

# *MARYLAND STATE MANAGEMENT PLAN*

## SECTION 5339 PROGRAM

MARYLAND TRANSIT ADMINISTRATION

MARYLAND DEPARTMENT OF TRANSPORTATION

**DRAFT**

December 2015



**Office of Planning**

6 St. Paul Street

Baltimore, Maryland 21202-1614















In some cases, Maryland may choose to grant Section 5339 assistance to a subrecipient through an intermediary subrecipient. For example, for public policy reasons, Maryland might pass funds to a public corporation through a local public body. The arrangement between the first tier and second tier subrecipient is not a third party contract if the ultimate subrecipient would otherwise be eligible under Section 5339 to receive funds directly from the State and the ultimate subrecipient intends to use those funds to pursue its own public transit project.

## VI. Eligible Projects

Although eligible subrecipients must operate fixed route bus service, project funding is not limited to fixed route services. Eligible capital projects under Maryland's Section 5339 program include, but are not limited to:

- Buses, maintenance, service, and/or paratransit vehicles (including ADA vehicles),
- Radios or other communications equipment,
- Bus stop signs, benches, or shelters,
- Wheelchair lifts and related vehicle modifications,
- Vehicle rehabilitation where candidate vehicles meet the extended useful life and rehabilitation cost limits established by the MTA/OLTS,
- Spare parts, maintenance and other miscellaneous equipment with a unit cost over \$1,000 and a useful life of more than one year, and/or,
- Vehicle preventive maintenance programs.

Because the need for vehicle replacement funding far exceeds the available funding, MTA limits use of the small urban and rural Section 5339 funds to bus and bus-related equipment only, awarded in coordination with Section 5307 and 5311 program funds.

## VII. Local Share and Local Funding Requirements

### ***A. Local Match Ratio***

The financing of Section 5339 capital assistance is:

Federal: Up to 80 percent of the project cost

State Share: Up to 10 percent of the project cost

Local Share: A minimum of 10 percent of the project cost

## **B. Source of Local Match**

The local share includes all local funds contributed to meet project costs. The local share for Section 5339 must be provided for in cash. Cash may include local appropriations or cash derived from other sources.

All local contributions are accepted as part of the local subrecipient's matching share when such contributions meet all of the following criteria:

- Are verifiable from the provider's records;
- Are not included as contributions for any other Federally assisted program;
- Are not paid by the Federal government under another assistance agreement unless authorized under the other subject; and
- Are provided for in the approved budget when required by the funding agency.

In most years, Maryland contributes State funding toward the rural local match requirement, thus reducing the local match required from the subrecipients.

## **VIII. Project Selection Criteria and Method of Distributing Funds**

With the exception of the apportionment for the Aberdeen—Bel Air South—Bel Air North large UZA and the Cecil County portion of the Philadelphia, PA-NJ-DE-MD large UZA, Section 5339 capital projects are funded on a discretionary basis according to necessity; therefore, each local applicant must provide a justification for their requested capital projects. The priorities for funding capital assistance are: 1) replacement vehicles, which must meet the service life guidelines that are included in this State Management Plan under XIII.E.3; 2) vehicles required for ADA compliance; 3) preventive maintenance; 4) other transit capital projects necessary for the operation of public transit services, such as shelters, parts, radios, or miscellaneous maintenance equipment; and 5) vehicles for expanded service.

For the Aberdeen—Bel Air South—Bel Air North large UZA and Cecil County portion of the Philadelphia, PA-NJ-DE-MD large UZA, FTA apportions the amount of Section 5339 funds. However, the subrecipient county must still complete an annual ATP application with justification to MTA.

Capital project funding is awarded and administered in accordance with FTA Circular 4220.1F, and the MTA/OLTS's or the local jurisdiction's competitive procurement procedures after they have gone through the ATP annual review process and have been recommended for the Annual Program of Projects. The ATP annual review process

consists of a statewide review of capital needs. Projects are selected based on funding availability, merit and demonstrated need.

All capital grant applicants must provide an adequate opportunity for public review and comment on a capital project, and after providing notice, must hold a public hearing on the project if the project affects significant economic, social, or environmental interests.

## **IX. Annual Program of Projects Development and Approval Process**

### ***A. Subrecipient Application Process***

In Maryland, the subrecipient application for the Section 5339 program is combined with other Federal and State public transit funding programs into one document known as the Annual Transportation Plan (ATP).

The funding programs applied for through the ATP currently include:

1. Section 5311 (Formula Program for Rural Areas, excluding the Intercity Bus Program, which has a separate application process);
2. Section 5307 (Urbanized Area Formula Program) for small urbanized areas;
3. Sections 5339 (Bus and Bus Facilities Formula Program);
4. Sections 5303/5304/5305 (for subrecipient planning and technical assistance projects);
5. State Americans with Disabilities Act (ADA) Program - The State of Maryland provides funds to transit systems that operate fixed routes to provide complementary paratransit service to persons with disabilities as required under the Federal ADA;
6. State Large Urban Capital and Operating Assistance - Eligibility for these funds is limited to LOTS serving the Baltimore and Washington, DC metro areas; and
7. Statewide Specialized Transportation Assistance Program (SSTAP) - The SSTAP provides State funds to local governments for general-purpose transportation of the elderly and persons with disabilities.

Each subrecipient's ATP describes the operation of the subsequent year's transportation program and includes all the Federally-mandated local assurances, as well as the documentation needed to assure the MTA/OLTS that all State and Federal requirements will be met. The most recent Annual Transportation Plan document is attached to this State Management Plan as Appendix A.

Each Fall the program announcement and ATP package for the following fiscal year's funding are distributed to all current Section 5307, 5311, and 5339 subrecipients. The entire cycle, from the initial announcement of allocations, is approximately as follows:

Program Announcement: Fall  
Application Deadline: Winter  
State Application Submission: Early Spring  
Federal Approval: Spring

Once a Section 5339 ATP has been approved by the MTA/OLTS and the Federal funds are approved by FTA, an interagency grant agreement between the MTA and the subrecipient is executed. This agreement will contain all appropriate certifications and assurances and serve to notify the subrecipients of all FTA requirements. The MTA/OLTS will maintain files documenting the basis for all assurances it makes to the FTA. Each fiscal year, the MTA Office of Planning (Capital Programming) will electronically submit the appropriate certifications and assurances for all active grants that it expects FTA to make during that year.

The MTA/OLTS's review and approval process of ATPs includes an analysis of the transportation service plan and service performance, vehicle inventory and utilization plan, purchased vehicles, fixed asset inventory, vehicle replacement and refurbishment plans, vehicle funding requests, current and future equipment requests, maintenance contracts and schedules, private enterprise involvement, program compliance, certifications and assurances, operating budget, and the overall management of the project. Several levels of review and discussion are held prior to the final recommendations for the Annual Program of Projects.

## **X. Transfer of Funds**

The State has the flexibility to transfer funds between small UZAs based on their own defined process. The national distribution funds may be transferred between small UZAs, large UZAs, and rural areas. Based on the project selection criteria and method of distributing funds described under section VIII of this State Management Plan, MTA/OLTS may transfer S.5339 allocations between small UZAs and rural area.

Section 5339 funds apportioned to the State may also be transferred to the Section 5307 Small Urban and 5311 Rural programs so long as the transferred funds are for projects that meet Section 5339 eligibility requirements.

Each time MTA/OLTS plans to transfer Section 5339 funds, Maryland's Governor provides notification to FTA, through a letter prepared by MTA, of the transfer for each transaction, so that FTA can accurately reflect this transfer decision in overall program budget levels and apportionment records. In addition, MTA's grant application project budget shows the amounts of transferred funds.

