



U.S. Department
of Transportation

**Federal Transit
Administration**

REGION III
Delaware, District of
Columbia, Maryland,
Pennsylvania, Virginia,
West Virginia

1835 Market Street
Suite 1910
Philadelphia, PA 19103-2932
215-656-7100

September 5, 2023

Mr. Samuel Parham
Mayor, City Council
City of Petersburg
100 W. Washington Street
Petersburg VA, 23803

Re: Fiscal Year 2023 Triennial Review – Final Report

Dear Mr. Parham:

I am pleased to provide you with a copy of this Federal Transit Administration (FTA) report as required by 49 U.S.C. Chapter 53 and other Federal requirements. The enclosed final report documents the FTA's Fiscal Year (FY) 2023 Triennial Review of Petersburg Area Transit (PAT) in Petersburg, VA. Although not an audit, the Triennial Review is the FTA's assessment of PAT's compliance with Federal requirements, determined by examining a sample of award management and program implementation practices. As such, the Triennial Review is not intended as, nor does it constitute, a comprehensive and final review of compliance with award requirements.

Due to the Coronavirus 2019 (COVID-19) Public Health Emergency, a virtual site visit was conducted for this Triennial Review. In addition, the review was expanded to address PAT's compliance with the administrative relief and flexibilities FTA granted and the requirements of the COVID-19 Relief funds received through the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Coronavirus Response and Relief Supplemental Appropriations Act (CRRSAA) of 2021, and the American Rescue Plan (ARP) Act of 2021.

The Triennial Review focused on PAT's compliance in 23 areas. Deficiencies were found in five (5) areas: Financial Management and Capacity, Maintenance, Procurement, Title VI, and Public Transportation Agency Safety Plans. PAT had one (1) repeat deficiency from the Fiscal Year 2019 Triennial Review in the Financial Management and Capacity area.

Thank you for your cooperation and assistance during this Triennial Review. If you need any technical assistance or have any questions, please do not hesitate to contact Ms. Kelly Tyler, Transportation Program Specialist, at Kelly.Tyler@dot.gov.

Sincerely,

Anthony Taronne
Deputy Regional Administrator

FINAL REPORT

FISCAL YEAR 2023 TRIENNIAL REVIEW

of

**Petersburg Area Transit
PAT
Petersburg, VA
ID: 1457**

Performed for:

**U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL TRANSIT ADMINISTRATION
REGION 3**

Prepared By:

Calyptus Consulting Group, Inc

**Desk Review/Scoping Meeting Date: March 1-2, 2023
Virtual Site Visit Entrance Conference Date: July 5, 2023
Virtual Site Visit Exit Conference Date: July 10, 2023
Draft Report Date: August 8, 2023
Final Report Date: September 5, 2023**

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I. Executive Summary

This report documents the Federal Transit Administration's (FTA) Triennial Review of the Petersburg Area Transit (PAT) of Petersburg, VA. The FTA wants to ensure that awards are administered in accordance with the requirements of Federal public transportation law 49 U.S.C. Chapter 53. The review was performed by Calyptus Consulting Group, Inc. (Reviewer). During the virtual site visit, the Reviewer discussed the administrative and statutory requirements and reviewed Recipient documents.

Due to the Coronavirus 2019 (COVID-19) Public Health Emergency, the FTA conducted a virtual site visit for this Triennial Review. In addition, the FTA expanded the review to address PAT's compliance with the administrative relief and flexibilities that the FTA granted, and the requirements of the COVID-19 Relief funds received through the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Coronavirus Response and Relief Supplemental Appropriations Act (CRRSAA) of 2021, and the American Rescue Plan (ARP) Act of 2021. The FTA also requested the PAT share if and/or how it suspended, deviated from, or significantly updated or altered its transit program due to the public health emergency.

The FY2023 Triennial Review focused on PAT's compliance in 23 areas. Deficiencies related to the COVID-19 Relief funds have been clearly identified as part of the deficiency description in the respective review area. There was one (1) repeat deficiency from the FY 2019 Triennial Review in the following area: Financial Management and Capacity. Deficiencies were found in the areas listed below.

Review Area	Deficiency Codes		Corrective Action(s)	Response Due Date(s)
	Code	Rationale		
Financial Management & Capacity	F6-3: Single Audit submission deficient, including late submission*	FY21 and FY22 audits were not submitted to SAC	PAT must inform the Region 3 office when the FY21 and FY22 single audits are uploaded to the clearinghouse. The City of Petersburg must submit to the FTA regional office policies and procedures to ensure that the Single Audit report, data collection form, and reporting package are submitted on time.	10/16/23 11/13/23

Review Area	Deficiency Codes		Corrective Action(s)	Response Due Date(s)
	Code	Rationale		
Maintenance	M2-1: Late facility/equipment preventive maintenance	Facility maintenance files not available	<p>PAT must submit to the Region 3 office:</p> <ul style="list-style-type: none"> • procedures for maintaining preventive maintenance inspections documentation. • A monthly report signed by the chief executive officer or other senior management designee on the preventive maintenance results of the item(s) examined during the review until the data demonstrates the recipient has conducted 80 percent of its facility preventive maintenance on time for three (3) consecutive months. For each asset that received a preventive maintenance inspection during the month, the recipient must include with the submittal to the FTA regional office: o A report listing the items, the dates the inspections are due, and the dates of the actual inspections. List the percentage of the inspections performed on time. o Back-up documentation for each item (e.g., copy of work order, printout from the maintenance management system) documenting the date of the inspection. 	11/13/23
Procurement	P4-1: Responsibility determination deficiencies	The City does not have a process for conducting and documenting responsibility	<p>The City must submit to the Region 3 office:</p> <ul style="list-style-type: none"> • Indication that for any ongoing contracts where the recipient was found to have failed to verify that the contractor was responsible, the recipient must verify the responsibility of contractors using the draft form submitted August 17, 2023 and submit to regional office for review. • Revised procedures including/referencing the form submitted August 17, 2023 for documenting the process to make adequate responsibility determinations prior to award of a contract. <p>The City must submit to the FTA regional office the required process for review, and for the next procurement provide the responsibility determination to the FTA Regional Office.</p>	11/13/23
	P5-1: Incomplete written documentation of procurement history	The City does not have a process for documenting procurement history	<p>The City must submit to the Region 3 office evidence that the deficiencies identified in its record-keeping process have been corrected and that procurement staff have been trained on documenting procurement history.</p> <p>The City must submit to the FTA regional office documentation that the required process was implemented for the next procurement.</p>	12/22/23

