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# Policies & Procedures for FTA Related Procurements

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City of La Crosse  
Municipal Transit Utility

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Adopted by  
La Crosse Municipal Transit Utility Board  
May ??, 2026

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**ATTACHMENTS**

- 1 – WisDOT Sub Recipient Procurement Checklist
- 2 – Responsibility Determination Form
- 3 – Method of Procurement Decision Matrix Form
- 4 – Sample Bid Checklist Form
- 5 – Independent Cost Estimate and Bid Cost Factors Form
- 6 – Noncompetitive Procurement Justification Form
- 7 – Cost and Price Analysis Form
- 8 – FTA Contract Clauses Matrix Check list
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- 10 – Bid Summary Form
- 11 – Award Recommendation and Justification Form
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## **Policies & Procedures for FTA Related Procurement**

This document has been prepared in accordance with the Federal Transit Administration's (FTA) procurement policies. Please reference the FTA's Master Agreement for changes, assistance, and clarification. The Master Agreement contains standard terms and conditions governing the administration of a Project supported with Federal assistance awarded by the Federal Transit Administration (FTA) through a Grant Agreement or Cooperative Agreement with the Recipient, or supported through a loan, loan guarantee, or line of credit provided by FTA. Also, please refer to The FTA's Best Practice: Procurement Manual for procurement assistance, contract clauses and provisions.

The City of La Crosse typically receives transit capital assistance through the FTA Section 5307 and 5339 Capital Programs administered through the statewide program. This process requires WisDOT approval and involvement at various stages throughout the procurement process. Please reference the checklist of activities and approvals in Attachment 1 – Sub recipient Procurement Process Checklist.

When purchasing goods and services the Municipal Transit Utility will also follow the requirements of the City of La Crosse Purchasing Policy Resolution - Attachment 17.

### **Written Record of Procurement History**

The City shall maintain records detailing the history of each FTA associated procurement. These records shall be placed in the master file and include:

- The rationale for the method of procurement (See - Decision Matrix - Attachment 3);
- Selection of contract type;
- Reasons for contractor selection or rejection; and
- The basis for the contract price.

#### **Procurement documentation files**

Where appropriate, the file will contain:

- Purchase request, acquisition planning information, and other pre-solicitation documents
- Evidence of availability of funds
- Rationale for the method of procurement (negotiations, formal advertising)
- List of sources solicited
- Independent cost estimate
- Description of work/scope of services
- Copies of published notices of proposed contract action
- Copy of the solicitation, all addenda, and all amendments
- Liquidated damages determination
- An abstract of each offer or quote
- Contractor's contingent fee representation and other certifications and representations
- Source selection documentation if applicable
- Contracting Officer's determination of contractor responsiveness and responsibility
- Cost or pricing data
- Determination that price is fair and reasonable including an analysis of the cost and price data, required internal approvals for award

- Purchase Requisition indicating availability of funding
- Notice to unsuccessful bidders or offers and record of any debriefing,
- Record of any protest
- Bid, Performance, Payment, or other bond documents, and notices to sureties
- Required insurance documents, and
- Notice to proceed

#### **Contract Administration File**

Where appropriate, the file contains:

- Executed contract and notice of award
- Bond-related documents
- Insurance documentation
- Post-award correspondence
- Notice to proceed
- Approvals or disapprovals of waivers and deviations
- Modifications and changes in the terms or conditions of the contract, including a rationale for the change, determinations regarding their scope, and cost/price analysis of any price increases or decreases.

### **Awards to Responsible Contractors**

The City shall make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed agreement. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. The debarred and suspended list will also be checked on the System for Award Management web site at [www.sam.gov](http://www.sam.gov). A copy of the page from web site search will be included in the procurement file.

The department must complete the attached *Responsibility Determination Form* prior to the issuance of an award, (Attachment 2.) The prospective Contractor must complete and return the certification regarding debarment and suspension, (Attachment 15.)

### **Methods of Solicitation and Selection**

The methods of solicitation and selection allowed within the Federal contractual sphere are listed in FTA Circular 4220.1G. You may choose:

- micro purchases only for contract amounts less than **\$5,000**;
- small purchase procedures only for contract amounts less than the simplified acquisition threshold (currently **\$150,000**);
- sealed bids where
  - You have a complete, adequate, and realistic specification or purchase description
  - Two or more responsible bidders are willing and able to compete the procurement lends itself to a firm fixed price contract and the selection can be made primarily on the basis of price
  - No discussion with bidders is needed after receipt of offers;
- competitive proposals; or
- Noncompetitive proposals (sole source) procurement only if you can justify not soliciting additional competition in the manner explicitly defined in FTA Circular 4220.1G, Chapter VI page 14.
- Best value for contracts which indicate that the best value or the proposal which offers the greatest

business value based upon an analysis of a tradeoff of qualitative technical factors and price/cost to derive which proposals represents the "best value" to the City's procurement. The Department must complete the attached *Method of Procurement Decision Matrix Form* to begin new procurement actions. The Decision Matrix will be placed in the master file, (Attachment 3).

### **Micro-Purchases**

Procurement by micro-purchases is those purchases under \$5,000. Purchases below that threshold may be made without obtaining competitive quotations if the grantee determines that the price is fair and reasonable. Such purchases are exempt from Buy America requirements. There should be equitable distribution among qualified suppliers, and no splitting of procurements to avoid competition. The Davis- Bacon Act applies to construction contracts over \$2,000.

Minimum documentation required: A determination that the price is fair and reasonable and how this determination was derived. This written determination shall be placed in the Procurement file. Please use the *Price and Cost Analysis Form* (Attachment 7).

### **Small Purchases**

Small purchase procedures are to be used if the services, supplies, or other property cost between \$5,000 and \$150,000. If small purchases procedures are used, price or rate quotations shall be obtained from at least three qualified sources prior to the issuance of an award. These price or rate quotations shall be placed in the procurement file. Please use the *Price Rate Quotation Form* (Attachment 12).

### **Sealed Bids/Invitation for Bid (IFB)**

Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest in price.

Note: Sealed bids are evaluated by the department for compliance with bid specifications, responsible and responsive bidders, verification of pricing, fund availability, etc.

In order for sealed bidding to be feasible, the following conditions should be present:

- a. A complete, adequate, and realistic specification or purchase description is available;
- b. Two or more responsible bidders are willing and able to compete effectively for the business;
- c. The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.
- d. No discussion with bidders is needed.

If this procurement method is used, the following requirements apply:

- a. The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time to prepare bids prior to the date set for opening the bids;
- b. The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services sought in order for the bidder to properly respond;
- c. All bids will be publicly opened at the time and place prescribed in the invitation for bids;
- d. The *Bid Summary Sheet*, *Bid Checklist*, and *Bid Cost Factors Forms* (Attachments 10, 4 & 5) will be completed by the department;

- e. A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. When specified in bidding documents, factors such as discounts, transportation costs, and life cycle costs shall be considered in determining which bid is lowest;

Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

The City may reject any or all bids, if there is a sound documented business reason, The Purchasing Agent or procuring department rejecting lower bids than the bid being accepted for award must provide a detailed written Determination of Findings outlining the reasons for rejection to the Purchasing Department for inclusion in the master file.

The sealed bid method is the preferred method for procuring construction.

In determining which proposals is most advantageous, grantees may award (if consistent with State law) to the proposer whose proposals offer the greatest business value to the Agency based upon an analysis of a tradeoff of qualitative technical factors and price/cost to derive which proposal represents the "best value" to the Procuring Agency. If the grantee elects to use the best value selection method as the basis for award, however, the solicitation must contain language which establishes that an award will be made on a "best value" basis.

### **Competitive Proposal/Request for Proposals (RFP)**

The competitive proposal method of procurement is normally conducted with more than one source submitting an offer or proposal. Either a fixed price or cost reimbursement type contract is awarded. This method of procurement is generally used when conditions are not appropriate for the use of sealed bids (i.e. when descriptions of experience, education, expertise, availability of services, etc, are necessary for evaluation). If this procurement method is used the following requirements apply:

- (1) Requests for proposals will be publicized.
- (2) All evaluation factors will be identified and included along with their relative importance in the RFP. If scores are based on a uniform scale (i.e. 1-10, or 1-100), it is best to define in advance levels of compliance, skills, or proximity to the ideal that each step of the scale represents. (i.e. a bachelor's degree is worth 25 points, a master's degree is worth 50 points, and a doctorate is worth 100 points)
- (3) Proposals will be solicited from an adequate number of qualified sources.
- (4) The Department must have a written method in place for conducting technical evaluations of the proposals received and for selecting awardees.
- (5) Awards will be made to the responsible firm whose proposal is most advantageous to the grantee's program with price and other factors considered. Other factors may include labor rates, specifications, labor hours, and delivery schedule. Documentation of the award justification should clearly identify key determination factors. Please use the Award Justification Form (Attachment 11)

### **Architectural and Engineering Services (A&E)**

The Department shall use competitive proposal procedures based on the Brooks Act, when contracting for A&E services as defined in 40 U.S.C. §541 and 40 U.S.C. §5325(d). The Brooks Act is federal policy relating to the selection of firms individuals to perform architectural, engineering, and related services. Other types of services considered A&E services include

program management, construction management, feasibility studies, preliminary engineering, design, surveying, mapping, and services which require performance by a registered or licensed architect or engineer.

The Brooks Act requires that:

1. An offeror's qualifications are evaluated;
2. Price must be excluded as an evaluation factor;
3. Negotiations be conducted with only the most qualified offeror; and
4. Failing agreement on price, negotiations with the next most qualified offeror are conducted until a contract award can be made to the most qualified offeror whose price is fair and reasonable to the grantee. This "qualifications based procurement method" can only be used for the procurement of A&E services. This method of procurement cannot be used to obtain other types of services even though a firm that provides A&E services is also a potential source to perform other types of services.

### **National Intelligent Transportation Systems Architecture and Standards.**

When requesting services for transportation system architecture, the City must ensure all offerors/bidders agree to conform, to the extent applicable, to the intelligent Transportation System Architecture and Standards under the FHWA final rule, and with FTA Notice. "FTA National (ITS) Architecture Policy on Transit Projects and other subsequent Federal directives that may be issued.

### **Noncompetitive Proposals (Sole Source).**

Sole Source procurements are accomplished through solicitation or acceptance of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. A contract amendment or change order that is not within the scope of the original contract is considered a sole source procurement that must comply with this subparagraph.

