

EXHIBIT 5a(i)(13)

07-23-2013 Response to the DOT



547 W. Jackson Blvd. Chicago, IL 60661 (312) 322-6900 TTY# 1-312-322-6774

July 23, 2012

Mr. Dominick J. Gatto, PE
Director, Office of Program Management and Oversight
Federal Transit Administration, Region V
200 West Adams Street, Suite 320
Chicago, Illinois 60606-2789

Attn: Melody Hopson

Re: Metra Response to FTA
Procurement System Review Letter

Dear Mr. Gatto:

FTA's June 15th letter (attached) regarding the 2011 Procurement System Review (PSR) requested certain information about Metra's progress in implementing promised improvements to correct deficiencies discovered in the PSR. The letter requested that specific information be provided by July 30, 2012. We are assiduously assembling the requested information, which we intend to transmit to FTA by the requested deadline. Due to the complexity of analyzing and assembling some of the information, we request an extension of your deadline to respond. I would like to specifically identify the items that we feel certain we can supply by the requested July 30th deadline, and those items for which we request an extension.

First, by July 30th we intend to provide evidence that the EMS contract has been reconciled to account for the audited adjustments in overhead rates. Next, in the body of the July 15th letter five items are requested, set off by dot points. By July 30th we intend to provide the first four: 1) a detailed organization chart for the Procurement Department, 2) evidence that all involved in the purchasing process have received training, 3) evidence that the Procurement staff in particular has received adequate training, and 4) evidence of a process to review and validate contracts on an on-going basis. The final dot point, evidence of a fully-developed procurement audit oversight function, will not be fully implemented by July 30th. We respectfully request extension of this request to October 31st. This is consistent with the deadline for detailing the independent evaluation process for action item implementation noted in Attachment 1 of your June 15, 2012 letter.

Regarding follow-up actions for the twenty open findings, Attachment 1 to your letter requests three categories of response, two due by July 30th, and one by October 31st. Category 1 requests a training schedule for all twenty open findings. This we intend to supply by July 30th. Category 2 requests a milestone schedule for coming into compliance for seven of the open findings. We request extension from July 30th to September 30th for action items 2, 5, and 48 due to their complexity. We do, however, plan to respond to Category 2 action items 6, 19, 37, and 39 by July 30th. Finally, Metra intends to supply the third category response, an independent procurement action evaluation plan for all open items, by the requested October 31st deadline.

If you require any additional information regarding our requested extension, please contact me at (312) 322-6639.

Sincerely,



Larry Bubel
Acting Senior Director
Grant Management and Accounting

cc: T. Barnett
J. Milano
T. Farmer
R. Capra
P. Kisielius
C. Gamboa
D. Simmons



U.S. Department
of Transportation
Federal Transit Administration

REGION V
Illinois, Indiana,
Michigan, Minnesota,
Ohio, Wisconsin

200 West Adams Street
Suite 320
Chicago, IL 60606-5232
312-353-2789
312-886-0351 (fax)

June 15, 2012

Mr. Alexander Clifford
Executive Director and CEO
Metra
547 West Jackson Blvd.
Chicago, Illinois 60661

Re: 2011 Procurement System Review

Dear Mr. Clifford:

The Federal Transit Administration (FTA) is in receipt of Metra's latest response to the 2011 Procurement System Review (PSR) and our review of your responses has been completed. I wish to thank you and your staff for your patience during this process. By way of background, FTA conducted a PSR on Metra back in 2011 and a final report was issued dated July 1st of that year. Additionally, we asked our PSR consultant, Calyptus Consulting Group, Inc. (Calyptus) to review four contracts that generated a number of the findings from the 2011 PSR, which were Terry's Ford, LTK, Nippon Sharyo, and Engineering and Management Specialists, Inc. (EMS). The review of those contracts was to determine federal funding participation.

Contingent upon our receipt of a satisfactory response to the corrective actions and conditions stated in this letter below, the LTK, Nippon Sharyo and current EMS contracts remain eligible for Federal assistance. Metra may resume grant drawdown for these contracts, but must first provide evidence that the current EMS contract has been reconciled to account for the audited adjustment in overhead rates. However, due to recent developments that Metra has alerted our office to regarding the Terry's Ford contract, FTA will make a final determination of eligibility status at a later date.

Enclosed with this letter is our final follow up corrective actions from the 2011 PSR that Metra must address. In addition to providing a satisfactory response to the follow up actions, Metra must also:

- Provide FTA with a detailed organization chart of its purchasing department, with names, functions and areas of responsibility;
- Provide FTA with evidence that all Metra staff involved in its purchasing process has been trained in FTA procurement requirements;
- Provide FTA with evidence that Metra's procurement staff has received adequate procurement training commensurate to their level of responsibilities and are thoroughly knowledgeable of Metra's revised procurement policies and procedures;

- Provide FTA with evidence that Metra has put in place a process to review and validate on an on-going basis, contracts representing each method of procurement to assure compliance with Metra's policies and procedures, as well as FTA requirements.
- Provide FTA with evidence that an independent audit function is in place to ensure integrity of Metra's procurement actions.

