



## PURCHASING POLICY & MANUAL

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## **MAX PURCHASING POLICY**

### **POLICY STATEMENT**

It is the policy of the Macatawa Area Express Transportation Authority (MAX) to set forth standards and procedures for purchases of all sizes for the transit system that comply with sound financial management practices and FTA procurement guidelines. The Macatawa Area Express hereby self-certifies that its procurement system complies with Federal requirements for any FTA-assisted third-party contract the recipient undertakes and administers.

All procurements—whether sealed bid or negotiation and without regard to dollar value—shall be conducted in a manner that provides maximum open and free competition consistent with FTA Circular 4220.1F, "Third Party Contracting Guidance," FTA's Master Agreement, or the Uniform Guidance (also referred to as the "Super Circular," found at 2 CFR 200, replacing and superseding FTA's Common Grant Rules found at 49 CFR 18), FTA's Best Practices Procurement & Lessons Learned Manual (Oct. 2016), OMB Memorandum OM-18-18 (Jun. 2018), and the MAX Employee Handbook policies on "Employee Conduct & Work Rules" and "Conflict of Interest" governing employee conduct. Clear and accurate contract specifications will be used that do not unduly restrict competition and identify all requirements that offerors must fulfill and all factors to be used in evaluating bids or proposals. Awards will be made to the lowest responsive and responsible bidders, and sound business reasons documented if any or all bids are rejected.

MAX prohibits any arbitrary action in the procurement process (e.g. in the competitive selection of contractors) as well as any unreasonable requirements being placed on firms in order for them to qualify to do business (e.g. unnecessary experience and excessive bonding requirements). Also prohibited are any procurement practices, which give in-state or local geographical preferences in the evaluation of bids or proposals, except in those cases where Federal statutes expressly mandate or encourage geographic preference. This policy does not preempt State licensing laws.

### **WRITTEN STANDARDS OF CONDUCT**

MAX employees, officers, agents (e.g. City of Holland or other appointed agents acting on behalf of MAX's interest), immediate family members, and committee or Board members are prohibited from: participating in the selection, award, or administration of a contract supported by FTA funds if a conflict of interest, real or apparent is involved; and soliciting or accepting gifts, gratuities, favors or anything of consequential value from current or potential contractors or parties to sub agreements that could influence purchasing decisions. As outlined in the MAX Employee Handbook, procurement personnel must disclose any potential conflicts of interest to the MAX Director.

MAX employees or agents with a potential conflict of interest shall remove themselves from the procurement in question. To the extent permitted by state or local laws or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary action for violation

of such standards by any MAX employees, officers, agents, or by contractors or subrecipients or their agents.

Small items customarily provided in the course of daily work, such as a cup of coffee or soda, a modest lunch, or box of holiday candy are not considered of significance or value to be construed as presenting a conflict of interest or having unduly influence over purchasing decisions if offered by a current or potential contractor.

### **PROHIBITION OF GEOGRAPHIC PREFERENCES**

If all bids received are for the same total amount or unit price, quality and service being equal, the contract or purchase shall be awarded to one of the tied bidders by drawing lots in public. The use of statutorily or administratively imposed local or in-state geographical preferences in the evaluation of bids and proposals for FTA funded contracts is prohibited; geographic locations may be included in the selection criterion in procurements for architectural and engineering services, provided an appropriate number of qualified firms—given the nature and size of the project—are available to compete for the contract. MiDeal contracts may be considered for revenue vehicles only. Non-revenue vehicles, tires, computers and other items is prohibited.

### **SPLITTING INVOICES OR ORDERS**

The splitting of orders or invoices to avoid certain purchasing thresholds and requirements is prohibited.

### **CONTRACT ADMINISTRATION**

MAX defines contract administration as the process or system of processes used to ensure contractors and firms perform in accordance with the terms, conditions, and specifications of their respective awarded contracts or purchase orders. The accepted overall performance of contractors or firms will be a factor in subsequent contract negotiations and award. Remedial action by MAX through legal processes shall be considered in instances of identified significant nonperformance. The following paragraphs of this section describe the specific tasks assigned to personnel for the duties of *Purchasing Coordinator* and *Project Manager*, as well as all additional procedures assigned to the contract administration process.