## **XI. Civil Rights**

The MTA/OLTS and subrecipients must ensure that no person shall on the grounds of race, color, creed, national origin, sex, age, or disability be excluded from participating in, denied the benefits of, or be subject to discrimination under any project, program, or activity funded in whole or in part through the Section 5339 program. This section describes how the State ensures that Section 5339 subrecipients meet the requirements of Title VI, Equal Employment Opportunity (EEO) and Disadvantaged Business Enterprise (DBE).

MTA/OLTS coordinates with MTA's Office of Fair Practices for implementation and oversight of the Title VI, EEO, and DBE processes and requirements. The Office of Fair Practices has ultimate responsibility for Civil Rights programs.

### **A. Title VI**

#### **1. OLTS Program Management Related to Title VI**

##### **a. Statewide Transportation Planning Process**

Each subrecipient develops and maintains a demographic profile of its jurisdiction that includes identification of the locations of socioeconomic groups, including low-income and minority populations as covered by the Executive Order on Environmental Justice and Title VI. This profile is submitted to MTA/OLTS.

Additionally, the MTA/OLTS staff collects demographic profiles of the jurisdictions through the statewide transportation planning process. The statewide transportation planning process is conducted as a compilation of several different existing planning processes. Each local jurisdiction that operates public transit services is required to have a Transportation Development Plan (TDP). The planning process used to develop this

document specifically works to identify the needs of low-income and minority populations within each jurisdiction. Secondly, as was established under SAFETEA-LU for the Section 5310 as well as the former Section 5316 and 5317 programs, the MTA/OLTS has completed a locally developed, coordinated public transit-human services transportation plan for each region in Maryland, with the exception of the Washington Region in which the programs are administered by the Metropolitan Washington Council of Government. These documents comprehensively look at unmet transportation needs of individuals with disabilities, older adults, and people with low incomes specifically those seeking employment and/or employment-related activities. These documents are supplemented with input and data received during other planning process such as the development of the Consolidated Transportation Plan (CTP), the Maryland Comprehensive Transportation Plan (MTP), Transportation Improvement Program (TIP), and Statewide Transportation Improvement Program (STIP). Together these documents will serve as MTA/OLTS's primary planning tools from which programming decisions and the development of the POP will be made.

#### **b. Section 5339 Funding Distribution**

Each county within the State of Maryland has a designated public transit operator, and Section 5339 capital funds are distributed to the local subrecipients based on a competitive application process in coordination with Section 5311 and 5307 funding, as described below as well as under section VIII of this State Management Plan.

Each subrecipient is required to submit an ATP to the MTA/OLTS each year. MTA/OLTS reviews each application for completeness and accuracy. MTA/OLTS staff works directly with each applicant to gain a thorough knowledge of the projects requested in the ATP. Funding recommendations are broken down into two separate categories, (1) Operating and (2) Capital (which includes Section 5339 as well as other FTA and State funding programs for public transportation). Recommendations for FTA funding to support operating costs are based on maintaining existing transportation levels of effort across the State. Maintaining existing levels of transportation service delivery has exhausted the amount of funds available each year. Recommendations for FTA funding to support capital projects in each local jurisdiction are based on the following priorities:

1. replacement vehicles, which must meet the service life guidelines that are included in this State Management Plan under XIII.E.3;
2. vehicles required for ADA compliance;
3. preventive maintenance;
4. other transit capital projects necessary for the operation of public transit services, such as shelters, parts, radios, or miscellaneous maintenance equipment;
5. vehicles for expanded service.

Title VI requires that an equitable distribution of funds to subrecipients serving predominantly minority and low-income populations is achieved through the MTA/OLTS's on-going monitoring of each local government's compliance with Title VI requirements as they operate existing services and the planning process detailed in the section above. As demographic changes are identified in the planning processes or public input identifies deficiencies in the existing levels of service delivery relative to minority and low-income populations, the MTA/OLTS staff will work directly with the subrecipient to identify changes to their existing services to better accommodate these needs. If the subrecipients fail to make appropriate service adjustments, this dynamic will be given consideration as funding recommendations are developed.

Once a funding recommendations list has been refined, it is forwarded to the MTA Administrator for review and approval. The MTA Administrator is authorized by MDOT to make final project recommendation approvals and to submit applications to the FTA.

**c. Criteria for Selecting Transit Providers to Participate in FTA Grant Programs**

The MTA/OLTS will only award Section 5339 funds to local units of government for the delivery of open door general public transportation services.

**2. Title VI Requirements for Subrecipients**

**a. For All Subrecipients**

All Maryland LOTS, including Section 5339 subrecipients, are required by MTA/OLTS to:

1. Establish a written policy of non-discrimination on the basis of race, color, and national origin.
2. Designate a contact person responsible for implementation of Title VI for the transit system.
3. Establish a written process for receiving, recording, responding to, and resolving Title VI investigations, complaints, and lawsuits. This process should include notification of MTA immediately when any investigation, complaint, or lawsuit is initiated.
4. Notify the public of Title VI rights and procedures the public may follow to file a complaint.
5. Sign and submit the certifications and assurances with the ATP.

6. Report to MTA immediately any Title VI complaints received, or investigations or lawsuits initiated, as well as annually as part of the ATP certification and assurances.
7. Develop a Limited English Proficiency (LEP) Plan, a written plan for providing access to meaningful activities and programs for persons with LEP.
8. Develop a public participation plan and undertake steps to ensure that minority persons and LEP persons have meaningful access to these activities.
9. Compile a written Title VI Policy and Program that includes the above items and must be submitted to the MTA Office of Fair Practices for review at least every three years.

**b. For Subrecipients Which Operate Fixed Route Services**

All LOTS which operate fixed route service are required to establish the following system-wide standards and policies in accordance with FTA Circular 4702.1B:

1. Quantitative system-wide service standards for vehicle load, vehicle headway, on-time performance, and service availability; and
2. System-wide service policies for distribution of transit amenities and vehicle assignment.

**c. For Subrecipients Which Operate 50 or More Fixed Route Buses in Peak Service and Are Located in UZAs of 200,000 or More Population**

All LOTS which operate 50 or more fixed route buses in peak service and are located in UZAs of 200,000 or more population, or have been placed in this category at the discretion of the FTA Director of Civil Rights in consultation with the FTA Administrator, have the following additional requirements in accordance with FTA Circular 4702.1B:

1. A demographic analysis of the transit provider's service area. This shall include demographic maps and charts completed since submission of the last Title VI Program (if applicable) that contains demographic information and service profiles;
2. Data regarding customer demographics and travel patterns, collected from passenger surveys;
3. Results of the monitoring program of service standards and policies and any action taken, including documentation (e.g., a resolution, copy of meeting

- minutes, or similar documentation) to verify the board's or governing entity or official(s)'s consideration, awareness, and approval of the monitoring results;
4. A description of the public engagement process for setting the "major service change policy" and disparate impact policy;
  5. A copy of board meeting minutes or a resolution demonstrating the board's or governing entity or official(s)'s consideration, awareness, and approval of the major service change policy and disparate impact policy.
  6. Results of equity analyses for any major service changes and/or fare changes implemented since the last Title VI Program submission; and
  7. A copy of board meeting minutes or a resolution demonstrating the board's or governing entity or official(s)'s consideration, awareness, and approval of the equity analysis for any service or fare changes required by FTA Circular 4702.1B.