FTA will continue to monitor Metra's progress in these efforts, inclusive of a follow up PSR to be scheduled in the future. Also, my staff will always be available to provide your staff with technical assistance throughout this process. Again I wish to thank you and your staff for your cooperation in this matter and please feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Marisol R. Simón". The signature is written in a cursive style with a horizontal line extending from the end.

Marisol R. Simón
Regional Administrator

Attachment 1

**Metra 2011 Procurement System Review
FTA Review of Metra's Responses
June 18, 2012**

Summary Follow Up Actions (FINAL) – 20 Open Findings

Metra 2011 PSR System-wide Elements – Open Findings		Follow Up Action Categories		
		1	2	3
1	2 – Contract Administration System	●	●	●
2	5 – Procedures of Ensuring Most Efficient and Economic Purchase	●	●	●
3	6 – Procurement Policies and Procedures	●	●	●
4	7 – Independent Cost Estimate	●		●
5	12 – Arbitrary Action	●		●
6	13 – Brand Name Restrictions	●		●
7	15 – Contract Term Limitation	●		●
8	16 – Written Procurement Selection Procedures	●		●
9	18 – Award to Responsible Contractors	●		●
10	19 – Sound and complete Agreement	●	●	●
11	24 – Clear, Accurate, and Complete Specification	●		●
12	25 – Adequate Competition – Two or More Competitors	●		●
13	36 – Evaluation (RFP)	●		●
14	37 – Price and Other Factors (RFP)	●	●	●
15	39 – Cost Analysis Required (Sole Source)	●	●	●
16	41 – Cost or Price Analysis	●		●
17	42 – Written Record of Procurement History	●		●
18	46 – Progress Payments	●		●
19	48 – Cost Plus Percentage of Cost	●	●	●
20	56 – Clauses	●		●

Follow Up Action Categories

Category 1

Metra shall provide by July 30, 2012, a schedule for procurement training to FTA as a condition for accepting the corrective action and to close the finding. Written evidence of the training and attendees shall be provided to FTA once training has been completed.

Category 2

Metra shall provide by July 30, 2012, a milestone schedule of all procurement actions to come into compliance with FTA requirements as a condition to accepting the corrective action and to close the finding. Written evidence of the milestone schedule shall be provided to FTA.

Category 3

Metra shall provide by October 31, 2012 as to how it will conduct an objective and independent evaluation to confirm that its procurement actions are compliant with FTA procurement system requirements as a condition to accepting the corrective action and to close the finding. Metra shall provide written evidence of its plan to FTA.

II.1. SYSTEMWIDE ELEMENTS

2) Contract Administration System (FTA Requirement)

"The Common Grant Rules require the recipient to maintain a contract administration system to ensure that it and its third party contractors comply with the terms, conditions, and specifications of their contracts or purchase orders and applicable Federal, State and local responsibilities." [FTA C 4220.1E, III, 3.]

PSR Corrective Action (7/1/11): Metra must revise its procedures to require that contract types be clearly stated for all contracts, to fully document contract administration activities in policies and procedures, and to ensure that provisional billing rates be adjusted on an annual basis. Training in contract administration and validation of the changes must be evidenced and provided to FTA.

Metra's Response: In a letter dated January 31, 2012, Metra indicated that procedures require adjustments in provisional rates through annual updates to overhead rates. Standard contracts terms for the standard Agreement for professional and consulting services were updated. Metra indicated that the independent validation to occur within 120 days after FTA acceptance of corrective action.

Follow Up Action (6/12 FINAL)

Metra shall provide by **July 30, 2012**, a schedule for procurement training to FTA as a condition for accepting the corrective action and to close the finding. Written evidence of the training and attendees shall be provided to FTA once training has been completed.

Metra shall provide by **July 30, 2012**, a milestone schedule of all procurement actions (contract administration system to address responsibilities for managing contracts, change orders, out of scope changes and claims) to come into compliance with FTA requirements as a condition to accepting the corrective action and to close the finding. Written evidence of the milestone schedule shall be provided to FTA.

Metra shall provide by **October 31, 2012** as to how it will conduct an objective and independent evaluation (validation of the changes) to confirm that its procurement actions are compliant with FTA procurement system requirements as a condition to for accepting the corrective action and to close the finding. Metra shall provide written evidence of its plan to FTA.

5) Procedures for Ensuring Most Efficient and Economic Purchase (FTA Requirement)

"Proposed procurements should be reviewed to avoid the purchase of property and services the recipient does not need (including duplicative items and unnecessary options)... Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase...To obtain the best value, lease versus purchase alternatives for acquiring property should be reviewed and, if necessary, an analysis should be obtained to determine the more economical alternative." FTA requires the recipient to make a written determination of the cost of leasing the asset compared with the cost of purchasing or constructing it." [FTA C 4220.1F, IV, 1.b. c. e.]

