Chapter 8 - Transit Service Contracting

Contracting for transit services is an important aspect of the operation of a public transit system. In Iowa, state law requires any agency or organization using public funds for passenger transportation services to coordinate with the local public transit system. Each contract must be fair to both parties, and must comply with the requirements of the funding programs.

As the recipient of federal transit funds, the Office of Public Transit (OPT) has accepted responsibility for ensuring compliance with all federal rules in conjunction with subcontracting. OPT focuses its oversight of transit service subcontracting on the small urban and regional transit providers that participate in the federal Section 5310 and 5311 programs. The office has deferred its direct oversight of subcontracts by large urban systems to FTA, since these systems work directly with FTA for funding and compliance issues. However, any system receiving Section 5339 statewide capital funds administered by the Iowa DOT must submit copies of any transit service contracts to OPT.

Contract Approval/Review

Section 24 of the Joint Participation Agreements for State Transit Assistance and Federal 5310/ 5311 funds prohibits subcontracting, assigning or transferring duties without "*prior written approval of the DEPARTMENT*." Although OPT has suspended its requirement for transit service contracts to be pre-approved, service contracts must still be submitted to the office within 90 days of the beginning of services. Services provided under contracts not submitted to OPT will not be eligible for state or federal operating support. The statistics from these services will not be used in the funding formula calculations.

Transit systems are encouraged to use the model Purchase of Service Contract, Sale of Service Contract, and User Agreement. Any service funded with state or federal funds must be **open to the public.**

The transit system is responsible for compliance with state and federal laws and funding requirements. When subcontracting, the transit system has assigned a part of its responsibilities under its joint participation agreement in any service agreement/contract. The subcontractor is obligated to comply with all state and federal regulations and funding requirements, but the transit system is responsible for overseeing and verifying compliance.

When to Contract

Some services to clients do not require a contract. When an agency or organization merely schedules rides on public demand responsive or fixed route services, no contract is required even if the agency pays the clients' fares.

Services that require contracts:

- When the transit system agrees to provide specific transportation services for another party in return for compensation, or
- When the transit system agrees to compensate another party to provide public transit services needed by the transit system.

Procurement of Services – Refer to Chapter 9 for guidelines relating to third party contracting.

Types of Transit Service Contracts

There are two basic types of transit service contracts: Sale of Service and Purchase of Service. These are defined from the perspective of the public transit system as the direct recipient of funding.

In a Sale of Service Contract, the transit system agrees to provide specific transportation services desired by another party in return for some type of compensation.

In a Purchase of Service Contract, the transit system agrees to compensate another party to provide public transit services needed by the transit system.

Either type of contract may also involve a Vehicle User Agreement. The vehicle user agreement allows the party actually providing the transit service to use a vehicle belonging to the other party in order to provide the contracted service. The party providing the transit service may be a transit system or another provider.

Transit systems may not provide vehicles purchased with federal funds for use by another party except as part of an Iowa DOT approved transit Purchase of Service contract. Vehicles may be provided to another public transit system to assist that transit system in meeting short-term fleet requirements as long as the arrangement is pre-approved by OPT.

Transit systems may lease vehicles from their subproviders as part of a purchase of service contract/agreement. They may also lease equipment from other parties through normal procurement procedures without a related transit service contract. Such leases will require advanced OPT approval.

Required Elements of Transit Service Contracts
The following guidelines shall be the basis for OPT review of transit service contracts by public transit systems or their subcontractors. Each contract must include the following elements:

- **Demographic/Header information**
  - The legal name and any other name used during business for each party should be stated.
  - The purpose of the transit services should be stated.
  - Contract time period (beginning and ending dates) that the contract will be in effect.

- **Transit Service Description**
  - A description of the transit services to be provided including:
    - Hours, days and dates when service will be available (a list of holidays and non-working days should be included)
    - The geographic coverage common to the service, (i.e. fixed-route, subscription, demand-response with number of hours notice required, a common or primary origin or destination)
    - A description of each distinct service type. If there is more than one service-type, each type should be described.
  - Arrangements for service continuity, such as vehicle and driver back-up. The contract should describe what happens if the contracted service cannot be provided.
  - Each contract may describe who the services are targeted to, but the contract **must clearly state that the services will be open to all members of the general public at all times on an equal basis.**
  - Each contract shall describe the fares or suggested contributions to be collected from riders. Reduced or free fares may be offered to clients of the agency contracting with the transit system and to others, if desired. However, the fare or suggested donations required by any member of the general public shall not be prohibitive and should reflect the benefits of the state and federal transit subsidies.
- **Drivers**
  - Each contract shall require that all drivers providing transit services under the contract must possess valid chauffeurs or commercial driver licenses, as applicable. Volunteers driving their own vehicles are exempt from the chauffeurs' license requirement but the vehicle size may require a CDL.
- **Drug and Alcohol Testing**
  - Each contract shall require that the employer have a drug and alcohol testing program meeting FTA standards. No person may perform a safety-sensitive function unless he or she has been pre-employment drug tested and is in the drug and alcohol random testing

pool. The employer's drug and alcohol testing policy must be made available for OPT review. Volunteers may not operate FTA funded equipment without written OPT approval.