Review Area	Deficiency Codes		Corrective Action(s)	Response Due Date(s)
	Code	Rationale		
	P10-1: Lacking independent cost estimate	ICE not completed for rolling stock procurement	The City must submit to the Region 3 office documentation that it has updated its procurement procedures to include development of independent cost estimates with every procurement exceeding the Federal Simplified Acquisition Threshold.	11/13/23
			The City must submit to the FTA regional office documentation that the required process was implemented for the next procurement.	12/22/23
	P11-1: Missing FTA Clauses	The City does not include (1) the Notice to FTA and DOT OIG, (2) Telecommunications, (3) Seat Belt, or (4) Distracted Driving clauses	The City must submit to the Region 3 office revised procurement procedures that address inclusion of all FTA-required third party contract clauses through use of a clause checklist or other mechanism and procedures for updating the required contract clauses on an annual basis.	11/13/23
			The City must submit to the FTA regional office documentation that the required process was implemented for the next procurement.	12/22/23
Title VI	TVI2-1: Language Assistance Plan implementation deficiencies	TVI training not implemented per the LAP	PAT must submit documentation of implementing its LAP to the Office of Civil Rights via FTACivilRightsSupport@dot.gov (per instructions in Section VII of this report).	11/13/23
Public Transportation Agency Safety Plans (PTASP)	PTASP1-5: ASP not developed/updated in cooperation with frontline employee representatives.	BIL Updates not put in place or approved	PAT must submit to the Region 3 office evidence that the recipient updated its ASP in cooperation with frontline employee representatives.	11/13/23

* Denotes a repeat finding

II. Review Background and Process

1. Background

The United States Code, Chapter 53 of Title 49 (49 U.S.C. 5307(f)(2)) requires that “At least once every 3 years, the Secretary shall review and evaluate completely the performance of a recipient in carrying out the recipient’s program, specifically referring to compliance with statutory and administrative requirements...” The FTA performs this Triennial Review in accordance with its procedures (published in FTA Order 9010.1B, April 5, 1993).

The Triennial Review includes a review of the recipient’s compliance in 23 areas. The basic requirements for each of these areas are summarized in Section IV. The FTA contracts with experienced Reviewers to lead and conduct the Triennial Reviews, in partnership with the staff of the regional office.

This report presents the findings from the Triennial Review of the recipient. The review concentrated on procedures and practices employed since the recipient’s previous Triennial Review in 2019; however, coverage was extended to earlier periods as needed to assess the policies in place and the management of award funds. The specific documents reviewed and referenced in this report are available at the FTA’s Region 3 office or the recipient’s office.

2. Process

The Triennial Review includes a pre-review assessment, a desk review and scoping meeting with the FTA regional office, and a site visit to the recipient’s location. The FTA also requested that the recipient share if and/or how it suspended, deviated from, or significantly updated or altered its transit program due to the public health emergency

The fiscal year (FY) 2023 process began with the regional office transmitting, a notification of the review and a Recipient Information Request (RIR) to the recipient on December 2, 2022 indicating a review would be conducted. While the recipient prepared its response to the RIR, the regional office and review team conducted a desk review and scoping meeting was held on March 1-2, 2023. Regional office staff provided electronic files as necessary to the Reviewer who also accessed recipient information in the FTA electronic award management (TrAMS) and oversight (OTrak) systems. Following the desk review and scoping meeting, the reviewer(s) and the recipient corresponded and exchanged information and documentation in preparation for the virtual site visit. Prior to the virtual site visit, the Reviewer sent an agenda package to the recipient on March 14, 2023 indicating the issues that would be discussed, records to be reviewed, and interviews to be conducted. The virtual site visit to PAT occurred from July 5, 2023 (entrance conference) to July 10, 2023 (exit conference).

The virtual site visit portion of the review began with an entrance conference, at which the Reviewer and regional staff discussed the purpose of the Triennial Review and the review process. The Reviewers conducted additional interviews and reviewed documentation to evidence the recipient’s compliance with FTA requirements.

Upon completion of the virtual site visit, the Reviewer and the FTA regional office staff provided a summary of preliminary findings to the recipient at the exit conference on July 10, 2023. Section VI of this report lists the individuals participating in the site visit.

3. Metrics

The metrics used to evaluate whether a recipient is meeting the requirements for each of the areas reviewed are:

- Not Deficient (ND): An area is considered not deficient if, during the review, nothing came to light that would indicate the requirements within the area reviewed were not met.
- Deficient (D): An area is considered deficient if any of the requirements within the area reviewed were not met.
- Not Applicable (NA): An area can be deemed not applicable if, after an initial assessment, the recipient does not conduct activities for which the requirements of the respective area would be applicable.

III. Recipient Description

1. Organization

Petersburg Area Transit (PAT) is a department in the City of Petersburg, Virginia. The Director of Mass Transit is the department head for the city and reports directly to the City Manager. PAT provides transit service in the cities of Petersburg, Colonial Heights, and Hopewell, along with the counties of Dinwiddie, Prince George, and Ettrick, VA. The service area population is approximately 152,858 persons.

PAT service is provided along 13 fixed routes and includes Americans with Disabilities Act (ADA) complementary paratransit service. PAT operates a fleet of 27 FTA funded buses for fixed route service. Service is provided Monday through Friday from 5:45 a.m. to 6:15 p.m. and Saturday from 6:45 a.m. to 6:15 p.m. There is no service on Sundays or major holidays. PAT fixed route and paratransit services are currently zero-fare (until further notice).

Fixed route service is offered to adults, children, elderly riders, persons with disabilities, and Medicare card holders during all hours.

ADA paratransit service is for senior citizens, Medicare card holders, and persons with disabilities (permanent or temporary). The paratransit service uses seven (7) FTA funded wheelchair lift-equipped vans providing door-to-door service (upon request) for ADA qualified passengers. PAT also provides service for those 65 years old or older. Patrons using this program may also ride PAT local fixed-route buses for zero fare (until further notice).

PAT specialized transit services are offered the same days of the week and hours as the fixed route service.

