

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-95-59 and should be submitted by November 3, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Jonathan G. Katz,
Secretary.

[FR Doc. 95-25445 Filed 10-12-95; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 USC Chapter 35).

DATE: October 5, 1995.

ADDRESSES: Written comments on the DOT information collection requests should be forwarded, as quickly as possible, to Edward Clarke, Office of Management and Budget, New

Executive Office Building, Room 10202, Washington, D.C. 20503. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB official of your intent immediately.

FOR FURTHER INFORMATION CONTACT:

Copies of the DOT information collection requests submitted to OMB may be obtained from Susan Pickrel or Gemma de Guzman, Information Resource Management (IRM) Strategies Division, M-32, Office of the Secretary of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590, (202) 366-4735.

SUPPLEMENTARY INFORMATION: Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the Federal Register, listing those information collection requests submitted to OMB for approval or renewal under that Act. OMB reviews and approves agency submissions in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms and the reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Items Submitted to OMB for Review

The following information collection requests were submitted to OMB on October 5, 1995:

DOT No: 8.

OMB No: 2127-0042.

Administration: National Highway Traffic Safety Administration.

Title: 49 CFR Part 576—Record Retention.

Need for Information: 49 USC Section 30166(e) requires manufacturers to retain one copy of complaints, reports and other records of malfunctions that may be related to motor vehicle safety. These records may be used to investigate possible defects and noncompliances.

Proposed Use of Information: The information will be used to ensure that records are kept by manufacturers for proper investigation of possible defects related to motor vehicle safety.

Frequency: On occasion.

Respondents: Manufacturers of motor vehicles, Businesses.

Number of Respondents: 1,000.

Burden Estimate: 40,000 hours.

Form(s): None.

Average Burden Hours Per Response: 40 hours.

Issued in Washington, D.C. on October 5, 1995.

Jim Harrell,

Acting Manager, Information Resource Management (IRM) Strategies Division.

[FR Doc. 95-25410 Filed 10-12-95; 8:45am]

BILLING CODE 4910-62-P

[Notice 95-12]

Commercial Space Transportation Advisory Committee; Open Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. App. 2), notice is hereby given of a meeting of the Commercial Space Transportation Advisory Committee (COMSTAC). The meeting will take place on Thursday, October 26, 1995, from 8:30 a.m. to 12:30 p.m. in Room 2230 of the Department of Transportation's headquarters building at 400 Seventh Street, SW, in Washington, D.C. This will be the twenty-second meeting of the COMSTAC. In addition to reports from the respective COMSTAC Working Groups, the meeting will provide a legislative update on Congressional activities involving commercial space transportation; an activities report from the Office of Commercial Space Transportation; an update on RLV activities; and other related topics. This meeting is open to the public; however, space may be limited. Additional information may be obtained by contacting Patti Grace Smith at (202) 366-5770.

Dated: October 4, 1995.

Frank C. Weaver,

Director, Office of Commercial Space Transportation.

[FR Doc. 95-25587 Filed 10-12-95; 8:45 am]

BILLING CODE 4910-62-P

Federal Transit Administration

[Docket No. 94-B]

Third Party Contracting Requirements

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of availability of Third Party Contracting Requirements, Circular 4220.1C.

SUMMARY: On September 7, 1994, the Federal Transit Administration (FTA) published a Notice in the Federal Register announcing its decision to revise its Third Party Contracting Guidelines, Circular 4220.1B, to incorporate new provisions included in the Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. 102-240,

¹⁰ 17 CFR 200.30-3(a)(12).

October 28, 1991) and to update and streamline third party procurements made with FTA financial assistance. On December 19, 1994, FTA published a Notice in the Federal Register extending the comment period to January 18, 1995. This Notice announces the adoption and availability of FTA's revised Circular 4220.1C, retitled "Third Party Contracting Requirements," and discusses changes FTA made as a result of comments received in response to the two previous Notices.

EFFECTIVE DATE: FTA Circular 4220.1C is effective as of October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Carolyn S. Thompson, Procurement Analyst, Office of Procurement, (202) 366-5470. FTA will mail copies of the Circular to all of its grantees. Other interested parties may obtain a copy of the Circular by sending a self-addressed mailing label to: Office of Procurement, Room 7405, 400 Seventh Street, S.W., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION:

I. Introduction

On September 7, 1994, FTA announced its intent to update its third party procurement requirements in FTA Circular 4220.1B, "Third Party Contracting Guidelines," and solicited public comment (59 FR 46294). On December 19, 1994, FTA extended the comment period until January 18, 1995, to allow interested parties additional time to comment (59 FR 65427).

FTA sought particular comment on two issues. First, FTA proposed to continue its mandatory pre-award review and approval of certain procurements to be made by FTA recipients. Second, FTA proposed to continue to apply the revised circular to procurements made with Federal operating assistance.