- (1) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and at least one of the following circumstances applies
  - a. The item is available only from a single source;
  - b. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
  - c. FTA authorizes noncompetitive negotiations;
  - d. After solicitation of a number of sources, competition determined inadequate; or
  - e. The item is an associated capital maintenance item as defined in 49 U.S.C. §5307(a) (1) that is procured directly from the original manufacturer or supplier of the item to be replaced. The grantee must first certify in writing to FTA: (i) that such manufacturer or supplier is the only source for such item; and (ii) that the price of such item is no higher than the price paid for such item by like customers.
- (2) A cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required.

### **Best Value**

Best Value is a selection process in which proposals contain both price and qualitative components, and award is based upon a combination of price and qualitative considerations. Qualitative considerations may include technical design, technical approach, quality of proposed personnel, and for management plan. The award selection is based upon consideration of a combination of technical and price factors to determine the offer deemed most advantageous and of the greatest value to the City.

## **The Traditional Construction Process - Design/Bid/Build**

It has been traditional in the construction industry to employ *an architect/engineer* to complete a detailed design of the entire project before soliciting bids from construction contractors. This traditional approach is known as *sequential design and construction*. This sequential design/construction approach requires that a detailed design package of the entire project be complete before bids are solicited from construction contractors. Following award of the construction contract, the NIE is often retained by the owner for the construction phase, and acts as the owner's agent, to inspect the construction work to ensure that the structures are built according to the designs and specifications.

Advantages - A major advantage of the sequential design and construction approach is that complex or one-of-a-kind projects can be thoroughly planned and thought through before construction begins. The traditional approach thus produces, in the design phase of the project, the most accurate estimate of final project costs, and this is an advantage of the traditional technique. If problems are encountered with design aspects for the latter stages of the project, the earlier design features or phases can be modified before any construction work has been done, thus avoiding construction contractor claims and delays. Another advantage is that the Agency is given a fixed price for completion of the entire project before construction begins. There may also be advantages in obtaining the necessary financing and project approvals. Overall management of the project should also be simplified by this approach.

Disadvantages - *Sequential design and construction* requires a longer time to complete the project than *phased design and construction ("fast tracking")*. And since time pressures are often the most intense issues confronting the Agency, the sequential method may not be feasible. Alternative contracting approaches have arisen to shorten the project completion time. These include *phased design and construction ("fast tracking")*, which often involves the use of a *construction manager*, and *turnkey (design-build)* contracting.

The *Noncompetitive Procurement Justification Form* and the *Sole Source Cost Analysis Form* (Attachments 6 & 9) must be completed prior to proceeding with this type of procurement.

## **Bid Protest Procedures**

1. For the purposes of this section, the following definitions apply:
  - "Days" refers to the working days of the Federal Government.
  - "File" or "submit" refers to the date of receipt by MTU.
  - "Interested party" means an actual or prospective bidder, offeror, subcontractor, or supplier whose direct economic interest would be affected by the award of the contract or by failure to award the contract.
  - "Bid" includes the term "offer" or "proposal" as used in the context of negotiated procurements."
  - "Federal law or regulation" means the violation of any valid requirement imposed by Federal statute or regulation governing contracts awarded pursuant to a grant agreement. This includes the requirements as stated in FTA Circular 4220.1G.
2. Submission of Protest  
Any interested party who wishes to protest at any point in the procurement process, evaluation, award, or post-award, may do so. An "interested party" must, however, be an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or by failure to award the contract.

All protests must be submitted in writing to:

Director of Transit  
La Crosse Municipal Transit Utility  
2000 Marco Drive  
La Crosse, WI 54601

3. Time for Filing

Protests should be made as soon as possible but no later than five (5) working days following MTU procurement decision. The protest must contain a detailed statement of the grounds for protest and any supporting documentation.

4. Director of Transit Response

Upon receipt of a written protest, the Director of Transit will meet with the protester and attempt to resolve the matter informally within five (5) working days. If the protester is still not satisfied and indicates an intention to appeal to the next step, the Director of Transit will suspend the award of the contract temporarily unless he determines that:

- a. The items to be procured are urgently required;
- b. Delivery or performance will be unduly delayed by failure to make the awards promptly or;
- c. Failure to make the prompt award will otherwise cause undue harm to MTU or;
- d. There is no merit whatsoever in the protest.

5. Local Appeal Procedure

If the protester wishes to appeal the Director of Transits' decision, the matter will be forwarded to the City of La Crosse Municipal Transit Utility Board for review. The recommendation of the Transit Board will be forwarded to the City of La Crosse Finance and Personnel Committee for ultimate local disposition.

6. Additional Appeals

If the protest alleges that MTU has failed to follow its written bid protest procedures, the protester may ask that the Federal Transit Administration (FTA) review the protest in accordance with FTA Circular 4220.1G. If the protest alleges violation of a specific Federal requirement that provides an applicable complaint procedure, it may be submitted and processed in accordance with provisions of that particular regulation.

Alleged violations on all other grounds are under the jurisdiction of the appropriate State and local administrative or judicial authorities, and remedy may be sought through them.

The Protest Procedures language must be included in all Bids/RFP/RFB's, (Attachment 16.)

## Costing and Pricing

### Independent Cost Estimates

The Department must 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 Circular 4220.1G). The department must make independent estimates before receiving bids or proposals (Attachment 5). These estimates may be obtained from published competitive prices, results of competitive procurements, historical prices and trends, or by Purchasing Department estimates or outside estimators.

The *Cost and Price Analysis Form* must be completed prior to awarding for any solicitation, (Attachment 7)

1. Cost Analysis

- a. 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.
- b. A cost analysis will be necessary when adequate price competition is lacking and 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 or on the basis of prices set by law or regulation.

2. Price Analysis

- a. A price analysis may be used in all other instances to determine the reasonableness of the proposed contract price.

3. Profit

- a. The Department will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed.
- b. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

**Federal Cost Principles**

Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles. The City may reference their own cost principles that comply with applicable Federal cost principles.

**Cost Plus Percentage of Cost Prohibited**

The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used

**Full and Open Competition**

The principle of full and open competition has one primary and two secondary purposes. The primary purpose is to obtain the best quality and service at minimum cost. In other words, to get the best buy. The secondary purposes are to guard against favoritism and profiteering at public expense and to provide equal opportunities to participate in public business to every potential offeror.

The Department must conduct all procurement in a manner providing full and open competition. This policy assures that all responsible bidders are permitted to compete for the procurement. In the case of sole or single source procurement, justification for use of the source must be documented on the *Noncompetitive Procurement Justification Form* (Attachment 6). Also see Sole Source Contracting Section.

Contracts with a value of more than \$100,000 shall be awarded by sealed bid or by the competitive and noncompetitive proposal process unless there is an explicit exception. The Department must refrain from the following practices, which are deemed restrictive of competition:

- a. Unreasonable requirements placed on firms in order for them to qualify to do business;
- b. Unnecessary experience and excessive bonding requirements;
- c. Noncompetitive pricing practices between firms or between affiliated companies;
- d. Noncompetitive awards to any person or firm on retainer contracts;
- e. Organizational conflicts of interest;
- f. Restrictive use of brand names.
- g. Any arbitrary action in the procurement process; and
- h. Geographic preferences.

### **Bonding Requirements**

For those construction or facility improvement contracts or subcontracts exceeding \$100,000, FTA may accept the bonding policy and requirements of the grantee, provided FTA determined that the policy and requirements adequately protect the Federal interest. FTA has determined that grantee policies and requirements that meet the following minimum criteria adequately protect the Federal interest.

- a. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified;
- b. A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract; and
- c. A payment bond on the part of the contractor. A payment bond is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts determined to adequately protect the federal interest are as follows:

Fifty percent of the contract price if the contract price is not more than \$1 million;

Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million;  
or

Two and a half million dollars if the contract price is more than \$5 million.

A Grantee may seek FTA approval of its bonding policy and requirements if they do not comply with these criteria.

### **Brand Name or Equals**

Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not contain features unduly restricting competition. The description may include a statement of the qualitative nature of the material, product, or service

to be procured and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used.

Departments shall use a "brand name or equal" description only when it cannot provide an adequate specification or more detailed description, without performing an inspection and analysis, in time for the acquisition under consideration. Further, if the department wishes to use "brand name or equal" it must carefully identify its minimum needs and clearly set forth those salient physical and functional characteristics of the brand name product in the solicitation.

## **Conflicts of Interest**

The City's Code of Ethics Policy covers standards of conduct and conflict of interest issues. In addition, employees, officers, board members, or agents of the City of La Crosse are prohibited from participating in the selection, award, or administration of contracts or sub-agreements supported by federal funds if a real or apparent conflict of interest exists.

The following language must be included in all RFPs for design and evaluation services covered under this section. This statement prohibits contractors from bidding on follow-up (add on) construction work resulting from the design.

In order to prevent real or apparent conflicts of interest, the City prohibits contractors that have participated in FTA-funded design or evaluation services from bidding on any resulting construction work, services, or capital equipment purchases. All specifications prepared by design consultants must be written in such a manner that any reasonable, competent contractor could understand the requirement and perform the work".

## **Geographic Preferences**

The Department shall conduct procurements in a manner that prohibits the use of statutory or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. This does not preempt State licensing laws. However, geographic location may be a selection criterion in procurements for architectural and engineering (A&E) services, provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

## **Written Selection Procedures**

To ensure all procurements are awarded in a fair and equitable manner, all solicitations shall:

- a. Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not contain features that unduly restrict competition. The description may include a statement of the qualitative nature of the material, product, or service to be procured and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use.
- b. Identify all requirements that offerors must fulfill and all other factors to be used in evaluating bids or proposals.

Evaluators and reviewers must follow the established criteria when rating the proposals.

### **Prequalification of Bidders**

The department shall ensure that all lists of prequalified persons, firms, or products that are used in acquiring goods and services are current and include enough qualified sources to ensure maximum full and open competition. In addition, the City shall not preclude potential bidders from qualifying during the solicitation period, which is from issuance of the solicitation to its closing date.

### **Advertising and Publicizing Solicitation**

IFBs and RFPs must be publicly advertised and publicized (respectively) at least fourteen (14) days prior to the solicitation's due date. A longer time period is suggested for larger, more complex procurements.

Outreach efforts must be made using diverse resources such as the Internet and mailing lists coupled with widely circulated publications.

IFBs must be issued with sufficient time to prepare bids prior to the date set for opening the bids. Further, the invitation for bids will include any specifications and pertinent attachments and shall properly define the items or services sought in order for the bidder to properly respond. RFPs must identify all evaluation factors along with their relative importance. The Department shall place copies of all advertising and publicized solicitation material in the related master file.