PAT's maintenance department operates from the bus garage located at 309 Fairgrounds Road, and the Transit Center which houses the administrative and operation offices is located at 100 West Washington Street, both in Petersburg.

2. Award and Project Activity

Below is a list of PAT's open awards at the time of the review.

Award Number	Award Amount	Year Executed	Description
VA-34-0005	\$325,459	2015	Capital
VA-2023-006	\$1,365,000	2023	Petersburg Area Transit (PAT) FFY 2019 Section 5307 Operating Assistance and Section 5339 FFY 2020 and FFY 2021 to Purchase Support Vehicles and Shop Equipment
VA-90-X415	\$3,587,895	2014	Capital and Operating
VA-2021-036	\$1,590,084	2021	Petersburg Area Transit (PAT) FFY 2018 and 2019 Section 5307 Operating Assistance and Preventive Maintenance and FFY 2019 and FFY 2020 Section 5339 Bus Purchase, Rehab and Renovate the Admin Facility and Purchase of Hardware

PAT received Supplemental Funds for operating assistance in award number VA-2020-024. This is not the PAT's first time receiving operating assistance from the FTA.

Projects Completed

In the past few years, PAT completed the following noteworthy projects:

- Instrumental in developing a structurally balanced (Mass Transit) budget.
- Developed and implemented our Agency's Safety Plan
- Oversaw the procurement, specifications and delivery of new transit vehicles totaling \$394,661.64
- Ensured the hiring of three additional Diesel Mechanics to offset workload and lower employee overtime.

Ongoing Projects

PAT is currently implementing the following noteworthy project:

- Conducting feasibility study relative to the construction of new bus garage.

Future Projects

PAT plans to pursue the following noteworthy project in the next three to five years:

- Determine site for new Maintenance Facility and to expand service routes.

IV. Results of the Review

1. Legal

Basic Requirement: The recipient must promptly notify the FTA of legal matters and additionally notify the USDOT Office of Inspector General (OIG) of any instances relating to false claims under the False Claims Act or fraud. Recipients must comply with restrictions on lobbying requirements.

Finding: During this Triennial Review of PAT, no deficiencies were found with the FTA requirements for Legal.

2. Financial Management and Capacity

Basic Requirement: The recipient must have financial policies and procedures; an organizational structure that defines, assigns and delegates fiduciary authority; and financial management systems in place to manage, match, and charge only allowable costs to the award. The recipient must conduct required Single Audits, as required by 2 CFR part 200, and provide financial oversight of subrecipients.

Finding: During this Triennial Review of PAT, one (1) deficiency was found with the FTA requirements for Financial Management and Capacity.

Deficiency Description: Single Audit submission deficient, including late submission (F6-3)

The City of Petersburg fiscal year (FY) 2021 Comprehensive Annual Financial Report (CAFR) and FY 2022 Annual Comprehensive Financial Report (ACFR) were not available for submission with the Recipient Information Request (RIR) but were posted to the City's website by the time of the review. Neither the FY21 nor FY22 Single Audit report, data collection form, or reporting package was uploaded to the Single Audit Clearinghouse.

2 CFR Part 200.501 (a) Audit required

A non-Federal entity that expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions of this part.

2 CFR Part 200.512 Report submission (a) General

(1) The audit must be completed and the data collection form described in paragraph (b) of this section and reporting package described in paragraph (c) of this section must be submitted within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period. If the due date falls on a Saturday, Sunday, or Federal holiday, the reporting package is due the next business day.

2 CFR Part 200.512 Report submission (b) Data Collection

(1) The auditee must submit required data elements described in Appendix X to Part 200, which state whether the audit was completed in accordance with this part and provides information about the auditee, its Federal programs, and the results of the audit. The data must include information available from the audit required by this part that is necessary for Federal agencies to use the audit to ensure integrity for Federal programs. The data elements and format must be approved by OMB, available from the FAC, and include collections of information from the reporting package described in paragraph (c) of this section. A senior level representative of the auditee (e.g., state controller, director of finance, chief executive officer, or chief financial officer) must sign a statement to be included as part of the data collection that says that the auditee complied with the requirements of this part, the data were prepared in accordance with this part (and the instructions accompanying the form), the reporting package does not include protected personally identifiable information, the information included in its entirety is accurate and complete, and that the FAC is authorized to make the reporting package and the form publicly available on a website.

2 CFR Part 200.513 Responsibilities (a)(3) Cognizant agency for audit responsibilities

(vii) Coordinate a management decision for cross-cutting audit findings (see in § 200.1 of this part) that affects the Federal programs of more than one agency when requested by any Federal awarding agency whose awards are included in the audit finding of the auditee.

FTA Circular 5010.1E, Chapter VI, Section 8. Annual Audit (d) Resolution of Audit Findings (3)

The recipient must resolve the deficiencies or opportunities for improvement identified in their audit. The resolution of audits begins with FTA's report to the recipient and continues until the recipient corrects identified deficiencies, implements needed improvements, or demonstrates that the findings or recommendations are not valid or do not warrant management action. The audit cannot be closed until FTA concurs in the documentation of steps taken to implement any needed corrective actions. The status of outstanding audit findings and recommendations should be monitored and reported by the recipient in quarterly progress reports and, where appropriate, significant events reported.

FTA Frequently Asked Questions from FTA Grantees Regarding Coronavirus Disease 2019 (COVID-19)

AD19: Can an organization receive an extension to submit its Single Audit Report?

A: Yes. Per the Office of Management and Budget Memorandum M-20-26, FTA recipients with fiscal year end dates through June 30, 2021 may delay the completion and submission of their single audit reporting package to six months beyond the normal due date. Recipients are not required to seek approval for the extension, but should maintain documentation of the reason for the delayed filing.

AD24: Will I have to meet the current deadlines for reports and other deliverables related to my award?

A: Consistent with OMB Memorandum M-21-20, FTA will allow recipients to delay submission of financial, performance and other reports on currently-active award for a period of up to three

months beyond the normal due date. These reports are still due at the end of the postponed period. This means that if a report were due on April 30, 2021, FTA would now require the report to be submitted by July 31, 2021. Recipients should document the report is late due to the COVID-19 public health emergency. For any other deliverables related to research awards, please contact the FTA Regional Office for award specific guidance.

