section outlines the minimum criteria for complementary paratransit to meet the tests of “comparable” service to the fixed route system. Six (6) criteria are defined:

- (1) *Service Area* - Paratransit service must be provided within a corridor of three-quarters of a mile on either side and within the terminus of all fixed routes. At a locality’s discretion, this boundary may be extended to up to one and one-half miles. Any “gaps” left in the core service area are also to be served. If the service area extends past a jurisdictional limit where the fixed route provider service has no operating authority, complementary paratransit need not be provided.
- (2) *Response Time* - This section requires “next-day” advance reservation capabilities be provided by the public entity and further specifies that next day means during normal administrative hours operated by the transit system. This includes having some capacity for reservations when the office is closed the day preceding a service day (*e.g.*, Sunday). Reservations may be taken up to 30 days in advance of the requested date of travel.
- (3) *Fares* - Fares may be no more than twice the fare for a comparable trip on the fixed route system, without regards to discounts. Personal care attendants are not charged a fare under this section. This section also expressly permits the public agency to charge a higher rate than normally allowed under this section to human service agencies for services provided under contract.
- (4) *Trip Purpose Restrictions* - The public entity is not permitted to impose any limitations on using the paratransit system based on trip purpose.
- (5) *Hours and Days of Service* - Complementary paratransit service must be provided during the same days and hours as fixed route service.
- (6) *Capacity Constraints* - The public entity cannot deny paratransit service due to any operational pattern or practice that would significantly limit paratransit service.

**49 CFR Part 37.133: Subscription Service** - This section permits subscription service (or “standing orders”), however, it limits the amount of subscription trips to no more than 50 percent of the number of trips available at a given time, unless there is capacity in the system to accommodate all non-subscription trips at that time. This section also expressly permits the public entity to develop waiting lists or other demand management strategies for subscription services only.

**49 CFR Part 37.135 - 37.149: Paratransit Plan** - These sections require each public entity to submit a plan detailing how the entity would achieve compliance with the requirements for complementary paratransit services provision within the prescribed time frame (no later than January 26, 1997). The plan approval process, as well as procedures for developing joint plans with adjacent jurisdictions, is specified.

**49 CFR Part 37.51 - 155: Undue Financial Burden Waiver** - These three sections outline a procedure whereby a public entity could receive a waiver of compliance with the six service criteria if it could be determined that adherence to the all six service criteria created an undue

financial burden on the public entity. The criteria for seeking such a waiver, and the FTA process for evaluating the requests, are spelled out in this section.

### **Subpart G: Provision of Service**

**49 CFR Part 37.161: Maintenance of Accessible Features: General** - This section requires that public and private entities keep accessibility features of vehicles in working order, including lifts, signage, securement devices, and communications systems.

**49 CFR Part 37.163: Keeping Vehicle Lifts in Operative Order: Public Entities** - This section applies only to public entities operating non-rail vehicles and is designed to ensure that each entity adopt a process of systematic maintenance of accessibility features, particularly lifts, to make sure they are operative in regular service.

**49 CFR Part 37.165: Lift and Securement Use** - This section specifies that the public or private agency will transport all wheelchairs (as defined in 49 CFR part 38) and that all chairs and passengers will be secured in the transit vehicle.

This section also prohibits the transit provider to require that an individual transfer from a wheelchair to another seat on the vehicle. It also requires that standees be permitted on wheelchair lifts.

**49 CFR Part 37.167 - 37.173: Other Requirements** - These final sections of the regulations deal with miscellaneous other provisions, including the need to announce major stops and/or intersections on fixed route services, the need to have a visual means for identify the route the vehicle is traveling, a requirement to permit service animals, and a requirement to provide adequate communications systems regarding system information.

A series of interim procedures were provided for over-the-road coach operation until such time as the Department can complete a study and adopt final rules for accessible intercity buses (37.169).

Finally, the Department requires that each covered entity train personnel to proficiency in the operation of equipment used to serve disabled persons.

### **Appendix A to Part 37: Standard for Accessible Transportation Facilities**

As an appendix to the regulations, USDOT simultaneously published the standards for accessible building and facilities. These standards are applicable to facilities subject to coverage under either Title II or Title III of the ADA. These standards are commonly referred to as the ADA Accessibility Guidelines (hereinafter referred to as “ADAAG”).

Generally, the technical specifications contained in ADAAG are the same as the American National Standards Specification for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped (hereinafter referred to as “ANSI 117.1”). However, there are differences between the old and the new standards. 49 CFR part 37.9 clearly indicates that ADAAG is the standard to be followed, unless the facility alteration began before January 26, 1992 and the modification complied with ANSI 117.1 or the Uniform Federal Accessibility Standard (UFAS).

As the ADAAG standards are complex and comprehensive in scope, only those standards applicable to bus stops and terminals (Section 10.2.1 of the ADAAG) and seating (Section 10.2.2 of the ADAAG) are reviewed here. It is also important to note that Section 10.1 contains a cross-reference to Sections 4.1 through 4.35 and Sections 5 through 9 of the ADAAG, meaning that bus stops must adhere to all these provisions, as applicable.

**Section 10.1: General** - This section requires every station bus stop, bus stop pad, terminal, building, or other transportation facility to comply with ADAAG.

**Section 10.2.1: New Construction of Bus Stops and Terminals** - Where new bus stop pads are constructed at bus stops (or other areas where a wheelchair lift is to be deployed, the following requirements apply. The pad must:

- have a firm, stable surface;
- have a minimum clear length of 96 inches (measured from the curb or vehicle roadway edge;<sup>1</sup>
- have a minimum clear width of 60 inches (measured parallel to the vehicle roadway);
- be connected to streets, sidewalks, or pedestrian paths by an accessible route complying with ADAAG Section 4.3 and 4.4;
- have a slope parallel to the roadway as same as the adjacent roadway (to the extent practicable); and
- have a maximum slope of 1:50 (2%) perpendicular to the roadway.

Bus stop shelters, where provided, must:

- be positioned to allow access via a public path;
- have a minimum clear floor area of 30 inches by 48 inches entirely within the interior perimeter of the shelter; and
- be connected to an accessible path leading to the bus stop pad.

Bus stop signs must have characters and symbols that contrast with their background, using either light characters on a dark background or dark characters on a light background. To the extent practical, all new bus stop signs shall:

- have characters and numbers with a width to height ratio between 3.5:1 and 1:1 and a stroke-width-to-height ratio of between 1:5 and 1:10; and
- have characters and numbers sized according to the viewing distance from which they are to be read, considering a location 80 inches off the surface of the path.

**Section 10.2.2: Bus Stop Sitting and Alterations** - Bus stops shall be chosen so that, to the maximum extent practicable, so that lifts can be deployed at areas that meet the requirements of Section 10.2.1.

When new signs are installed or old signs replaced, they must comply with Section 10.2.1.

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<sup>1</sup> To the extent allowed by legal or site constraints.

The ADAAG does not require that pads be built at bus stops, only the standards that must be met if constructed by a covered public entity. Moreover, 49 CFR part 37.9(c) further limits the public entity's responsibility only when they have control over the construction specifications.

*Attachment VIII-4.*

*49 CFR Part 38: Accessibility Specifications for Transportation Vehicles Regulatory*

*Summary*

## **49 CFR Part 38: Accessibility Specifications for Transportation Vehicles Regulatory Summary**

This regulation provides the minimum design specifications for accessible transportation vehicles. In some cases, there are different specifications for vehicles with less than 30,000 G.V.W.R.

All new, used, or re-manufactured buses and vans acquired after August 25, 1990 must meet these requirements to be considered accessible. A summary of the key provisions of this regulation is provided below.

**49 CFR part 38.23: Mobility Aid Accessibility** - All vehicles must have a level change device (lift or ramp) and sufficient clearance inside the vehicle to permit wheelchair user access to the securement location. At least two (2) mobility device securement locations shall be provided on vehicles in excess of 22 feet in length. At least one (1) securement location shall be provided on vehicles less than 22 feet in length.