### **3. Monitoring Subrecipients**

Subrecipients are required to provide detailed Title VI information to MTA on usage and performance of the project. The Title VI Investigations, Complaints & Lawsuit Log which is used to provide this detailed information is submitted to the MTA/OLTS support staff along with an operating Request for Payment form quarterly. These quarterly reports will include financial and program measures updates.

The MTA/OLTS ensures that subrecipients maintain and demonstrate compliance with Title VI requirements through the following activities.

#### **a. Annual Submittals**

All subrecipients are required to sign an assurance document which is compliant with 49 CFR Section 21.7(a) and submit it to the MTA with their annual funding application. MTA/OLTS staff reviews this documentation for completeness and accuracy.

Any subrecipient who is applying for and or receiving funding for the first time is required to submit to the MTA/OLTS information regarding their Title VI compliance history if they have previously received funding from another Federal agency. This must include a copy of any Title VI compliance review activities conducted in the last three years, including the purpose or reason for the review, the name of the agency or organization that performed the review, a summary of the findings and recommendations of the review, and a report on the status and/or disposition of such findings and recommendations. This information should be relevant to the organizational entity actually submitting the application, not necessarily the larger agency or department of which the entity is a part. This submittal shall be made to the MTA/OLTS prior to any funding being awarded. MTA/OLTS staff reviews this documentation for completeness and accuracy. Any concerns identified as part of this review will be investigated fully prior to the awarding of FTA funds.

Each year, all Section 5307, 5311, and 5339 subrecipients are required to submit a funding application, the ATP. MTA/OLTS staff conducts a thorough and extensive review of each funding application. This review includes validating that all required documents are submitted and completed properly. This review also includes a subjective analysis of the project scope and the applicant's adherence to FTA requirements (Title VI requirements are part of this analysis). Applicants are also asked to submit printed and website material such as schedules, brochures, and other public outreach material including LEP documents as part of their application. This material is reviewed by MTA/OLTS staff for Title VI compliance.

There are different thresholds for compliance based on population, whether or not the subrecipient operates fixed route service, and the number of fixed route vehicles operated in peak service. Each year the subrecipients are required to submit documentation which defines what thresholds they need to meet in terms of Title IV compliance.

**b. Public Notification**

At a minimum, each subrecipient shall produce public notice outreach to inform the public of the subrecipient's Title VI obligations, apprise members of the public of the protections against discrimination afforded to them by Title VI, notify the public that the subrecipient certifies that they are in compliance with these requirements, and explain how the public can access the subrecipient's complaint process. Documentation of this effort shall be submitted to the MTA/OLTS once a year, through the ATP process. The subrecipients make their application available for public review and comment prior to the submission of the application to the MTA/OLTS. MTA/OLTS staff reviews this documentation for completeness and accuracy.

**c. Reporting of Any Title VI Concerns**

Each subrecipient shall notify the MTA/OLTS in writing about any complaints, lawsuits or FTA administrative activity within 3 business days of their knowledge of these actions. If the MTA/OLTS receives such a notification, the MTA/OLTS will immediately notify the MTA Office of Fair Practices. MTA/OLTS staff will be assigned to assist in the full investigation of the issue. If necessary, MTA/OLTS staff will then provide technical assistance to the subrecipient to assist in the development of corrective actions and monitor the implementation of those corrective actions

**d. Transportation Development Plan (TDP)**

Subrecipients for Sections 5307, 5311, and 5339 funding are required to have a TDP. These plans are updated on a five year cycle. As part of the TDP update, a critical assessment of the subrecipient's Title VI obligations and their ability to meet these requirements is

conducted. This planning effort also serves as a tool to develop current and accurate data to identify locations of clusters of minority and low-income populations. MTA/OLTS staff provides technical assistance and guidance directly to subrecipient staff as the planning update process is conducted.

**e. Training**

The MTA/OLTS provides subrecipients with a comprehensive program manual detailing FTA and State requirements for the LOTS. A discussion of Title VI requirements is included in this document. Additionally, the MTA/OLTS hosts periodic mandatory training sessions to present various FTA program requirements, including Title VI.

**f. Site visits**

MTA/OLTS staff is quarterly or as needed on site at subrecipients' facilities as part of MTA/OLTS's continuing and on-going technical assistance and monitoring. During these visits staff is looking for visual indications of Title VI compliance. Additionally, as MTA/OLTS staff interacts with subrecipient staff, they will monitor for indications that the subrecipients have understanding of, and are adhering to, Title VI requirements.

On a triennial basis each Section 5307, 5311 and 5339 subrecipient is scheduled to receive a comprehensive site visit and compliance review by MTA/OLTS staff. These reviews are conducted to assure all relevant FTA program regulations are being followed and implemented by our subrecipients. Title VI compliance is part of this review process. While on site staff will physically review any written policy documents and records subrecipients may have on file relevant to Title VI including LEP programs and complaint policy and procedures. Subrecipients will be charged with correcting any deficiencies identified during these audits. MTA/OLTS staff will work directly with subrecipients to provide technical assistance and ensure the corrective actions are implemented in a timely manner. The checklist used to conduct these reviews is attached as Appendix B.

***B. Equal Employment Opportunity (EEO)***

A formal EEO program is required of any subrecipient that both employs 50 or more transit-related employees (including temporary, full-time or part-time employees either directly employed and/or through contractors) and received in excess of \$1 million in capital or operating assistance or in excess of \$250,000 in planning assistance in the previous Federal fiscal year. The program requirements detail what must be included – workforce analysis, numeric goals and timetables, an assessment of past employment practices and proposed remedies for problem areas, and a monitoring and reporting system. Program updates are required every three years. MTA/OLTS monitors the status of its subrecipients toward meeting these thresholds on an annual basis.

MTA/OLTS requires that all Section 5339 subrecipients (whether or not they meet the Federal threshold for a formal EEO program) establish: a responsible party for ensuring compliance with EEO requirements; a written EEO policy statement; and an EEO complaint procedure. Employees and applications must be notified of the EEO policy and complaint procedure. Subrecipients are required to notify MTA/OLTS immediately of any EEO complaints, and submit annually through the ATP the name of the responsible party, a report on complaints and their resolution, certification that EEO requirements are being met, and indication of whether the system has an official FTA approved program (if they meet the threshold requiring this).

In addition to the annual ATP submissions, MTA/OLTS monitors subrecipient compliance with EEO requirements as part of the comprehensive compliance review that MTA/OLTS conducts with each of its Section 5311 subrecipients every three years. (See Appendix B for the LOTS Compliance Review checklist.)

The MTA Office of Fair Practices is responsible for civil rights programs compliance. The Office of Fair Practices reviews subrecipient EEO programs for compliance with Federal and State requirements, and submits these documents to FTA on behalf of those subrecipients meeting Federal thresholds for FTA program submissions. The Office of Fair Practices also submits the EEO program and reports required for the State as the grantee.

### ***C. Disadvantaged Business Enterprise (DBE)***

MTA/OLTS has established an MTA/OLTS DBE Procurement Review Group (PRG). The PRG consists of MTA Procurement Officers, Project Managers and employees of the Office of Fair Practice. PRG meetings are held bi-weekly to determine the DBE goals for MTA and subrecipients' contracts that are being offered for solicitation. Detailed MTA/OLTS standard operating procedures related to DBE program activities for the LOTS are attached as Appendix C.

#### ***1. Goal Setting***

For all subrecipient projects valued \$25,000 or more (the current Maryland LOTS small purchase threshold), the LOTS must submit a request for procurement to the MTA/OLTS Regional Planner identifying the capital/operating project, the estimated project cost, the anticipated DBE goal, the DBE goal tabulation, the method of procurement and any procurement documents such as a Request for Proposal (RFP) which contains a scope of work (SOW). The LOTS procurement specialist is required to create a subcontracting analysis which identifies the subcontracting opportunities and an independent cost

estimate (ICE) for the project with assistance from the MTA/OLTS Regional Planner as needed.