Corrective Action(s) and Schedule: By October 16, 2023, PAT must inform the Region 3 office when the FY21 and FY22 single audits are uploaded to the clearinghouse.

By November 13, 2023 the City of Petersburg must submit to the FTA regional office policies and procedures to ensure that the Single Audit report, data collection form, and reporting package are submitted on time.

3. Technical Capacity – Award Management

Basic Requirement: The recipient must report progress of projects in awards to the Federal Transit Administration (FTA) and close awards timely.

Finding: During this Triennial Review of PAT, no deficiencies were found with the FTA requirements for Technical Capacity – Award Management.

4. Technical Capacity – Program Management & Subrecipient Oversight

Basic Requirement: States must document and follow a public involvement process for the development of the long-range statewide transportation plan and State Transportation Improvement Program (STIP). Designated recipients of Sections 5310, 5311, and 5339 funds must develop and submit a State Management/Program Management Plan to the FTA for approval. Recipients must enter into an agreement with each subrecipient, obtain required certifications from subrecipients, report in the Federal Funding Accountability and Transparency Act Subaward Reporting System (FSRS) on subawards, and ensure subrecipients comply with the terms of the award.

Finding: During this Triennial Review of PAT, the FTA requirements for Technical Capacity – Program Management & Subrecipient Oversight were not applicable.

5. Technical Capacity – Project Management

Basic Requirement: The recipient must implement the FTA-funded projects in accordance with the award application, the FTA Master Agreement, and applicable laws and regulations using sound management practices.

Finding: During this Triennial Review of PAT, no deficiencies were found with the FTA requirements for Technical Capacity – Project Management.

6. Transit Asset Management

Basic Requirement: Recipients must comply with 49 CFR part 625 to ensure public transportation providers develop and implement transit asset management (TAM) plans.

Finding: During this Triennial Review of PAT, no deficiencies were found with the FTA requirements for Transit Asset Management.

7. Satisfactory Continuing Control

Basic Requirement: The recipient must ensure that FTA-funded property will remain available and used for its originally authorized purpose throughout its useful life until disposition.

Finding: During this Triennial Review of PAT, no deficiencies were found with the FTA requirements for Satisfactory and Continuing Control.

8. Maintenance

Basic Requirement: Recipients must keep federally-funded vehicles, equipment, and facilities in good operating condition. Recipients must keep Americans with Disabilities Act (ADA) accessibility features on all vehicles, equipment, and facilities in good operating order.

Finding: During this Triennial Review of PAT, one (1) deficiency was found with the FTA requirements for Maintenance.

Deficiency Description: Late facility/ equipment preventive maintenance (M2-2)

Maintenance files not available for PAT facilities per inspection intervals listed in the Facility Maintenance Plan.

FTA Circular 5010.1E, Ch. IV Management of the Award, Section 4. Equipment and Supplies (Including Rolling Stock)

n. Management of Federally-Assisted Property

(4) Maintenance and Warranty

(a) Recipients must maintain federally-assisted property in good operating order and in compliance with any applicable Federal regulations that may be issued and follow applicable guidance that may be issued, except to the extent that FTA determines otherwise in writing.

(b) Recipients must keep satisfactory records pertaining to the use of federally-assisted property, and submit to FTA upon request such information as may be required to assure compliance with Federal requirements.

FTA Circular 5010.1E, Ch. IV 4(n)(4), Maintenance and Warranty

(a) Recipients must maintain federally-assisted property in good operating order and in compliance with any applicable federal regulations that may be issued and follow applicable guidance that may be issued, except to the extent that FTA determines otherwise in writing.

(b) Recipients must keep satisfactory records pertaining to the use of federally-assisted property, and submit to FTA upon request such information as may be required to assure compliance with Federal requirements.

Corrective Action(s) and Schedule: By November 13, 2023, PAT must submit to the Region 3 office:

- Procedures for maintaining preventive maintenance inspection documentation.
- A monthly report signed by the chief executive officer or other senior management designee on the preventive maintenance results of the item(s) examined during the review until the data demonstrates the recipient has conducted 80 percent of its facility preventive maintenance on time for three (3) consecutive months. For each asset that received a preventive maintenance inspection during the month, the recipient must include with the submittal to the FTA regional office:
 - A report listing the items, the dates the inspections are due, and the dates of the actual inspections. List the percentage of the inspections performed on time.
 - Back-up documentation for each item (e.g., copy of work order, printout from the maintenance management system) documenting the date of the inspection.

9. Procurement

Basic Requirement: The non-Federal entity must use its own documented procurement procedures which reflect applicable State, local, and tribal laws and regulations, and conform to applicable Federal law and the standards identified in 2 CFR Part 200. State recipients can use the state's overall policies and procedures. When applied to Federal procurements, those policies and procedures must still be compliant with all Federal requirements as applied to non-state recipients. The flexibility afforded by 2 CFR Part 200 should not be misconstrued as absolving a state from Federal requirements. For example, the FTA does not require each State DOT to have policies and procedures separate from the state education department.

Finding: During this Triennial Review of PAT, four (4) deficiencies were found with the FTA requirements for Procurement.

Deficiency Description #1: Responsibility determination deficiencies (P4-1)

The City does not have a process for conducting and documenting responsibility.

49 U.S.C 5325(j) AWARDS TO RESPONSIBLE CONTRACTORS

(1) IN GENERAL. Federal financial assistance under this chapter may be provided for contracts only if a recipient awards such contracts to responsible contractors possessing the ability to successfully perform under the terms and conditions of a proposed procurement.

(2) CRITERIA. Before making an award to a contractor under paragraph (1), a recipient shall consider:

- A. the integrity of the contractor;
- B. the contractor's compliance with public policy;
- C. the contractor's past performance, including the performance reported in the Contractor Performance Assessment Reports required under section 5309(l)(2); and D. the contractor's financial and technical resources.

2 CFR 180.300 What must I do before I enter into a covered transaction with another person at the next lower tier?

When you enter into a covered transaction with another person at the next lower tier, you must verify that the person with whom you intend to do business is not excluded or disqualified. You do this by: (a) Checking SAM Exclusions; or (b) Collecting a certification from that person; or (c) Adding a clause or condition to the covered transaction with that person.