Additionally:

- The design load for the lift shall be at least 600 pounds.
- Lift controls must be interlocked with the vehicle transmission or braking system.
- The lift must incorporate an emergency method of deploying in the event of a power failure. A performance standard for the rate of descent in the event of power failure during the lift cycle is specified.
- The lift platform is to be 48 inches long and 30 inches wide and must have barriers on both the front and sides. The side edge barriers must be a minimum of 1 and ½ inches high. A performance specification is provided in lieu of a height standard for the loading edge barrier.
- The lift platform surface must be slip resistant with a minimum clear of 28.5 inches at the platform and 30 inches when measure 2 inches to 30 inches above the platform. The platform must have a clear length of 48 inches measured 2 inches to 30 inches above the platform surface.
- The gap between the lift and vehicle entrance cannot exceed ½ inch horizontally and 5/8 inch vertically.
- Lifts must accommodate standees, and have handrails.
- Wheelchair securement devices on vehicles in excess of 30,000 G.V.W.R. must restrain a force of up to 2,000 pounds per leg and 4,000 pounds per device. Wheelchair securement devices on vehicles with less than 30,000 G.V.W.R. must restrain a force of up to 2,500 pounds per leg and 5,000 pounds per device.
- The wheelchair securement area must be located as close to the vehicle entrance as possible.
- The device shall secure wheelchairs and mobility aids and shall be either automatic or easily attached by a person familiar with the device.
- In vehicles in excess of 22 feet, at least one (1) securement device shall secure the wheelchair facing toward the front of the vehicle. Additional securement devices may be either forward facing or rear facing (provided a padded barrier is installed). In smaller vehicles, the orientation may be forward or rear facing.

**49 CFR part 38.25: Doors, Steps, and Thresholds** - All flooring must have slip resistant surfaces. A contrasting color shall be provided at all step edges and thresholds. In vehicles over 22 feet in length, a vertical door clearance of 68 inches minimum is required. In vehicles under 22 feet, 56 inches is required.

**49 CFR part 38.27: Priority Seating Signs** - At least one set of forward facing seats shall be designated and signed as priority seating for persons with disabilities. Each wheelchair or mobility aid securement location shall also be marked as such.

**49 CFR part 28.29: Interior Circulation, Handrail, and Stanchion** - Handrails and stanchions must be provided and located in such a manner as not to interfere with interior vehicle circulation by persons with disabilities. Locations of handrails and stanchions are specified. For vehicles in excess of 22 feet, an overhead handrail is required. The minimum interior height shall be 68 inches. For vehicles less than 22 feet, the minimum interior height is 56 inches.

**49 CFR part 38.31: Lighting** - Lighting equivalent to 2 foot-candles illumination (when measured from the step tread) shall be provided at any stepwell or doorway adjacent to the driver. Outside light(s) shall be provided at least 1 foot-candle of illumination on the street surface for a distance of 3 feet perpendicular to the bottom step tread.

**49 CFR part 38.33: Farebox** - If provided, the farebox must be located so as not to obstruct internal circulation.

**49 CFR part 38.35: Public Information System** - Each vehicle in excess of 22 feet used in multiple-stop fixed route service must be equipped with a public address system so that stops and other information can be announced.

**49 CFR part 38.37: Stop Request Systems** - When a vehicle is used in service where passengers may disembark at their option (*e.g.*, along designated stops of a fixed route), each vehicle in excess of 22 feet shall provide a control system adjacent to the securement location for requesting stops. Auditory and visual indications that the request has been made are required.

**49 CFR part 38.39: Destination and Route Signs** - Exterior destination signs must be illuminated. Standards for character display are proposed. Character width-to-height and stroke width-to-height ratios are specified. Minimum character height of 2 inches is required for front headsigns while 1 inch height is required for the boarding side sign.

## Section IX.

### Other Compliance Issues

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## IX. OTHER PROGRAM COMPLIANCE ISSUES

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### INTRODUCTION

[FTA Circular 9040.1F \(Volume II, Appendix D\)](#) defines the program requirements that must be adhered to by all grantees. This section provides an overview of each of these program requirements and the responsibilities of the grantee. Grantees should make frequent reference to the cross-referenced material in Volume II.

### COMPLIANCE ELEMENTS

#### Labor

##### Special Warranty

For almost all Federal transit programs involving transit operations, including the Section 5311 program, [49 U.S.C. § 5333\(b\)](#) requires that fair and equitable arrangements must be made to protect the interests of employees affected by such assistance. The United States Department of Labor (USDOL) is responsible under Federal law for the administration of Section 5333(b). A simplified process for assuring employee protections has been developed to accommodate the needs of participants in the Section 5311 program. USDOL and USDOT agreed upon a [Special Section 5333\(b\) Warranty for Section 5311](#) projects (hereinafter referred to as the “Special Warranty”), which was certified by the Secretary of Labor on May 31, 1979. A copy of the Warranty is found in [Attachment IX-1](#).

Acceptance of the Special Warranty by grantees substitutes for the certification by USDOL of individually negotiated labor agreements for each project within the INDOT program of projects for Section

5311. If DOL has certified comparable arrangements to be substituted for certain parts of the Special Warranty for use in a particular situation, acceptance of the warranty as modified is treated the same as acceptance of the Special Warranty.

Before undertaking a project, the Section 5311 grantee (or a legally responsible entity designated by INDOT) must agree in writing to the Special Warranty. INDOT, in turn, certifies to USDOL that each grantee included in the program of projects for each annual funding cycle has agreed in writing to the Special Warranty. The agreement to the Special Warranty is a prerequisite before a grantee is permitted to draw down Section 5311 funds for a project.

##### Other Required Submittal Elements

An additional requirement of this section is that grantees must submit to INDOT with each grant application an accurate, up-to-date listing of all existing transportation providers that are eligible recipients of transportation assistance under Section 5311. Additionally, a list of any labor organizations representing the employees of such providers must be provided. INDOT has prepared (included in the INDOT annual application package) a special form that must be completed with the grant application for purposes of meeting these requirements.

The grantee must post the entire signed and completed Special Warranty where affected employees may see it. A bulletin board in a driver’s room or other conspicuous place would be a good location.

The text of the National (Model) Agreement and additional guidance concerning the

Special Warranty for Section 5311 may be obtained by contacting the U.S. Department of Labor, Division of Statutory Programs, Suite N5603, 200 Constitution Avenue, N.W., Washington, D.C. 20210, or by calling (202) 219-4473.

DOL procedures established for using the Special Warranty do not extend beyond the Section 5311 program. DOL guidelines ([29 CFR Part 215, Volume II, Appendix R](#)) have established different labor protection procedures for FTA's Section 5309 capital program and Section 5307 urbanized area formula program. Note that those procedures apply to Section 5309 funds that the state may receive on behalf of recipients in nonurbanized areas. Unlike the Special Warranty for Section 5311, employee protective arrangements for each grant under other FTA programs must be certified by DOL prior to grant award. The terms and conditions that DOL may certify for Section 5307 and 5309 grants, however, are generally similar to those of the Special Warranty for Section 5311.

### **Private Sector Participation**

[Section 5323\(a\)\(1\)](#) (Volume II, Appendix A) requires that FTA funded projects "to the maximum extent feasible" provide for "the participation of private mass transportation companies." While FTA no longer prescribes a particular private sector participation process, Section 5311 grantees still have obligations under this requirement. The statewide and metropolitan planning process is assumed to adequately address private sector concerns. If, however, the state's planning process does not address rural transit projects in sufficient detail to provide adequate notice to potential private operators in the service area of Section 5311 projects, the state may need to adopt

supplemental procedures in order to be able to make the required assurance.

FTA's Notice and update of its Private Enterprise Policy was printed in the Federal Register on April 26, 1994 ([Volume II, Appendix S](#)).

### **CHARTER SERVICE**

#### **INDOT expressly prohibits Section 5311 grantees to engage in charter service.**

The Federal Transit Administration (FTA) made significant changes to longstanding charter rules. These changes are specified in the FTA charter service regulation ([49 CFR, Part 604 – Volume II, Appendix P](#)).

Charter service as defined in 49 CFR Part 604 is transportation provided by a recipient at the request of a third party for the exclusive use of a bus or van for a negotiated price. It does not include demand response service to individuals. The following features may be characteristic of charter service:

Transportation provided by a recipient at the request of a third party for the exclusive use of a bus or van for a negotiated price. The following features may be characteristic of charter service:

- A third party pays the transit provider a negotiated price for the group;
- Any fares charged to individual members of the group are collected by a third party;
- The service is not part of the transit provider's regularly scheduled service, or is offered for a limited period of time; or
- A third party determines the origin and destination of the trip as well as scheduling.

- Transportation provided by a recipient to the public for events or functions that occur on an irregular basis or for a limited duration and:
  - A premium fare is charged that is greater than the usual or customary fixed route fare; or
  - The service is paid for in whole or in part by a third party.

Other key elements in this definition are defined by FTA as follows:

Demand Response-means any non-fixed route system of transporting individuals that requires advanced scheduling by the customer including services provided by public entities, nonprofits, and private providers.

Exclusive-means service that a reasonable person would conclude is intended to exclude members of the public.