The MTA/OLTS Regional Planner forwards the LOTS request and documents to MTA's Procurement Department, which sends these on to the Office of Fair Practices for review. The Office of Fair Practices may adjust the LOTS' recommended DBE goals, in which case they will work directly with the LOTS' procurement officer to address such recommendations. For projects valued over \$50,000, the Office of Fair Practices presents its recommended DBE goal for review at the PRG meeting.

## **2. Solicitations**

For all subrecipient projects valued \$25,000 or more, the LOTS must advertise the procurement using a method of competitive procurement such as a Request for Proposal (RFP), an Invitation for Bid (IFB), etc., including the DBE project goal.

Before awarding the contract, the LOTS must send the recommended appropriate bidder's bid analysis, along with the package of MDOT DBE forms, to the Regional Planner, requesting concurrence to award the contract. Before the MTA/OLTS Regional Planner can issue concurrence, a DBE evaluation of the recommended bidder and DBE package is conducted by the Office of Fair Practices.

Should the bidder/offeror submit a request for a waiver demonstrating they are unable to achieve the DBE participation goal as outlined in the procurement solicitation, such as a RFP or IFB, etc., documentation is required from the bidder/offeror showing good faith efforts to obtain the specified DBE participation goal.

## **3. Contract Monitoring**

For projects that exceed \$25,000, following MTA/OLTS concurrence to award the project, the LOTS send the prime contractor and subcontractor details on the specific compliance requirements and schedule. The prime contractor must submit to the LOTS the Monthly Prime DBE Payment Report and the Monthly Subcontractor DBE Payment Report by the 10th of the following month even if there is no payment activity. The LOTS will forward the Monthly Payment Reports to the MTA/OLTS Regional Planner who provides a copy of the monthly report to the Office of Fair Practices.

The MTA/OLTS Regional Planner will work with the Office of Fair Practices should there be any issues of non-compliance indicated on the Monthly Payment Form submissions and/or within the project engineer's records which will be reviewed during the MTA/OLTS quarterly site visits.

**4. Formal DBE Program for Subrecipients Meeting FTA Threshold**

All subrecipients that receive \$250,000 or more in FTA planning, capital (not counting transit vehicle purchases), and/or operating assistance in a State fiscal year are required have an MTA-approved DBE program. The requirement includes:

- a. A signed and dated DBE policy statement that expresses a commitment to the DBE program, states its objectives, and outlines responsibilities for its implementation. The statement must be circulated throughout the organization and to the DBE and non-DBE business communities that perform work on FTA-assisted contracts (which can be achieved by including the policy statement in all procurements involving FTA funds).
- b. Establishment of an overall DBE goal for annual contract participation by disadvantaged businesses.
- c. Development and maintenance of a directory of DBE-certified firms to be notified when competitive procurements are advertised. This directory must include each firm's address, phone number, and the types of work the firm has been certified to perform as a DBE. Each subrecipient must revise their directory at least annually and make updated information available to contractors and the public on request. Alternately, subrecipients may use the MDOT DBE directory rather than creating their own individual directories.
- d. Public participation that includes:
  - o Consultation with minority, women's, and general contractor groups, community organizations, and other officials or organizations that could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and a grantee's efforts to establish participation of DBEs.
  - o A published notice announcing proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at the principal office for 30 days following the date of the notice, and informing the public that comments on the goals will be accepted for 45 days from the date of the notice. The notice must include addresses to which comments may be sent. The notice must be published in general circulation media and be available in minority-focused media and trade association publications.

## **XII. Section 504 and ADA Reporting**

All Section 5339 subrecipients are required to comply with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, and assure that no individual is discriminated against on the basis of disability in connection with the provision of transportation service.

MTA/OLTS requires subrecipients to submit procurement documents to MTA/OLTS for concurrence before initiating the procurement. As part of procurement oversight, MTA/OLTS verifies that all fixed-route vehicle specifications require ADA accessibility. Non-accessible demand-response vehicles are only permitted to be purchased when the demand-response system, when viewed in its entirety, provides an equivalent level of service for persons using wheelchairs as for ambulatory persons. Subrecipients are required to submit a Certification of Equivalent Service for annual grant requests for demand-responsive vehicles that are not accessible to persons using wheelchairs, and reviews the makeup and utilization of the applicant's entire revenue vehicle fleet as part of the application.

MTA/OLTS requires every subrecipient providing fixed-route service (with the exception of commuter bus and intercity bus) to provide ADA-compliant complementary paratransit service. This service must meet the specific Federally established vehicle and service requirements, and provide an equivalent level of service as the fixed-route service it is intended to complement. For systems that operate route deviation service:

- If deviations are available to all members of the public (not just persons with disabilities), the service is considered "Demand Response" and the system does not need to operate ADA complementary paratransit services.
- If deviations are only available for persons with disabilities, the LOTS must offer separate complementary paratransit as well.

Jurisdictions that provide ADA complementary paratransit service are required to have an approved ADA plan. ADA audits are performed on these jurisdictions periodically to ensure compliance. ADA plans are updated/revised based on recommendations from audits and due to changes in FTA regulations.

MTA/OLTS provides technical assistance to subrecipients on all aspects of ensuring transportation services are accessible to people with disabilities and compliance with the ADA. The Maryland LOTS Program Manual includes a 24-page chapter, and also addresses accessibility considerations in other chapters with regards to planning, public participation, facility development, maintenance, and emergency preparedness.

Subrecipient training funded by the Maryland RTAP program also frequently addresses aspects of ADA compliance. MTA/OLTS provides subrecipients with sample ADA-related policies and procedures for fixed route and demand-response services (Appendices D and E), and related guidance for route deviation services (Appendix F).

MTA/OLTS monitors subrecipient compliance with ADA requirements as part of the comprehensive compliance review that MTA/OLTS conducts with each of its Section 5311 subrecipients every three years. (See Appendix B for the LOTS Compliance Review checklist. ADA requirements are addressed in the Service Requirements/Restrictions section.) As part of this review, the reviewer looks at the subrecipient's website and printed materials to ensure that ADA-compliant service policies are in effect.

MTA/OLTS also inspects maintenance records of accessibility equipment as part of periodic maintenance review of each subrecipient.

### **XIII. Program Management**

#### ***A. Procurement***

Except for revenue vehicles, all procurement activities are the responsibility of the local Section 5339 subrecipient. Revenue vehicles may be procured by the local Section 5339 subrecipient or by the State for the local subrecipient. Local subrecipients use the procurement procedures of their jurisdiction as long as they conform to the minimum standards prescribed by the MTA/OLTS and in FTA Circular 4220.1F. In addition, the local subrecipient must maintain a contract administration system that ensures that all procurements funded wholly or in part with Section 5339 funds are done in accordance with the MTA/OLTS and Federal regulations.

The MTA/OLTS has adopted the procurement requirements and standards delineated in FTA Circular 4220.1F for the Section 5339 subrecipients in Maryland with the following exception: the State small purchase threshold is \$25,000. For projects over \$25,000, the subrecipient must pursue the same methods of procurement that are followed for FTA-funded projects that are \$100,000 or more as described in Circular 4220.1F.

For projects up to \$25,000 (State limit equivalent to FTA's threshold of \$100,000), the subrecipient must solicit price or rate quotations from an adequate number of sources; the State requires at least two and preferably three quotes.