After reviewing the comments, FTA determined that most of the difficulties faced by persons engaging in third party contracting stemmed from uncertainty as to what procedures and policies were required by Federal law and regulation and what procedures were recommended but not mandatory. A related problem was the seemingly haphazard way in which procurement information was disseminated to grantees and contractors.

To resolve these difficulties, FTA has considered (1) whether it should cancel Circular 4220.1B and simply require grantees to comply with the Department of Transportation's "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," and "Uniform Administrative Requirements for Grants

and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations, 49 CFR Parts 18 and 19, respectively (collectively, the common grant rules); (2) whether it should continue to issue procurement alerts and oral guidance; (3) whether audits and procurement system reviews are appropriate ways to ensure that grantees understand FTA's third party contracting requirements; (4) whether it should develop additional written guidance and training programs to help grantees understand the applicable contracting requirements; and (5) whether it should continue to require that grantees submit extensive information for FTA's pre-certification and/or pre-award review.

After review of the comments received, FTA has decided that its third party contracting circular should contain only the minimum requirements of the common grant rules, related Executive Orders, and statutes, along with statements of FTA policy, and that provisions interpreting the requirements and recommending practices should be contained in a "Third Party Procurement Manual," which would be updated regularly. The revised Circular, FTA 4220.1C, has thus been renamed "Third Party Contracting Requirements." Consequently, Circular 4220.1C is streamlined, straightforward, and much shorter than its predecessor. The "best practices" manual, currently under development, is to be supplemented by additional procurement training for FTA staff and grantees.

For a detailed analysis of the changes reflected in the revised Circular, see the following discussion.

II. Analysis and Comments

FTA received 52 comments in response to its Federal Register Notices:

| | |
|---------------------------|----|
| Transit Agencies | 35 |
| Cities and Counties | 6 |
| State DOTs | 3 |
| Trade Associations | 3 |
| Private Businesses | 3 |
| Labor Unions | 1 |
| Individual Citizens | 1 |

A. Self-certification. FTA proposed to continue 4220.1B's self-certification process whereby certain recipients are required to submit a self-certification and summary description of their procurement procedures. However, recognizing that 49 CFR Part 18 has been in place for nearly a decade and that a reduction of process and paper is desirable, FTA is establishing in Circular 4220.1C a new self-certification process, applicable to all grantees, which does not require submission of

supporting documents. The certification will be made through the "Certifications and Assurances for FTA Assistance" checklist, which is submitted to FTA at the beginning of each fiscal year and updated and published annually in the Federal Register. In place of reviewing written documents, FTA will verify compliance with FTA's requirements through "Triennial Reviews" and "Procurement System Reviews," in which a grantee's procurement procedures are reviewed on-site and in-depth.

B. Pre-award Review of Contracts. FTA proposed to continue to review certain procurement contracts before grantee award to the successful bidder. While the majority of commenters did not respond to this proposal, one commenter argued persuasively that FTA should not conduct pre-award reviews of third party contracts. This commenter wrote that as a State agency it

operat[es] to a well established procurement law and regulations that are based on the Model Procurement Code for State and Local Governments. All procurements over \$10,000, including sole source and single bids, are subject to considerable public scrutiny and public notice. Adding FTA review to such a process is totally redundant and amounts to wasted resources on the part of FTA.

FTA agrees and has eliminated all routine pre-award reviews of third party contracts in favor of periodic, post-grant reviews. Under this new process, FTA may still conduct pre-award reviews if appropriate in a given situation, and grantees may request such reviews.

C. Multi-Year Contracting. FTA had proposed to add a provision addressing "multi-year contracts," a contracting method designed to reduce costs by promising a contractor work over a number of years, even though Federal funds are appropriated for only one year. This technique is intended to save money by enabling the contractor to amortize start-up costs and requiring the same price-per-unit over the life of the contract. FTA further proposed to require an FTA recipient to address the possibility of cancellation.

Commenters expressed some concerns and sought clarification. For instance, one commenter noted that requiring constant unit prices over the life of a contract would cause vendors to inflate their prices during the early years of a multi-year contract. Another asked that the term "cancellation costs" be clarified. This proposal has not been adopted in Circular 4220.1C because it is not a mandatory requirement; the use of "multi-year contracts" will be addressed in the "Third Party

Procurement Manual" in which FTA will discuss the benefits of using this process and include model contract clauses.

D. Bonding Requirements. FTA proposed two general bonding requirements. For construction or facility improvement contracts or subcontracts exceeding \$100,000, a grantee could use its own bonding policy if approved by FTA. If not approved by FTA, the grantee would be required to obtain from contractors: (1) A bid guarantee equivalent to 5 percent of the bid price; (2) a performance bond for 100 percent of the contract price; and (3) a payment bond for 50 percent of the contract price for contracts less than \$1 million, 40 percent of the contract price for contracts between \$1 million and \$5 million, and \$2.5 million for contracts over \$5 million. Although FTA did not propose specific requirements regarding the use of bonds in non-construction contracts, we discouraged their use.