**What does this definition mean?**

The definition specifies several characteristics of charter service. These components are:

1. The service is provided using vehicles and facilities financed by FTA.
2. The service is provided to a group of persons (two or more persons).
3. The group travels pursuant to a common purpose.
4. There is a contract, either written or oral, between the group and the provider.
5. The agreement stipulates an agreed charge for the services rendered, consistent with the provider's customary and usual charges.

6. The group has acquired the exclusive use of the vehicle.
7. The group has specified the origin, destination, and any intermediate stops in the travel itinerary.

If these seven conditions exist, it is likely that the service being provided is charter service subject to the provisions of 49 CFR part 604.

FTA excludes from charter regulations coverage of recipients under the Section 5310, Section 5311, Section 5316 (Job Access Reverse Commute), and Section 5317 (New Freedom) Programs, if the service to be provided is considered for "program purposes." FTA defines program purposes as "...*transportation that services the needs of either human service agencies or targeted populations (elderly, individuals with disabilities and /or low income individuals).*"

*If the service does not meet the above definition, then the program exemption **does not apply.***

Significant changes to the Charter regulations include new exemptions, new exceptions, new reporting and recordkeeping requirements, new web-based registration for private charter providers, new complaint procedures, and the elimination of the requirement to fully allocate costs. Attachment VIII-1, FTA's Charter Regulation: A Compliance Guide for Rural Public Transit Systems, is an excellent resource. However, if a system is unsure if the requested service is charter, the system must contact INDOT for further guidance. Remember, **INDOT does not allow charter service.**

## SCHOOL TRANSPORTATION

[Section 5323\(f\) of the Federal Transit Act of 1964](#), as amended, prohibits the use of FTA funds for exclusive school bus transportation for school students and school personnel. The implementing regulation ([49 CFR Part 605 –Volume II, Appendix F](#)) does permit regular service to be modified to accommodate school students who ride along with the general public. For the purpose of FTA's school bus regulation, Head Start transportation (Head Start is a pre-school program financed by DHHS) is considered social service agency transportation, not school bus transportation. FTA recipients may operate vehicles that meet the safety requirements for school transportation, but may not provide exclusive school service.

## BUY AMERICA

Section 5311 funds, with certain exceptions, may not be obligated for mass transportation projects unless steel and manufactured products used in such projects are produced in the United States. Section 5311 recipients must conform to the FTA regulations ([49 CFR Part 661 – Volume II, Appendix K](#)). Buy America requirements apply to all purchases, including materials or supplies funded as operating costs, if the purchase exceeds the threshold for small purchases.

There are four exceptions to the basic requirements that may be the basis for a waiver. The requirements will not apply:

- (1) If its application is not in the public interest.
- (2) If materials and products being procured are not produced in the United States in sufficient and

reasonably available quantities and of a satisfactory quality.

- (3) In a case involving the procurement of buses and other rolling stock (including train control, communication, and traction power equipment) if the cost of components and subcomponents which are produced in the United States is more than 60 percent of the cost of all components and subcomponents of the vehicles or equipment, and if final assembly takes place in the United States.
- (4) If the inclusion of domestic material will increase the overall project contract by more than 25 percent.

Requests for Buy America waivers under the non-availability, price differential, and public interest exceptions must be submitted to FTA. A waiver is not required for rolling stock meeting the domestic content and final assembly requirements. FTA has issued a general waiver for selected items, including all purchases under the Federal small purchase threshold, currently \$100,000.

## PRE-AWARD AND POST-DELIVERY REVIEW

Procurements for vehicles, other than sedans or unmodified vans, must be audited in accordance with the FTA regulation, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases" (49 CFR Part 663 – Volume II, Appendix Q). The regulation requires any recipient that purchases rolling stock for use in revenue service with funds obligated after October 24, 1991, conduct a pre-award and post-delivery review to assure compliance with its bid specifications, Buy America requirements, and Federal Motor Vehicle Safety

requirements, and to complete specific certifications. Purchase of more than ten vehicles, other than unmodified vans or sedans, requires in-plant inspection. In the case of consolidated state procurements on behalf of multiple recipients, the in-plant inspection requirement is triggered only if any single recipient will receive more than ten of the vehicles.

### **NEW MODEL BUS TESTING**

Any new bus models must be tested at the FTA sponsored test facility in Altoona, PA, before FTA funds can be expended to purchase them ([49 CFR Part 665 – Volume II, Section L](#)). This requirement applies to all buses and modified vans, but not to unmodified vans, including vans with raised roofs or lifts installed in strict conformance with the original equipment manufacturer modification guidelines.

A new model is defined as one that has not been used in mass transportation service in the United States before October 1, 1988, or that has been used in such service but which, after September 30, 1988, is being produced with a major change in configuration or components. A major change in "configuration" is defined as a change which may have a significant impact on vehicle handling and stability or structural integrity. A major change in "components" is defined as a change in one or more of the vehicle's major components such as the engine, transmission, suspension, axle, or steering.

INDOT must ensure that the manufacturer has complied with the testing requirement by requesting a copy of the bus testing report, which must be provided to INDOT before any FTA funds can be expended for those vehicles.

Reports on vehicles that have been tested can be obtained from the Altoona Bus Testing Center, 6th Avenue and 45th Street, Altoona, Pennsylvania, 16602. The telephone number is (814) 949-7944.

### **DEBARMENT AND SUSPENSION**

The purpose of the so-called "integrity" certification required of grantees and their subcontractors receiving over \$100,000, is to ensure that Section 5311 funds are not given to anyone who has been debarred, suspended, ineligible, or voluntarily excluded from participation in federally assisted transactions. The U.S. General Services Administration regularly publishes a document entitled "Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs" (<http://www.gsa.gov/>). The burden of disclosure is on those debarred or suspended. If at any time the grantee or other covered entity learns that a certification it made or received was erroneous when submitted, or if circumstances have changed, disclosure to INDOT is required.

### **SAFETY**

FTA has the authority to withhold further financial assistance from any grantee that fails to correct any condition that FTA believes "creates a serious hazard of death or injury." As the designated entity responsible for the administration of FTA funds in nonurbanized areas, INDOT, through its regular program of monitoring, site visits, and compliance reviews, will identify any potential safety-related issues at the grantee level that should be brought to FTA's attention for further investigation.

## DRUG AND ALCOHOL POLICY

### Background

The FTA recognizes that prohibited drug use and alcohol misuse affect everyone in the United States in one way or another. The final rule on the prevention of alcohol misuse and prohibited drug use in transit operations (49 CFR Part 655) went into effect on August 1, 2001. In addition, the Department of Transportation has issued [49 CFR part 40 \(as amended\), "Procedures for Transportation Workplace Drug and Alcohol Testing Programs" \(Volume II, Appendix Q\)](#) which prescribes testing methods to be followed. Grantees should note that there have been a number of updates to these two regulations published in the *Federal Register*. A listing of the regulatory updates are found in [Attachment IX-3](#).

An additional document, that summarizes all of the federal guidelines, is the FTA publication "*Implementation Guidelines for Drug and Alcohol Regulations in Mass Transit*" (April 1994). Copies of this document are available from INDOT.

INDOT requires all 5311 grantees to submit to drug and alcohol compliance reviews and other inspections every four (4) years and as necessary to ensure compliance with the FTA mandated drug and alcohol testing program. These reviews include vendor compliance, program manager, record retention, and policy review.

### Required Participation

Any recipient of Federal financial assistance under the Section 5311 program, or any recipient of Federal financial assistance under Section 103(e)(4) of title 23 of the United States Code, must comply with these regulations. Generally, these are transit

agencies that receive FTA funding and State agencies that assist in distributing FTA funding to transit agencies.

FTA regulations require that the following program elements be implemented:

- A policy statement on drug use and alcohol misuse in the workplace;
- An employee (for drug program only) and supervisor education and training program;
- A prohibited drug and alcohol testing program for employees and applicants for employment in safety-sensitive positions;
- An evaluation of the employee who has violated the drug and alcohol regulations; and
- An administrative procedure for recordkeeping, reporting, releasing information, and certifying compliance.

## COMMERCIAL DRIVER'S LICENSE

In 1986, Congress passed the Commercial Motor Vehicle Safety Act, prescribing that a national system of licensing should be adopted to ensure the fitness of individuals driving commercial motor vehicles. The legislation required the states to adopt and carry out a program for testing and ensuring the fitness of individuals to operate commercial motor vehicles consistent with the minimum standards prescribed by the U.S. Secretary of Transportation ([49 CFR Part 383 – Volume II, Appendix R](#)).