The State categorizes small procurements as follows, each with its own procurement guidelines:

1. **Category I (known as Micro-purchases under Federal methods):** For purchases valued up to \$3,000 (Federal threshold), oral or written solicitation may be used. A written purchase order or contract is required if written solicitation is used. The subrecipient is responsible for ensuring that the price is fair and reasonable, and is encouraged to distribute multiple purchases equitably among local qualified suppliers. The basis for the award should be the judgment of the subrecipient's procurement officer. Once a subrecipient has identified a preferred vendor, MTA/OLTS concurrence is required prior to the issuance of a purchase order.
2. **Category II:** for procurements more than \$3,000 but not more than \$15,000, oral or written solicitation may be made. A written purchase order or contract is required for Category II small procurements.
3. **Category III:** for procurements more than \$15,000 but not more than \$25,000, written solicitation must be made (although it may be supplemented by oral solicitation), and the solicitation must be posted on the eMaryland Marketplace.

All of these categories require an Independent Cost Estimate (ICE).

MTA/OLTS ensures subrecipient compliance with procurement requirements by requiring that subrecipients consult with their MTA/OLTS Regional Planner for any FTA- and/or MTA-funded purchases exceeding \$300 for purchases funded by capital grants, and \$3,000 for purchases funded by operating grants. The MTA/OLTS must concur with subrecipient solicitation documents prior to the initiation of the procurement process for all items or services purchased with capital and technical assistance funds, as well as for all items purchased through small purchase, sealed bids, competitive proposal, competitive negotiation, or noncompetitive negotiation. This includes approval of bid specifications for vehicles and equipment.

The MTA/OLTS must also concur in writing with the recommendation for award prior to the execution of a local contract or purchase order for all items purchased through the methods mentioned previously. The MTA/OLTS will defer to the local subrecipient's procurement requirements if the subrecipient's requirements are more stringent than the State's requirements.

MTA/OLTS provides periodic training to all subrecipients on procurement requirements. MTA/OLTS monitors subrecipient compliance with procurement requirements as part of the comprehensive compliance review that MTA/OLTS conducts with each of its Section 5339 subrecipients every three years. As part of this review, documentation within the subrecipient's procurement files is examined.

MTA conducts centralized vehicle procurements of vans and small- and medium-sized buses on behalf of the LOTS systems, and Section 5339 subrecipients are strongly encouraged to take advantage of MTA's bus procurement when available for their project. Section 5339 subrecipients may conduct their own bus procurements subject to MTA review and approval.

## ***B. Financial Management, Accounting, and Auditing***

The MTA/OLTS provides for fiscal controls and accounting procedures in accordance with State laws and in compliance with all FTA requirements.

Information received from subrecipients will provide detailed information on expenditures and services provided in support of projects for payment for Section 5311 funds. The grant agreements held with subrecipients require that all funds be expended and accounted for as required by Federal, State, and local law. A-133 audits are required and received annually from each subrecipient. This information, as well as records held by the subrecipient, provide documentation for State and Federal review.

## ***C. Project Closeout***

MTA/OLTS closes out Section 5339 projects through a two-phase process:

1. The MTA closes out the project with the subrecipient. MTA/OLTS initiates subrecipient grant closeout after the capital item(s) (for which the grant was awarded) are procured, the subrecipient has submitted all final requests for payment and supporting information to the MTA, and MTA has reimbursed the subrecipient for the capital expense. At this point, any remaining funds in the subrecipient grant are reallocated to other eligible subrecipient projects.
2. After all subrecipient projects under the FTA grant are closed out, the MTA closes out the grant with FTA.

## ***D. Property Management***

FTA defines equipment as all tangible, nonexpendable, personal property that has a service life of more than one year and an acquisition cost that exceeds \$5,000 per unit. Maryland Section 5339 subrecipients are required to maintain the following records on all MTA-funded vehicles and other equipment with a unit cost of \$300 or more, as well as desk or laptop computers:

- A description of the equipment,
- A serial number or other identification number,
- Who holds the title,
- The acquisition date,
- The cost of the equipment,
- Percentage of Federal/State participation in the cost of the equipment,
- MTA grant or project number under which it was procured,
- FTA grant agreement number under which it was procured,
- the location, use, and condition of the equipment,
- useful life; and
- any disposition date, including the date of disposal and sale price of the equipment.

The title (if applicable) to all equipment must be vested in the name of the local subrecipient.

In accordance with FTA Circular 5010.1D, MTA/OLTS requires that subrecipients conduct a physical inventory of equipment and reconcile the results with the property records at least once every two years.

As part of the Annual Transportation Plan (annual grant application), subrecipients are required to submit a current Vehicle Inventory Form as well as a Fixed Assets Inventory Form for equipment and facilities purchased in whole or in part with the MTA and FTA funds.

- The Vehicle Inventory form requires the following information: agency fleet number, vehicle identification number (VIN), model year, make, vehicle type, accessibility status, seating capacity, wheelchair capacity, MTA grant number or other source, in service date, funding ratio (federal/ state / local), purchase price, useful life (minimum miles/years), current mileage, current condition, current status (active/ backup), average annual mileage, estimated useful life remaining, and budget year for replacement, as well as disposition information for vehicles disposed of during the year. A second form requires utilization details (location, days and hours of use).
- The Fixed Assets Inventory form requires the following information: inventory control number, department, date acquired, asset description, use, condition, original cost, federal/ state (percent share), grant number or other source, in-service date, disposition action, owner, and useful life (years).

The Annual Transportation Plan also contains the FTA Certifications and Assurances requiring the applicant to have satisfactory continuing control over the use of project equipment and facilities. As part of their review of the Annual Transportation Plan, the MTA/OLTS staff will analyze 1) the previous awards made and 2) whether the capital still holds value to warrant listing. The MTA/OLTS staff will validate presence and condition of equipment during annual site visits.

A control system must be developed by each subrecipient to ensure adequate safeguards to prevent the loss, damage, or theft of equipment. Any loss, damage, or theft shall be investigated. Adequate maintenance procedures must be developed to keep the property in good condition, as described in section XIII.E.2 of this SMP. In cases of accidental or casual loss of project equipment, fair market value shall be deemed as the value of the equipment prior to its destruction. The local subrecipient must reinvest the insurance proceeds from the settlement for public transit purposes. FTA useful life requirements apply. If the asset has not reached its useful life, the appropriate payment should be made to replace the asset. Otherwise, documentation should be provided supporting the application of proceeds to the transit operation.

## ***E. Vehicle Use, Maintenance and Disposition***

### ***1. Vehicle Use and Satisfactory Continuing Control***

Capital management is an important aspect of public transit since it affects the safety, marketability, and financial integrity of the transit system. Transit is dependent on its capital equipment to accomplish its mission. Subrecipients of federal dollars administered by the MTA/OLTS are required to certify that any property purchased with those funds is used for public transportation services within the subrecipient's service area or other area described in the grant application for the useful life of the equipment or facility. Additionally, the subrecipient must annually certify that it has or will have satisfactory continuing control over the use of the equipment and facilities through operation or lease or otherwise.

All property acquired using federal funds must be utilized and disposed of in accordance with the applicable FTA program circular, FTA Circular 5010.1D (as amended) and 49 CFR 18 or 49 CFR 19. Title to all property purchased with Section 5339 funds must be vested in the name of the subrecipient.

Subrecipients are required to maintain the property at a high level of cleanliness, safety, and mechanical soundness. Each subrecipient must establish a maintenance program that, at a minimum, meets the equipment manufacturer's recommendations. MTA/OLTS has the right, and obligation, to review the transit system's maintenance and safety

programs and to conduct periodic audits of equipment and facilities funded with state and federal funds administered by MTA/OLTS.