The duties of *Purchasing Coordinator* have been assigned to the Transit Specialist for all vehicle related purchases, and Administrative Assistant for all non-vehicle related purchases of the Director Department—the department responsible for developing, controlling, revising, and communicating procurement policies and procedures. The Purchasing Coordinator's responsibilities consist of ensuring policy compliance and completeness through the oversight of established procurement processes, and in the timely review and filing of all required documentation as outlined in the Required Purchasing Documentation section of this policy. The Purchasing Coordinator may receive initial and ongoing training in the form of FTA webinars, FTA directed guidance, and/or FTA sponsored workshops. Other duties include offering guidance to employees with assigned Project Manager roles, and reviewing procurement responsibilities with new employees or with staff newly assigned to Project Manager duties.

In addition, the Purchasing Coordinator may also serve as a *Project Manager (PM)* during specialized procurements. Project Managers are responsible for providing the oversight and documentation related to the seeking, awarding, and monitoring of contractual matters—including compliance and payment(s)—for specific contracts or procurements. An important duty of the PM is contractor evaluation, done by determining if the work performed or products delivered conform to the specifications or scope, which serves as the basis for payment of invoices submitted. The PM has a continuing responsibility to monitor the contractor's or firm's work progress until it is completed and the product or service is accepted or delivered.

The Executive Director will appoint a specific PM for each contract beyond the \$50,000 procurement threshold and requiring a formalized bidding process through the release of an RFP or IFB. The PM is typically the originating departmental manager or supervisor, such as the Deputy Director or Building & Grounds Supervisor. The Executive Director, Deputy Director, or the Operations Manager may additionally serve in this capacity. Should the project include construction and occur over an extended period of time, MAX staff may be augmented through the use of a consultant serving as a Construction Manager.

Contract administration requirements may vary based on the size and complexity of each particular procurement. The contract administration system for the acquisition of services or property will generally include—but is not limited to—the following elements and activities:

- Holding contract kick-off meetings or walk-throughs, when appropriate
- Maintaining updated insurance documentation, where required
- Securing contractor progress reporting and other reports, as may be required
- Ensuring on-going progress meetings are held, and documented, where appropriate
- Monitoring DBE participation and prompt payment, where required
- Monitoring and inspecting services and property
- Enforcing performance or product specifications
- Providing for managing instances of non-conformance
- Enforcing penalties or damages as may be provided in the contract
- Monitoring or approving requests for payment
- Managing contract modifications
- Ensuring final acceptance of all services and property
- Documenting and executing all required pre-award or post-delivery Buy America, Federal Motor Vehicle Safety Standards (FMVSS), and purchaser's certification requirements for FTA funded rolling stock procurements

Additional requirements for construction projects include the following:

- Securing/approval and monitoring of bonds
- Conducting on-going, systematic inspections of work in progress
- Maintaining inspection logs/reports

- Maintaining construction logs
- Monitoring time and material effort, where required
- Enforcing quality control requirements

If in the course of the work it becomes apparent that a *Contract Change*, or a change in the project Specifications (for purchases >\$50,000) or Summary of Requirements (for RFP/IFB) is required, the Project Manager will initiate a request for a Contract Amendment and coordinate changes to the Specifications or Summary of Requirements with contractors, obtaining cost quotes, assessing impacts, and obtaining necessary approvals.

The Specifications or Summary of Requirements, change in schedule, and cost of the change—if any—may be negotiated with the contractor or firm by the Project Manager and Purchasing Coordinator before the Contract Amendment is processed and documented. Documentation of such instances will be provided to the Purchasing Coordinator, whom will offer technical assistance in these matters.

Prior to procurement or project closeout, the Executive Director will confirm a contractor's or firm's *Contract Performance* with the appropriate Project Manager to ensure all procurement terms, conditions, and associated activities have been satisfactorily completed before payment is approved. As previously stated in this section, the accepted overall performance of contractors or firms will be monitored by the Project Manager, and will be a factor in subsequent contract negotiations and award.

Remedial action by MAX through legal processes shall be considered in instances of identified significant nonperformance.

**Payments**—In general, payments may only be made upon receipt and acceptance of property or services in accordance with contract requirements, including the submittal of appropriate documentation. Payment records will be maintained throughout the life of the contract up to and including closeout. The following additional specific requirements apply to payments:

1. **Advance Payments**—Advance payments are prohibited in FTA funded contracts unless such payments are approved in writing by FTA.
2. **Progress Payments**—Progress payments are payments made to contracts for unfinished work in progress, typically in construction or major apparatus contracts. Progress payments may be made only for actual costs incurred, as documented through the invoice review and approval process, and MAX must obtain adequate security for such payments. Adequate security may include taking title, letters of credit, or other equivalent means to protect the interest of both MAX and FTA (for FTA funded procurements).