PSR Corrective Action (7/1/11): Metra must revise its procedures to require buildup of contract values rather than using budgeted amounts. Also, Metra must revise its procedures to require fixed fee to be addressed under cost-plus-fixed-fee contracts. Training and validation of the changes must be evidenced and provided to FTA.

Metra's Response: In a letter dated January 31, 2012, Metra indicated that the procedures require ICE and cost element buildup.

Follow Up Action (6/12 FINAL):

Metra shall provide by July 30, 2012, a schedule for procurement training to FTA as a condition for accepting the corrective action and to close the finding. Written evidence of the training and attendees shall be provided to FTA once training has been completed.

Metra shall provide by July 30, 2012, a milestone schedule of all procurement actions (procedures to address fixed fees under cost-plus-fixed-fee contracts) to come into compliance with FTA requirements as a condition to accepting the corrective action and to close the finding. Written evidence of the milestone schedule shall be provided to FTA.

Metra shall provide by October 31, 2012 as to how it will conduct an objective and independent evaluation (validation of the changes) to confirm that its procurement actions are compliant with FTA procurement system requirements as a condition to accepting the corrective action and to close the finding. Metra shall provide written evidence of its plan to FTA.

6) Procurement Policies and Procedures (FTA Requirement)

"Each recipient and sub-recipient may use its own procurement procedures, provided that its procurements conform to applicable Federal law and regulations." [FTA C 4220.1F, III, 3.a.]

"...the guidance within this circular applies to each Federal Transit Administration (FTA) recipient of Federal assistance...." [FTA C 4220.1F, II, 1.]

PSR Corrective Actions (7/1/11): Metra must ensure that its policies and procedures address the requirements of FTA Circular 4220.1F. Metra must also provide evidence of adequate training and independent audit evidence that procedures are being followed consistently.

Metra's Response: In a letter dated January 31, 2012, Metra indicated that the procurement procedures were updated to address the deficient areas.

Follow Up Action (6/12 FINAL):

Metra shall provide by July 30, 2012, a schedule for procurement training (in procurement policies and procedures) to FTA as a condition to accepting the corrective action and to close the finding. Written evidence of the training and attendees shall be provided to FTA once training has been completed.

Metra shall provide by July 30, 2012, a milestone schedule of all procurement actions (procedures must include: federal statutory and regulatory requirements stated as required terms and conditions to be included in various types of contracts, construction bonding requirements and requisitioning procedures) to come into compliance with FTA requirements as a condition to accepting the corrective action and to close the finding. Written evidence of the milestone schedule shall be provided to FTA.

Metra shall provide by October 31, 2012 as to how it will conduct an objective and independent evaluation (validation of the changes) to confirm that its procurement actions are compliant with FTA procurement system requirements as a condition to accepting the corrective action and to close the finding. Metra shall provide written evidence of its plan to FTA.

7) Independent Cost Estimate (FTA Requirement)

"The Common Grant Rules require the recipient to perform a cost or price analysis in connection with every procurement action ...as a starting point, the recipient must make independent estimates before receiving bids or proposals" [FTA C 4220.1F, VI, 6.; BPPM § 2.3.2]

PSR Corrective Actions (7/1/11): Adherence to the requirement for independent cost estimates must be monitored and enforced consistently. To achieve compliance, Metra must provide detailed procedures,

evidence of training and evidence of independent audit confirming that procedures are being followed consistently.

Metra's Response: Metra submitted the revisions as requested in the above corrective action. Metra did not provide a schedule for training.

Follow Up Action (6/12 FINAL):

Metra shall provide by **July 30, 2012**, a schedule for procurement training (independent cost estimates) to FTA as a condition to accepting the corrective action and to close the finding. Written evidence of the training and attendees shall be provided to FTA once training has been completed.

Metra shall provide by **October 31, 2012** as to how it will conduct an objective and independent evaluation (validation of the changes) to confirm that its procurement actions are compliant with FTA procurement system requirements as a condition to accepting the corrective action and to close the finding. Metra shall provide written evidence of its plan to FTA.

12) Arbitrary Action (FTA Requirement)

Example of situation restrictive of competition: "Taking any arbitrary action in the procurement process" [FTA C 4220.1F, VI, 2.a. (4) (j); BPPM § 2.4.2.1]

PSR Corrective Actions (7/1/11): Consistent and proper file documentation can help evaluate whether or not an arbitrary action occurred. To achieve compliance, Metra must provide detailed procedures, evidence of adequate training and evidence of independent audits confirming that procedures are being followed consistently.

Metra's Response: Metra submitted the revisions as requested in the above corrective action. Metra did not provide a schedule for training

Follow Up Action (6/12 FINAL):

Metra shall provide by **July 30, 2012**, a schedule for procurement training to FTA as a condition to accepting the corrective action and to close the finding. Written evidence of the training and attendees shall be provided to FTA once training has been completed.