The subrecipient must have the requisite fiscal capability to carry out the project and is responsible for maintaining required insurance coverage, property records, conducting physical inventories, implementing adequate property control systems and maintaining the equipment in proper working condition. Documentation must be available upon request.

Subrecipients must maintain control over Federally funded property; ensure that it is used in transit service, and dispose of it in accordance with Federal requirements. If the subrecipient leases Federally funded property to another party, the lease must provide that the subrecipient satisfactory provides continuing control over the use of that property. Control over FTA-funded facilities and equipment is determined in two areas: real property (land) and facilities; and personal property (equipment and rolling stock, both revenue and non-revenue).

Subrecipients are prohibited from using FTA-funded vehicles to provide charter service or exclusive school transportation, as detailed under sections XIX.D and XIX. E of this State Management Plan.

## **2. Vehicle Maintenance**

All Section 5339 subrecipients must have a written maintenance plan, and must establish a preventive maintenance (PM) program. Inspection and servicing of ADA-mandated accessibility equipment is required to be part of PM program, including cycling the lift as part of the pre-trip inspection. Subrecipients are required to adhere to the frequencies and PM schedule identified in their plan. MTA/OLTS monitors and measure adherence to this schedule as part of the comprehensive compliance review that MTA/OLTS conducts with each of its Section 5311 subrecipients every three years. (See Appendix B for the LOTS Compliance Review checklist.) Current MTA/OLTS standards allow for a 10% deviation from the schedule and at least 80% of scheduled services need to be within the 10% window. Grantees are also subject to quarterly PM reviews (see Appendix G for the Quarterly PM Check form) and random maintenance record checks.

Additionally, Section 5339 subrecipients must comply with the Maryland Preventive Maintenance Program requirements detailed under COMAR Title 11: Department of Transportation, Subtitle 22: Preventive Maintenance Program. This requirement applies to any bus designed and used to carry more than ten people owned by the State of Maryland or any political subdivision, excluding those subject to school bus regulations, as well as vehicles with a seating capacity for 16 or more passengers including the driver (as well as other types of commercial vehicles) owned by other types of organizations. Each vehicle must carry a certification documenting that preventive maintenance and

inspections are performed and in compliance with State Preventive Maintenance Program requirements. MTA/OLTS checks annually for preventive maintenance certification as part of the ATP.

**3. Minimum Useful Life Standards**

To ensure that vehicles are adequately maintained and remain in service for their normal service life, the MTA/OLTS has established minimum useful life standards for vehicles funded with state or federal funds. These standards apply to all vehicles purchased with Sections 5307, 5309/5339, 5310, 5311, 5316, 5317, and State funds, and to all vehicles that will be replaced with vehicles funded from these programs, regardless of the initial funding source.

<b>Classification</b>	<b>Yrs.</b>	<b>Miles</b>	<b>GVWR</b>	<b>LENGTH</b>
Revenue Specialized Vehicles (Accessible Minivans, Vans, Accessible Taxicabs & Sedans)	4 years	150,000	< 14,000 lbs.	n/a
Light Duty Small Bus	6 years	200,000	15,000 lbs. or less	n/a
Medium Duty Bus	8 years	250,000	15,000 lbs. - 23,000 lbs.	30' - 40'
Heavy Duty Bus	10 years	350,000	All	Under 35'
Heavy Duty Bus	12 years	500,000	All	Over 35'
Non-Revenue Specialized/ Fleet Support Vehicles (Pick-Up Trucks, Utility Vehicles & Sedans)	10 years	200,000	All	n/a

To classify a vehicle, both the gross vehicle weight ratio (GVWR) and the length of the vehicle must be met. Useful life for trolley-buses (simulated, with rubber tires and internal combustion engines) is determined using the above useful life classifications. If there is ever a question about what a certain vehicle’s classification might be, the Altoona Test used for that vehicle is always the substantiating documentation as to its classification.

Service-life begins on the date the vehicle was placed in service and continues until it is removed from service.

Vehicles are not replaced based solely on age and accumulated mileage. Subrecipients are required to submit additional information about the condition of the vehicle for all replacement requests, such as repair records or estimated repair costs.

Below is minimum information that is requested to submit for a replacement vehicle, using forms provided in the annual grant application.

- Fleet Vehicle Number,
- Present Mileage,
- Vehicle Identification Number and delivery date (if the vehicle to be replaced was purchased under a previous Section 5307, 5309/5339, 5310, 5311, 5316, 5317, or State grant),
- A description of the condition of the vehicle to be replaced, including the reasons for replacing the vehicle at this time; and
- An indication of how the vehicle will be disposed of (sell, salvage, or used as backup or other).

Any insurance proceeds received for a vehicle are deducted from MTA's state and federal portion of the eligible cost of a replacement vehicle.

#### **4. Replacement Prior to Meeting Minimum Useful Life Criteria**

The MTA/OLTS considers the value prior to the end of normal useful-life to be based on straight line depreciation and that removal of an MTA/OLTS funded vehicle before the end of its normal service life, for any reason, requires notification to the MTA/OLTS. The subrecipient must describe the circumstances necessitating the replacement of the vehicle. The subrecipient would need to complete the information above, in addition to providing the following information:

1. A list of any repairs that will be required to keep the vehicle in service, and an estimated cost of each repair.
2. A description and cost of repairs made to the vehicle to date (attach the repair and preventive maintenance records, if available).

Upon notification, the MTA/OLTS will determine whether it retains further interest in the vehicle and whether reimbursement of the federal/state share of its remaining value must take place. For FTA/MTA-funded vehicles, after the normal service life is met, the MTA/OLTS no longer retains a financial interest in the vehicle. FTA/MTA approval is required prior to disposal of FTA/MTA-funded vehicles with remaining FTA financial interest.

#### **5. Disposition**

The subrecipient may dispose of vehicles and other equipment at the end of their useful life after notifying and receiving disposition instructions from the MTA/OLTS. The subrecipient must follow its locally adopted process and must obtain a minimum of two appraisals in writing by qualified individuals to determine the fair market value of the equipment to be sold and concurrence must be received from the MTA/OLTS. Proceeds from the sale of the vehicle should be added to the subrecipient's transportation budget

and utilized for transit capital projects, and must not be considered local match in any future request for payment. MTA/OLTS has established accounting requirements regarding grant-funded vehicle sales proceeds, to ensure that there is a paper trail demonstrating that such revenues are not used as local match or for operating expenses (attached as Appendix I).

The first \$100 of the proceeds can be retained to cover administrative expenses incurred. The MTA/OLTS requests that upon completion of the sale, the subrecipient provide the sales receipt information and indicate on what capital item(s) they intend to spend the auction proceeds.

If the original purchase price was \$1,000 or more, MTA/OLTS may request that the subrecipient remit back to MTA a proportional amount of the sale based upon the original grant ratio, deducting from this amount if necessary to ensure that the subrecipient retains at least \$100 from the proceeds to cover handling expenses.

For any sale which results in proceeds over \$5,000, the subrecipient must notify MTA, and the MTA will notify FTA and request direction on usage of sales proceeds.

## ***F. Management and Financial Reviews***

### ***1. Subrecipient Technical Capacity***

The subrecipient must be able to implement the projects included in the grant application and grant agreement using sound management practices. The subrecipient must have adequate procedures in place to manage the grants including procedures to submit timely, complete reports to the MTA/OLTS, close out grants in a timely manner, and effectively manage and deliver transit services.

As part of the annual grant application as well as the MTA/OLTS Triennial Reviews of subrecipients, described in section XIX.G of this State Management Plan, each subrecipient's financial capacity is reviewed.

