

FTA Section 5339

Bus and Bus Facilities Program



Program Guidance

State Fiscal Year (SFY) 2023

(FFY22 apportionment + prior year carryover funds)

**BIPARTISAN
INFRASTRUCTURE
LAW**

NH Department of Transportation (NHDOT)

Bureau of Rail & Transit

9/27/2022

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I. FTA Section 5339 Application Deadline

November 14, 2022 @3pm

II. Submittal/Contact Information

Submittal Information:

Submit electronic copies of all required plans and documents with application via email to Fred Butler, Public Transportation Administrator, at: Frederick.J.Butler@dot.nh.gov

Contact Information:

Fred Butler
Public Transportation Administrator, Bureau of Rail & Transit
NH Department of Transportation
7 Hazen Dr.
Concord, NH 03302
Phone: 603-271-2468

NHDOT's FTA Grant Information Website:

<http://www.nh.gov/dot/org/aerorailtransit/railandtransit/grants.htm>

III. Introduction

The Federal Transit Administration (FTA) Section 5339 (Bus and Bus Facilities Program) is a formula program that provides funding for capital projects to replace, rehabilitate, and purchase buses and bus-related equipment, and to construct bus-related facilities. This program was established under Moving Ahead for Progress in the 21st Century (MAP-21), replacing the previous Section 5309 discretionary program established under the Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). Please refer to FTA [Circular C5100.1](#) for additional program guidance.

NHDOT will provide oversight as needed to ensure all projects resulting from awards are conducted in compliance with all Federal and State requirements. However, as further discussed in the Requirements section below, the onus is on the subrecipient itself to ensure it has the technical capacity to carry out any project for which it applies.

IV. Eligible Subrecipients

Per FTA Circular [C5100.1](#): “Eligible subrecipients include public agencies or private nonprofit organizations engaged in public transportation, including those providing services open to a segment of the general public, as defined by age, disability, or low income.”

The term “**engaged in public transportation**” within the Circular’s definition above is important. It is not possible for NHDOT to award 5339 funding to a subrecipient without first ensuring that the applicant is “engaged in public transportation” as FTA defines it, i.e., the applicant has the technical capacity to utilize the vehicle/item for public transportation services that are compliant with Federal/FTA requirements as further detailed in the “Requirements” section below, and as detailed within the [FY2022 FTA Contractors Manual](#). A list of NH’s existing public transportation providers can be found here: [Transit Services | NH Rideshare Program | NH Department of Transportation](#)

Providers of FTA Section 5307- and/or 5311-funded services are encouraged to apply for this FTA Section 5339 funding even for capital items related to FTA Section 5310-eligible projects, i.e., projects designed to enhance mobility for seniors and individuals with disabilities. While providers of public transportation are technically eligible for 5310 funding because 5310 is essentially a subset of 5307 (urban) and 5311 (rural), the demand for 5310 funding is higher than that of 5339 funding at time of writing.

A note regarding first-time applicants: While it theoretically possible for new applicants to apply directly for 5339 funding, it is more likely than not that an applicant would first need to become a subrecipient of [FTA Section 5311](#) rural public transportation funding, or a direct recipient of [FTA Section 5307](#) urban public transportation funding as

applicable based on geography. It is therefore highly recommended that any agencies interested in applying that do not currently receive FTA funding for public transportation first reach out to their [regional planning commission](#) in order to 1) gauge the likelihood of an existing provider's ability to provide the desired service and 2) obtain details regarding the federal requirements related to public transportation. Any interested applicants can also reach out to Fred Butler directly for more information.

All applicants are required to demonstrate technical and financial capacity to meet the federal requirements, including but not limited to grant management, maintenance of the capital items/projects, project management, and financial management. See the Project Selection and Requirements sections for more information.