### **Contractor Information Form**

In accordance with 40 CFR §26.11, the City of La Crosse shall collect information on the availability of Disadvantaged Business Enterprise (DBE) contractors that seek to work on federally assisted contracts. Each contractor responding to such a solicitation shall complete the Contractor's Information Form, providing the following data on each contractor and subcontractor:

- a. Firm name;
- b. Firm address;
- c. Firm's status as a DBE or non-DBE;
- d. Age of the firm; and
- e. Annual gross receipts of the firm.

### **Pre-Bid and Pre-Proposal Conferences**

Pre-bid and pre-proposal conferences are generally used in complex acquisitions as a means of briefing prospective offerors and explaining complicated specifications and requirements to them as early as possible after the solicitation has been issued and before offers are received. This is also an open forum for potential respondents to address ambiguities in the solicitation documents that may require clarification. Notice of the conference is included in the solicitation at the time of issuance.

### **Evaluations of Bid Alternates**

When bid alternates are included in a bid or proposal document, these alternates must be evaluated as part of the overall bid. This evaluation must be in a written narrative detailing the contract award and takes the alternate into account in reaching a procurement decision. This evaluation must be submitted to the Purchasing Department prior to proceeding with the procurement.

## Exercise of Bid Alternates

Bid Alternates may not be exercised unless it is in accordance with the terms and conditions stated in the initial contract. In addition, the requesting department must have made a determination that the alternate price is better than the market price or that the option price is more advantageous. Full written documentation supporting this determination must be submitted to the Purchasing Department.

## Types of Contracts

### Fixed Price v. Cost Reimbursement

Procurement by the Sealed Bid/Invitation for Bids (IFB) method when certain conditions are present. Among those listed is the condition that:

- a. The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.
- b. Chapter VI, pages 5-6 of [FTA Circular 4220.1G](#) authorizes procurement by the Competitive Proposal/Request for Proposals (RFP) method and either a fixed price or cost reimbursement type contract may be awarded.
- c. Chapter III, page 4 of [FTA Circular 4220.1G](#) requires that departments must document their reasons for selecting the contract type as a part of the written record of procurement history.
- d. Chapter VI, page 6 of [FTA Circular 4220.1G](#) prohibits the cost plus a percentage of cost method of contracting.

There are two broad categories of contract types: fixed-price contracts and cost-reimbursement contracts. Within these two families of contract types there are a number of subtypes offering differing degrees of incentives. At the extremes are the firm-fixed-price contract, in which the contractor has complete responsibility for the costs of performance and the resulting profit or loss, and the cost-plus-fixed-fee contract, in which the contractor has virtually no risk for performance costs and the fee (profit) is fixed. Between these two extremes are the various incentive-type contracts where the degree of cost risk and profit incentive can be tailored to meet almost any specific program situation.

### Fixed-Price Contracts

These contracts are appropriate for acquiring commercial items, or for supplies or services which can be clearly defined with either performance/functional specifications or design specifications, and where performance uncertainties do not impose unreasonably high risks upon the contractor.

### Cost-Reimbursement Contracts

These contracts are one in which the City does not contract for the performance of a specified amount of work for a predetermined price, but agrees instead to pay the contractor's reasonable, allocable and allowable costs of performance regardless of whether the work is completed. The City/Department assumes a high risk of incurring cost overruns, while the contractor has almost no risk of financial losses. Cost-type contracts are suitable when (a) you are unable to accurately describe the work to be done, or (b) there is an inability to accurately estimate the costs of performance. If either of these conditions is present, the cost-reimbursement contract is the proper type of contract. *Cost-type contracts are ideally suited to complex requirements because the parties can devote their attention to accomplishing the work rather than on the claims process, which will be significant on large, complex projects.*

## **Time and Materials Contracts**

Departments will use time and materials contracts only:

- (1) After a determination that no other type of contract is suitable;
- (2) The contract specifies a ceiling price, and the contractor shall not exceed that price except at its own risk; and
- (3) The *Method of Procurement Decision Matrix Form* (Attachment 3) must be completed and included with the file for this type of contract.

## **Labor / Hour Contracts**

Labor / hour contracts are a variation of the time and materials contract, differing only in that materials are not supplied by the contractor. You should use this type of contract only when no other would be suitable, and you need to document your determination if you choose to use this type of contract.

## **Cost Plus Percentage of Cost Contracts (CPPC)**

The FTA Circular 4220.1G: clearly prohibits the use of this contracting method.

## **Out of Scope Changes/Cardinal Changes**

An "out of scope change"/Cardinal Change is a contract amendment or change order that is not within the scope of the original contract and is considered a sole source procurement or "tag on" and is a Cardinal Change and is not allowed without justification. Please use the Cardinal Change policies for this type of action. FTA Circular 4220.1G, Chapter VI, page 17.

## **Contract Term Limitation**

The City shall not enter into any contract for rolling stock or replacement parts with a period of performance exceeding five (5) years inclusive of options. All other types of contracts (supply, service, leases of real property, revenue and construction, etc.) will be based on sound business judgment. Length of contracts shall be for not more than the amount of time required to accomplish the purpose of the contract, and will also include consideration for competition, pricing, fairness, and public perception. Once a contract has been awarded, an extension of the contract term length that amounts to an out of scope change will require a sole source justification.

## **Revenue Contract**

Revenue contracts are those third party contracts whose primary purpose is to either generate revenues in connection with a transit related activity, or to create business opportunities utilizing an FTA funded asset. FTA requires these contracts to be awarded utilizing competitive selection procedures and principles. The extent of and type of competition required is within the discretionary judgment of the City.

## **Tag-Ons**

The use of tag-ons, or the addition of work including supplies, equipment or services, that is beyond the scope of the original contract that amounts to a cardinal change as generally interpreted in Federal practice by the various Boards of Contract Appeals, is prohibited and applies to the original buyer as well as to others. In scope "tag-on" changes are not considered tag-ons.

## **Piggybacking**

Piggybacking is an assignment of existing contract rights to purchase supplies, equipment or services. Piggybacking is permissible when the solicitation document and resultant contract contain an assignability clause that provides for the assignment of all or a portion of the specified deliverables as originally advertised, completed, evaluated, and awarded. If the supplies were solicited, competed and awarded through the use of an indefinite-delivery-indefinite-quantity (IDIQ) contract, then both the solicitation and contract award must contain both a minimum and a maximum quantity that represents the reasonably foreseeable needs of the party(s) to the solicitation and contract. If the City and another party jointly solicit and award an IDIQ contract, then there must be a total minimum and maximum.

## **E-Commerce**

E-Commerce is an allowable means to conduct procurements. If an E-Commerce solicitation will be utilized, full and open competition must be addressed in compliance with the Federal Circular 4220.1G. A written procedure will be required prior to use of E-Commerce. Please call the Purchasing Office prior to use of this alternative.

## **Payments**

### **Advance Payments**

FTA does not authorize, and will not participate in funding payments to a contractor prior to the incurrence of costs by the contractor unless prior written concurrence is obtained from FTA.

### **Progress Payments**

Grantees may use progress payments provided the following requirements are followed:

- (1) Progress payments are only made to the contractor for costs incurred in the performance of the contract,
- (2) The grantee must obtain adequate security for progress payments adequate security may include taking title, letter of credit or equivalent means to protect the grantee's interest in the progress payment.

## **Contract Provisions**

All contracts shall include provisions to define a sound and complete agreement, In addition, contracts and subcontracts shall contain contractual provisions or conditions that allow for:

- a. Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, including sanctions and penalties as may be appropriate. (All contracts in excess of the small purchase threshold.)
- b. Termination for cause and for convenience by the City or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000.)

## **Liquidated Damages Provisions**

The City may use liquidated damages if it may reasonably expect to suffer damages (increased costs on project involved) from late completion and the extent or amount of such damages would be difficult or impossible to determine. In order to obtain liquidated damages, the City must suffer an actual loss. The amount of liquidated damages must be reasonable in light of the loss suffered. The assessment for damages shall be at a specific rate per day for each day of overrun in contract time; and the rate must be specified in the third party contract. Any liquidated damages recovered shall be credited to the project account involved unless the FTA permits otherwise.

## **Architectural and Engineering Services Conflicts of Interest**

The following language must be included in all RFPs for design and evaluation services covered under this section. This statement prohibits contractors from bidding on follow-up (add on) construction work resulting from the design.

"In order to prevent real or apparent conflicts of interest, the City prohibits contractors that have participated in FTA-funded design or evaluation services from bidding on any resulting construction work, services, or capital equipment purchases. All specifications prepared by design consultants must be written in such a manner that any reasonable, competent contractor could understand the requirement and perform the work,"

## **Flow down of FTA Clauses**

Please see the attached *FTA Contract Clauses* as a guide to ensure the proper clauses are included in the procurement process. The relative clauses are required to be included in all FTA contracts and purchase orders. (Attachment 8 )

A full text of all contract clauses may be found in the FTA Best Practices Manual and the WisDOT Procurement Website through the National Rural Transit Assistance Program (National RTAP) ProcurementPRO link <https://www.nationalrtap.org/Technology-Tools/ProcurementPRO> .

## **Build America, Buy America Act**

As a condition of responsiveness to bidding for procurements of rolling stock, iron, steel, or manufactured products greater than \$150,000 the bidder must submit with the bid or offer, a completed Build America Act Self Certification Letter and a Buy America Act certificate, outlined below. This clause requires any contract exceeding \$150,000 entered into by the City with FTA assistance requires that all iron, steel, manufactured products (including rolling stock), and construction materials used are produced or manufactured in the United States, unless FTA has granted a waiver authorized by Buy America regulations. FTA cautions that its Buy America regulations are complex and different from the Federal "Buy American Act" regulations in FAR Subparts 25.1 and 25.2. FTA C. 4220.1G, Chpt. IV.

FTA may obligate an amount for a project only if the steel, iron, manufactured goods, and construction materials used in the project are produced in the United States under the Build America, Buy America Act (BABAA), Pub. L. 117-58, §§ 70901–27 incorporated under 49 U.S.C. 5323(j).

The City will, to the greatest practical extent consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States of America, even when Buy America and other regulations do not apply. 2 C.F.R. § 200.322

Certifications in compliance with Part 661.6 and 661.12 are provided in Attachments 13

## **Lobbying**

Contractors who apply or bid for an award of \$100,000 or more must file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each level of FTA fund recipient certifies to the level above it that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352, Each FTA fund recipient must also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that specific Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from each level of fund recipient to the next level of fund recipient until it reaches the grantor. See "Lobbying" as provided in <https://www.transit.dot.gov/funding/grantee-resources/certifications-and-assurances/certifications-and-disclosure-lobbying> .