The commenters who responded to this issue generally favored its adoption. Thus, in 4220.1C, FTA addresses construction or facility improvement contracts or subcontracts exceeding \$100,000. Whether a grantee requires bonds for non-construction contracts is a matter left to local discretion. Guidance on this subject may be included in the "Third Party Procurement Manual."

E. Options. Although only one grantee commented on the proposal regarding the use of options, we are aware that this is a controversial issue. Instead of adopting this proposal, 4220.1C provides that if a grantee chooses to use options, three requirements apply: (1) the option must have been evaluated as part of the contract award (otherwise it is a sole source procurement); (2) the option must be exercised in accordance with contractual terms and conditions at the time the contract is awarded; and (3) at the time it is exercised, the option price must be determined to be the most advantageous for the grantee. Moreover, FTA has removed the restriction that an option may not be greater than 50 percent of the base line item quantity. The discretion to determine option quantities will now reside with the grantee.

F. Bid Protest Procedures. FTA will continue to review protests alleging that a grantee failed to have written bid protest procedures or to follow them. Grantee protest decisions must be in writing; protests to FTA must be in writing and submitted within five working days of the date the protester knew or should have known of the violation. All other information which

describes the process FTA will follow in reviewing bid protests has been removed for reissuance, as appropriate, in the "Third Party Procurement Manual."

G. Payment Provisions. Although FTA received only two comments concerning the provisions addressing advance and progress payments, FTA has decided to make the following changes. Under Circular 4220.1C, advance payments may now be used if prior written concurrence is received from FTA. Progress payments may also be used as long as the grantee obtains title to the property being constructed or acquired or an equivalent security equal in value to the progress payment amount. The use of progress payments is at the grantee's discretion.

H. Small Purchase Threshold. FTA did not propose raising the small purchase dollar threshold because we were aware at the time that the Office of Management and Budget (OMB) was considering such a change. In the interim, the common grant rules have been changed to increase the threshold. The Circular has been revised accordingly, and grantees may raise their small purchase threshold to \$100,000 if they wish.

I. General Services Administration (GSA) Federal Supply Schedule (FSS). Although the proposal did not contain any provision regarding the use of the FSS in procuring goods, FTA recipients have repeatedly requested permission to use it. FTA supports this request and notes that as soon as GSA has established the requisite procedures, eligible grantees will be able to use them.

J. Operating Assistance. FTA had proposed to continue to require recipients of operating assistance to apply the Circular to all operating procurements. All but one commenter opposed the proposal. Due to the complexity of the legal and policy issues surrounding this particular requirement, no change has been made. FTA does intend, however, to continue to study the issue to determine what, if any, changes can be made consistent with the principles of Federalism and the National Performance Review.

K. Commercial Services. FTA proposed a specific provision applicable to the purchase of "commercial services" for the provision of transit, maintenance, or management services. Commenters responding to this proposal were uniformly opposed. One commenter, for example, wrote that "[t]he essential 'make or buy' question—that is inherent to any sound procurement process—by definition applies to both goods and services."

We agree with the commenters; a separate provision on the procurement of "commercial services" is inappropriate and unnecessary, since such procurements are covered by section 8 of Circular 4220.1C entitled "Competition," which requires that "all procurement transactions . . . be conducted in a manner providing full and open competition."

L. Attachment A. FTA proposed to identify and list all of the statutes and regulations that address third party contracting issues. Instead of adopting this proposal, however, FTA decided that recipients should be referred to the "Master Agreement," which contains a comprehensive list of the requirements applicable to the FTA program, including procurement. Unlike the Circulars, the "Master Agreement" is updated annually. Moreover, as mentioned above, FTA is developing a "Third Party Procurement Manual" which will give FTA recipients detailed guidance on the applicability of various statutes and regulations addressing third party contracting matters.

M. The Use of the Metric System. In our proposal, FTA "encouraged [grantees] to begin using the metric system of measurement * * * at the earliest possible date in their procurements and other business activities." Although grantees would be merely encouraged to use the metric system, the commenters were adamantly opposed. Given FTA's decision to focus on contracting requirements, this provision is not included in Circular 4220.1C. FTA notes, however, that 49 U.S.C. sections 205a *et seq.*, E.O. 12770, "Metric Usage in Federal Government Programs," 15 U.S.C. section 205a, and the "Master Agreement" require the use of the metric system by 1997. FTA recipients should note, however, that the use of the metric system is not required in every instance; 49 CFR 19.44(a)(3)(v) exempts its use when not "practicable and economically feasible."

N. Architectural and Engineering Contracts. Although FTA has reworded the provisions concerning the requirements for architectural and engineering contracts, the basic requirements have not been changed.

Issued: October 10, 1995.

Gordon J. Linton,

Administrator.

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