All drivers of vehicles designed to transport 16 or more people (including the driver) must have a Commercial Driver's License (CDL) pursuant to this Act. Mechanics that drive the vehicles must also have a CDL.

Systems are required to provide written documentation that mechanics who drive the

vehicles are CDL holders. This includes outside vendors that provide maintenance for these vehicles.

### **RESTRICTIONS ON LOBBYING**

Federal financial assistance, including Section 5311, may not be used to influence any member of Congress or an officer or employee of any agency in connection with the making of any Federal contract, grant, or cooperative agreement.

Grantees awarded FTA assistance exceeding \$100,000 must sign a certification so stating and also must disclose the expenditure of non-Federal funds for such purposes ([49 CFR Part 20 – Volume II, Appendix S](#)). Other Federal laws also govern lobbying activities. For example, Federal funds may not be used for lobbying Congressional representatives or senators indirectly, such as by contributing to a lobbying organization or funding a grass-roots campaign, to influence legislation (31 U.S.C. § 1352). General advocacy for transit and providing information to legislators about the services a recipient provides in the community are not prohibited, nor is using non-Federal funds for lobbying, so long as the required disclosures are made.

### **PROTECTION OF THE ENVIRONMENT**

All projects undertaken with Federal funds must assess the project's potential impact on the environment. Most projects and activities funded through the Section 5311 program do not normally involve significant environmental impacts. Such projects are termed "categorical exclusions" in FTA's procedures because they are types of projects that have been categorically excluded from the requirement to prepare an environmental document.

In the annual certifications and assurances, the state assures FTA that all the projects in the application are categorical exclusions under 23 CFR §771.117(c) ([Volume II, Appendix T](#)) unless otherwise noted. FTA's regulation classifies categorically excluded actions and projects into two groups.

The first group, described in [23 CFR §771.117\(c\)](#), contains activities and projects which have very limited or no environmental effects at all such as: planning and technical studies, preliminary design work, program administration, operating assistance, and transit vehicle purchases. Because environmental impacts of these activities are either nonexistent or minimal, no environmental documentation is required.

The second group of projects, described in [23 CFR. §771.117\(d\)](#), which normally qualify for a categorical exclusion are projects involving more construction and greater potential for off-site impacts. Examples are: new construction or expansion of transit terminals, storage and maintenance garages, office facilities, and parking facilities. Experience has shown that these projects can be built and operated without causing significant impacts if they are carefully sited in areas with compatible land use where the primary access routes are adequate to handle the additional transit vehicle traffic. These construction projects may be designated as categorical exclusions after FTA approval, but no presumption exists concerning the significance of environmental effects. It is the applicant's responsibility to provide documentation that clearly demonstrates that the stated conditions or criteria are met and that no significant adverse effects will result. Such documentation is usually narrowly focused on one or a limited number of environmental concerns or questionable areas. Depending

on the circumstances, some technical analysis may be required, such as a noise impact assessment or a street capacity analysis; but in most cases, the documentation will focus on consistency with local land-use plans, zoning and any state or local plans or programs governing the protection and management of environmental resources, such as air quality, water quality, and noise abatement. The documentation will provide a written record of coordination with those state and local agencies having jurisdiction or a special interest in some aspect of the project. There is no formal public review for these types of environmental studies. FTA reviews this information and determines if a categorical exclusion is appropriate. In order to include or advance such a project to Category A, the state must have on file a letter from FTA approving the categorical exclusion.

For any project that is not found to be a categorical exclusion, the state may be required to prepare an Environmental Assessment (EA) for public comment and FTA review to determine if a Finding of No Significant Impact (FONSI) is appropriate. A project which requires an EA may not be included in Category A before FTA has issued a FONSI for the project. In the unlikely event that significant environmental impacts are identified for a Section 5311 project, an Environmental Impact Statement (EIS) will be required.

There are a number of environmentally related statutes, orders, and compliance procedures that may apply to a given project even if it is properly classified as a categorical exclusion. The environmental requirements which may come into play for Section 5311 projects are: Clean Air Act conformity provisions; protection of public parkland, wetland, and waterfowl refuges, and historic sites (49 U.S.C. §303); Section

106 of the National Historic Preservation Act (protection of historic and archaeological resources); and Section 404 of the Clean Water Act (Corp of Engineers' permit requirements for dredge and fill activities in "waters of the United States"). FTA policy is to require compliance with these environmentally related requirements within the overall environmental process. The EA or environmental documentation to support a categorical exclusion must address these related requirements. Compliance with these requirements must be completed before a construction project can be included in Category A.

FTA's procedures categorically exclude most Section 5311 projects. INDOT conducts its initial assessment of potential environmental impacts of each project when the agency conducts its application review. The grant application package requires prospective grantees to sufficiently document the project in order for INDOT to make the necessary determination to recommend to FTA that the project should be classified as a Categorical Exclusion. Similarly, INDOT will also identify those projects where additional documentation and study may be necessary before an environmental determination can be rendered. INDOT will coordinate with the FTA Regional Office on all projects falling into this latter category.

Any project involving new construction of a facility or substantial rehabilitation of an existing facility will be discussed with FTA to determine the need for information supporting a categorical exclusion and the applicability of any additional environmental requirements. Early coordination is also necessary to identify those projects for which the state must prepare an EA. If an EA is required, further steps to develop the project will not be

authorized (e.g., property acquisition, final design, and construction) until FTA makes a final environmental finding for the project.

### **CLEAN AIR ACT**

The Clean Air Act, as amended, establishes many substantive requirements in order to bring air quality regions that violate the national ambient air quality standards into attainment by prescribed dates. Most "nonattainment" areas are heavily urbanized, but in the case of areas that are nonattainment for ozone or small particulate matter (PM-10), substantial rural areas may be included within the nonattainment area boundaries.

The principal requirement that the state and Section 5311 subrecipients must be aware of is the transportation/air quality conformity review process. In general, transportation plans, programs, and projects must be found to "conform" with approved state (air quality) implementation plans before they can be funded by FHWA or FTA. Most of the projects typically funded under Section 5311 have been exempted by regulation from the conformity review process, e.g., operating assistance, purchase and rehabilitation of transit vehicles, operating equipment, construction of most storage and maintenance facilities, *etc.* A complete list of exempted highway and transit projects is found in 40 C.F.R. §51.361. Other types of projects may require detailed air quality analysis (either burden analysis or dispersion modeling) in order to determine whether the project would create a violation of a standard or make an existing violation worse. While this is not an issue for most Section 5311 projects, it could be for certain large facilities, e.g., transit terminals and park-and-ride facilities.

The state should consult with FTA as early as possible in the development of the program of projects to establish which projects, if any, will require further analysis to support FTA's conformity determination. Consultation with the Environmental Protection Agency and state and local air quality agencies is also required for all projects subject to the conformity review process; thus, it is in the best interests of the state and subrecipient to identify these projects to the FTA regional office as soon as possible.

Other Clean Air Act requirements may apply to the state and Section 5311 subrecipients, e.g., phase-in of more stringent bus emission standards. The FTA regional office can supply up-to-date information on various provisions of the Clean Air Act related to mobile sources.

### **BLOODBORNE PATHOGENS POLICY**

Any employer that has employees with occupational exposure to blood or other potentially infectious materials must develop a written Exposure Control Plan designed to eliminate or minimize employee exposure. "Occupational Exposure" means "reasonably anticipated skin, eye, mucous membrane, or parenteral contact with blood or other potentially infectious materials that may result from the performance of an employee's duties."

Most transit systems have determined that their employees do face periodic exposure to potentially infectious materials. As a result, the provisions of OSHA Regulation 1910.1030 ([Volume II, Appendix U](#)) should be addressed by all grantees.

Under this rule **annual** training must be provided to all drivers and mechanics. New hires should receive training as soon as

possible following the hire date. The training documentation must include date of training, individuals trained, name of person (or video) conducting the training, and any materials used in the training. All transit systems must be equipped with the proper safety and disposal equipment. A thorough explanation of a Transit Manager's responsibilities to implement the proper training and procedures is contained in the document entitled, "Managing Bloodborne Pathogens: Guidelines for Transit Managers", Erskine Walther, Walther Consultancy, Greensboro, NC 27401,

(September 1993). Copies of this document are available from INDOT. In addition, INDOT RTAP has developed an Exposure Control Plan template for Section 5311 systems that is available through their office. The local Health Department may be able to provide you with further information. INDOT strongly recommends that drivers be offered the Hepatitis B series of vaccination. If a driver selects not to accept the vaccination, a waiver form must be signed. The waiver form is included in the INDOT Exposure Control Plan.