Certifications in Attachment 14

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## 1.2 SUBRECIPIENT PROCUREMENT PROCESS CHECKLIST

### TO DO BEFORE THE PROCUREMENT PROCESS

- Determine Scope of Procurement
- Identify Who Needs to be Involved
- Plan The Procurement Process
- Decide on the Method of Procurement: IFB or RFP

### PROCUREMENT PACKET PREPARATION

- Convene Review Committee
- Develop Draft IFB or RFP, including all required clauses
- Develop Technical Specifications and/or Scope of Work
- Identify Potential Bidders/Proposers
- Develop Evaluation Process and Criteria
- Develop Protest Procedures
- Finalize Draft of Bid Package
- WisDOT Review and Approval of Procurement Packet

### CONDUCTING THE PROCUREMENT

- Finalize IFB/RFP Package
- Advertising And Notifying Potential Bidders/Proposers
- Conduct Pre-Bid or Pre-Proposal Conference (Optional)
- Procedures for Approved Equals (If Applicable)
- Pre-Bid/Pre-Proposal Approved Equals Protests Procedures (If Applicable)
- Bid/Proposal Deadline and Acceptance by the Procuring Agency

### PRE-AWARD REVIEW AND CONCURRENCE PROCESS

- Re-Convene Review Committee
- Review Evaluation Process and Criteria
- Evaluate Bids/Proposals for Required Elements/Responsiveness
- WisDOT Notified of Intent to Award
- Notify Selected and Rejected Bidders/Proposers
- Handle Intent to Award Protests Using the Local Process

### POST-AWARD AND POST-DELIVERY ACTIVITIES

- Issue Purchase Order or Service Contract to Selected Bidder/Proposer
- Monitor Contractor Activities (If Applicable)
- Post-Delivery Inspection of Capital Equipment Purchases
- Complete Required Post-Delivery Audit Forms
- Acceptance, Warranty and Service Arrangements Made with Contractor
- Vehicle Title/Registration - Showing WisDOT as Lien-Holder
- Payment/Reimbursement of the Federal Share of Purchase Cost



**Responsibility Determination Form**

**BID / RFP No:** \_\_\_\_\_

**Supplier:** \_\_\_\_\_

**Date:** \_\_\_\_\_

For each of the areas described below, check that the appropriate research has been accomplished and provide a short description of the research and the results.

<b>Acceptable</b>	<b>Comment</b>		
1. Appropriate financial, equipment, facility, and personnel.	Yes	No	_____ _____ _____
2. Ability to meet the delivery schedule.	Yes	No	_____ _____ _____
3. Satisfactory period of performance.	Yes	No	_____ _____ _____
4. Satisfactory record of integrity, not on declined or suspend listings.	Yes	No	_____ _____ _____
5. Receipt of all necessary data from supplier.	Yes	No	_____ _____ _____
6. Debarred and Suspended List has been checked (supplier not listed)	Yes	No	_____ _____ _____



**Method of Procurement  
Decision Matrix Form**

To best determine which method of procurement is suitable, classify your situation by checking off the appropriate boxes below. All elements must apply to use that method

<p><b>Micro-purchase</b></p> <p>Amount &lt;\$2500 <input type="checkbox"/></p> <p>Multiple sources <input type="checkbox"/></p>	<p><b>Competitive Procurement</b></p> <p>Amount &gt;\$2500 <input type="checkbox"/></p> <p>Multiple sources available <input type="checkbox"/></p> <p>Not an emergency purchase <input type="checkbox"/></p> <p><b>Sealed Bid (IFB)</b></p> <p>Complete &amp; adequate specs or purchase description <input type="checkbox"/></p> <p>Two or more responsible Bidders willing to compete. <input type="checkbox"/></p> <p>Selection can be made on basis of price <input type="checkbox"/></p> <p>Procurement suitable for firm, fixed price <input type="checkbox"/></p> <p>No discussion with bidders needed after receipt of offers <input type="checkbox"/></p> <p><b>Competitive Proposals (RFP)</b></p> <p>Complete specifications not feasible <input type="checkbox"/></p> <p>Bidder input needed for specification <input type="checkbox"/></p> <p>Two or more responsible bidders willing to compete <input type="checkbox"/></p> <p>Discussion needed with bidders after receipt of proposals, prior to award. <input type="checkbox"/></p> <p>Fixed price can be set after discussions <input type="checkbox"/></p> <p><b>Time and Materials Contract (subset of RFP)</b></p> <p>Fixed price cannot be set for work <input type="checkbox"/></p> <p>Complete extent of work unknown, whether time, or material use, or both. <input type="checkbox"/></p> <p><b>Best Value</b> <input type="checkbox"/></p> <p>Price and qualitative consideration Greatest value to the City</p>	<p><b>Sole Source</b></p> <p>OEM or custom item <input type="checkbox"/></p> <p>Only one source available <input type="checkbox"/></p> <p>Approved by FTA-sole source <input type="checkbox"/></p> <p>Public exigency issue/emerg. <input type="checkbox"/></p> <p>Competition is inadequate after public solicitation <input type="checkbox"/></p> <p><b>Emergency Procurement (subset of sole source)</b></p> <p>There is a health and safety issue that prohibits delay. <input type="checkbox"/></p>
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ATTACHMENT 4

**Bid Checklist Form**

	<u>YES</u>	<u>NO</u>
1. Price is firm, fixed and definite	_____	_____
2. Bid is responsive to requirements of the solicitation	_____	_____
3. Exceptions taken to any material term or condition of the solicitation	_____	_____
4. Bid is ambiguous	_____	_____
5. All amendments to solicitation acknowledged	_____	_____
6. Bid signed	_____	_____
7. All material representations, bonds, guarantees and certifications completed.	_____	_____
8. All required information submitted.	_____	_____
9. Bid is not defective	_____	_____

## **ATTACHMENT 5 – INDEPENDENT COST ESTIMATE**

### Instructions for Use

1. Use this template for developing independent cost estimates (ICE) for formal solicitations. The ICE must be signed and dated. The ICE and any supporting documentation must be filed in its appropriate place in the Procurement History File.
2. Purchase Request Number – If applicable, insert Purchase Request identifier.
3. Item Description/Project Name – Enter a brief description of the item or service to be purchased.
4. Delivery/Completion Date – Enter the date that the item or service must be delivered or completed.
5. Preparer's Name and Signature – Print and sign if you are the developer of the ICE.
6. Total Estimated Price/Cost – Enter the procurement's total anticipated price or cost. Include option years, if applicable.
7. Date of Estimate – Enter the date that the ICE was developed.
8. Method – Check all of the listed methods which were used in developing the current ICE and attach any supporting documents such as catalog or Internet-based search pages, etc.
9. Cost Estimate Details – When you anticipate that cost analysis will be necessary in order to determine the procurement's "price reasonableness" prior to award and in developing cost estimates using cost groupings (elements) such as Materials, Overhead, SG&A (Selling, General, and Administrative expenses), refer to the cost principles set forth in Federal Acquisition Regulation (FAR) Part 31, Contract Cost Principles and Procedures).

**(INSERT NAME OF TRANSIT SYSTEM)  
INDEPENDENT COST ESTIMATE**

Purchase Request Number	Item Description/Project Name	Delivery/Completion Date
Name/Signature of Preparer	Total Estimated Price/Cost	Date of Estimate

**Method.** The above estimate has been developed as follows (check all that apply):

- \_\_\_\_\_ Published catalog or price list (attach pertinent catalog or price list pages).
- \_\_\_\_\_ Recent prices for the same or similar item/service (identify contracts, purchase orders, sources, and additional helpful information (e.g. dates of award), and attach any pertinent documents):  
\_\_\_\_\_
- \_\_\_\_\_ In-house engineering or technical estimate (see details below).
- \_\_\_\_\_ Independent Third Party estimate developed by \_\_\_\_\_ (attach the estimate).
- \_\_\_\_\_ Other (specify): \_\_\_\_\_
- \_\_\_\_\_ If appropriate, the estimates/prices herein have been made current by adjusting for inflation using the following Producer or Consumer Price Index: \_\_\_\_\_

**Cost Estimate Details.** Details for the estimated price/cost identified are shown below.

**Cost of Standard Items**

Product	Unit Cost	Unit Cost	Notes / Data Source
	Delivered	No Freight	
A			

**Cost of Services, Repairs, or Non-Standard Items**

Item / Task:							
Materials	Other Direct Costs	Labor (rate, hours)	Labor Class	Allocated Overhead	SG&A	Profit	Total
B							

**NOTE:** For complex projects or tasks, attach additional supporting documentation, as appropriate.



**Bid Cost Factors Form**

**Solicitation / Bid No:** \_\_\_\_\_

**Supplier Price Evaluation Factors:**

- 1. Purchase price: \$ \_\_\_\_\_
  - 2. Payment discount terms: \_\_\_\_\_
  - 3. Transportation costs: \_\_\_\_\_
  - 4. Warranty: \_\_\_\_\_
  - 5. Installation: \_\_\_\_\_
  - 6. Training: \_\_\_\_\_
  - 7. Technical assistance: \_\_\_\_\_
- Total bid:** \_\_\_\_\_
- Evaluation:** \$ \_\_\_\_\_



**NONCOMPETITIVE PROCUREMENT  
JUSTIFICATION FORM**

Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and at least one of the following circumstances applies:

**Check one:**

- The item is available only from a single source (sole source justification is attached).
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation (documented emergency condition is attached).
- FTA authorizes noncompetitive negotiations (letter of authorization is attached).
- After solicitation of a number of sources, competition is determined inadequate (record of source contacts is attached).
- The item is an associated capital maintenance item as defined in 49 U.S.C. §5307(a)(1) that is procured directly from the original manufacturer or supplier of the time to be replaced (price certification attached).

**Comments:**

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Cost Analysis is attached.

\_\_\_\_\_  
Purchasing Agent

\_\_\_\_\_  
Department Manager

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## ATTACHMENT 7 – COST/PRICE ANALYSIS AND PRICE REASONABLENESS

### Instructions for Use

1. The format provided is intended to document cost/price analysis and price reasonableness for procurement of supplies or services. In most instances, “price reasonableness” can be determined based upon comparison with current in-house bids or offers for the same requirement (on the same procurement) and/or currently existing contracts for the same or similar products or services. In the latter case, take care to provide sufficient documentation to support the case that the proposed awardee’s offered prices on the instant contract are, in fact, *based on prices on currently existing contracts wherein such prices have previously been found to be “fair and reasonable.”* Modify the Summary Matrix as appropriate to accommodate additional bidders and/or items.
2. For a sole source procurement, prepare a cost analysis verifying the proposed cost data, the projections of the data, and the evaluation of the costs and profits.
3. Refer to the WisDOT Invitation for Bid Procurement Toolkit, Section 6.17, for guidance relevant to conducting price analysis and documenting price reasonableness. Price analysis must be conducted and price reasonableness determined prior to any contract award.
4. The analysis must be signed and dated by the individual conducting the analysis and determining the prospective awardee’s price to be “fair and reasonable.”
5. The Price Analysis and Price Reasonableness Determination and any supporting documentation must be filed in its appropriate place in the Procurement History File.

