



## **NADTC Section 5310 Webinar 1: The Federal Perspective FTA Response to questions on Voucher Programs and Acquisition of Transportation Services**

Thank you for tuning in to the Section 5310 webinar hosted by the National Aging and Disability Transportation Center (NADTC). Below I copied and pasted some info from the Section 5310 Circular (FTA C 9070.1G): [https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/C9070\\_1G\\_FINAL\\_circular\\_4-20-15%281%29.pdf](https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/C9070_1G_FINAL_circular_4-20-15%281%29.pdf). See the NADTC website for a Word version of the Section 5310 Circular.

22. Supporting the administration and expenses related to voucher programs for transportation services offered by human service providers. This activity is intended to support and supplement existing transportation services by expanding the number of providers available or the number of passengers receiving transportation services. Vouchers can be used as an administrative mechanism for payment of alternative transportation services to supplement available public transportation. The Section 5310 program can provide vouchers to seniors and individuals with disabilities to purchase rides, including: (a) mileage reimbursement as part of a volunteer driver program; (b) a taxi trip; or (c) trips provided by a human service agency. Providers of transportation can then submit the voucher for reimbursement to the recipient for payment based on predetermined rates or contractual arrangements. **Transit passes or vouchers for use on existing fixed-route or ADA complementary paratransit service are not eligible.** Vouchers are an operational expense which requires a 50/50 (federal/local) match.
1. PROCUREMENT RESTRICTIONS. An applicant seeking federal assistance pursuant to the federal transit laws as codified at 49 U.S.C. 5301 *et seq.* to acquire property or services in support of a proposed project is subject to numerous provisions of law pertaining to third party procurement requirements. FTA's procurement requirements are codified at 49 U.S.C. 5325. In addition, regulations promulgated at 49 CFR part 18 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments) establish uniform administrative rules for federal grants, cooperative agreements and subawards to state, local, and Indian tribal governments (private, nonprofit organizations must comply with similar regulations in 49 CFR part 19). Provisions of the common rule pertaining to procurement requirements for FTA recipients are set forth at 49 CFR 18.36. Those requirements, as well as other FTA specific provisions, are also set forth in FTA's master agreement (FTA MA(20) October 1, 2013, as amended) at Section 17, "Procurement," updated annually with the issuance of each new master agreement. Finally, FTA has published additional guidance relative to recipients' compliance with third party procurement requirements within the current FTA Circular 4220.1 and its "Best Practices Procurement Manual." The regulations and guidance are intended to ensure full and open competition and equitable treatment of all potential sources in the procurement process including planning, solicitation, award, administration, and documentation of all federally funded contracts.

Each recipient of FTA assistance to acquire property or services in support of its proposed project shall certify to FTA, in accordance with 49 CFR 18.36, that its procurements and procurement system will comply with all applicable third party procurement provisions of federal laws, regulations, and

directives, except to the extent FTA has expressly approved otherwise in writing. Any applicant that fails to provide this certification may be determined ineligible for award of federal assistance, if FTA determines that its procurement practices and procurement system are incapable of compliance with federal laws, regulations, and directives governing procurements financed with FTA assistance.

Now to the exact questions from the webinar:

1. The first has to do with “acquisition of transportation services under contract, lease, or other arrangement” as a traditional Section 5310 project. There are a few private non-profit organizations (eligible subrecipients for traditional section 5310 projects) that provide transportation assistance to the populations they serve by either 1. providing them transit passes (which the organization purchased in advance from the public transit agency) for use on existing fixed-route or ADA complementary paratransit service or 2. paying their taxi fares. Is that considered “acquisition of transportation services” which is eligible for capital assistance?
  - a. Acquisition of transportation services means it’s under a contract, lease, or other arrangement. This may include acquisition of ADA-complementary paratransit services when provided by an eligible recipient or subrecipient. Both capital and operating costs associated with contracted service are eligible capital expenses. User-side subsidies or vouchers or shared-ride taxi or TNCs are considered one form of eligible arrangement. Funds may be requested for contracted services covering a time period of more than one year. The capital eligibility of acquisition of services as authorized in 49 U.S.C. 5310(b)(4) is limited to the Section 5310 program. Transit passes or vouchers for use on existing fixed-route or ADA complementary paratransit service are not eligible. Vouchers are an operational expense which requires a 50/50 (federal/local) match. However, if it’s done through acquisition of transportation services means it’s under a contract, lease, or other arrangement – it’s capital: 80/20.
2. This question [about whether federal procurements regulations apply to passes and vouchers and if they are considered acquisition of services] are considered has been brought up because in the description for Other Eligible Capital and Operating Expenses in the 5310 Circular it says “transit passes or vouchers for use on existing fixed-route or ADA complementary paratransit service are not eligible. Vouchers are an operational expense which requires a 50/50 (federal /local) match.” The countervailing argument is that if they are eligible subrecipients for traditional section 5310 projects the transit passes and taxi fares are both eligible as “acquisition of transportation services” and eligible for capital assistance. The follow up question is, if those are considered “acquisition of transportation services” do federal procurement regulations apply? I imagine it would be relatively easy to justify the transit passes as a sole source procurement but the taxi rides might be a little more complicated.
  - a. Yes, federal procurement regulations apply. What it really comes down to is, it depends on whether we are discussing a direct recipient or a

subrecipient. States and designated recipients can allocate funds to subrecipients under Section 5310 without conducting a competition - there is no requirement that this allocation be done on a competitive basis, although many states and DRs do compete their section 5310 funds in order to fund the best projects. Once a subrecipient has received approval to use federal funds to provide the service, if it opts to not provide the service itself, but rather contracts it out, a competitive procurement for that service *is required*. There is a distinction between subrecipients and contractors. Funds can flow through direct recipients to subrecipients without competition, but if an agency is procuring service, there must be a competition.

Response submitted July 11, 2016:  
Danielle Nelson  
U.S. Department of Transportation  
Federal Transit Administration  
Rural and Targeted Programs