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**Attachment IX-1:**

**Special Section 5333(b) Warranty for Section 5311 Projects**

**SPECIAL WARRANTY ARRANGEMENT**  
For Application to Other Than Urbanized and Over-the-Road Bus Accessibility  
Projects  
PURSUANT TO SECTION 5333(b) OF  
TITLE 49 OF THE U.S. CODE, CHAPTER 53  
*October 1, 2008*

The following language shall be made part of the contract of assistance by reference in the Federal Transit Administration's Master Agreement as signed by the grantee:

The terms and conditions set forth below shall apply for the protection of the transportation-related employees in the transportation service area of the Project. As a precondition of the release of assistance by the Grantee/State Agency to any Recipient under the grant, the Grantee shall bind the Recipient to these obligations by incorporating this arrangement into the contract of assistance between the Grantee and the Recipient(s), by reference. If a Grantee fails to comply with the terms of the Warranty and fails to bind a Recipient as a precondition to the release of funds, the Grantee will be a guarantor of the required protections and the Grantee will be required to act as if it were the Recipient of funds unless and until the Grantee is able to secure the retroactive agreement of the Recipient to be bound by the terms of the Warranty.

These protective arrangements are intended for the benefit of transit employees in the service area of the project, who are considered as third-party beneficiaries to the employee protective arrangements referenced in the grant contract between the U.S. Department of Transportation and the Grantee, and the parties to the contract so signify by executing that contract. Employees, or their representative, may assert claims with respect to the protective arrangements under this provision. This clause creates no independent cause of action against the United States Government.

The term "service area," as used herein, includes the geographic area over which the Project is operated and the area whose population is served by the Project, including adjacent areas affected by the Project. The term "Union," as used herein, shall refer to any labor organization representing employees providing public transportation services in the service area of a Project assisted under the grant. The term "employee," as used herein, shall include individuals who may or may not be represented by a Union. The term "Recipient," as used herein, shall refer to any employer(s) receiving transportation assistance under the grant. The term "Grantee," as used herein, shall refer to the applicant for assistance; a Grantee which receives assistance is also a Recipient.

Where the Department of Labor (the Department) deems it necessary to modify the requirements of this Special Warranty Arrangement so that a particular Grantee or Recipient can continue to satisfy the requirements of the statute, the Department will issue a supplementary certification letter setting forth the alternative provisions to be included in the contract of assistance between the Grantee and FTA, by reference. These terms will be made binding upon the particular Grantee or Recipient, along with these terms and conditions, for each subsequent grant of assistance until withdrawn in writing by the Department.

(1) The Project shall be carried out in such a manner and upon such terms and conditions as will not adversely affect employees of the Recipient and of any other surface public transportation provider in the transportation service area of the Project. It shall be an obligation of the Recipient to assure that any and all transportation services assisted by the Project are contracted for and operated in such a manner that they do not impair the rights and interests of affected employees. The term "Project," as used herein, shall not be limited to the particular facility, service, or operation assisted by Federal funds, but shall include any changes, whether organizational, operational, technological, or otherwise, which are a result of the assistance provided. The phrase "as a result of the Project," shall, when used in this arrangement, include events related to the Project occurring in anticipation of, during, and subsequent to the Project and any program of efficiencies or economies related thereto; provided, however, that volume rises and falls of business, or changes in volume and character of employment brought about solely by causes other than the Project (including any economies or efficiencies unrelated to the Project) are not within the purview of this arrangement.

An employee covered by this arrangement, who is not dismissed, displaced or otherwise worsened in his/her position with regard to employment as a result of the Project, but who is dismissed, displaced or otherwise worsened solely because of the total or partial termination of the Project or exhaustion of Project funding shall not be deemed eligible for a dismissal or displacement allowance within the meaning of paragraphs (6) and (7) of this arrangement.

(2) Where employees of a Recipient are represented for collective bargaining purposes, all Project services provided by that Recipient shall be provided under and in accordance with any collective bargaining agreement applicable to such employees which is then in effect. This Arrangement does not create any collective bargaining relationship where one does not already exist or between any Recipient and the employees of another employer. Where the Recipient has no collective bargaining relationship with the Unions representing employees in the service area, the Recipient will not take any action which impairs or interferes with the rights, privileges, and benefits and/or the preservation or continuation of the collective bargaining rights of such employees.

(3) All rights, privileges, and benefits (including pension rights and benefits) of employees covered by this arrangement (including employees having already retired) under existing collective bargaining agreements or otherwise, or under any revision or renewal thereof, shall be preserved and continued; provided, however, that such rights, privileges and benefits which are not foreclosed from further bargaining under applicable law or contract may be modified by collective bargaining and agreement by the Recipient and the Union involved to substitute other rights, privileges and benefits. Unless otherwise provided, nothing in this arrangement shall be deemed to restrict any rights the Recipient may otherwise have to direct the working forces and manage its business as it deemed best, in accordance with the applicable collective bargaining agreement.

(4) The collective bargaining rights of employees covered by this arrangement, including the right to arbitrate labor disputes and to maintain union security and checkoff arrangements, as provided by applicable laws, policies and/or existing collective bargaining agreements, shall be preserved and continued. Provided, however, that this provision shall not be interpreted so as to require the Recipient to retain any such rights which exist by virtue of a collective bargaining agreement after such agreement is no longer in effect.

The Recipient agrees that it will bargain collectively with the Union or otherwise arrange for the continuation of collective bargaining, and that it will enter into agreements with the Union or arrange for such agreements to be entered into, relative to all subjects which are or may be proper subjects of collective bargaining. If, at any time, applicable law or contracts permit or grant to employees covered by this arrangement the right to utilize any economic measures, nothing in this arrangement shall be deemed to foreclose the exercise of such right.

(5)(a) The Recipient shall provide to all affected employees sixty (60) days' notice of intended actions which may result in displacements or dismissals or rearrangements of the working forces as a result of the Project. In the case of employees represented by a Union, such notice shall be provided by certified mail through their representatives. The notice shall contain a full and adequate statement of the proposed changes, and an estimate of the number of employees affected by the intended changes, and the number and classifications of any jobs within the jurisdiction and control of the Recipient, including those in the employment of any entity bound by this arrangement pursuant to paragraph (21), available to be filled by such affected employees.

(5)(b) The procedures of this subparagraph shall apply to cases where notices involve employees represented by a Union for collective bargaining purposes. At the request of either the Recipient or the representatives of such employees, negotiations for the purposes of reaching agreement with respect to the application of the terms and conditions of this arrangement shall commence immediately. These negotiations shall include determining the selection of forces from among the mass transportation employees who may be affected as a result of the Project, to establish which such employees shall be offered employment for which they are qualified or can be trained. If no agreement is reached within twenty (20) days from the commencement of negotiations, any party to the dispute may submit the matter to dispute settlement procedures in accordance with paragraph (15) of this arrangement. Unless the parties otherwise mutually agree in writing, no change in operations, services, facilities or equipment within the purview of this paragraph (5) shall occur until after either: 1) an agreement with respect to the application of the terms and conditions of this arrangement to the intended change(s) is reached; 2) the decision of the arbitrator has been rendered pursuant to this subparagraph (b); or 3) an arbitrator selected pursuant to Paragraph (15) of this arrangement determines that the intended change(s) may be instituted prior to the finalization of implementing arrangements.

(5)(c) In the event of a dispute as to whether an intended change within the purview of this paragraph (5) may be instituted at the end of the 60-day notice period and before an implementing agreement is reached or a final arbitration decision is rendered pursuant to subparagraph (b), any involved party may immediately submit that issue to arbitration under paragraph (15) of this arrangement. In any such arbitration, the arbitrator shall rely upon the standards and criteria utilized by the Surface Transportation Board (and its predecessor agency, the Interstate Commerce Commission) to address the "preconsummation" issue in cases involving employee protections pursuant to 49 U.S.C. Section 11326 (or its predecessor, Section 5(2)(f) of the Interstate Commerce Act, as amended). If the Recipient demonstrates, as a threshold matter in any such arbitration, that the intended action is a trackage rights, lease proceeding or similar transaction, and not a merger, acquisition, consolidation, or other similar transaction, the burden shall then shift to the involved labor organization(s) to prove that under the standards and criteria referenced above, the intended action should not be permitted to be instituted prior to the effective date of a negotiated or arbitrated implementing agreement.