**COST/PRICE ANALYSIS AND PRICE REASONABLENESS DETERMINATION**

Contract Number: \_\_\_\_\_ Item Description \_\_\_\_\_

Original Procurement: Yes \_\_\_ No, option year; Year 1: \_\_\_\_, Year 2: \_\_\_\_, Year 3: \_\_\_\_, or Year 4: \_\_\_\_

I hereby determine that the prices offered by (supplier name) \_\_\_\_\_ for the purchase of these products or services to be fair and reasonable based on the following analysis:

**Check one or more which apply:**

- Comparison of and based on current offers received for the same or similar services (complete matrix below).
- Comparison of proposed pricing with pricing from recent purchases for the same or similar services, adjusted by the pertinent Consumer or Producer Price Index or Inflation Rate over the corresponding time period, if appropriate. This includes the same or similar services found on existing State or municipal contracts (identify contract pricing sources and attach supporting documentation).
- Comparison of price components against current industry standards, such as labor rates, dollars per pound, dollars per square foot, etc., to justify the price reasonableness of the whole (attach the analysis which supports the conclusions drawn).
- Comparison with published catalog prices or price lists, commercially advertised sales prices, or prices obtained through other market research (e.g., Internet-based, trade journals, etc.) for the same or similar item commercially available from competing suppliers (complete the matrix below and attach supporting quotes, catalog pages, price lists, advertisements, etc.).
- Comparison of proposed pricing with an in-house independent cost estimate for the same or similar item (complete the matrix below, attach the signed in-house estimate, and explain factors influencing any differences found).
- The quoted price is from a regulated utility (identify the utility in the "Comments" section below).
- Other (e.g., verifiable sales information for the same or similar items sold to the supplier's other customers (discuss in the "Comments" section below and attach supplier's sales information).

**SUMMARY MATRIX**

For multi-year contracts	Item	Proposed Pricing	Average Market Price	Offeror A	Offeror B	In-House Estimate	Other
Years 1&2							
Option Yr 1							
Option Yr 2							
Option Yr 3							

Reason for the selection:

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Supporting documents are attached. This analysis and determination will be filed in the Procurement History File.

\_\_\_\_\_  
Purchasing Agent (Print Name, Sign, and Date)

### Applicability Of Third-Party Contract Provisions

(excluding micro-purchases, except Davis-Bacon requirements apply to contracts exceeding \$2,000)  
**Includes provisions CFR 200, Master Agreement 32 (March 26, 2025), Master Agreement 33 (April 25, 2025) and Circular 4220.1G. Citations from the Master Agreement (MA) and other relevant federal documents are noted.**

TYPE OF PROCUREMENT					
PROVISION	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
No Federal Government Obligations to Third Parties (by Use of a Disclaimer) <b>MA 33 – §3(f)</b>	All	All	All	All	All
False Statements or Claims Civil and Criminal Fraud <b>MA 33 - §4(e)</b>	All	All	All	All	All
Access to Third Party Contract Records <b>MA 33 - §16 (S)</b>	All	All	All	All	All
Changes to Federal Requirements <b>MA 33 - §3(i)(6)</b>	All	All	All	All	All
Termination <b>MA 33 - §16(d)(2)</b>	>\$10,000	>\$10,000	>\$10,000	>\$10,000	>\$10,000
Civil Rights (Title VI, ADA, EEO) <b>MA 33 - §12</b>	All	All	All>\$10,000	All	All
Veteran’s Employment Preference <b>Section 2108 of Title 5 and MA 33 - §16 (u)</b>				All	
Disadvantaged Business Enterprises (DBEs) <b>MA33 - §12(e)</b>	All	All	All	All	All
Prompt Payment to Subcontractors (if not part of DBE clause) <b>49 CFR § 26.29</b>	All	All	All	All	All
Incorporation of FTA Terms <b>MA 33 - §16(a)(3)</b>	All	All	All	All	All
Debarment and Suspension <b>2 CFR Parts 180 and 1200 and MA 33 - §16(d)(7)</b>	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000
Buy America <b>49 USC 5323(j)(13) MA 33 - §16(m)</b>			>\$150,000 49 USC 5323(j)(13)	>\$150,000 49 USC 5323(j)(13)	>\$150,000 49 USC 5323(j)(13)

<b>PROVISION</b>	<b>Professional Services/A&amp;E</b>	<b>Operations/ Management</b>	<b>Rolling Stock Purchase</b>	<b>Construction</b>	<b>Materials &amp; Supplies</b>
Resolution of Disputes, Breaches, or Other Litigation – Notification of Contractor and/or Subcontractor to Agency and Agency notification to FTA <b>2 C.F.R. §180.220 - \$25,000 threshold</b> <b>2 CFR 200.318(k); 2 CRF 200 Appendix II (a)</b> <b>MA 33 - §39(b)</b>	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000
Lobbying <b>2 CFR 200 Appendix II (I)</b> <b>MA 33 §4 (c) and 16(d)(8)</b>	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Air <b>2 CFR 200 Appendix II (G)</b> <b>MA 33 - §16 (d)(6)</b>	>\$150,000	>\$150,000	>\$150,000	>\$150,000	>\$150,000
Clean Water <b>2 CFR 200 Appendix II (G)</b> <b>MA 33 - §16 (d)(6)</b>	>\$150,000	>\$150,000	>\$150,000	>\$150,000	>\$150,000
Cargo Preference <b>MA 33 - §15(c)</b>			Transport by ocean vessel.	Transport by ocean vessel.	Transport by ocean vessel.
Fly America <b>MA 33 - §15(d)</b>	Foreign air transp. /travel.	Foreign air transp. /travel	Foreign air transp. /travel	Foreign air transp. /travel	Foreign air transp. /travel
Davis-Bacon Act <b>2 CFR 200 Appendix II (D)</b> <b>MA 33 – §16(d)(3)</b>				>\$2,000 (also ferries).	
Contract Work Hours and Safety Standards Act <b>2 CFR 200 Appendix II (E)</b> <b>MA 33 - §16(d)(4) OR MA 33 §24(a)</b> <b>MA 33 - §24(b) – non-construction</b>		>\$100,000 (transportation services excepted).	>\$100,000	>\$100,000 (also ferries).	
Copeland Anti-Kickback Act Section 1 Section 2 <b>2 CFR 200 Appendix II (D)</b> <b>MA 33 - §16(d)(3)</b>				All > \$2,000 (also ferries).	
Bonding <b>2 CFR 200.326</b> <b>MA 33 - §16(n)</b>				>\$250,000	
Seismic Safety <b>MA 33 - §23.(b)</b>	A&E for new buildings & additions.			New buildings & additions.	
Transit Employee Protective Arrangements <b>MA 33 - §24(d)</b>		Transit operations.			

<b>PROVISION</b>	<b>Professional Services/A&amp;E</b>	<b>Operations/ Management</b>	<b>Rolling Stock Purchase</b>	<b>Construction</b>	<b>Materials &amp; Supplies</b>
Charter Service Operations <b>MA 33 - §28</b>		All			
School Bus Operations <b>MA 33 - §29</b>		All			
Drug Use and Testing <b>MA 33 - §35(a)</b>		Transit operations.			
Alcohol Misuse and Testing <b>MA 33 - §35(b)</b>		Transit operations.			
Patent Rights <b>MA 33 - §17(a)(2)</b>	R & D				
Rights in Data and Copyrights <b>MA 33 - §18</b>	R & D				
Rights to Inventions Made Under a Contract or Agreement <b>2 CFR 200 Appendix II (F)</b> <b>MA 33 - §16(d)(5)</b>	R & D with Small Business or Non-Profit				
Energy Conservation <b>MA 30 - §26(i)</b>	All	All	All	All	All
Recycled Products <b>2 CFR 200.323</b> <b>MA 33 - §16(d)(9)</b>		EPA-selected items \$10,000 or more annually.		EPA-selected items \$10,000 or more annually.	EPA-selected items \$10,000 or more annually.
Conformance with ITS National Architecture <b>MA 33 - §16(l)</b>	ITS projects.	ITS projects.	ITS projects.	ITS projects.	ITS projects.
ADA Access <b>MA 33 - §12(h)</b>	A&E	All	All	All	All
Notification of Federal Participation for States <b>MA 33 - §37</b>	Limited to States.	Limited to States.	Limited to States.	Limited to States.	Limited to States.
Safe Operation of Motor Vehicles 1. Seat Belt Use 2. Distracted Driving <b>MA 33 - §34 (a) and (b)</b>	All	All	All	All	All
Prohibition on certain telecommunications and video surveillance services or equipment <b>2 CFR 200.216</b>	All	All	All	All	All
Federal Tax Liabilities and Recent Felony Convictions – Requires Certification – ALL tiers <b>MA 31-§4(g)(1) and (2)</b>	All	All	All	All	All

<b>PROVISION</b>	<b>Professional Services/A&amp;E</b>	<b>Operations/ Management</b>	<b>Rolling Stock Purchase</b>	<b>Construction</b>	<b>Materials &amp; Supplies</b>
Domestic Preferences for Procurement** 2 CFR 184.6 2 CFR 200.322 & 2 CFR 200 Appendix II (L) – See Note below				Construction materials ONLY	

\*\*On Domestic Preferences for procurement, FTA's Buy America statute at 49 U.S.C. 5323(j) has, with some exceptions, required all steel, iron, and manufactured products used in a federally funded project to be produced in the United States. A principal effect of Build America Buy America (BABA) is to add construction materials to this list of items. BABA does not change FTA's Buy America standards for steel, iron, or manufactured products including rolling stock (e.g., FTA does not apply the 55% cost-of-components standard to procurements).

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## **FEDERAL CLAUSES**

### **ACCESS TO RECORDS AND REPORTS**

a. Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, leases, subcontracts, arrangements, other third-party Contracts of any type, and supporting materials related to those records.

b. Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.334. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.

c. Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information, including such records and information the contractor or its subcontractors may regard as confidential or proprietary, related to performance of this contract in accordance with 2 CFR § 200.337.

d. Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract in accordance with 2 CFR § 200.337.

### **AMERICANS WITH DISABILITIES ACT (ADA)**

The contractor agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act, and with the Architectural Barriers act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act. In addition, the contractor agrees to comply with any and all applicable requirements issued by the FTA, DOT, DOJ, U.S. GSA, U.S. EEOC, U.S. FCC, any subsequent amendments thereto and any other nondiscrimination statute(s) that may apply to the Project.