2 CFR 180.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?

(a) You as a participant may continue covered transactions with an excluded person if the transactions were in existence when the agency excluded the person. However, you are not required to continue the transactions, and you may consider termination. You should make a decision about whether to terminate and the type of termination action, if any, only after a thorough review to ensure that the action is proper and appropriate. (b) You may not renew or extend covered transactions (other than no-cost time extensions) with any excluded person, unless the Federal agency responsible for the transaction grants an exception under §180.135.

2 CFR 1200.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

In addition to the contracts covered under 2 CFR 180.220(b) of the OMB guidance, this part applies to any contract, regardless of tier, that is awarded by a contractor, subcontractor, supplier, consultant, or its agent or representative in any transaction, if the contract is to be funded or provided by the Department of Transportation under a covered nonprocurement transaction and the amount of the contract is expected to equal or exceed \$25,000. This extends the coverage of the Department of Transportation nonprocurement suspension and debarment requirements to all lower tiers of subcontracts under covered nonprocurement transactions, as permitted under the OMB guidance at 2 CFR 180.220(c) (see optional lower-tier coverage in the figure in the appendix to 2 CFR part 180).

Frequently Asked Questions (FAQ) Regarding Coronavirus Disease 2019 (COVID-19), CE2

Under the authority of the Emergency Relief program to set the necessary terms and conditions of a grant (49 USC 5324 (d)(1), FTA will permit funds to be used for operations and

maintenance expenses incurred after January 20, 2020, even if the original contract did not meet all Federal requirements. Any new contracts would need to follow all federal requirements.

Corrective Action(s) and Schedule: By November 13, 2023, the City must submit to the Region 3 office:

- Indication that for any ongoing contracts where the recipient was found to have failed to verify that the contractor was responsible, the recipient must verify the responsibility of contractors using the draft form submitted August 17, 2023 and submit to regional office for review.
- Revised procedures including/referencing the form submitted August 17, 2023 for documenting the process to make adequate responsibility determinations prior to award of a contract.

By December 22, 2023, the City must submit to the FTA regional office the required process for review, and for the next procurement provide the responsibility determination to the FTA Regional Office.

Deficiency Description #2: Incomplete written documentation of procurement history (P5-1)

The City does not have a process for documenting procurement history.

2 CFR 200.318(i)

The non-Federal entity must maintain records sufficient to detail the history of the procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

Frequently Asked Questions (FAQ) Regarding Coronavirus Disease 2019 (COVID-19), CE2

Under the authority of the Emergency Relief program to set the necessary terms and conditions of a grant (49 USC 5324 (d)(1), FTA will permit funds to be used for operations and maintenance expenses incurred after January 20, 2020, even if the original contract did not meet all Federal requirements. Any new contracts would need to follow all federal requirements.

Corrective Action(s) and Schedule: By November 13, 2023, the City must submit to the Region 3 office evidence that the deficiencies identified in its record-keeping process have been corrected using the form submitted August 17, 2023 and that procurement staff have been trained on documenting procurement history.

By December 22, 2023, the City must submit to the FTA regional office documentation that the required process was implemented for the next procurement.

Deficiency Description #3: Lacking independent cost estimate (P10-1)

Two (2) procurement files for rolling stock were over the Federal Simplified Acquisition Threshold and did not include independent cost estimates.

2 CFR 200.324 Contract cost and price

- (a) *The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.*
- (b) *The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.*
- (c) *Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under subpart E of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.*
- (d) *The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.*

FTA Circular 4220.1F Chapter VI 6. a. Cost Analysis

The recipient must obtain a cost analysis when a price analysis will not provide sufficient information to determine the reasonableness of the contract cost. The recipient must obtain a cost analysis when the offeror submits elements (that is, labor hours, overhead, materials, and so forth) of the estimated cost, (such as professional consulting and A&E contracts, and so forth). The recipient is also expected to obtain a cost analysis when price competition is inadequate, when only a sole source is available, even if the procurement is a contract modification, or in the event of a change order. The recipient, however, need not obtain a cost analysis if it can justify price reasonableness of the proposed contract based on a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation.

FTA Circular 4220.1F Chapter VI 6. b. Price Analysis

If the recipient determines that competition was adequate, a price analysis, rather than a cost analysis, is required to determine the reasonableness of the proposed contract price.

Corrective Action(s) and Schedule: By November 13, 2023, the City must submit to the Region 3 office documentation that it has updated its procurement procedures to include development of independent cost estimates with every procurement exceeding the Federal Simplified Acquisition Threshold.

By December 22, 2023, the City must submit to the FTA regional office documentation that the required process was implemented for the next procurement.

Deficiency Description #3: Missing FTA Clauses (P11-1)

The City procurement files do not include the (1) Notice to FTA and U.S. DOT Inspector General of information related to fraud, waste, abuse, or other legal matters, (2) Prohibition on certain telecommunications and video surveillance services or equipment, (3) seatbelt use per FTA Master Agreement Section 34(a), or (4) distracted driving per FTA Master Agreement Section 34(a).

Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with

the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387).

Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(J) See §200.322 Procurement of recovered materials—A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

FTA Master Agreement (28), Section 16.d.

Required Clauses in Third Party Contracts. In addition to other applicable provisions of federal law, regulations, requirements, and guidance, all third party contracts made by the Recipient under the Federal award must contain provisions covering the following, as applicable:

- (1) Simplified Acquisition Threshold. Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. § 1908, or otherwise set by law, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. (Note that the simplified acquisition threshold determines the procurement procedures that must be employed pursuant to 2 C.F.R. §§ 200.317–200.327. The simplified acquisition threshold does not exempt a procurement from other eligibility or processes requirements that may apply. For example, Buy America’s eligibility and process requirements apply to any procurement in excess of \$150,000. 49 U.S.C. § 5323(j)(13).)*
- (2) Termination. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-federal entity including the manner by which it will be effected and the basis for settlement.*
- (3) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60-1.4(b), in accordance with Executive Order No. 11246, “Equal Employment Opportunity,” 42 U.S.C. § 2000e note (30 Fed. Reg. 12319, 12935, 3 C.F.R. 1964–1965 Comp., p. 339), as amended by Executive Order No. 11375, “Amending Executive Order No. 11246 Relating to Equal Employment Opportunity,” (32 Fed. Reg. 14,303) and implementing regulations at 41 CFR Part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”*
- (4) Davis-Bacon Act, as amended (40 U.S.C. §§ 3141 – 3148). When required by federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141 – 3144, and 3146 – 3148) as supplemented by Department of Labor regulations (29 CFR*

Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-federal entity must report all suspected or reported violations to the federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of a public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-federal entity must report all suspected or reported violations to the federal awarding agency.