V. Eligible Projects

Eligible capital projects include projects to replace, rehabilitate, and purchase buses and related equipment and bus-related facilities. The following is a list of typical projects that are eligible for Section 5339 funding, with a full list available in Section III of Circular [C5100.1](#). Please contact [Fred Butler](#) prior to applying if a desired capital project is not on the list:

- Acquisition of buses for fleet and service expansion
- Acquisition of replacement vehicles
- Bus overhauls and bus rebuilds (for bus rebuild and rehabilitation projects, only over-the-road, large buses are eligible)
- Passenger amenities such as passenger shelters, bus stop signs, and schedule racks/holders
- Facilities including bus maintenance, administrative, and transportation centers
- Bicycle facilities, bicycle racks (on buses & at passenger shelters/stop locations)
- Accessory and miscellaneous equipment such as:
 - mobile radio units
 - supervisory vehicles
 - fare boxes
 - computers
 - shop and garage equipment
- Introduction of new technology, such as Intelligent Transportation Systems (ITS), e.g., real-time info, advanced fare payment methods, passenger counters
- Environmental compliance engineering and design

VI. Funding

Estimated Available FTA Section 5339 Funding for SFY 2023 Project Solicitation			
	FFY 2021 carryover	FFY 2022	Total
Statewide*	\$278,022	\$4,000,000	\$4,278,022
Small Urban areas	\$0	\$468,006	\$468,006
Boston Urban area	\$0	\$104,146	\$104,146
Total	\$278,022	\$4,572,152	\$4,850,174

*NOTE: Statewide funds are primarily for rural areas not covered by Small & Large Urban area apportionments & therefore NHDOT reserves the right to prioritize rural projects with these funds and/or exclusively use & reserve these funds for rural projects. NHDOT may use discretion in such matters where rural and urban projects are competing for statewide funding.

Per FTA requirements, Urbanized Area funds must be used in the respective areas. Funding availability is approximate and is subject to change. NHDOT may decide to withhold a portion of the funding to ensure projected demand in future years can be accommodated.

State Capital Match:** In general, State Capital Match is provided for revenue vehicles as well as passenger amenities. If the requested project has not previously been put forth to NHDOT for inclusion in the biennium budget for State Capital Budget matching funds consideration, agencies must identify 20% local match (15% for ADA-accessible vehicles). If the project had been included in NHDOT's request, the State will provide up to 10% (7.5% for ADA-accessible vehicles) of the non-federal match, through State Capital Budget matching funds, for each project. NHDOT may, at its discretion, seek to provide state capital matching funds for projects that were not part of NHDOT's biennium request for capital funds if, for instance, unexpended funds remain from previous projects.

PROJECT FUNDING/MATCHING REQUIREMENTS			
Project Type	Max Federal %	State Capital Match**	Local (Applicant) Match
ADA-accessible vehicles***	85%	7.5%	7.5%
Bicycle facilities	90%	5%	5%
Capital (non-vehicle) equipment requested to NHDOT in biennium budget	80%	10%	10%
Other equipment	80%	0%	20%

Table is unofficial and provided for reference only. See Circular 5100.1 for complete breakdown.

***State Capital Match is subject to availability; projects included in biennium requests are prioritized.*

****At its discretion, NHDOT may fund ADA-accessible vehicles at less than 85% Federal to maximize the number of projects able to be funded. The most likely result would be funding at 80% Fed/20% local (or 10% State/10% local).*

VII. Project Selection

Projects will be evaluated by no less than three evaluators as selected by NHDOT's Public Transportation Administrator. In accordance with NHDOT's State Management Plan, replacements are prioritized over expansion items/projects per the scoring matrix below. Further, State of Good Repair (SGR), as calculated by NHDOT's Transit Asset Management (TAM) plan, or the appropriate TAM plan if not included in NHDOT's plan, will be factored into final project selection for replacement vehicles & equipment in the TAM. NHDOT's SGR is based on an asset's age, mileage (for vehicles), and condition, whereby assets receive an SGR index score of 1-5. In NHDOT's TAM plan, assets with an SGR score of 2.5 or below are presumed eligible for replacing. Applicants should contact Fred Butler for further information regarding SGRs, as final funding decisions may be impacted by SGRs. Applicants should ensure that their applications adequately address each criterion to ensure each project is given its due consideration. Criteria are as follows:

*	The applicant & proposed service/projects are eligible for FTA Section 5339 funding. <i>(Disqualified if no.)</i>	Y/N
*	Seniors and individuals with disabilities have full access to the applicant's services. <i>(Disqualified if no.)</i>	Y/N
1	The applicant conveys how this addresses a critical public transportation need. Applicants need to adequately illustrate how the project will benefit the agency's transportation program/services, including how it is necessary for continued and/or improved operations. (As replacement revenue vehicles/equipment are prioritized, detailed information is especially important for expansion projects. Revenue vehicle replacements that meet or exceed their SGRs are presumed to address needs. Non-revenue vehicles will receive a maximum of 20%.)	30%
2	The applicant complies with relevant Federal and state regulations and has a history of compliance with regulations and reporting requirements. New applicants must demonstrate sufficient resources for compliance.	20%
3	The applicant successfully demonstrates service efficiency and effectiveness, measured in ridership, service miles and hours, costs, and fare recovery as applicable. New applicants must demonstrate the ability to measure performance and achieve goals.	20%

4	The applicant has the fiscal and technical capacity and adequate budget to operate service and conduct ongoing maintenance associated with this capital request, including capacity to address environmental/historical impacts as applicable. This also includes demonstrating an assurance that matching funds are or will be available at the time of project award.	15%
5	The applicant demonstrates involvement in and support for the project, financial and otherwise, on the part of citizens and local government, e.g., letters of support, paying for installation of shelters, willing to provide local match above minimum required, etc. (Revenue vehicle replacements are presumed to have such support.)	15%
		100%

Only projects that receive an average score of 70% or higher will be deemed eligible for grant award. NHDOT will then award the funds according to average score, from highest to lowest, until funding is exhausted or until all projects deemed eligible (70% or higher) are funded.

NHDOT recognizes that the scoring criteria may not sufficiently enable NHDOT to discern between the merits of every potential project, or to account for mitigating circumstances such as possibly partially funding one higher-scoring project’s award to accommodate a critical component of a lower-scoring project. As such, NHDOT reserves the right to use its discretion when making final funding decisions provided that any deviation from the score-based outcome is documented and disclosed to the affected agencies.

As noted in the Funding section, Statewide funds are primarily for rural areas not covered by Small & Large Urban area apportionments & therefore NHDOT reserves the right to prioritize rural projects with these funds and/or exclusively use & reserve these funds for rural projects. NHDOT may use discretion in such matters where rural and urban projects are competing for statewide funding.

VIII. Appeal/Protest Process

In the case of an application that is not selected (whether in whole or in part), the applicant may appeal/protest the decision of the selection committee to the Commissioner of the NHDOT in accordance with [NH RSA 21-G:37](#).

Within five (5) business days of the closing date for responses, the NHDOT will post the number of responses received on the Bureau of Rail and Transit’s website - [Procurement Notices \(Per SB 86\)](#).

At least five (5) business days prior to submitting the proposed contract(s) to the Department of Administrative Services, the NHDOT will post the rank or score for each responding applicant on the Bureau of Rail and Transit’s [grants website](#).

An applicant questioning the NHDOT's identification of the selected applicant(s) may request that the NHDOT review its selection process. Such request shall be made in writing and be received by the NHDOT within five (5) business days after the rank or score is posted on the Bureau of Rail and Transit's [grants website](#). Request shall be sent to:

Commissioner
NH Department of Transportation
Attn: Intercity Bus Application Appeal
7 Hazen Drive
Concord, NH 03302

The request shall specify all points on which the applicant believes the agency erred in its process and shall contain such argument in support of its position as the applicant seeks to present. In response, the NHDOT shall review the process it followed for evaluating responses and, within five (5) business days of receiving the request for review, issue a written response either affirming its initial selection of an applicant or cancelling the solicitation. In its request for review, an applicant shall not submit, and the NHDOT shall not accept nor consider, any substantive information that was not included by the applicant in its original submission. No hearing shall be held in conjunction with a review. The outcome of the NHDOT's review shall not be subject to appeal.

Note: Should any protest procedures detailed above conflict with State or Federal requirements, the State/Federal requirements shall prevail.

IX. Requirements

Direct FTA Recipients: For direct recipients of FTA funding, NHDOT will submit a request to FTA that the funds be transferred for the awarded projects to be directly administered by the successful applicant. In such cases, the direct recipients will be solely responsible for adherence to all FTA requirements.