If the Recipient fails to demonstrate that the intended action is a trackage rights, lease proceeding, or similar transaction, it shall be the burden of the Recipient to prove that under the standards and criteria referenced above, the intended action should be permitted to be instituted prior to the effective date of a negotiated or arbitrated implementing agreement. For purposes of any such arbitration, the time period within which the parties are to respond to the list of potential arbitrators submitted by the American Arbitration Association Service shall be five (5) days, the notice of hearing may be given orally or by facsimile, the hearing will be held promptly, the award of the arbitrator shall be rendered promptly and, unless otherwise agreed to by the parties, no later than fourteen (14) days from the date of closing the hearings, with five (5) additional days for mailing if posthearing briefs are requested by either party. The intended change shall not be instituted during the pendency of any arbitration proceedings under this subparagraph (c).

(5)(d) If an intended change within the purview of this paragraph (5) is instituted before an implementing agreement is reached or a final arbitration decision is rendered pursuant to subparagraph (b), all employees affected shall be kept financially whole, as if the noticed and implemented action has not taken place, from the time they are affected until the effective date of an implementing agreement or final arbitration decision. This protection shall be in addition to the protective period defined in paragraph (14) of this arrangement, which period shall begin on the effective date of the implementing agreement or final arbitration decision rendered pursuant to subparagraph (b).

An employee selecting, bidding on, or hired to fill any position established as a result of a noticed and implemented action prior to the consummation of an implementing agreement or final arbitration decision shall accumulate no benefits under this arrangement as a result thereof during that period prior to the consummation of an implementing agreement or final arbitration decision pursuant to subparagraph (b).

(6)(a) Whenever an employee, retained in service, recalled to service, or employed by the Recipient pursuant to paragraphs (5), (7)(e), or (18) hereof is placed in a worse position with respect to compensation as a result of the Project, the employee shall be considered a "displaced employee", and shall be paid a monthly "displacement allowance" to be determined in accordance with this paragraph. Said displacement allowance shall be paid each displaced employee during the protective period so long as the employee is unable, in the exercise of his/her seniority rights, to obtain a position producing compensation equal to or exceeding the compensation the employee received in the position from which the employee was displaced, adjusted to reflect subsequent general wage adjustments, including cost of living adjustments where provided for.

(6)(b) The displacement allowance shall be a monthly allowance determined by computing the total compensation received by the employee, including vacation allowances and monthly compensation guarantees, and his/her total time paid for during the last twelve (12) months in which the employee performed compensated service more than fifty per centum of each such months, based upon the employee's normal work schedule, immediately preceding the date of his/her displacement as a result of the Project, and by dividing separately the total compensation and the total time paid for by twelve, thereby producing the average monthly compensation and the average monthly time paid for. Such allowance shall be adjusted to reflect subsequent general wage adjustments, including cost of living adjustments where provided for. If the

displaced employee's compensation in his/her current position is less in any month during his/her protective period than the aforesaid average compensation (adjusted to reflect subsequent general wage adjustments, including cost of living adjustments where provided for), the employee shall be paid the difference, less compensation for any time lost on account of voluntary absences to the extent that the employee is not available for service equivalent to his/her average monthly time, but the employee shall be compensated in addition thereto at the rate of the current position for any time worked in excess of the average monthly time paid for. If a displaced employee fails to exercise his/her seniority rights to secure another position to which the employee is entitled under the then existing collective bargaining agreement, and which carries a wage rate and compensation exceeding that of the position which the employee elects to retain, the employee shall thereafter be treated, for the purposes of this paragraph, as occupying the position the employee elects to decline.

(6)(c) The displacement allowance shall cease prior to the expiration of the protective period in the event of the displaced employee's resignation, death, retirement, or dismissal for cause in accordance with any labor agreement applicable to his/her employment.

(7)(a) Whenever any employee is laid off or otherwise deprived of employment as a result of the Project, in accordance with any collective bargaining agreement applicable to his/her employment, the employee shall be considered a "dismissed employee" and shall be paid a monthly dismissal allowance to be determined in accordance with this paragraph. Said dismissal allowance shall first be paid each dismissed employee on the thirtieth (30th) day following the day on which the employee is "dismissed" and shall continue during the protective period, as follow:

<b>Employee's length of service prior to adverse effect</b>	<b>Period of protection</b>
1 day to 6 years	Equivalent period
6 years or more	6 years

The monthly dismissal allowance shall be equivalent to one-twelfth (1/12th) of the total compensation received by the employee in the last twelve (12) months of his/her employment in which the employee performed compensation service more than fifty per centum of each such month based on the employee's normal work schedule to the date on which the employee was first deprived of employment as a result of the Project. Such allowance shall be adjusted to reflect subsequent general wage adjustments, including cost of living adjustments where provided for.

(7)(b) An employee shall be regarded as deprived of employment and entitled to a dismissal allowance when the position the employee holds is abolished as a result of the Project, or when the position the employee holds is not abolished but the employee loses that position as a result of the exercise of seniority rights by an employee whose position is abolished as a result of the Project or as a result of the exercise of seniority rights by other employees brought about as a result of the Project, and the employee is unable to obtain another position, either by the exercise of the employee's seniority rights, or through the Recipient, in accordance with subparagraph (e). In the absence of proper notice followed by an agreement or decision pursuant to paragraph (5) hereof, no employee who has been deprived of employment as a result of the Project shall be required to exercise his/her seniority rights to secure another position in order to qualify for a dismissal allowance hereunder.

(7)(c) Each employee receiving a dismissal allowance shall keep the Recipient informed as to his/her current address and the current name and address of any other person by whom the employee may be regularly employed, or if the employee is self-employed.

(7)(d) The dismissal allowance shall be paid to the regularly assigned incumbent of the position abolished. If the position of an employee is abolished when the employee is absent from service, the employee will be entitled to the dismissal allowance when the employee is available for service. The employee temporarily filling said position at the time it was abolished will be given a dismissal allowance on the basis of that position, until the regular employee is available for service, and thereafter shall revert to the employee's previous status and will be given the protections of the agreement in said position, if any are due him/her.

(7)(e) An employee receiving a dismissal allowance shall be subject to call to return to service by the employee's former employer; notification shall be in accordance with the terms of the then-existing collective bargaining agreement if the employee is represented by a union. Prior to such call to return to work by his/her employer, the employee may be required by the Recipient to accept reasonably comparable employment for which the employee is physically and mentally qualified, or for which the employee can become qualified after a reasonable training or retraining period, provided it does not require a change in residence or infringe upon the employment rights of other employees under then-existing collective bargaining agreements.

(7)(f) When an employee who is receiving a dismissal allowance again commences employment in accordance with subparagraph (e) above, said allowance shall cease while the employee is so reemployed, and the period of time during which the employee is so reemployed shall be deducted from the total period for which the employee is entitled to receive a dismissal allowance. During the time of such reemployment, the employee shall be entitled to the protections of this arrangement to the extent they are applicable.

(7)(g) The dismissal allowance of any employee who is otherwise employed shall be reduced to the extent that the employee's combined monthly earnings from such other employment or self-employment, any benefits received from any unemployment insurance law, and his/her dismissal allowance exceed the amount upon which the employee's dismissal allowance is based. Such employee, or his/her union representative, and the Recipient shall agree upon a procedure by which the Recipient shall be kept currently informed of the earnings of such employee in employment other than with the employee's former employer, including self-employment, and the benefits received.

(7)(h) The dismissal allowance shall cease prior to the expiration of the protective period in the event of the failure of the employee without good cause to return to service in accordance with the applicable labor agreement, or to accept employment as provided under subparagraph (e) above, or in the event of the employee's resignation, death, retirement, or dismissal for cause in accordance with any labor agreement applicable to his/her employment.

(7)(i) A dismissed employee receiving a dismissal allowance shall actively seek and not refuse other reasonably comparable employment offered him/her for which the employee is physically and mentally qualified and does not require a change in the employee's place of residence. Failure of the dismissed employee to comply with this obligation shall be grounds for

discontinuance of the employee's allowance; provided that said dismissal allowance shall not be discontinued until final determination is made either by agreement between the Recipient and the employee or his/her representative, or by final arbitration decision rendered in accordance with paragraph (15) of this arrangement that such employee did not comply with this obligation.

(8) In determining length of service of a displaced or dismissed employee for purposes of this arrangement, such employee shall be given full service credits in accordance with the records and labor agreements applicable to him/her and the employee shall be given additional service credits for each month in which the employee receives a dismissal or displacement allowance as if the employee were continuing to perform services in his/her former position.

(9) No employee shall be entitled to either a displacement or dismissal allowance under paragraphs (6) or (7) hereof because of the abolishment of a position to which, at some future time, the employee could have bid, been transferred, or promoted.