- **Insurance**
  - Each contract shall require that the transit services provided be protected with **$1 million in liability coverage** appropriate to services open to the general public. This shall include coverage for accidents resulting from actions of the service provider. It is recommended that accidents resulting from an uninsured or underinsured motorist be included.
  - Each contract shall state which party is responsible for providing the insurance liability coverage for the described transit services. If liability protection is to be in the form of self-insurance, the self-insurance plan must comply with the standards of Iowa DOT's Office of Motor Carrier Services and must be approved by OPT.
- **Vehicle Operations**
  - Each contract shall state which party is responsible for operation of the vehicles that are providing the described transit services.
  - Each contract shall state which party is responsible for:
    - Reservations;
    - Scheduling;
    - Identifying fares for each rider;
    - Making minor variances in schedules or routes; and
    - Providing complete information about the availability of the service to the general public.
  - Each contract shall state which party is providing the vehicles used for the described transit service.
  - Each contract shall identify who is responsible for vehicle maintenance.
  - Each contract shall address the responsibility for repair of damage to vehicles used to provide contracted services. OPT does not require collision or comprehensive coverage to be carried on federal or state-funded vehicles. However, OPT does require that damage to a federal or state-funded vehicle be repaired promptly and accurately. Transit systems may choose to require collision or comprehensive coverage by their subcontractors if it is considered necessary to ensure financial responsibility requirements.
  - Each contract must comply with the vehicle signage policy. See Chapter 11 for details.
- **Reports**
  - Each contract shall require the transit system or subcontractor providing the service to report the following statistics:
    - Actual, fully-allocated costs incurred;
    - Quarterly reporting of units of service provided, including revenue miles, rides by fare category, and other units upon which compensation is based;
    - Annual drug and alcohol testing reports; and
    - Additional costs (related to the contracted service) incurred by the party not providing the service, i.e. scheduling, screening, marketing, insurance, maintenance, grants administration etc.
  - The contract shall also require reporting of costs attributable to the contracted service on at least a quarterly basis.
- **Funding**
  - Funds to be collected from riders by the transit system or the party providing the service shall be separately estimated as a source of support. Other funds provided by the non-transit system party may be identified as a single amount or itemized. The contract should note if there is a possibility of any additional public transit services that may be provided under the contract with a different mix of support.
  - Each contract shall address what will be done in the case of a shortfall of anticipated funding from any source, or if the actual fully allocated costs of the service increases above the contracted figure. It should also address what will be done if contract revenues, as indicated, exceed actual fully allocated costs of the service.
  - Each contract shall set the procedure and timeframe for billings and payments.

- **Hold Harmless Clause**
  - Each contract shall contain a provision in which both parties hold OPT harmless from any losses related to the provision of contract services or to the use of vehicles purchased with funds provided by the office. Similar provisions are suggested to hold the transit system harmless from losses resulting from the actions of subcontractors or conditions beyond the system's control that might prevent providing contracted services. (It is likely that the other party will also desire provisions holding it harmless from losses resulting from transit system actions.)
- **Amendment Procedure**
  - Each contract shall specify the procedures for amendments, suspension, or termination of the contract. The contract shall acknowledge that any amendments are subject to OPT approval.

Other Provisions Required in Purchase of Service Contracts Only
The contract shall require the service provider to comply with federal EEO, affirmative action and nondiscrimination provisions.

The contract shall, unless it has been awarded on a fully competitive basis, require the service provider to comply with all state and federal requirements involving competitive procurement, DBE, etc.

The contract shall state whether the service provider may further subcontract, transfer or assign its responsibilities under the contract. If this is to be allowed, the contract must state it is only allowed with the concurrence of OPT.

If vehicles funded through OPT are provided to the other party for the provision of the contracted services, the contract shall state if the vehicles may be used for any FTA approved incidental purposes when not required for services under the contract. The contract must also state that vehicles provided for use under the contract may, at the transit system's initiative, be exchanged for other transit system vehicles. This allows transit systems to use vehicles to meet needs and accumulate a minimum mileage of 10,000 miles per year. The contract shall also prohibit use of the vehicles in ways prohibited by state or federal law (i.e., charter service or exclusive school bus services, etc.).

Other Provisions Related to Incidental Service
The transit service contract may allow use of a vehicle funded by OPT for incidental service (nonpublic transit service) in cases when:

- The fully allocated cost of the incidental service must be from non-public transit money;
- The service does not interfere with the use of the vehicle for public transit purposes;
- The service does not violate federal vehicle use rules; and
- The total incidental use does not constitute more than 20 percent of the use of the vehicle involved.

The contract shall fully describe the incidental service and when it will be provided. It shall also state that all costs and statistics from such services must be reported separately.

Review the Elements of Transit Service Contracts Checklist to use as a guide to be sure that all of the required provisions are included.

Special Policies when Contracting with Private Providers
If the private provider does not carry $1 million in liability coverage, the transit system will determine the level of liability coverage required. The transit system may be liable for any loss exceeding the coverage required of the private provider under the contract.

When contracting with a private provider, the contract should reflect the total cost of the trips provided under the contract. The standard fare may be considered to be the fully allocated cost. The fully allocated cost includes state and federal subsidies. **Actual numbers must be reported on quarterly reports.**