Metra shall provide by **October 31, 2012** as to how it will conduct an objective and independent evaluation (validation of the changes) to confirm that its procurement actions are compliant with FTA procurement system requirements as a condition to accepting the corrective action and to close the finding. Metra shall provide written evidence of its plan to FTA.

13) Brand Name Restrictions (FTA Requirement)

Example of situation restrictive of competition: "Specifying only a 'brand name' product instead of allowing an 'or equal' product to be offered or failing to specify the brand name product's salient characteristics" [FTA C 4220.1F, VI, 2.a. (4) (f); BPPM § 2.4.2.1 and 2.4.2.2.1]

- (a) "Detailed product specifications should be avoided if at all possible in favor of performance specifications." [FTA C 4220.1F, VI, 2.a. (1)]
- (b) "When it is impractical or uneconomical to make a clear and accurate description of the technical requirements of the property... a 'brand name or equal' description may be used as a means to define the performance or other salient characteristics of a specific type of property. The recipient, however, must state the salient characteristics of the named brand that offerors must provide." [FTA C 4220.1F, VI, 2.a. (3); BPPM § 4.3.2, 4.4.1, 4.5.1, and 4.5.2]

PSR Corrective Action (7/1/11): Consistent and proper file documentation can help evaluate whether or not an arbitrary action occurred. To achieve compliance, Metra must provide detailed procedures, evidence of adequate training and evidence of independent audits confirming that procedures are being followed consistently.

Metra's Response: Metra submitted the revisions as requested in the above corrective action. Metra did not provide a schedule for training

Follow Up Action (6/12 FINAL):

Metra shall provide by **July 30, 2012**, a schedule for procurement training to FTA as a condition to accepting the corrective action and to close the finding. Written evidence of the training and attendees shall be provided to FTA once training has been completed.

Metra shall provide by **October 31, 2012** as to how it will conduct an objective and independent evaluation (validation of the changes) to confirm that its procurement actions are compliant with FTA procurement system requirements as a condition to accepting the corrective action and to close the finding. Metra shall provide written evidence of its plan to FTA.

15) Contract Term Limitation (FTA Requirement)

- (a) "To comply with 49 U.S.C 5325 (e)(1), a multi - year third party contract to purchase additional rolling stock and replacement parts may not have options that extend more than five years after the date of the original contract."
- (b) "FTA interprets this five-year period as covering the recipient's rolling stock and replacement needs from the first day when the contract becomes effective to those at the end of the fifth year. This means that the contract may not encompass more rolling stock and replacement parts than the recipient needs within five years. The five-year rule does not mean delivery, acceptance, or even fabrication must be completed in five years – only that a contract is limited to purchasing no more than the recipient's rolling stock or replacement parts needs for five years based on the effective date of the contract." [FTA C 4220.1F, IV, 2.e.(10)]

PSR Corrective Action (7/1/11): All contracts for rolling stock and replacement parts must have a period of performance for placing orders that does not exceed five (5) years inclusive of options. Metra must provide detailed procedures, evidence of adequate training and evidence of independent audits confirming that procedures are being followed consistently.

Metra's Response: Metra submitted the revisions as requested in the above corrective action. Metra did not provide a schedule for training

Follow Up Action (6/12 FINAL):

Metra shall provide by **July 30, 2012**, a schedule for procurement training to FTA as a condition to accepting the corrective action and to close the finding. Written evidence of the training and attendees shall be provided to FTA once training has been completed.

Metra shall provide by **October 31, 2012** as to how it will conduct an objective and independent evaluation (validation of the changes) to confirm that its procurement actions are compliant with FTA procurement system requirements as a condition to accepting the corrective action and to close the finding. Metra shall provide written evidence of its plan to FTA.

16) Written Procurement Selection Procedures (FTA Requirement)

- (a) "The Common Grant Rule...requires the recipient to have written procurement procedures." [FTA C 4220.1F, III, 3. a.; BPPM § 4.3.2, 4.4.1, 4.5.1, and 4.5.2]
- (b) "The Common Grant Rules require that each solicitation provide for the following...Identify all factors

to be used in evaluating bids or proposals.” FTA C 4220.1F, VI, 2.e.; BPPM § 4.3.2, 4.4.1, 4.5.1, and 4.5.2]

PSR Corrective Action (7/1/11): Metra must provide detailed procedures, evidence of adequate training and evidence of independent audits confirming that procedures are being followed consistently.

Metra’s Response: Metra submitted the revisions as requested in the above corrective action. Metra did not provide a schedule for training.

Follow Up Action (6/12 FINAL):

Metra shall provide by **July 30, 2012**, a schedule for procurement training to FTA as a condition to accepting the corrective action and to close the finding. Written evidence of the training and attendees shall be provided to FTA once training has been completed.