### ***2. Subrecipient Financial Capacity***

The subrecipient system must have the ability to match and manage grant funds, to cover operating deficits through long-term stable and reliable sources of revenue, to maintain and operate federally funded facilities and equipment, and to conduct an annual independent organization-wide audit in accordance with the provisions of Title 2 of the Code of Federal Regulations (2 CFR 200). The subrecipient is required to prepare an annual budget that incorporates future financial needs. In addition to an annual audit, if

the organization uses Federal funds to cover indirect costs (e.g., an overhead rate from a parent organization), they must have an approved cost allocation plan.

As part of the annual grant application as well as the MTA/OLTS Triennial Reviews of subrecipients, described in section XIX.G of this State Management Plan, each subrecipient's financial capacity is reviewed.

### ***G. Project Monitoring and Reviews***

MTA/OLTS monitors Section 5339 projects for progress as well as compliance. MTA/OLTS's approach to subrecipient compliance monitoring is described under section XIX.G of this State Management Plan. Progress monitoring of Section 5339 projects is achieved through the following requirements:

Subrecipients are required to submit all solicitation documents prior to the initiation of the procurement process for all items or services purchased with Section 5339 funds. This includes bid specifications for vehicles and equipment. Subrecipients are not permitted to execute a Section 5339-funded local contract or purchase order valued more than \$300 without MTA concurrence. Funding is provided on a cost reimbursement basis. Additional MTA/OLTS monitoring related to subrecipient vehicle procurements is described under sections XIII.A and XIX.B of this State Management Plan.

Subrecipients are required to submit quarterly financial operating reports to MTA/OLTS, as described under section XIII.I of this State Management Plan.

### ***H. Performance Standards***

MTA has established the transit operating performance standards for the LOTS (subrecipients). The current standards, updated in December 2015, are found Appendix H.

These performance standards were established as a tool for monitoring subrecipient services for effectiveness and efficiency. This rating structure is used as a basis for offering technical assistance. The program is set up such that services can be rated as "Successful" or "Problem" based on how they perform in each of the operating measures. In addition, these standards are utilized in determining whether new services requested by the systems should be funded based on their potential for being successful.

Subrecipient performance standards are periodically updated to reflect changes in the Consumer Price Index (CPI).

## ***I. Reporting Requirements***

### **1. General Requirements**

The MTA/OLTS is responsible for ensuring that data is collected and compiled from each Section 5339 subrecipient and transportation provider in the State that benefits from the grant. This is accomplished through quarterly operating and financial statements required from each subrecipient, as well as annual data and updated capital asset inventories submitted as part of each subrecipient's annual grant application.

### **2. NTD Reporting**

Subrecipients and beneficiaries of Section 5339 are required by 49 U.S.C. 5335(a) and (b) to submit data to the NTD as a condition of the award, through annual reports (all subrecipients) and monthly reports (subrecipients in urbanized areas).

- Section 5339 subrecipients that are also Section 5307 subrecipients are required to submit their reports directly to the NTD in accordance with the NTD Reporting manual.
- Section 5339 subrecipients that are also Section 5311 subrecipients are required to submit annual Rural NTD reports to MTA.

## **XIX. Compliance with Other Federal Provisions**

Describe the process by which the recipient complies with other federal requirements such as environmental protection, Buy America (see Chapter V) provisions, preaward and post-delivery reviews, restrictions on lobbying, prohibition of exclusive school transportation, and drug and alcohol testing, including the state's procedures for monitoring compliance by subrecipients.

### ***A. Environmental Protection***

Environmental protection requirements are met whenever Section 5339 funds are used.

- Section 5339 projects must comply with the joint FHWA/FTA guidelines on protection of the environment titled "Environmental Impact and Related Procedures" (23 CFR §771).

- The regulation categorized projects in three classes according to degree of environmental impact:
  - Class I projects have a significant effect on the environment and, therefore, require the preparation of an Environmental Impact Statement (EIS).
  - Class II projects do not normally have a significant environmental impact and as such are "categorically excluded" from the requirement to prepare further environmental assessment or impact studies.
  - Class III projects are those where the significance of the environmental impact cannot readily be determined and require a brief Environmental Assessment.

A majority of the projects funded through Maryland's Section 5339 program will be classed as categorical exclusions (CEs). Larger construction projects or projects in sensitive areas may require the preparation of an environmental assessment (EA). All potential projects will be screened by the MTA Office of Planning's Environmental Division and MTA's Office of Planning's Environmental Division will make an initial determination as to which projects meet the criteria for categorical exclusions and which may require additional documentation. Since the MTA/OLTS staff maintains a close working relationship with its subrecipients, projects that do not qualify as a categorical exclusion can be identified early in project development; therefore activities can be coordinated with the FTA Regional Office so that any necessary environmental analysis and reviews will not delay implementation.

## ***B. Buy America, Pre-Award and Post-Delivery Reviews***

As part of the Annual Transportation Plan (annual grant application) certifications and assurances all Section 5339 subrecipients agree to comply with FTA's Buy America regulations, as well as Rolling Stock Reviews and Bus Testing Certifications. In addition, solicitation and contract documents for all capital procurements, as well as for any procurement conducted through sealed bids, competitive proposal and noncompetitive negotiation, must be reviewed by the MTA/OLTS for compliance with all applicable regulations.

The MTA/OLTS has provided information to all subrecipients procuring vehicles on the pre-award and post-delivery audits as well as specific language to be included in bid documents. The MTA/OLTS will not process any payments for vehicles without the pre-award and post-delivery audit certifications attached to the request for payment as well as the Transit Vehicle Manufacturer (TVM) certification of compliance with subpart D, part 26 (when applicable). Compliance will also be certified on the Annual List of Certifications and Assurances. The MTA Office of Procurement will procure vehicles on

behalf of subrecipients which not only reduces the administrative burden, but also results in lower prices for higher quantity purchases.

### ***C. Restrictions of Lobbying***

FTA recipients are prohibited from using Federal financial assistance to influence any Member of Congress or an officer or employee of any agency in the connection with the making of any federal contract, grant, or cooperative agreement. MTA and Section 5339 recipients of grants exceeding \$100,000 must sign a certification so stating and must disclose the expenditure of non-federal funds for such purposes (49 CFR part 20). Other Federal laws also govern lobbying activities. For example, federal funds may not be used for lobbying Congressional representatives or senators indirectly, such as by contributing to a lobbying organization or funding a grass-roots campaign to influence legislation (31 U.S.C § 1352). General advocacy for transit and providing information to legislators about the services a recipient provides in the community are not prohibited, nor is using non-federal funds for lobbying, so long as the required disclosures are made.

Currently, subrecipients certify to MTA/OLTS through the grant agreements and the annual certifications and assurances. Specific contracts, grants or cooperative agreements are actions covered by the restrictions on lobbying. Activities such as submitting grant applications, status inquiries, and professional and technical services are not lobbying and do not need to be disclosed. Efforts to influence Federal officials about specific grants and contracts or to ask Congressional representatives for support of a particular application or bid must be disclosed. Also, lobbying restrictions do not apply to activities that might influence policy issues.

Subrecipient responsibilities:

1. Sign a certification of compliance pertaining to lobbying activities.
2. Where third party contractors are involved, subrecipients must obtain a signed certification of compliance from the contractor.
3. If non-federal funds have been used to support lobbying activities in connection with a grant from MTA, and the subrecipient receives federal grants exceeding \$100,000, fill out Standard Form-LLL and submit it to MTA/OLTS.
4. If contractors received more than \$100,000 in federal funds and used non-federal funds to support lobbying, subrecipients must obtain the completed Standard Form-LLL from the contractor and submit it to MTA/OLTS.