## **BOND REQUIREMENTS**

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

(b) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's requirements under such contract.

(c) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

It is also understood and agreed that if the bidder should withdraw any part or all of their bid within [90] days after the bid opening without the written consent of the Agency, or refuse or be unable to enter into this Contract as provided above, or refuse or be unable to furnish adequate and acceptable Performance and Payment Bonds, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, it shall forfeit its bid guaranty to the extent Agency's damages occasioned by such withdrawal, or refusal, or inability to enter into a Contract, or provide adequate security thereof.

It is further understood and agreed that to the extent the defaulting bidder's bid guaranty shall prove inadequate to fully recompense Agency for the damages occasioned by default, then the bidder agrees to indemnify Agency and pay over to Agency the difference between the bid guarantee and Agency's total damages so as to make Agency whole.

The bidder understands that any material alteration of any of the above or any of the material contained herein, other than that requested will render the bid unresponsive.

Performance Guarantee. A Performance Guarantee in the amount of 100% of the Contract value is required by the Agency to ensure faithful performance of the Contract. Either a Performance Bond or an Irrevocable Stand-By Letter of Credit shall be provided by the Contractor and shall remain in full force for the term of the Contract. The successful Bidder shall certify that it will provide the requisite Performance Guarantee to the Agency within ten

(10) business days from Contract execution. The Agency requires all Performance Bonds to be provided by a fully qualified surety company acceptable to the Agency and listed as a company currently authorized under 31 C.F.R. part 22 as possessing a Certificate of Authority as described hereunder. Agency may require additional performance bond protection when the contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The Agency may secure additional protection by directing the Contractor to increase the amount of the existing bond or to obtain an additional bond.

If the Bidder chooses to provide a Letter of Credit as its Performance Guarantee, the Bidder shall furnish with its bid, certification that an Irrevocable Stand-By Letter of Credit will be furnished should the Bidder become the successful Contractor. The Bidder shall also provide a statement from the banking institution certifying that an Irrevocable Stand-By Letter of Credit for the action will be provided if the Contract is awarded to the Bidder. The Irrevocable Stand-By Letter of Credit will only be accepted by the Agency if:

1. A bank in good standing issues it. The Agency will not accept a Letter of Credit from an entity other than a bank.
2. It is in writing and signed by the issuing bank.
3. It conspicuously states that it is an irrevocable, non-transferable, "standby" Letter of Credit.
4. The Agency is identified as the Beneficiary.
5. It is in an amount equal to 100% of the Contract value. This amount must be in U.S. dollars.
6. The effective date of the Letter of Credit is the same as the effective date of the Contract
7. The expiration date of the Letter of Credit coincides with the term of the contract.
8. It indicates that it is being issued in order to support the obligation of the Contractor to perform under the Contract. It must specifically reference the Contract between the Agency and the Contractor the work stipulated herein.

The issuing bank's obligation to pay will arise upon the presentation of the original Letter of Credit and a certificate and draft to the issuing bank's representative at a location and time to be determined by the parties. This documentation will indicate that the Contractor is in default under the Contract.

**Payment Bonds.** A Labor and Materials Payment Bond equal to the full value of the contract must be furnished by the contractor to Agency as security for payment by the Contractor and subcontractors for labor, materials, and rental of equipment. The bond may be issued by a fully qualified surety company acceptable to (Agency) and listed as a company currently authorized under 31 C.F.R. part 223 as possessing a Certificate of Authority as described thereunder.

## **BUS TESTING**

The Contractor [Manufacturer] agrees to comply with the Bus Testing requirements under 49 U.S.C. 5318(e) and FTA's implementing regulation at 49 C.F.R. part 665 to ensure that the requisite testing is performed for all new bus models or any bus model with a major change in configuration or components, and that the bus model has achieved a passing score. Upon completion of the testing, the contractor shall obtain a copy of the bus testing reports from the operator of the testing facility and make that report(s) publicly available prior to final acceptance of the first vehicle by the recipient.

## **BUY AMERICA REQUIREMENTS**

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661 and 2 CFR § 200.322 Domestic preferences for procurements, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7.

Build America, Buy America Act. Construction materials used in the Project are subject to the domestic preference requirement of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 – 70927 (2021), as implemented by the U.S. Office of Management and Budget's "Buy America Preferences for Infrastructure Projects," 2 CFR Part 184. The Recipient acknowledges that this agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b). In accordance with 2 CFR § 184.2(a), the Recipient shall apply the standards of 49 CFR Part 661 to iron, steel, and manufactured products.

Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C), 49 U.S.C. § 5323(u) and 49 C.F.R. § 661.11. Domestic preferences for procurements

The bidder or offeror must submit to the Agency the appropriate Buy America certification. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive. For more information, please see the FTA's Buy America webpage at: <https://www.transit.dot.gov/buyamerica>

## **CARGO PREFERENCE REQUIREMENTS**

The contractor agrees:

a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of any equipment, materials or commodities procured, contracted for or otherwise obtained with funds granted, guaranteed, loaned, or advanced by the U.S. Government under this agreement, and which may be transported by ocean vessel, shall be transported on privately owned United

States-flag commercial vessels, if available. 46 U.S.C. § 55305, and U.S. Maritime Administration regulations, “Cargo Preference – U.S.-Flag Vessels,” 46 CFR Part 381.

b. to furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, ‘on-board’ commercial ocean bill-of-lading in English for each shipment of cargo described in 46 CFR § 381.7(a)(1) shall be furnished to both the recipient (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590; and

c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

### ***CHANGES TO FEDERAL REQUIREMENTS***

Federal requirements that apply to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto may change due to changes in federal law, regulation, other requirements, or guidance, or changes in the Recipient’s Underlying Agreement including any information incorporated by reference and made part of that Underlying Agreement; and

Applicable changes to those federal requirements will apply to each Third-Party Agreement and parties thereto at any tier.

### ***CHARTER SERVICE***

The contractor agrees to comply with 49 U.S.C. 5323(d), 5323(r), and 49 C.F.R. part 604, which provides that Recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except as permitted under:

1. Federal transit laws, specifically 49 U.S.C. § 5323(d);
2. FTA regulations, “Charter Service,” 49 C.F.R. part 604;
3. Any other federal Charter Service regulations; or
4. Federal guidance, except as FTA determines otherwise in writing.

The contractor agrees that if it engages in a pattern of violations of FTA’s Charter Service regulations, FTA may require corrective measures or impose remedies on it. These corrective measures and remedies may include:

1. Barring it or any subcontractor operating public transportation under its Award that has provided prohibited charter service from receiving federal assistance from FTA;
2. Withholding an amount of federal assistance as provided by Appendix D to part 604 of FTA's Charter Service regulations; or
3. Any other appropriate remedy that may apply.

The contractor should also include the substance of this clause in each subcontract that may involve operating public transit services.

## **CIVIL RIGHTS LAWS AND REGULATIONS**

The following Federal Civil Rights laws and regulations apply to all contracts.

The Contractor and any subcontractor agree to comply with all the requirements prohibiting discrimination on the basis of race, color, or national origin of the Title VI of the Civil Rights Action of 1964, as amended 52 U.S.C 2000d, and U.S. DOT regulation "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of the Title VI of the Civil rights Act," 49 C.F. R. Part 21 and any implementing requirement FTA may issue.

- 1 **Federal Equal Employment Opportunity (EEO) Requirements.** These include, but are not limited to:
  - a) Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation), disability, or age, and prohibits discrimination in employment or business opportunity.
  - b) Prohibition against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, Title VI of the Civil Rights Act of 1964," 49 CFR Part 21, and 49 U.S.C. § 5332, prohibits discrimination in employment on the basis of race, color, religion, sex, or national origin.
- 2 **Nondiscrimination on the Basis of Sex.** Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq. and implementing Federal regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25 prohibit discrimination on the basis of sex.
- 3 **Nondiscrimination on the Basis of Age.** The "Age Discrimination Act of 1975," as amended, 42 U.S.C. § 6101 et seq., and Department of Health and Human Services implementing regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et seq., and Equal Employment Opportunity

Commission (EEOC) implementing regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, also prohibit employment discrimination against individuals age 40 and over on the basis of age.

- 4 **Federal Protections for Individuals with Disabilities.** The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 et seq., prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

### **Civil Rights and Equal Opportunity**

The Agency is an Equal Opportunity Employer. As such, the Agency agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the Agency agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications. Under this Contract, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

1. **Nondiscrimination.** In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
2. **Equal Employment Opportunity.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., Title I of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12101, et seq.; and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements, without regard to their race, color, religion, national origin, or sex (including sexual orientation). In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
3. **Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any

Implementing requirements FTA may issue.

4. **Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
5. **Federal Law and Public Policy Requirements.** The Contractor shall ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

### ***CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT***

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251-1387). Violations must be reported to FTA and the Regional Office of the Environmental Protection Agency. The following applies for contracts of amounts in excess of \$150,000:

#### Clean Air Act

- (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- (2) The contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

#### Federal Water Pollution Control Act

- (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as

amended, 33 U.S.C. 1251 et seq.

- (2) The contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA."

### ***CONTRACT WORK HOURS AND SAFETY STANDARDS ACT***

- a. Applicability: This requirement applies to all FTA grant and cooperative agreement programs.
- b. Where applicable (see 40 U.S.C. § 3701), all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II.
- c. Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.
- d. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- e. The regulation at 29 C.F.R. § 5.5(b) provides the required contract clause concerning compliance with the Contract Work Hours and Safety Standards Act:

#### Compliance with the Contract Work Hours and Safety Standards Act.

- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- (3) Withholding for unpaid wages and liquidated damages. The agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- (4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section."

### ***DAVIS BACON ACT AND COPELAND ANTI-KICKBACK ACT***

For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FTA, the Contractor shall comply with the Davis-Bacon Act and the Copeland "Anti-Kickback" Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction." In accordance with the statute, the Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor agrees to pay wages not less than once a week. The Contractor shall also comply with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States." The Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair

of public work, to give up any part of the compensation to which he or she is otherwise entitled.

### **DEBARMENT AND SUSPENSION**

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the AGENCY. If it is later determined by the AGENCY that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the AGENCY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

### **DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

*(Does not apply to projects fully funded by the Tribal Transportation Program (TTP).)*

It is the policy of the Agency and the United States Department of Transportation ("DOT") that Disadvantaged Business Enterprises ("DBE's"), as defined herein and in the Federal regulations

published at 49 C.F.R. part 26, shall have an equal opportunity to participate in DOT-assisted contracts.