Metra shall provide by **October 31, 2012** as to how it will conduct an objective and independent evaluation (validation of the changes) to confirm that its procurement actions are compliant with FTA procurement system requirements as a condition to accepting the corrective action and to close the finding. Metra shall provide written evidence of its plan to FTA.

18) Award to Responsible Contractors (FTA Requirement)

“A recipient may award a contract ...only to a ‘responsible’ contractor capable of successfully performing under the terms and conditions of the contract. To determine responsibility, the recipient must consider the following criteria before awarding the contract:

- (1) Integrity. The contractor’s integrity;
- (2) Public Policy. The contractor’s compliance with public policy;
- (3) Past Performance. The contractor’s past performance;
- (4) Financial and Technical Resources. The contractor’s financial and technical resources, and;
- (5) Debarment/Suspension. Contractor’s status with respect to DOT regulations, ‘Governmentwide Debarment and Suspension (Nonprocurement),’ 49 CFR Part 29.” [FTA C 4220.1F, VI, 8.b.]

PSR Corrective Action (7/1/11): Metra must provide detailed procedures, evidence of adequate training and evidence of independent audits confirming that procedures are being followed consistently.

Metra’s Response: Metra submitted the revisions as requested in the above corrective action. Metra did not provide a schedule for training.

Follow Up Action (6/12 FINAL):

Metra shall provide by **July 30, 2012**, a schedule for procurement training to FTA as a condition to accepting the corrective action and to close the finding. Written evidence of the training and attendees shall be provided to FTA once training has been completed.

Metra shall provide by **October 31, 2012** as to how it will conduct an objective and independent evaluation (validation of the changes) to confirm that its procurement actions are compliant with FTA procurement system requirements as a condition to accepting the corrective action and to close the finding. Metra shall provide written evidence of its plan to FTA.

19) Sound and Complete Agreement (FTA Requirement)

- (a) “The Common Grant Rules require that all third party contracts include provisions adequate to form a sound and complete agreement.” [FTA C 4220.1F, III, 3.b.]
- (b) “Third party contracts exceeding \$100,000 must include administrative, contractual, or legal remedies for violations or breach of the contract by the third party contractor.” [FTA C 4220.1F, IV, 2.b. (6) 2]

- (c) "For contracts exceeding \$10,000, there must be termination for cause and termination for convenience provisions." [FTA C 4220.1F, IV, 2.b. (6) 4]

PSR Corrective Action (7/1/11): Metra must provide detailed procedures, evidence of adequate training and evidence of independent audits confirming that procedures are being followed consistently.

Metra's Response: In a letter dated January 31, 2012, Metra submitted procedures that did not address the minimum elements to be included in contracts such as termination clauses, disputes, payment, compensation and period of performance.

Follow Up Action (6/12 FINAL):

Metra shall provide by **July 30, 2012**, a schedule for procurement training to FTA as a condition to accepting the corrective action and to close the finding. Written evidence of the training and attendees shall be provided to FTA once training has been completed.

Metra shall provide by **July 30, 2012**, a milestone schedule of all procurement actions (procedures must include minimum elements to be included in contracts such as termination clauses, disputes, payment, compensation and period of performance) to come into compliance with FTA requirements as a condition to accepting the corrective action and to close the finding. Written evidence of the milestone schedule shall be provided to FTA.

Metra shall provide by **October 31, 2012** as to how it will conduct an objective and independent evaluation (validation of the changes) to confirm that its procurement actions are compliant with FTA procurement system requirements as a condition to accepting the corrective action and to close the finding. Metra shall provide written evidence of its plan to FTA.

24) Clear, Accurate, and Complete Specification (FTA Requirement)

- (a) "Each solicitation must provide a clear and accurate description of the technical requirements for the property or services to be procured." [FTA C 4220.1F, VI, 2.a.; BPPM § 3]
- (b) "In competitive procurements, the description may not contain features that unduly restrict competition." [FTA C 4220.1F, III, 3.a.(1) (b)]
- (c) "The Common Grant Rule ... advises the recipient to describe technical requirements in terms of 'functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.'" [FTA C 4220.1F, III, 3.a.(1) (d)]
- (d) "In order for sealed bidding to be feasible, the following conditions should be present: A complete, adequate, and realistic specification or purchase description is available." [FTA C 4220.1F, VI, 3.c. (1) (a)]
- (e) "If this procurement method is used . . . the invitation for bids will include any specifications and pertinent attachments...in order for the bidder to properly respond." [FTA C 4220.1F, VI, 3.c. (2) (c)]

PSR Corrective Action (7/1/11): Metra must provide detailed procedures, evidence of adequate training and evidence of independent audits confirming that procedures are being followed consistently.

Metra's Response: Metra submitted the revisions as requested in the above corrective action. Metra did not provide a schedule for training.

Follow Up Action (6/12 FINAL):

Metra shall provide by **July 30, 2012**, a schedule for procurement training to FTA as a condition to accepting the corrective action and to close the finding. Written evidence of the training and attendees shall be provided to FTA once training has been completed.