Others: Once approved by FTA, successful applicants will be required to enter into a contractual agreement with NHDOT. (Existing FTA Section 5311 subrecipients generally have the contractual authority to operate vehicles inherent within their existing contracts.) The agreement remains in effect until the project's useful life has been met and/or the equipment/vehicle has been disposed of. Applicants are responsible for the proper use, operating costs, and maintenance of all project equipment (notwithstanding other sources of grant funding). Applicants must demonstrate to NHDOT that they meet all federal, state, and local requirements prior to contract approval.

Given the extensive nature of the Federal requirements, new applicants are strongly recommended to contact the Department prior to applying to ensure that they have the technical capacity to manage FTA-funded projects. For a project to be successful, it is important to adequately budget for time and resources necessary to maintain Federal compliance. Compliance issues include, but are not limited to, the following:

1. Required Reporting/Documents Submission (as applicable)

- a. Quarterly milestone progress reports
- b. Disadvantaged Business Enterprise (DBE) reports twice per year
- c. Davis-Bacon wage rate documentation
- d. Prompt Payment reports related to construction activities
- e. EEO plan (if applicable)
- f. Title VI plan
- g. FTA Annual Certifications and Assurances
- h. Maintenance plan
- i. Force account plan (if applicable)
- j. Quarterly vehicle monitoring/performance reports
- k. Annual National Transit Database (NTD) reports

2. Procurement

While NHDOT procures most vehicles directly, **procurement review and approval by NHDOT must occur prior to all capital purchases**. All procurements utilizing Federal funds, including local procurement of supplies, equipment, construction, and services, must be conducted in accordance with [2 CFR 200](#) "Uniform Guidance" and FTA Circular [4220.1F](#), "Third-Party Contracting Guidance" and Best Practices Procurement Manual, or as amended.

Construction activities in particular trigger many procurement-related issues such as DBE Commercially Useful Function (CUF) reviews, Davis-Bacon wage rate requirements, etc. Applicants are responsible for ensuring it has the technical capacity – whether in-house or via the hiring of a consultant/contractor – to administer all projects in compliance with all such Federal requirements.

3. Disadvantage Business Enterprise

Subrecipients must comply with [49 CFR Part 26](#) to ensure nondiscrimination in the award and administration of DOT-assisted contracts on the basis of race, color, and national origin. In addition, subrecipients must create a level playing field on which disadvantage business enterprise (DBEs) can compete fairly for DOT-assisted contracts.

Note that, for the purposes of FTA’s DBE program, the term “contract” means every third-party transaction for which an agency has discretion in terms of the vendor. For instance, a purchase of a pen or a gas fill-up would be subject to DBE requirements, whereas expenditures related to utility bills *may* not be. That is, if the FTA-funded program within the agency has no discretion with regard to the procurement of said utility, it would not be considered a contracting opportunity. If, however, the FTA-funded program directly procures the utility, the resultant contract would be counted as a contracting opportunity for DBE purposes.

4. National Environmental Policy Act ([NEPA](#)) (if applicable)

Capital projects affecting real property generally require a comprehensive environmental review process – all of which is the applicant’s responsibility – prior to any grant/contract approval.

5. Historic Preservation ([Section 106](#)) (if applicable, i.e., if project affects historical district)

This is related to the NEPA process outlined above. Capital projects located within historical districts require applicants to complete a Section 106 process to determine whether the project may adversely affect any historical aspects of the property. This will involve undergoing a Request for Project Review (RPR) process by NHDOT.

6. Buy America

Procurements of over \$150,000 must comply with Buy America provisions set forth in [49 CFR 661](#) and [49 CFR 663](#).

7. Lobbying

Subrecipients must certify compliance with the Federal Restrictions on Lobbying when signing their Agreement with NHDOT. This generally applies to grants in excess of \$100,000.

8. Debarment and Suspension

Subrecipients must certify compliance with the federal debarment and suspension provisions by signing a separate certification when executing their Agreement with NHDOT. In addition, language contained within the Agreement requires compliance with the debarment and suspension provisions. (While the Federal threshold is \$25,000, NHDOT may require this for all projects at its discretion.)

9. Vehicle Certification

Subrecipients are the registered owner of vehicles purchased with Section 5339 funds. However, NHDOT shall be listed as the lien holder and retains the Certificate of Title until the property is disposed. With very limited exceptions permitted under Federal guidelines, disposition cannot occur until the property meets the useful life standard and the federal interest requirement.