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Agency deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

Prime contractors are required to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the Agency makes to the prime contractor. 49 C.F.R. § 26.29(a).

Finally, for contracts with defined DBE contract goals, the contractor shall utilize the specific DBEs listed unless the contractor obtains the Agency's written consent; and that, unless the Agency's consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

### **DOMESTIC PREFERENCES FOR PROCUREMENTS.**

(a) The recipient or subrecipient should, to the greatest extent practicable and consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards, contracts, and purchase orders under Federal awards.

(b) For purposes of this section:

(1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

(c) Federal agencies providing Federal financial assistance for infrastructure projects must implement the Buy America preferences set forth in 2 CFR 184.

## **ENERGY CONSERVATION**

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6201).

## **FLY AMERICA**

- a) Definitions. As used in this clause—
- 1) “International air transportation” means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.
  - 2) “United States” means the 50 States, the District of Columbia, and outlying areas.
  - 3) “U.S.-flag air carrier” means an air carrier holding a certificate under 49 U.S.C. Chapter 411.
- b) When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, Agencies, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.
- c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.
- d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

### Statement of Unavailability of U.S.-Flag Air Carriers

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. [State reasons]:

- e) Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

### ***INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS***

The provisions within include, in part, certain Standard Terms and Conditions required under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR § 200), whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, detailed in 2 CFR § 200 or as amended by 2 CFR § 1201, or the most recent version of FTA Circular 4220.1 are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any request which would cause a violation of the FTA terms and conditions.

### ***NO GOVERNMENT OBLIGATION TO THIRD PARTIES***

The Recipient and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Recipient, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

### ***NOTICE TO FTA AND U.S. DOT INSPECTOR GENERAL OF INFORMATION RELATED TO FRAUD, WASTE, ABUSE, OR OTHER LEGAL MATTERS***

If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third-Party Agreements and must require each Third-Party Participant to include an equivalent provision in its subagreements at every tier, for any agreement that is a "covered transaction" according to 2 C.F.R. §§ 180.220 and 1200.220.

- (1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or

a legal disagreement in any forum for any reason.

(2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.

(3) The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient.

## ***PATENT RIGHTS AND RIGHTS IN DATA***

### Intellectual Property Rights

This Project is funded through a Federal award with FTA for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this Contract. The Contractor shall grant the Agency intellectual property access and licenses deemed necessary for the work performed under this Contract and in accordance with the requirements of 37 C.F.R. part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by FTA or U.S. DOT.

The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Contract and shall, at a minimum, include the following restrictions:

Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of FTA, until such time as FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution.

For purposes of this Contract, the term "subject data" means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of "subject data" include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.

1. The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for "Federal Government Purposes," any subject data or copyright described below. For "Federal Government Purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

a. Any subject data developed under the Contract, whether or not a copyright has been obtained; and

b. Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part by the FTA.

2. Unless FTA determines otherwise, the Contractor performing experimental, developmental, or research work required as part of this Contract agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.

3. Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. The Contractor shall not be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

4. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

5. Data developed by the Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying Contract is exempt from the requirements herein, provided that the Contractor identifies those data in writing at the time of delivery of the Contract work.

6. The Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

### **PRE-AWARD AND POST-DELIVERY AUDITS OF ROLLING STOCK PURCHASES**

*(Does not apply to projects fully funded by the Tribal Transportation Program (TTP).)*

The Contractor agrees to comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 C.F.R. part 663. The Contractor shall comply with the Buy America certification(s) submitted with its proposal/bid. The Contractor agrees to participate and cooperate in any pre-award and post-delivery audits performed pursuant to 49 C.F.R. part 663 and related FTA guidance.

### **PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS**

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

***PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.***

a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

- 1) Procure or obtain;
- 2) Extend or renew a contract to procure or obtain; or
- 3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

b) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

c) See Public Law 115-232, section 889 for additional information.

d) See also § 200.471.

### **PROMPT PAYMENT**

*(Does not apply to projects fully funded by the Tribal Transportation Program (TTP).)*

The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work. In addition, the contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.

The contractor must promptly notify the Agency, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the Agency.

### **PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS**

The Contractor agrees to comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):

1. U.S. DOL Certification. Under this Contract or any Amendments thereto that involve public transportation operations that are supported with federal assistance, a certification issued by U.S. DOL is a condition of the Contract.
2. Special Warranty. When the Contract involves public transportation operations and is supported with federal assistance appropriated or made available for 49 U.S.C. § 5311, U.S. DOL will provide a Special Warranty for its Award, including its Award of federal assistance under the Tribal Transit Program. The U.S. DOL Special Warranty is a condition of the Contract.
3. Special Arrangements. The conditions of 49 U.S.C. § 5333(b) do not apply to Contractors providing public transportation operations pursuant to 49 U.S.C. § 5310. FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate, and, in those instances, any special

arrangements required by FTA will be incorporated herein as required.

## **RESTRICTIONS ON LOBBYING**

### **Conditions on use of funds.**

- (a) No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (b) Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement shall file with that agency a certification, that the person has not made, and will not make, any payment prohibited by paragraph (a) of this section.
- (c) Each person who requests or receives from an agency a Federal contract, grant, loan, or a cooperative agreement shall file with that agency a disclosure form if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (a) of this section if paid for with appropriated funds.
- (d) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a statement, whether that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.
- (e) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a disclosure form if that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

### **Certification and disclosure.**

- (a) Each person shall file a certification, and a disclosure form, if required, with each submission that initiates agency consideration of such person for:
  - (1) Award of a Federal contract, grant, or cooperative agreement exceeding \$100,000; or
  - (2) An award of a Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000.
- (b) Each person shall file a certification, and a disclosure form, if required, upon receipt by such person of:

- (1) A Federal contract, grant, or cooperative agreement exceeding \$100,000; or
- (2) A Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000,

Unless such person previously filed a certification, and a disclosure form, if required, under paragraph (a) of this section.

(c) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraphs (a) or (b) of this section. An event that materially affects the accuracy of the information reported includes:

- (1) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
- (2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or,
- (3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(d) Any person who requests or receives from a person referred to in paragraphs (a) or (b) of this section:

- (1) A subcontract exceeding \$100,000 at any tier under a Federal contract;
- (2) A subgrant, contract, or subcontract exceeding \$100,000 at any tier under a Federal grant;
- (3) A contract or subcontract exceeding \$100,000 at any tier under a Federal loan exceeding \$150,000; or,
- (4) A contract or subcontract exceeding \$100,000 at any tier under a Federal cooperative agreement,

Shall file a certification, and a disclosure form, if required, to the next tier above.

(e) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraphs (a) or (b) of this section. That person shall forward all disclosure forms to the agency.

(f) Any certification or disclosure form filed under paragraph (e) of this section shall be treated as a material representation of fact upon which all receiving tiers shall rely. All liability arising from an erroneous representation shall be borne solely by the tier filing that representation and shall not be shared by any tier to which the erroneous representation is forwarded. Submitting an erroneous certification or disclosure constitutes a failure to file the required certification or disclosure, respectively. If a person fails to file a required certification or disclosure, the United States may pursue all available remedies, including those authorized by section 1352, title 31, U.S. Code.

(g) For awards and commitments in process prior to December 23, 1989, but not made before that date, certifications shall be required at award or commitment, covering activities occurring between December 23, 1989, and the date of award or commitment. However, for awards and commitments in process prior to the December 23, 1989 effective date of these provisions, but not made before December 23, 1989, disclosure forms shall not be required at time of award or commitment but shall be filed within 30 days.

(h) No reporting is required for an activity paid for with appropriated funds if that activity is allowable under either subpart B or C.

## ***SAFE OPERATION OF MOTOR VEHICLES***

### **Seat Belt Use**

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or Agency.

### **Distracted Driving**

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract.

## ***SCHOOL BUS OPERATIONS***

The contractor agrees to comply with 49 U.S.C. 5323(f), and 49 C.F.R. part 604, and not engage in school bus operations using federally funded equipment or facilities in competition with private operators of school buses, except as permitted under:

1. Federal transit laws, specifically 49 U.S.C. § 5323(f);
2. FTA regulations, “School Bus Operations,” 49 C.F.R. part 605;
3. Any other Federal School Bus regulations; or
4. Federal guidance, except as FTA determines otherwise in writing.

If Contractor violates this School Bus Agreement, FTA may:

1. Bar the Contractor from receiving Federal assistance for public transportation; or
2. Require the contractor to take such remedial measures as FTA considers appropriate.

When operating exclusive school bus service under an allowable exemption, the contractor may not use federally funded equipment, vehicles, or facilities.

The Contractor should include the substance of this clause in each subcontract or purchase under this contract that may operate public transportation services.

## ***SEISMIC SAFETY***

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation (DOT) Seismic Safety Regulations 49 C.F.R. part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety regulations and the certification of compliance issued on the project.

## ***SIMPLIFIED ACQUISITION THRESHOLD***

Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. § 1908, or otherwise set by law, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. (Note that the simplified acquisition threshold determines the procurement procedures that must be employed pursuant to 2 C.F.R. §§ 200.317–200.327. The simplified acquisition threshold does not exempt a procurement from other eligibility or processes requirements that may apply. For example, Buy America’s eligibility and process requirements apply to any procurement in excess of \$150,000. 49 U.S.C. § 5323(j)(13).

## ***SOLID WASTES (RECOVERED MATERIALS)***

A Recipient that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

## ***SPECIAL NOTIFICATION REQUIREMENTS FOR STATES***

Applies to States –

- a. To the extent required under federal law, the State, as the Recipient, agrees to provide the following information about federal assistance awarded for its State Program, Project, or related activities:
  - (1) The Identification of FTA as the federal agency providing the federal assistance for a State Program or Project;
  - (2) The Catalog of Federal Domestic Assistance Number of the program from which the federal assistance for a State Program or Project is authorized; and
  - (3) The amount of federal assistance FTA has provided for a State Program or Project.
  
- b. Documents - The State agrees to provide the information required under this provision in the following documents:
  - (1) applications for federal assistance,
  - (2) requests for proposals or solicitations,
  - (3) forms,
  - (4) notifications,
  - (5) press releases, and
  - (6) other publications.

### ***SUBSTANCE ABUSE REQUIREMENTS***

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. part 655, produce any documentation necessary to establish its compliance with part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency, or Agency, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. part 655 and review the testing process. The Contractor agrees further to certify annually its compliance with part 655 and to submit the Management Information System (MIS) reports to the Agency.

### ***TERMINATION***

#### Termination for Convenience (General Provision)

The Agency may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Agency's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Agency to be paid the Contractor. If the Contractor has any property in its possession belonging to Agency, the Contractor will account for the same, and dispose of it in the manner Agency directs.