(5) Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701 – 3708). Where applicable, all contracts awarded by the non-federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. § 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer based on a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(6) Rights to Inventions Made Under a Contract or Agreement. If the federal award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

(7) Clean Air Act (42 U.S.C. §§ 7401 – 7671q.) and the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 – 1388), as amended. Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401 – 7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251 – 1388). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(8) *Debarment and Suspension (Executive Orders 12549 and 12689). A covered transaction (see 2 C.F.R. §§ 180.220 and 1200.220) must not be entered into with any party listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. 180 that implement Executive Orders 12549 (31 U.S.C. § 6101 note, 51 Fed. Reg. 6370,) and 12689 (31 U.S.C. § 6101 note, 54 Fed. Reg. 34131), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. The Recipient agrees to include, and require each Third Party Participant to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant:*

- (i) *Complies with federal debarment and suspension requirements; and*
- (ii) *Reviews the SAM at https://www.sam.gov, if necessary to comply with U.S. DOT regulations, 2 CFR Part 1200.*

(10) *Solid Wastes. A Recipient that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.*

200.216 Prohibition on certain telecommunications and video surveillance services or equipment.

(a) *Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:*

- (1) *Procure or obtain;*
- (2) *Extend or renew a contract to procure or obtain; or*

(3) *Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).*

(i) *For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation,*

Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(b) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

FTA Master Agreement (25) Section 34. Safe Operation of Motor Vehicles.

(a) Seat Belt Use. The Recipient agrees to implement Executive Order No. 13043, “Increasing Seat Belt Use in the United States,” April 16, 1997, 23 U.S.C. § 402 note, (62 Fed. Reg. 19217), by: 90 (1) Adopting and promoting on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles; and (2) Including a “Seat Belt Use” provision in each third party agreement related to the Award.

FTA Master Agreement (25) Section 34. Safe Operation of Motor Vehicles. (b) Distracted Driving, Including Text Messaging While Driving.

The Recipient agrees to comply with: (1) Executive Order No. 13513, “Federal Leadership on Reducing Text Messaging While Driving,” October 1, 2009, 23 U.S.C. § 402 note, (74 Fed. Reg. 51225); (2) U.S. DOT Order 3902.10, “Text Messaging While Driving,” December 30, 2009; and (3) The following U.S. DOT Special Provision pertaining to Distracted Driving: (i) Safety. The Recipient agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Recipient owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Award, or when performing any work for or on behalf of the Award; (ii) Recipient Size. The Recipient agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving; and (iii) Extension of Provision. The Recipient agrees to include the preceding Special Provision of section 34(b)(3)(i) – (ii) of this Master Agreement in its third party agreements, and encourage its Third Party Participants to comply with this Special

Provision, and include this Special Provision in each third party subagreement at each tier supported with federal assistance.

FTA Master Agreement (28) Section 39(b).

Notification to FTA; Flow Down Requirement. If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third Party Agreements and must require each Third Party Participant to include an equivalent provision in its subagreements at every tier, for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.

(1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.

(2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.

(3) Additional Notice to U.S. DOT Inspector General. The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient. In this paragraph, “promptly” means to refer information without delay and without change. This notification provision applies to all divisions of the Recipient, including divisions tasked with law enforcement or investigatory functions.

Corrective Action(s) and Schedule: By November 13, 2023, the City must submit to the Region 3 office revised procurement procedures that address inclusion of all FTA-required third party contract clauses through use of a clause checklist or other mechanism and procedures for updating the required contract clauses on an annual basis.

By December 22, 2023, the City must submit to the FTA regional office documentation that the required process was implemented for the next procurement.

10. Disadvantaged Business Enterprise (DBE)

Basic Requirement: Recipients must comply with 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts. Recipients also must create a level playing field on which DBEs can compete fairly for USDOT-assisted contracts.

Finding: During this Triennial Review of PAT, the USDOT requirements for DBE were not applicable.

11. Title VI

Basic Requirement: The recipient must ensure that no person shall, on the grounds of race, color, or national origin, be excluded from participating in, or be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance without regard to whether specific projects or services are federally funded. The recipient must ensure that all transit services and related benefits are distributed in an equitable manner.

Finding: During this Triennial Review of PAT, one (1) deficiency was found with the FTA requirements for Title VI.

Deficiency Description: Language Assistance Plan implementation deficiencies (TVI2-1)

PAT does not provide staff with training on the LEP Plan and procedures through staff orientation as stated in the Title VI Program.

FTA Circular 4702.1B Chapter III.9.b Developing a Language Assistance Plan

After completing the Four Factor Analysis, the recipient shall use the results of the analyses to determine which language assistance services are appropriate. Additionally, the recipient shall develop an assistance plan to address the identified needs of the LEP population(s) it serves. The DOT LEP Guidance recognizes that certain recipients, such as those serving very few LEP persons or those with very limited resources, may choose not to develop a written plan. However, FTA has determined it is necessary to require its recipients to develop an assistance plan in order to ensure compliance.

Corrective Action(s) and Schedule: By November 13, 2023, PAT must submit documentation of implementing its LAP to the Office of Civil Rights via FTACivilRightsSupport@dot.gov (per instructions in Section VII of this report).

12. Americans with Disabilities Act (ADA) – General

Basic Requirement: Titles II and III of the Americans with Disabilities Act of 1990 provide that no entity shall discriminate against an individual with a disability in connection with the provision of transportation service. The law sets forth specific requirements for vehicle and facility accessibility and the provision of service, including complementary paratransit service.

Finding: During this Triennial Review of PAT, no deficiencies were found with the USDOT requirements for ADA – General.

13. ADA – Complementary Paratransit

Basic Requirement: Under 49 CFR 37.121(a), each public entity operating a fixed-route system shall provide paratransit or other special service to individuals with disabilities that is comparable to the level of service provided to individuals without disabilities who use the fixed-route system. “Comparability” is determined by 49 CFR 37.123-37.133. Requirements for complementary paratransit do not apply to commuter bus, commuter rail, or intercity rail systems.