(10) No employee receiving a dismissal or displacement allowance shall be deprived, during the employee's protected period, of any rights, privileges, or benefits attaching to his/her employment, including, without limitation, group life insurance, hospitalization and medical care, free transportation for the employee and the employee's family, sick leave, continued status and participation under any disability or retirement program, and such other employee benefits as Railroad Retirement, Social Security, Workmen's Compensation, and unemployment compensation, as well as any other benefits to which the employee may be entitled under the same conditions and so long as such benefits continue to be accorded to other employees of the bargaining unit, in active service or furloughed as the case may be.

(11)(a) Any employee covered by this arrangement who is retained in the service of his/her employer, or who is later restored to service after being entitled to receive a dismissal allowance, and who is required to change the point of his/her employment in order to retain or secure active employment with the Recipient in accordance with this arrangement, and who is required to move his/her place of residence, shall be reimbursed for all expenses of moving his/her household and other personal effects, for the traveling expenses for the employee and members of the employee's immediate family, including living expenses for the employee and the employee's immediate family, and for his/her own actual wage loss during the time necessary for such transfer and for a reasonable time thereafter, not to exceed five (5) working days. The exact extent of the responsibility of the Recipient under this paragraph, and the ways and means of transportation, shall be agreed upon in advance between the Recipient and the affected employee or the employee's representatives.

(11)(b) If any such employee is laid off within three (3) years after changing his/her point of employment in accordance with paragraph (a) hereof, and elects to move his/her place of residence back to the original point of employment, the Recipient shall assume the expenses, losses and costs of moving to the same extent provided in subparagraph (a) of this paragraph (11) and paragraph (12)(a) hereof.

(11)(c) No claim for reimbursement shall be paid under the provisions of this paragraph unless such claim is presented to the Recipient in writing within ninety (90) days after the date on which the expenses were incurred.

(11)(d) Except as otherwise provided in subparagraph (b), changes in place of residence, subsequent to the initial changes as a result of the Project, which are not a result of the Project but grow out of the normal exercise of seniority rights, shall not be considered within the purview of this paragraph.

(12)(a) The following conditions shall apply to the extent they are applicable in each instance to any employee who is retained in the service of the employer (or who is later restored to service after being entitled to receive a dismissal allowance), who is required to change the point of his/her employment as a result of the Project, and is thereby required to move his/her place of residence.

If the employee owns his/her own home in the locality from which the employee is required to move, the employee shall, at the employee's option, be reimbursed by the Recipient for any loss suffered in the sale of the employee's home for less than its fair market value, plus conventional fees and closing costs, such loss to be paid within thirty (30) days of settlement or closing on the sale of the home. In each case, the fair market value of the home in question shall be determined, as of a date sufficiently prior to the date of the Project, so as to be unaffected thereby. The Recipient shall, in each instance, be afforded an opportunity to purchase the home at such fair market value before it is sold by the employee to any other person and to reimburse the seller for his/her conventional fees and closing costs.

If the employee is under a contract to purchase his/her home, the Recipient shall protect the employee against loss under such contract, and in addition, shall relieve the employee from any further obligation thereunder.

If the employee holds an unexpired lease of a dwelling occupied as the employee's home, the Recipient shall protect the employee from all loss and cost in securing the cancellation of said lease.

(12)(b) No claim for loss shall be paid under the provisions of this paragraph unless such claim is presented to the Recipient in writing within one year after the effective date of the change in residence.

(12)(c) Should a controversy arise in respect to the value of the home, the loss sustained in its sale, the loss under a contract for purchase, loss and cost in securing termination of a lease, or any other question in connection with these matters, it shall be decided through a joint conference between the employee, or his/her union, and the Recipient. In the event they are unable to agree, the dispute or controversy may be referred by the Recipient or the union to a board of competent real estate appraisers selected in the following manner: one (1) to be selected by the representatives of the employee, and one (1) by the Recipient, and these two, if unable to agree within thirty (30) days upon the valuation, shall endeavor by agreement with ten (10) days thereafter to select a third appraiser or to agree to a method by which a third appraiser shall be selected, and failing such agreement, either party may request the State and local Board of Real Estate Commissioners to designate within ten (10) days a third appraiser, whose designation will be binding upon the parties and whose jurisdiction shall be limited to determination of the issues raised in this paragraph only. A decision of a majority of the appraisers shall be required and said decision shall be final, binding, and conclusive. The compensation and expenses of the neutral appraiser including expenses of the appraisal board,

shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the compensation of the appraiser selected by such party.

(12)(d) Except as otherwise provided in paragraph (11)(b) hereof, changes in place of residence, subsequent to the initial changes as a result of the Project, which are not a result of the Project but grow out of the normal exercise of seniority rights, shall not be considered within the purview of this paragraph.

(12)(e) "Change in residence" means transfer to a work location which is either (A) outside a radius of twenty (20) miles of the employee's former work location and farther from the employee's residence than was his/her former work location, or (B) is more than thirty (30) normal highway route miles from the employee's residence and also farther from his/her residence than was the employee's former work location.

(13)(a) A dismissed employee entitled to protection under this arrangement may, at the employee's option within twenty-one (21) days of his/her dismissal, resign and (in lieu of all other benefits and protections provided in this arrangement) accept a lump sum payment computed in accordance with section (9) of the Washington Job Protection Agreement of May 1936:

<b>Length of Service</b>	<b>Separation Allowance</b>
1 year and less that 2 years	3 months pay
2 years and less that 3 years	6 months pay
3 years and less that 5 years	9 months pay
5 years and less that 10 years	12 months pay
10 years and less that 15 years	12 months pay
15 years and over	12 months pay

In the case of an employee with less than one year's service, five days' pay, computed by multiplying by 5 the normal daily earnings (including regularly scheduled overtime, but excluding other overtime payments) received by the employee in the position last occupied, for each month in which the employee performed service, will be paid as the lump sum.

Length of service shall be computed as provided in Section 7(b) of the Washington Job Protection Agreement, as follows:

For the purposes of this arrangement, the length of service of the employee shall be determined from the date the employee last acquired an employment status with the employing carrier and the employee shall be given credit for one month's service for each month in which the employee performed any service (in any capacity whatsoever) and twelve (12) such months shall be credited as one year's service. The employment status of an employee shall not be interrupted by furlough in instances where the employee has a right to and does return to service when called. In determining length of service of an employee acting as an officer or other official representative of an employee organization, the employee will be given credit for performing service while so engaged on leave of absence from the service of a carrier.

(13)(b) One month's pay shall be computed by multiplying by 30 the normal daily earnings (including regularly scheduled overtime, but excluding other overtime payments) received by the

employee in the position last occupied prior to time of the employee's dismissal as a result of the Project.

(14) Whenever used herein, unless the context requires otherwise, the term "protective period" means that period of time during which a displaced or dismissed employee is to be provided protection hereunder and extends from the date on which an employee is displaced or dismissed to the expiration of six (6) years therefrom, provided, however, that the protective period for any particular employee during which the employee is entitled to receive the benefits of these provisions shall not continue for a longer period following the date the employee was displaced or dismissed than the employee's length of service, as shown by the records and labor agreements applicable to his/her employment prior to the date of the employee's displacement or dismissal.

(15)(a) In the event that employee(s) are represented by a Union, any dispute, claim, or grievance arising from or relating to the interpretation, application or enforcement of the provisions of this arrangement, not otherwise governed by paragraph 12(c), the Labor-Management Relations Act, as amended, the Railway Labor Act, as amended, or by impasse resolution provisions in a collective bargaining or protective arrangement involving the Recipient and the Union, which cannot be settled by the parties thereto within thirty (30) days after the dispute or controversy arises, may be referred by any such party to any final and binding dispute settlement procedure acceptable to the parties. In the event they cannot agree upon such procedure, the dispute, claim, or grievance may be submitted at the written request of the Recipient or the Union to final and binding arbitration. Should the parties be unable to agree upon the selection of a neutral arbitrator within ten (10) days, any party may request the American Arbitration Association to furnish, from among arbitrators who are then available to serve, five (5) arbitrators from which a neutral arbitrator shall be selected. The parties shall, within five (5) days after the receipt of such list, determine by lot the order of elimination and thereafter each shall, in that order, alternately eliminate one name until only one name remains. The remaining person on the list shall be the neutral arbitrator. Unless otherwise provided, in the case of arbitration proceedings, under paragraph (5) of this arrangement, the arbitration shall commence within fifteen (15) days after selection or appointment of the neutral arbitrator, and the decision shall be rendered within forty-five (45) days after the hearing of the dispute has been concluded and the record closed. The decision shall be final and binding. All the conditions of the arrangement shall continue to be effective during the arbitration proceedings.