Termination for Default [Breach or Cause] (General Provision)

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the Agency may terminate this contract for default. Termination shall be effected by serving a Notice of Termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will be paid only the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the Agency that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the Agency, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

Opportunity to Cure (General Provision)

The Agency, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions.

If Contractor fails to remedy to Agency's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [10 days] after receipt by Contractor of written notice from Agency setting forth the nature of said breach or default, Agency shall have the right to terminate the contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude Agency from also pursuing all available remedies against Contractor and its sureties for said breach or default.

Waiver of Remedies for any Breach

In the event that Agency elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by Agency shall not limit Agency's remedies for any succeeding breach of that or of any other covenant, term, or condition of this contract.

Termination for Convenience (Professional or Transit Service Contracts)

The Agency, by written notice, may terminate this contract, in whole or in part, when it is in the Agency's interest. If this contract is terminated, the Agency shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

Termination for Default (Supplies and Service)

If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the Agency may terminate this contract for default. The Agency shall terminate by

delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Agency.

#### Termination for Default (Transportation Services)

If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Agency goods, the Contractor shall, upon direction of the Agency, protect and preserve the goods until surrendered to the Agency or its agent. The Contractor and Agency shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Agency.

#### Termination for Default (Construction)

If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will ensure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provision of this contract, Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Agency may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Agency resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Agency in completing the work.

The Contractor's right to proceed shall not be terminated nor shall the Contractor be charged with damages under this clause if:

1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include:

- acts of God, acts of Agency, acts of another contractor in the performance of a contract with Agency, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. The Contractor, within [10] days from the beginning of any delay, notifies Agency in writing of the causes of delay. If, in the judgment of Agency, the delay is excusable, the time for completing the work shall be extended. The judgment of Agency shall be final and conclusive for the parties, but subject to appeal under the Disputes clause(s) of this contract.
  3. If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of Agency.

#### Termination for Convenience or Default (Architect and Engineering)

The Agency may terminate this contract in whole or in part, for the Agency's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Agency's Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. Agency has a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, all such data, drawings, specifications, reports, estimates, summaries, and other information and materials.

If the termination is for the convenience of the Agency, the Agency's Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the Agency may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Agency.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Agency.

#### Termination for Convenience or Default (Cost-Type Contracts)

The Agency may terminate this contract, or any portion of it, by serving a Notice of Termination on the Contractor. The notice shall state whether the termination is for convenience of Agency or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the Contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the Agency, or property supplied to the Contractor by the Agency. If the termination is for default, the Agency may fix the fee, if the contract provides for a fee, to be paid the Contractor

in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the Agency and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of Agency, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a Notice of Termination for Default, the Agency determines that the Contractor has an excusable reason for not performing, the Agency, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

### ***VETERANS HIRING PREFERENCE***

Veterans Employment - Construction contracts of Federal financial assistance shall ensure that contractors working on a capital project funded using such assistance give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

### ***VIOLATION AND BREACH OF CONTRACT***

#### **Disputes:**

Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the agency. This decision shall be final and conclusive unless within [10] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the agencies authorized representative. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the agencies authorized representative shall be binding upon the Contractor and the Contractor shall abide by the decision.

#### **Performance during Dispute:**

Unless otherwise directed by the agencies authorized representative, contractor shall continue performance under this contract while matters in dispute are being resolved.

#### **Claims for Damages:**

Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

**Remedies:**

Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the agencies authorized representative and contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the Agency is located.

**Rights and Remedies:**

Duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Agency or contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

## **OTHER RECOMMENDED CONTRACT REQUIREMENTS**

### **CONFORMANCE WITH ITS NATIONAL ARCHITECTURE**

Intelligent Transportation Systems (ITS) projects shall conform to the National ITS Architecture and standards pursuant to 23 CFR § 940. Conformance with the National ITS Architecture is interpreted to mean the use of the National ITS Architecture to develop a regional ITS architecture in support of integration and the subsequent adherence of all ITS projects to that regional ITS architecture. Development of the regional ITS architecture should be consistent with the transportation planning process for Statewide and Metropolitan Transportation Planning (49 CFR Part 613 and 621).

### **FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS**

- (1) The contractor certifies that it:
  - (a) Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and
  - (b) Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months.

If the contractor cannot so certify, the Recipient will refer the matter to FTA and not enter into any Third Party Agreement with the Third Party Participant without FTA's written approval.

- (2) Flow-Down. The Recipient agrees to require the contractor to flow this requirement down to participants at all lower tiers, without regard to the value of any subagreement.

### **SEVERABILITY**

The Contractor agrees that if any provision of this agreement or any amendment thereto is determined to be invalid, then the remaining provisions thereof that conform to federal laws, regulations, requirements, and guidance will continue in effect.

## ***TRAFFICKING IN PERSONS***

The contractor agrees that it and its employees that participate in the Recipient's Award, may not:

- (a) Engage in severe forms of trafficking in persons during the period of time that the Recipient's Award is in effect;
- (b) Procure a commercial sex act during the period of time that the Recipient's Award is in effect; or
- (c) Use forced labor in the performance of the Recipient's Award or subagreements thereunder.



### Sole Source Cost Analysis Form

Prior to proceeding with sole source procurements, including contract modifications, the requesting department must perform a cost analysis in order to demonstrate the proposed price is fair and reasonable. The cost analysis should examine the elements of cost (labor hours, material, overhead, and profit) for professional consulting and architectural and engineering type contracts.

Please note: It is not sufficient to list the last price paid and the percentage change of the newly quoted price. Actual analysis of the figures should be evident to explain why any increase or decrease in quoted costs is reasonable. All of the following elements must be completed for each proposed sole source procurement.

1. Verification of cost or pricing data and evaluation of cost elements:

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2. Comparison of cost proposed with independent or previous cost estimate,, market indices, and other factors:

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3. Evaluation of suppliers' costs first hand and assessment for completeness and reasonableness, including evidence and rationale for determination.

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**Award Recommendation & Justification Form**

Department: \_\_\_\_\_

Procurement Number: \_\_\_\_\_  
(RFP/BID #)

Subject: \_\_\_\_\_

Report Date: \_\_\_\_\_ Number Bids / RFP'S Mailed: \_\_\_\_\_ Number of Bids / RFP'S Received: \_\_\_\_\_

Recommendation:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Justification:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Approvals: \_\_\_\_\_

\_\_\_\_\_  
PROCURING AGENT



**Price / Rate Quotation Form**

Department: \_\_\_\_\_

Subject: \_\_\_\_\_

Report Date: \_\_\_\_\_ Number of Quotes Received: \_\_\_\_\_

Qty.	Qty/Ctn	Item	Vendor	Price	Amount

Recommendation:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Approvals: \_\_\_\_\_

\_\_\_\_\_  
PROCURING AGENT

**§ 661.6 Certification requirements for procurement of steel or manufactured products.**

If steel, iron, or manufactured products (as defined in §§ 661.3 and 661.5 of this part) are being procured, the appropriate certificate as set forth below shall be completed and submitted by each bidder or offeror in accordance with the requirement contained in § 661.13(b) of this part.

**Certificate of Compliance with Buy America Requirements**

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(1), and the applicable regulations in 49 CFR part 661.

Date \_\_\_\_\_  
Signature \_\_\_\_\_  
Company \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

**Certificate of Non-Compliance with Buy America Requirements**

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. 5323(j)(2), as amended, and the applicable regulations in 49 CFR 661.7.

Date \_\_\_\_\_  
Signature \_\_\_\_\_  
Company \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

**APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING**

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*.)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

\_\_\_\_\_  
Signature of Contractor's Authorized Official

\_\_\_\_\_  
Name and Title of Contractor's Authorized Official

\_\_\_\_\_  
Date

**ATTACHMENT 15**

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary  
Exclusion Lower Tier Covered Transactions**

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 49 CFR Part 29, prohibits FTA recipients and subrecipients from contracting for goods and services from organizations that have been suspended or debarred from receiving federally-assisted contracts.

The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

The prospective lower tier participant further agrees by submitting this proposal that it will include this certification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Business Name: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Signature of Authorized Representative

*Return this Certification with your bid.*

**Bid Protest Procedures**

1. For the purposes of this section, the following definitions apply:
  - "Days" refers to the working days of the Federal Government.
  - "File" or "submit" refers to the date of receipt by MTU.
  - "Interested party" means an actual or prospective bidder, offeror, subcontractor, or supplier whose direct economic interest would be affected by the award of the contract or by failure to award the contract.
  - "Bid" includes the term "offer" or "proposal" as used in the context of negotiated procurements."
  - "Federal law or regulation" means the violation of any valid requirement imposed by Federal statute or regulation governing contracts awarded pursuant to a grant agreement. This includes the requirements as stated in FTA Circular 4220.1F.
  
2. **Submission of Protest**

Any interested party who wishes to protest at any point in the procurement process, evaluation, award, or post-award, may do so. An "interested party" must, however, be an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or by failure to award the contract.

All protests must be submitted in writing to:  
Transit Manager  
La Crosse Municipal Transit Utility  
2000 Marco Drive  
La Crosse, WI 54601
  
3. **Time for Filing**

Protests should be made as soon as possible but no later than five (5) working days following MTU procurement decision. The protest must contain a detailed statement of the grounds for protest and any supporting documentation.
  
4. **Transit Manager Response**

Upon receipt of a written protest, the Transit Manager will meet with the protester and attempt to resolve the matter informally within five (5) working days. If the protester is still not satisfied and indicates an intention to appeal to the next step, the Transit Manager will suspend the award of the contract temporarily unless he determines that:

  - a. The items to be procured are urgently required;
  - b. Delivery or performance will be unduly delayed by failure to make the awards promptly or;
  - c. Failure to make the prompt award will otherwise cause undue harm to MTU or;
  - d. There is no merit whatsoever in the protest.
  
5. **Local Appeal Procedure**

If the protester wishes to appeal the Transit Managers' decision, the matter will be forwarded to the City of La Crosse Municipal Transit Utility Board for review. The recommendation of the Transit Board will be forwarded to the City of La Crosse Common Council for ultimate local disposition.
  
6. **Additional Appeals**

If the protest alleges that MTU has failed to follow its written bid protest procedures, the protester may ask that the Federal Transit Administration (FTA) review the protest in accordance with FTA C 4220.1F. If the protest alleges violation of a specific Federal requirement that provides an applicable complaint procedure, it may be submitted and processed in accordance with provisions of that particular regulation.

Alleged violations on all other grounds are under the jurisdiction of the appropriate State and local administrative or judicial authorities, and remedy may be sought through them.