Metra shall provide by **October 31, 2012** as to how it will conduct an objective and independent evaluation (validation of the changes) to confirm that its procurement actions are compliant with FTA

procurement system requirements as a condition to accepting the corrective action and to close the finding. Metra shall provide written evidence of its plan to FTA.

25) Adequate Competition - Two or More Competitors (FTA Requirement)

- (a) "In order for sealed bidding to be feasible, the following conditions should be present: . . . Two or more responsible bidders are willing and able to compete effectively for the business." [FTA C 4220.1F, VI, 3.c. (b)]
- (b) "Competitive proposals is a procurement method normally conducted with more than one source submitting an offer or proposal." [FTA C 4220.1F, VI, 3.d.(2)(c)]
 - ". . .the procurement lends itself to a firm fixed price contract." [FTA C 4220.1F, VI, 3.c. (1) (c)]

PSR Corrective Action (7/1/11): Metra must provide detailed procedures, evidence of adequate training and evidence of independent audits confirming that procedures are being followed consistently.

Metra's Response: Metra submitted the revisions as requested in the above corrective action. Metra did not provide a schedule for training.

Follow Up Action (6/12 FINAL):

Metra shall provide by **July 30, 2012**, a schedule for procurement training to FTA as a condition to accepting the corrective action and to close the finding. Written evidence of the training and attendees shall be provided to FTA once training has been completed.

Metra shall provide by **October 31, 2012** as to how it will conduct an objective and independent evaluation (validation of the changes) to confirm that its procurement actions are compliant with FTA procurement system requirements as a condition to accepting the corrective action and to close the finding. Metra shall provide written evidence of its plan to FTA.

36) Evaluation [RFP] (FTA Requirement)

"If this procurement method is used the following requirements apply: . . .

- (a) All evaluation factors will be identified in the procurement documents along with their relative importance; numerical or percentage ratings or weights, however, need not be disclosed... [FTA C 4220.1F, VI, 3.d. (2) (b)]
- (b) The recipient will have a method in place for conducting technical evaluations of the proposals received and for selecting awardees." [FTA C 4220.1F, VI, 3.d. (2) (d)]

PSR Corrective Action (7/1/11): Metra must provide detailed procedures, evidence of adequate training and evidence of independent audits confirming that procedures are being followed consistently.

Metra's Response: Metra submitted the revisions as requested in the above corrective action. Metra did not provide a schedule for training.

Follow Up Action (6/12 FINAL):

Metra shall provide by **July 30, 2012**, a schedule for procurement training to FTA as a condition to accepting the corrective action and to close the finding. Written evidence of the training and attendees shall be provided to FTA once training has been completed.

Metra shall provide by **October 31, 2012** as to how it will conduct an objective and independent evaluation (validation of the changes) to confirm that its procurement actions are compliant with FTA procurement system requirements as a condition to accepting the corrective action and to close the finding. Metra shall provide written evidence of its plan to FTA.

37) Price and Other Factors [RFP] (FTA Requirement)

"If this procurement method is used the following requirements apply: . . . Award will be made to the responsible firm whose proposal is most advantageous to the recipient's program with price and other factors considered."
[FTA C 4220.1F, VI, 3.d. (2) (e)]

PSR Corrective Action (7/1/11): Metra must detail specific and allowable reasons for the use of the A&E / Brooks Act procurement method. Metra must require documentation of negotiations and provide guidance in the form of revised procedures. Metra must provide evidence of adequate training and evidence of independent audits confirming that procedures are being followed consistently.

Metra's Response: Metra submitted procedures that covered the process to evaluate A&E proposals, but did not include a proper definition of A&E services as required in FTA Circular 4220.1F.

Follow Up Action (6/12 FINAL):

Metra shall provide by **July 30, 2012**, a schedule for procurement training to FTA as a condition to accepting the corrective action and to close the finding. Written evidence of the training and attendees shall be provided to FTA once training has been completed.

Metra shall provide by **July 30, 2012**, a milestone schedule of all procurement actions (procedures must include a proper definition of A&E services) to come into compliance with FTA requirements as a condition to accepting the corrective action and to close the finding. Written evidence of the milestone schedule shall be provided to FTA.

Metra shall provide by **October 31, 2012** as to how it will conduct an objective and independent evaluation (validation of the changes) to confirm that its procurement actions are compliant with FTA procurement system requirements as a condition to accepting the corrective action and to close the finding. Metra shall provide written evidence of its plan to FTA.

39) Cost Analysis Required [Sole Source] (FTA Requirement)

"A cost analysis will be necessary when adequate price competition is lacking and for sole source procurements, including contract modifications or change orders...." [FTA C 4220.1F, VI, 6.a.]

PSR Corrective Action (7/1/11): Metra must revise its procedures to require cost analysis for sole source procurements and to include an analysis of fee. Metra must provide detailed procedures, evidence of adequate training and evidence of independent audits confirming that procedures are being followed consistently.