Finding: During this Triennial Review of PAT, no deficiencies were found with USDOT requirements for ADA – Complementary Paratransit.

14. Equal Employment Opportunity

Basic Requirement: The recipient must ensure that no person in the United States shall on the grounds of race, color, religion, national origin, sex, age or disability be excluded from participating in, or denied the benefits of, or be subject to discrimination in employment under any project, program or activity receiving Federal financial assistance under the Federal transit laws.

Finding: During this Triennial Review of PAT, no deficiencies were found with the FTA requirements for Equal Employment Opportunity.

15. School Bus

Basic Requirement: Recipients are prohibited from providing school bus service in competition with private school bus operators unless the service qualifies and is approved by the FTA Administrator under an allowable exemption. Federally-funded equipment or facilities cannot be used to provide exclusive school bus service.

Finding: During this Triennial Review of PAT, no deficiencies were found with the FTA requirements for School Bus.

16. Charter Bus

Basic Requirement: Recipients are prohibited from using the FTA-funded equipment and facilities to provide charter service that unfairly competes with private charter operators. Recipients may operate charter only when the service meets a specified exception defined in rule.

Finding: During this Triennial Review of PAT, no deficiencies were found with the FTA requirements for Charter Bus.

17. Drug Free Workplace Act

Basic Requirement: Recipients are required to maintain a drug free workplace for all award-related employees; report any convictions occurring in the workplace timely; and have an ongoing drug free awareness program.

Finding: During this Triennial Review of PAT, no deficiencies were found with the FTA requirements for Drug-Free Workplace Act.

18. Drug and Alcohol Program

Basic Requirement: Recipients receiving Section 5307, 5309, 5311, or 5339 funds that have safety-sensitive employees must have a drug and alcohol testing program in place for such employees.

Finding: During this Triennial Review of PAT, no deficiencies were found with the FTA requirements for Drug and Alcohol Program.

19. Section 5307 Program Requirements

Basic Requirement: Recipients must participate in the transportation planning process in accordance with FTA requirements and the metropolitan and statewide planning regulations.

Recipients shall develop, publish, afford an opportunity for a public hearing on, and submit for approval, a program of projects (POP).

Recipients are expected to have a written, locally developed process for soliciting and considering public comment before raising a fare or carrying out a major transportation service reduction.

For fixed-route service supported with Section 5307 assistance, fares charged to seniors, persons with disabilities or an individual presenting a Medicare card during off peak hours will not be more than one half the peak hour fares.

Finding: During this Triennial Review of PAT, no deficiencies were found with the FTA requirements for Section 5307 Program Requirements.

20. Section 5310 Program Requirements

Basic Requirement: Recipients must expend Section 5310 funds on eligible projects that meet the specific needs of seniors and individuals with disabilities. Projects selected for funding must be included in a locally developed, coordinated public transit-human services transportation plan. Recipients must approve all subrecipient leases of Section 5310-funded vehicles. Leases of Section 5310-funded vehicles must include required terms and conditions. Either the recipient or subrecipient must hold the title to the leased vehicles.

This section only applies to recipients that receive Section 5310 funds directly from the FTA; therefore, the related requirements are not applicable to the Triennial Review of PAT.

21. Section 5311 Program Requirements

Basic Requirement: States must expend Section 5311 funds on eligible projects to support rural public transportation services and intercity bus transportation.

This section only applies to recipients that receive Section 5311 funds directly from FTA; therefore, the related requirements are not applicable to the Triennial Review of PAT.

22. Public Transportation Agency Safety Plans (PTASP)

Basic Requirement: Recipients must comply with the Public Transportation Agency Safety Plans (PTASP) regulation (49 CFR Part 673) to ensure public transportation providers develop and implement an Agency Safety Plan (ASP).

Finding: During this Triennial Review of PAT, one (1) deficiency was found with the FTA requirements for PTASP Requirements.

Deficiency Description: The ASP was not developed/updated in cooperation with frontline employee representatives (PTASP1-5)

PAT did not implement the updates as required as a participant of the Virginia Department of Rail and Public Transportation Tier II PTASP.

Corrective Action(s) and Schedule: By November 13, 2023, PAT must submit to the Region 3 office evidence that the recipient updated its ASP in cooperation with frontline employee representatives.

23. Cybersecurity

Basic Requirement: Recipients that operate rail fixed guideway public transportation systems must certify compliance with the requirements for establishing a cybersecurity process under 49 U.S.C. § 5323(v), a new subsection added by the National Defense Authorization Act for Fiscal Year 2020, Pub. L. 116-92, § 7613 (Dec. 20, 2019).

This section only applies to recipients that operate rail fixed guideway public transportation systems; therefore, the related requirements are not applicable to the Triennial Review of PAT.

V. Summary of Findings

Review Area	Finding	Deficiency Code(s)		Corrective Action(s)	Response Due Date(s)	Date Closed
		Code	Description			
1. Legal	ND					
2. Financial Management and Capacity	D	F6-3	Single Audit submission deficient, including late submission	PAT must inform the Region 3 office when the FY21 and FY22 single audits are uploaded to the clearinghouse. The City of Petersburg must submit to the FTA regional office policies and procedures to ensure that the Single Audit report, data collection form, and reporting package are submitted on time.	10/16/23 11/13/23	
3. Technical Capacity – Award Management	ND					
4. Technical Capacity – Program Management and Subrecipient Oversight	NA					
5. Technical Capacity – Project Management	ND					
6. Transit Asset Management	ND					
7. Satisfactory Continuing Control	ND					

Review Area	Finding	Deficiency Code(s)		Corrective Action(s)	Response Due Date(s)	Date Closed
		Code	Description			
8. Maintenance	D	M2-2	Late facility/equipment preventive maintenance	<p>PAT must submit to the Region 3 office:</p> <ul style="list-style-type: none"> • procedures for maintaining preventive maintenance inspections documentation. • A monthly report signed by the chief executive officer or other senior management designee on the preventive maintenance results of the item(s) examined during the review until the data demonstrates the recipient has conducted 80 percent of its facility preventive maintenance on time for three (3) consecutive months. For each asset that received a preventive maintenance inspection during the month, the recipient must include with the submittal to the FTA regional office: ◦ A report listing the items, the dates the inspections are due, and the dates of the actual inspections. List the percentage of the inspections performed on time. ◦ Back-up documentation for each item (e.g., copy of work order, printout from the maintenance management system) documenting the date of the inspection. 	11/13/23	
9. Procurement	D	P4-1	Responsibility determination deficiencies	<p>The City must submit to the Region 3 office:</p> <ul style="list-style-type: none"> • Indication that for any ongoing contracts where the recipient was found to have failed to verify that the contractor was responsible, the recipient must verify the responsibility of contractors using the draft form submitted August 17, 2023 and submit to regional office for review. • Revised procedures including/referencing the form submitted August 17, 2023 for documenting the process to make adequate responsibility determinations prior to award of a contract. <p>The City must submit to the FTA regional office the required process for review, and for the next procurement provide the responsibility determination to the FTA Regional Office.</p>	11/13/23 12/22/23	