10. Useful Life Standards

Subrecipients are required to maintain all Section 5339 funded equipment per manufacturers' suggested requirements until the useful life standard has been met. NHDOT's current useful life for equipment, as defined in its [State Management Plan](#), is as follows:

Vehicle or Equipment	Useful Life
Minivan, Van, Sedan	4 years / 100,000 miles
Small bus, minibus, small body on chassis (cutaways)	6 years / 150,000 miles
Transit bus less than 30 feet, medium bus, trolley	7 years / 200,000 miles
Transit bus 30-34 feet	10 years / 350,000 miles
Transit bus 35 feet and over	12 years / 500,000 miles
Over-the-road coach	12 years / 600,000 miles
Bus shelter	15 years
Transit Facility	40 years
Other	NHDOT will review per FTA Circular 5010.1E and advise

11. ITS Architecture

Subrecipients who are applying for ITS projects must receive formal approval by NHDOT to ensure compliance with the State's long-range ITS architecture plan. Subrecipients should notify NHDOT in advance of project submission to ensure this is satisfactorily addressed.

12. Request for Reimbursement

All grant awards made under Section 5339 are to be paid on a reimbursement basis only for expenditures against a grant award for a specific project. Reimbursements are paid only after execution of the Agreement and completion

of purchase and/service or delivery of equipment and consumption of materials as specified in the project. **Expenditures prior to contract execution are prohibited**, though such expenditures directly related to a project may be considered as matching funds for FTA grant purposes. Prior NHDOT approval would be required in such cases.

Reimbursement for allowable expenses in accordance with [2 CFR Part 200](#) is submitted by the subrecipient and reviewed by NHDOT to ensure compliance with project scope and the terms and conditions of the Standard Agreement. NHDOT reimburses expenditures directly to subrecipients per the Standard Agreement.

13. Matching funds

Vehicles or equipment that NHDOT will procure through State Purchasing will require that match be provided to the State upon issuance of a purchase order. NHDOT will generally provide an invoice to the receiving agency and require payment prior to the project's implementation (e.g., a vehicle's being put into revenue service).

In-kind match will be considered on a case-by-case basis and is subject to FTA approval as part of the grant process. See funding section above for additional information regarding matching funds.

14. Other

In addition to all statutory requirements, recipients of vehicles intended for use at a State-owned park & ride or bus terminal will be required to adhere to provisions set forth by the Department of Transportation and/or the contracted terminal facility operator with regards to access to the premises and established traffic patterns within the premises.

Refer to FTA [Circular C5100.1](#) as well as the [FY2022 FTA Contractors Manual](#) for additional program guidance.

X. Additional Information

- Based on current apportionments, subsequent solicitations will be approximately \$4,000,000 per year for Statewide/Rural use, \$450,000 for Small Urbanized areas, and \$100,000 for Boston UZA, plus unencumbered carryover balances. Additional competitive grants may be made available as authorized by the FAST Act (or subsequent authorization bill) as well.

- The 2020 Census will eventually impact the apportionments, likely starting with the SFY 2024 solicitation.
- The next planned solicitation for projects will be fall 2023.
- All USDOT-funded transportation projects must be listed in NH's Statewide Transportation Improvement Program ([STIP](#)). For State-administered programs/projects, the DOT includes a single statewide "programmatic" listing for each program, which fulfills this requirement. Therefore, for such projects, it is not necessary to request separate regional inclusion of proposed projects in the STIP.
 - **However, Direct Recipients of FTA funding are responsible for ensuring their projects are included in the STIP. (In most cases, NHDOT's statewide "FTA 5339" project within the STIP satisfies this requirement. Contact NHDOT if uncertain.)
- All successful applicants will be required to sign Federal Transit Administration (FTA) Certifications and Assurances prior to contract/vehicle award as well as annually to verify compliance with all Federal requirements.
- For 5311 subrecipients, vehicles are normally purchased by the State and titled to the receiving agency, with the State retaining a lien to protect the Federal and State interest. Agencies capable of adhering to FTA procurement guidelines may request permission to purchase vehicles themselves if it can be shown to be cost-effective to do so.
- This project will be administered according to the requirements of Title VI of the Civil Rights Act of 1964 and related statutes to ensure nondiscrimination.