Metra's Response: Metra submitted revised procedures; however, the procedures did not specifically require cost analysis for sole source procurements, or the separate evaluation of fee.

Follow Up Action (6/12 FINAL):

Metra shall provide by **July 30, 2012**, a schedule for procurement training to FTA as a condition to accepting the corrective action and to close the finding. Written evidence of the training and attendees shall be provided to FTA once training has been completed.

Metra shall provide by **July 30, 2012**, a milestone schedule of all procurement actions (procedures must specifically require cost analysis for sole source procurements and separate cost analysis evaluation of fee) to come into compliance with FTA as a condition to accepting the corrective action and to close the finding. Written evidence of the milestone schedule shall be provided to FTA.

Metra shall provide by **October 31, 2012** as to how it will conduct an objective and independent evaluation (validation of the changes) to confirm that its procurement actions are compliant with FTA

procurement system requirements as a condition to accepting the corrective action and to close the finding. Metra shall provide written evidence of its plan to FTA.

41) Cost or Price Analysis (FTA Requirement)

(a) Cost analysis

- (i) "The Common Grant Rules require the recipient to perform a cost or price analysis in connection with every procurement action, including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation" [FTA C 4220.1F, VI, 6.]
- (ii) "A cost analysis must be performed when the offeror is required to submit the elements (i.e., labor hours, overhead, materials, etc.) of the estimated cost, (e.g., under professional consulting and architectural and engineering services contracts, etc.)" [FTA C 4220.1F, VI, 6.a.]
- (iii) "A cost analysis will be necessary when adequate price competition is lacking . . . unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public . . ." [FTA C 4220.1F, VI, 6.a.]
- (iv) "A cost analysis will be necessary when adequate price competition is lacking . . . unless price reasonableness can be established on the basis of . . . prices set by law or regulation". [FTA C 4220.1F, VI, 6.a.]
- (v) "A cost analysis will be necessary . . . for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public . . ." [FTA C 4220.1F, VI, 6.a.]
- (vi) "A cost analysis will be necessary . . . for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of . . . prices set by law or regulation." [FTA C 4220.1F, VI, 6.a.]

(b) "A price analysis may be used in all other instances to determine the reasonableness of the proposed contract price." [FTA C 4220.1F, VI, 6.b.]

(c) Profit

- (i) "The recipient will negotiate profit as a separate element of the price for each contract in which there is no price competition" [FTA C 4220.1F, VI, 6.a.(3)]
- (ii) "The recipient will negotiate profit as a separate element of the price for each contract ...in all cases where cost analysis is performed." [FTA C 4220.1F, VI, 6.a.(3)]
- (iii) "To establish a fair and reasonable profit, consideration will be given to:
 - a. the complexity of the work to be performed,
 - b. the risk being borne by the contractor,
 - c. the contractor's investment,
 - d. the amount of subcontracting,
 - e. the quality of its record of past performance, and
 - f. industry profit rates in the surrounding geographical area for similar work." [FTA C 4220.1F, VI, 6.a.(3)]

PSR Corrective Action [7/1/11]: Metra must provide detailed procedures, evidence of adequate training and evidence of independent audits confirming that procedures are being followed consistently.

Metra's Response: Metra submitted the revisions as requested in the above corrective action. Metra did not provide a schedule for training.

Follow Up Action [6/12 FINAL]:

Metra shall provide by July 30, 2012, a schedule for procurement training to FTA as a condition to accepting the corrective action and to close the finding. Written evidence of the training and attendees shall be provided to FTA once training has been completed.

Metra shall provide by October 31, 2012 as to how it will conduct an objective and independent evaluation (validation of the changes) to confirm that its procurement actions are compliant with FTA procurement system requirements as a condition to accepting the corrective action and to close the finding. Metra shall provide written evidence of its plan to FTA.

42) Written Record of Procurement History (FTA Requirement)

"The Common Grant Rules require the recipient to maintain...written records detailing the history of each procurement, as follows:

- a. Procurement Method. ...the rationale for the method of procurement, including a sole source justification for any acquisition that does not qualify as competitive;
- b. Contract Type. ...state the reasons for selecting the contract type (fixed price, cost reimbursement, etc.);
- c. Contractor Selection. ...state the reasons for contractor selection or rejection...include a written responsibility determination for the successful contractor.
- d. Cost or Price. Each recipient must evaluate and state its justification for the contract cost or price." [FTA C 4220.1F, III, 3. d. (1)}

PSR Corrective Action (7/1/11): Metra must provide detailed procedures, evidence of adequate training and evidence of independent audits confirming that procedures are being followed consistently.

Metra's Response: Metra implemented procedures for using a form and a checklist to document procurement history. Metra did not provide a schedule for training or evidence of compliance.

Follow Up Action (6/12 FINAL):

Metra shall provide by **July 30, 2012**, a schedule for procurement training to FTA as a condition to accepting the corrective action and to close the finding. Written evidence of the training and attendees shall be provided to FTA once training has been completed.