Review Area	Finding	Deficiency Code(s)		Corrective Action(s)	Response Due Date(s)	Date Closed
		Code	Description			
		P5-1	Incomplete written documentation of procurement history	The City must submit to the Region 3 office evidence that the deficiencies identified in its record-keeping process have been corrected using the form submitted August 17, 2023 and that procurement staff have been trained on documenting procurement history. The City must submit to the FTA regional office documentation that the required process was implemented for the next procurement.	11/13/23 12/22/23	
		P10-1	Lacking independent cost estimate	The City must submit to the Region 3 office documentation that it has updated its procurement procedures to include development of independent cost estimates with every procurement exceeding the Federal Simplified Acquisition Threshold. The City must submit to the FTA regional office documentation that the required process was implemented for the next procurement.	11/13/23 12/22/23	
		P11-1	Missing FTA Clauses	The City must submit to the Region 3 office revised procurement procedures that address inclusion of all FTA-required third party contract clauses through use of a clause checklist or other mechanism and procedures for updating the required contract clauses on an annual basis. The City must submit to the FTA regional office documentation that the required process was implemented for the next procurement.	11/13/23 12/22/23	
10. Disadvantaged Business Enterprise	NA					
11. Title VI	D	TVI2-1	Language Assistance Plan implementation deficiencies	PAT must submit documentation of implementing its LAP to the Office of Civil Rights via FTACivilRightsSupport@dot.gov (per instructions in Section VII of this report).	11/13/23	
12. Americans with Disabilities Act (ADA) – General	ND					
13. ADA – Complementary Paratransit	ND					
14. Equal Employment Opportunity	ND					

Review Area	Finding	Deficiency Code(s)		Corrective Action(s)	Response Due Date(s)	Date Closed
		Code	Description			
15. School Bus	ND					
16. Charter Bus	ND					
17. Drug-Free Workplace	ND					
18. Drug and Alcohol Program	ND					
19. Section 5307 Program Requirements	ND					
20. Section 5310 Program Requirements	NA					
21. Section 5311 Program Requirements	NA					
22. Public Transportation Agency Safety Plans	D	PTASP1-5	ASP not developed/updated in cooperation with frontline employee representatives.	PAT must submit to the Region 3 office evidence that the recipient updated its ASP in cooperation with frontline employee representatives.	11/13/23	
23. Cybersecurity	NA					

The metrics used to evaluate whether a recipient is meeting the requirements for each of the areas reviewed are: Deficient (D)/Not Deficient (ND)/Not Applicable (NA)

VI. Attendees

Name	Title	Phone Number	E-mail Address
City of Petersburg, Petersburg Area Transit			
Yvette Seliem-Poindexter	Deputy Director of P.A.T.	804.733.2450 ext.2516	yseliem-poindexter@petersburg-va.org
Darius Mason	Operation Manager [PAT]	804.640.7434	dmason@petersbug-va.org
Michele Gregory	Assistant Operations Manager [PAT]	804.481.5643	mgregory@petersburg-va.org
Khalid Muhammad	Maintenance Manager [PAT]	804.948.4836	kmuhammad@petersburg-va.org
Queenie Byrd	Program Manager [PAT]	804.733.2450 ext.2506	qbyrd@petersburg-va.org
Cynthia Banks	Paratransit Supervisor [PAT]	804.324.5658	ctbanks@petersburg-va.org
Kyle J. Dixon	Administrative Manager [PAT]	804.324.5763	kjdixon@petersburg-va.org
JoAnn Clayton	Payroll Accounts/Revenue Specialist [PAT]	804.733.2450 ext.2504	jclayton@petersburg-va.org
Laura Nash	Accountant [PAT]	804.733.2450 ext.2507	lnash@petersburg-va.org
Stephen McClease	Safety Coordinator [PAT]	804.733.2450 ext.2508	smcclease@petersburg-va.org
Leticia Smith	Transit Account Manager [PAT]	804.733.2450 ext.2419	lsmith@petersburg-va.org
Lisa Scott	Purchasing Agent [City]	804.431.5085	lscott@petersburg-va.org
FTA			
Tony Tarone	Deputy Regional Administrator	215-656-7100	Tony.Tarone@dot.gov
Tony Cho	Director, Office of Program Management and Project Oversight	215-656-7100	Tony.Cho@dot.gov
Anthony Romero	Procurement Specialist (Contractor)	215-656-7100	Anthony.Romero.CTR@dot.gov
Jason Yucis	Financial Analyst	215-656-7100	Jason.Yucis@dot.gov
Contractor			
Ellen Harvey	Lead Reviewer	617-577-0042	eharvey@calyptusgroup.com
Trysh Strayhand	Associate Reviewer	617-577-0042	tstrayhand@calyptusgroup.com

VII. Appendices

Civil Rights Corrective Action Submission

All Civil Rights corrective actions should be submitted to FTACivilRightsSupport@dot.gov in the following format:

- A separate email should be sent to address each deficiency separately with attached supporting documentation.

Do not submit MS Word or Excel spreadsheets.

- Supporting documents should be sent as .pdf files in the following format:

Region Number-Grantee Name-TrAMSRcipID-Finding Code.pdf

For example, **Region3- PAT-1419-DBE6-1.pdf**

- **Email Subject Line:** TR FY23 Corrective Action: Grantee Name-Recipient ID, Deficiency Code, and Deficiency Title

For example, **Triennial Review FY23 Corrective Action: PAT-1419, DBE6-1 DBE Shortfall Analyses**

The body of the email should contain a short summary of the corrective action.