(15)(b) The compensation and expenses of the neutral arbitrator, and any other jointly incurred expenses, shall be borne equally by the Union(s) and Recipient, and all other expenses shall be paid by the party incurring them.

(15)(c) In the event that employee(s) are not represented by a Union, any dispute, claim, or grievance arising from or relating to the interpretation, application or enforcement of the provisions of this arrangement which cannot be settled by the Recipient and the employee(s) within thirty (30) days after the dispute or controversy arises, may be referred by any such party to any final and binding dispute settlement procedure acceptable to the parties, or in the event the parties cannot agree upon such a procedure, the dispute or controversy may be referred to the Secretary of Labor for a final and binding determination.

(15)(d) In the event of any dispute as to whether or not a particular employee was affected by the Project, it shall be the obligation of the employee or the representative of the employee to

identify the Project and specify the pertinent facts of the Project relied upon. It shall then be the burden of the Recipient to prove that factors other than the Project affected the employee. The claiming employee shall prevail if it is established that the Project had an effect upon the employee even if other factors may also have affected the employee. (See Hodgson's Affidavit in Civil Action No. 825-71).

(16) The Recipient will be financially responsible for the application of these conditions and will make the necessary arrangements so that any employee covered by this arrangement may file a written claim of its violation, through the Union, or directly if the employee is outside the bargaining unit, with the Recipient within sixty (60) days of the date the employee is terminated or laid off as a result of the Project, or within eighteen (18) months of the date the employee's position with respect to his/her employment is otherwise worsened as a result of the Project. In the latter case, if the events giving rise to the claim have occurred over an extended period, the 18-month limitation shall be measured from the last such event. No benefits shall be payable for any period prior to six (6) months from the date of the filing of any claim. Unless such claims are filed with the Recipient within said time limitations, the Recipient shall thereafter be relieved of all liabilities and obligations related to the claim.

The Recipient will fully honor the claim, making appropriate payments, or will give notice to the claimant or his/her representative of the basis for denying or modifying such claim, giving reasons therefore. If the Recipient fails to honor such claim, the Union or non-bargaining unit employee may invoke the following procedures for further joint investigation of the claim by giving notice in writing. Within ten (10) days from the receipt of such notice, the parties shall exchange such factual material as may be requested of them relevant to the disposition of the claim and shall jointly take such steps as may be necessary or desirable to obtain from any third party such additional factual materials as may be relevant. In the event the Recipient rejects the claim, the claim may be processed to arbitration as hereinabove provided by paragraph (15).

(17) Nothing in this arrangement shall be construed as depriving any employee of any rights or benefits which such employee may have under existing employment or collective bargaining agreements or otherwise; provided that there shall be no duplication of benefits to any employee, and, provided further, that any benefit under this arrangement shall be construed to include the conditions, responsibilities, and obligations accompanying such benefit. This arrangement shall not be deemed a waiver of any rights of any Union or of any represented employee derived from any other agreement or provision of federal, state or local law.

(18) During the employee's protective period, a dismissed employee shall, if the employee so requests, in writing, be granted priority of employment or reemployment to fill any vacant position within the jurisdiction and control of the Recipient reasonably comparable to that which the employee held when dismissed, including those in the employment of any entity bound by this arrangement pursuant to paragraph (21) herein, for which the employee is, or by training or retraining can become, qualified; not, however, in contravention of collective bargaining agreements related thereto. In the event such employee requests such training or re-training to fill such vacant position, the Recipient shall provide for such training or re-training at no cost to the employee. The employee shall be paid the salary or hourly rate provided for in the applicable collective bargaining agreement or otherwise established in personnel policies or practices for such position, plus any displacement allowance to which the employee may be otherwise entitled. If such dismissed employee who has made such request fails, without good cause,

within ten (10) days to accept an offer of a position comparable to that which the employee held when dismissed for which the employee is qualified, or for which the employee has satisfactorily completed such training, the employee shall, effective at the expiration of such ten-day period, forfeit all rights and benefits under this arrangement.

As between employees who request employment pursuant to this paragraph, the following order where applicable shall prevail in hiring such employees:

(a) Employees in the craft or class of the vacancy shall be given priority over employees without seniority in such craft or class;

(b) As between employees having seniority in the craft or class of the vacancy, the senior employees, based upon their service in that craft or class, as shown on the appropriate seniority roster, shall prevail over junior employees;

(c) As between employees not having seniority in the craft or class of the vacancy, the senior employees, based upon their service in the crafts or classes in which they do have seniority as shown on the appropriate seniority rosters, shall prevail over junior employees.

(19) The Recipient will post, in a prominent and accessible place, a notice stating that the Recipient has received federal assistance under the Federal Transit statute and has agreed to comply with the provisions of 49 U.S.C., Section 5333(b). This notice shall also specify the terms and conditions set forth herein for the protection of employees. The Recipient shall maintain and keep on file all relevant books and records in sufficient detail as to provide the basic information necessary to the proper application, administration, and enforcement of this arrangement and to the proper determination of any claims arising thereunder.

(20) In the event the Project is approved for assistance under the statute, the foregoing terms and conditions shall be made part of the contract of assistance between the federal government and the applicant for federal funds and between the applicant and any recipient of federal funds; provided, however, that this arrangement shall not merge into the contract of assistance, but shall be independently binding and enforceable by and upon the parties thereto, and by any covered employee or his/her representative, in accordance with its terms, nor shall any other employee protective agreement merge into this arrangement, but each shall be independently binding and enforceable by and upon the parties thereto, in accordance with its terms.

(21) This arrangement shall be binding upon the successors and assigns of the parties hereto, and no provisions, terms, or obligations herein contained shall be affected, modified, altered, or changed in any respect whatsoever by reason of the arrangements made by or for the Recipient to manage and operate the system.

Any person, enterprise, body, or agency, whether publicly - or privately- owned, which shall undertake the management, provision and/or operation of the Project services or the Recipient's transit system, or any part or portion thereof, under contractual arrangements of any form with the Recipient, its successors or assigns, shall agree to be bound by the terms of this arrangement and accept the responsibility with the Recipient for full performance of these conditions. As a condition precedent to any such contractual arrangements, the Recipient shall require such person, enterprise, body or agency to so agree.

(22) In the event of the acquisition, assisted with Federal funds, of any transportation system or services, or any part or portion thereof, the employees of the acquired entity shall be assured employment, in comparable positions, within the jurisdiction and control of the acquiring entity, including positions in the employment of any entity bound by this arrangement pursuant to paragraph (21). All persons employed under the provisions of this paragraph shall be appointed to such comparable positions without examination, other than that required by applicable federal, state or federal law or collective bargaining agreement, and shall be credited with their years of service for purposes of seniority, vacations, and pensions in accordance with the records of their former employer and/or any applicable collective bargaining agreements.

(23) The employees covered by this arrangement shall continue to receive any applicable coverage under Social Security, Railroad Retirement, Workmen's Compensation, unemployment compensation, and the like. In no event shall these benefits be worsened as a result of the Project.

(24) In the event any provision of this arrangement is held to be invalid, or otherwise unenforceable under the federal, state, or local law, in the context of a particular Project, the remaining provisions of this arrangement shall not be affected and the invalid or unenforceable provision shall be renegotiated by the Recipient and the interested Union representatives, if any, of the employees involved for purpose of adequate replacement under Section 5333(b). If such negotiation shall not result in mutually satisfactory agreement any party may invoke the jurisdiction of the Secretary of Labor to determine substitute fair and equitable employee protective arrangements for application only to the particular Project, which shall be incorporated in this arrangement only as applied to that Project, and any other appropriate action, remedy, or relief.

(25) If any employer of the employees covered by this arrangement shall have rearranged or adjusted its forces in anticipation of the Project, with the effect of depriving an employee of benefits to which the employee should be entitled under this arrangement, the provisions of this arrangement shall apply to such employee as of the date when the employee was so affected.

**Attachment IX-2:**

**Special Section 5333(b) Warranty –**

**List of Public Transportation Providers and Labor Unions**

INSERT NEW LIST HERE. DO NOT DELETE THIS BLANK PAGE.

**Attachment IX-3:**

**Listing of Regulatory Updates to FTA's Drug and Alcohol Testing**

August 2008 – Regulations were updated with an amendment to 49 CFR Part 40. This is the only update since 2001.

To search for regulatory updates, use the following link to the Volpe Center:  
<http://www.dot.gov/ost/dapc/>