Metra shall provide by **October 31, 2012** as to how it will conduct an objective and independent evaluation (validation of the changes) to confirm that its procurement actions are compliant with FTA procurement system requirements as a condition to accepting the corrective action and to close the finding. Metra shall provide written evidence of its plan to FTA.

46) Progress Payments (FTA Requirement)

"Progress payments are payments for costs incurred by the contractor in the performance of the contract before the contract work has been completed. FTA assistance may be used to support progress payments provided:

- (a) the recipient obtains adequate security for those payments, and
- (b) has sufficient documentation to substantiate the work performed for which payment is requested.
- (c) Progress payments for construction contracts may be made on a percentage of completion basis (as described in the Common Grant Rules). This payment method may not be used in non-construction contracts." [FTA C 4220.1F, IV, 2.b.(5)(c)]

PSR Corrective Action (7/1/11): Metra must provide detailed procedures, evidence of adequate training and evidence of independent audits confirming that procedures are being followed consistently.

Metra's Response: Metra developed revised procedures and indicated that non-compliant contracts will be amended. Metra did not provide a schedule for training or evidence of compliance.

Follow Up Action (6/12 FINAL):

Metra shall provide by **July 30, 2012**, a schedule for procurement training to FTA as a condition to accepting the corrective action and to close the finding. Written evidence of the training and attendees shall be provided to FTA once training has been completed.

Metra shall provide by **October 31, 2012** as to how it will conduct an objective and independent evaluation (validation of the changes) to confirm that its procurement actions are compliant with FTA procurement system requirements as a condition to accepting the corrective action and to close the finding. Metra shall provide written evidence of its plan to FTA.

48) Cost Plus Percentage of Cost (FTA Requirement)

"The Common Grant Rules expressly prohibit the use of the cost plus a percentage of cost and percentage of construction cost methods of contracting." [FTA C 4220.1F, VI, 2.c.(2)(a)]

PSR Corrective Action (7/1/11): In CPFF-type contracts, fixed fees were not stated. Contract types were not clearly stated. Reconciliation of all identified contracts with updated indirect rates must be provided to FTA. Metra must provide detailed procedures, evidence of adequate training and evidence of independent audits confirming that procedures are being followed consistently.

Metra's Response: In a letter dated January 31, 2012, Metra indicated that one contract should have been reflected as a single task contract while the others were blanket agreements with task orders to be released. Metra did not provide a schedule for training.

Follow Up Action (6/12 FINAL):

Metra shall provide by July 30, 2012, a schedule for procurement training to FTA as a condition as a condition to accepting the corrective action and to close the finding. Written evidence of the training and attendees shall be provided to FTA once training has been completed.

Metra shall provide by July 30, 2012, a milestone schedule of all procurement actions (agreed upon provisional rates for the V3 contract, reconciliation of all CPFF contracts with adjusted provisional rates provided to FTA; procedures for managing blanket-type contracts and task order contracting) to come into compliance with FTA requirements as a condition to accepting the corrective action and to close the finding. Written evidence of the milestone schedule shall be provided to FTA.

Metra shall provide by October 31, 2012 as to how it will conduct an objective and independent evaluation (validation of the changes) to confirm that its procurement actions are compliant with FTA procurement system requirements as a condition to accepting the corrective action and to close the finding. Metra shall provide written evidence of its plan to FTA.

56) Clauses (FTA Requirement)

"FEDERAL REQUIREMENTS THAT MAY AFFECT A RECIPIENT'S ACQUISITIONS. Before FTA assistance may be used to support an acquisition of property or services, all applicable Federal requirements, whether or not addressed in the Common Grant Rules, must be fulfilled." [FTA C 4220.1F, IV, 2.]

[FTA Circular 4220.1F, Appendix D, contains a matrix of Federally required clauses and contractor certifications for various dollar values and types of procurements, such as construction, A&E, rolling stock, materials, etc. Instructions for these clauses and suggested clause language may be found in the FTA "Best Practices Procurement Manual," Appendix A.1]

PSR Corrective Action (7/1/11): Small purchases did not include required Federal clauses. Metra must provide detailed procedures, evidence of adequate training and evidence of independent audits confirming that procedures are being followed consistently.

Metra's Response: Metra's procedure indicates that an additional Exhibit is included in all procurements. Metra did not provide a schedule for training or evidence of compliance.

Follow Up Action (6/12 FINAL):

Metra shall provide by July 30, 2012, a schedule for procurement training to as a condition to accepting the corrective action and to close the finding. Written evidence of the training and attendees shall be provided to FTA once training has been completed.

Metra shall provide by **October 31, 2012** as to how it will conduct an objective and independent evaluation (validation of the changes) to confirm that its procurement actions are compliant with FTA procurement system requirements as a condition to accepting the corrective action and to close the finding. Metra shall provide written evidence of its plan to FTA.