#### **D. Prohibition of Charter Bus Service**

As recipients of public transit funds, all LOTS sign a Charter Service Agreement. The agreement is contained in the Certifications and Assurances that become part of each subrecipient's Grant Agreement. In Charter Agreements, public transit grantees agree that the transit system, and each subrecipient or third party contractors who use FTA-funded vehicles, may provide charter services using equipment of facilities acquired with federal transit assistance only in compliance with FTA charter regulations, 49 CFR Part 604: <http://edocket.access.gpo.gov/2008/pdf/o8-86.pdf>.

The purpose of the FTA Charter Service rule is to protect private bus operators from unfair competition from transit operators who have access to Federal and State funds for purchasing buses, and Federal funds for their operation.

The current FTA rules on charter bus service by public transit operators receiving federal funds became effective on April 30, 2008. These regulations allow for clear exemptions up front for some services, as well as exceptions under particular circumstances. The 2008 regulations also revised the definition of charter service, allow Advisory Opinions and Cease and Desist Orders, provide a clear complaint and hearing process, and provide a mechanism for determining remedies in the event of a violation.

FTA's charter service webpage is: [http://www.fta.dot.gov/legislation\\_law/12922.html](http://www.fta.dot.gov/legislation_law/12922.html).

Subrecipients who choose to pursue a charter service provision within the confines of Federal regulations are required to do the following in addition to the other procedures outlined in the LOTS Manual.

- Subrecipient must notify MTA/OLTS in writing prior to entering into an agreement to provide charter service.
- Any revenue generated from charter bus activity must be tracked and accounted for within the confines of the non-fare revenue policy detailed in the LOTS Manual.

MTA/OLTS will review subrecipients compliance with the charter regulation as part of its evaluation and monitoring practices described in section XIX.G of this State Management Plan.

### ***E. Prohibition of Exclusive School Transportation***

FTA subrecipients are prohibited from providing exclusive school bus service unless it qualifies under specified exceptions. In no case, however, can federally-funded equipment or facilities be used for exclusive school service. This includes transportation to or from any before-or after-school activities. The implementing regulation (49 CFR Part 605) does permit regular service to be modified to accommodate school students along with the general public. The FTA considers Headstart to be a social service program rather than a school program. Rules for the Head Start program limit the types of vehicles which may be used to transport children participating in the Headstart Program. Subrecipients may operate multi-functional vehicles that meet the safety requirements for school transportation, but may not provide exclusive school service.

As part of the annual certifications and assurances, all MTA/OLTS subrecipients agree to abide by this prohibition.

### ***F. Drug and Alcohol Testing***

Section 5339 subrecipients are required to comply with FTA Drug and Alcohol Testing regulations for safety-sensitive positions. The MTA Office of Human Resources has provided all necessary information for compliance with the Drug and Alcohol Testing regulations required by 49 U.S.C. 5331, as well as technical assistance and training to properly implement the regulation. The MTA Office of Human Resources will continue to use its established monitoring program to ensure that all Section 5339 subrecipients are in compliance with the regulations.

The subrecipient requirements for FTA Drug and Alcohol Testing, as detailed in the Maryland LOTS Manual, are found in Appendix J to this State Management Plan.

### ***G. Subrecipient Compliance Monitoring***

Monitoring is necessary to ensure that the MTA/OLTS's subrecipients meet Federal and State requirements. While the local subrecipients are required to sign and submit annual certifications and assurances to the MTA/OLTS, the MTA/OLTS actively examines all subrecipients to ensure that funds are being used as intended.

Monitoring local subrecipients serves several functions, including review of compliance with Federal and State requirements and review of LOTS service performance. Monitoring ranges from informal observation and review, to auditing compliance with

Federal and State requirements, to enforcement of requirements in which a subrecipient is found to be deficient.

MTA/OLTS has established and follows an oversight program composed of the following seven procedures:

1. **Providing Ongoing Subrecipient Training and Education.** Mandatory training is provided twice yearly. Examples of recent topics include new Title VI program requirements; revised ADA program requirements; and new MAP 21 requirements for Transit Asset Management Plans and State of Good Repair Programs. The MTA/OLTS conducts periodic monitoring of subrecipients compliance with new program requirements.
2. **Conducting Subrecipient Triennial and Specific FTA Program Requirement Reviews.** The MTA/OLTS maintains a policy of conducting a full Triennial Review of each of the subrecipients in the State of Maryland (currently 21 once every three years). The MTA/OLTS conducts an annual review of the findings of completed Triennial Reviews and specific FTA program review findings to determine the next cycle order for its Triennial Reviews. The MTA/OLTS also conducts audits/reviews of particular FTA compliance requirements for all or some of its subrecipients based upon a state-wide demonstrated need, individual subrecipient finding(s) or changes in FTA requirements.
3. **Scheduling Quarterly and As-needed Subrecipient Meetings and Reviews With an Increased Emphasis on Continuing Program Oversight.** The MTA/OLTS maintains a policy to meet with each Maryland subrecipient on a quarterly fiscal year basis (four meetings per year). In an effort to provide enhanced oversight at the quarterly meetings, the MTA/OLTS utilizes these additional compliance procedures at least once (or more often as needed) during the quarterly meeting cycle: review outstanding FTA funded procurements; review current printed schedules and web site for required ADA, Title VI and service information; review status of implementation actions needed to resolve identified deficiencies. These reviews are documented on an MTA/OLTS prepared quarterly status report prepared for each subrecipient that highlights capital project status, operating project status, preventive maintenance, accidents, items of specific concern, and new items identified.
4. **Annual Subrecipient Submittal of Audits.** MTA/OLTS requires annual submittal of each subrecipient's audit in accordance with the provisions of Title 2 of the Code of Federal Regulations (2 CFR 200), reviews the audit findings, and follows up weekly with each subrecipient to ensure their compliance with any transit related findings within 90 days.

5. **Annual Submittal of Subrecipient's Grant Applications.** Annually the MTA/OLTS requires each subrecipient to submit a grant application providing detailed program description and information demonstrating compliance with federal and state requirements, certifications and assurances. Appendix K provides a checklist of the program activities and requirements that are reviewed and checked by MTA/OLTS for each grant submittal.
  
6. **Identification of Subrecipient's Common and Program-specific Deficiencies.** On an ongoing basis, the MTA/OLTS review all compliance oversight activities that have occurred over the prior year to identify common and program specific deficiencies found for its subrecipients. The review helps to determine new training opportunities, outstanding subrecipient deficiency findings for follow-up and new areas of compliance emphasis at quarterly meetings.
  
7. **Establishing and Maintaining an Active Review Process.** MTA/OLTS ensures subrecipients implement timely actions and plans required to resolve deficiencies identified in the A-133, Triennial or specific FTA program requirement reviews by establishing achievable and mutually agreed deadlines, conducting as-needed and programmed status meetings, and providing sample templates and acceptable program specific information to subrecipients. Subrecipient failure to meet deadlines is reviewed on a case-by-case basis to determine further remedial or corrective actions.

## **XX. STATE MANAGEMENT PLAN UPDATE**

Revisions to the Section 5339 State Management Plan will only be made when significant changes occur in the Federal Section 5339 Program or when major changes occur in the State administration of the program.

When program changes occur and updates to the State Management Plan are required, the draft version of the plan will be placed on the Maryland Transit Administration's website for review. There will be a designated timeframe for comments to be received and comments will be considered for inclusion in the final version of the State Management Plan.