### REQUIREMENT FOR EFFICIENT & ECONOMIC PURCHASES

Proposed procurements will be reviewed by MAX staff to avoid purchase of unnecessary or duplicative items. MAX will also give consideration to consolidating or breaking out

procurements in order to obtain the most economical purchase. When appropriate, an analysis will be made of lease versus purchase alternatives to determine the most economical approach.

The MAX Executive Director or his/her designee will review pending procurements in order to avoid duplicative or unnecessary purchases and to process those procurement actions in a manner that meets the requirements herein. The purchasing files shall be documented accordingly.

### **REQUIREMENT FOR SOUND & COMPLETE AGREEMENT**

For the procurement of property and services, all contracts awarded by MAX shall include provisions to define a sound and complete agreement. In addition, contracts and subcontracts shall contain contractual provisions or conditions necessary to ensure that contractors perform in a manner that ensures the appropriate delivery of all contract items and protects the interest of MAX and its funding entities. For FTA funded contracts this includes provisions for termination for cause and convenience for those contracts in excess of the small purchase threshold, and provisions for resolution of disputes and contract breaches for those contracts in excess of the small purchase threshold.

All FTA funded contracts must include the appropriate federal clauses and certifications. The applicability of the clauses and certifications will vary based on the nature of the property or services to be acquired, and the dollar value of the particular procurement.

A listing of required FTA clauses and certifications may be found in Appendix B of this manual. In addition, MAX shall include a Veteran-preference hiring clause applicable to all FTA funded construction contracts—per FTA Circular 4220.1F, Chapter IV, section 2.c. (1).

### **INDEPENDENT COST ESTIMATE (ICE)**

An independent cost estimate (ICE) is required before every procurement action at and greater than \$1,000.00, including contract modifications and single source purchases. Documentation must be prepared that ensures the price of goods or services is fair and reasonable, based on recent past purchases, catalog or internet pricing, retail pricing in advertisements, informal pricing from vendors/suppliers, or budgeted amount. Authority personnel will complete an ICE form prior to purchases and retain this in centralized purchasing files.

### **COST/PRICE ANALYSIS**

A cost or price analysis is required for every procurement action, including contract modifications. A cost or price analysis is used as the basis for determination of whether a proposed cost or price is fair and reasonable.

Price Analysis: The price analysis is an analysis of the total price submitted in a bid or proposal rather than the individual components of those prices. A price analysis may be conducted when there is adequate price competition in a procurement, i.e., the presence of two or more responsive bids or proposals submitted by responsible contractors that have competed independently and that the solicitation was conducted in a manner that did not inhibit or



discourage competition; the price analysis conducted results in a final determination of fair and reasonable pricing.

Price analysis techniques to determine fair and reasonable pricing may include the following:

- (1) Comparison of low responsive bid or proposal to the independent cost estimate;
- (2) Analysis of the range of bids or proposals received to determine the variance of prices within that range;
- (3) Catalog or market prices offered in substantial quantities to the general public;
- (4) Comparison of proposed pricing with recent prices or historical pricing from previous purchases of the same item, as adjusted for inflation or the applicable pricing index for the corresponding time period.

A price analysis will be the usual procedure followed in a competitive situation and in situations where items are being procured, which are sold in the commercial marketplace; a price analysis would not be suitable—for example—for research and development items, or for one-of-a-kind items for which there was no basis of comparison.

**Cost Analysis:** A cost analysis is a review of the component elements of a submitted price—including labor, materials, indirect costs, and the proposed profit—to determine fair and reasonable pricing. A cost analysis is generally required when adequate price competition is lacking, or when contractors are required to submit the various elements of their costs, e.g., professional consulting or architecture/engineering contracts.

A cost analysis will be obtained for **inadequate pricing competition**, when only a **sole source** is available, or in the event of a **change order**. A cost analysis is not needed when adequate price competition is lacking however the price can be established on the basis of a catalogue or market price of a product sold in substantial quantities to the general public or based on prices set by law or regulation.

**Profit:** MAX will negotiate profit as a separate element of the cost for each contract in which there has been no price competition, and in all acquisitions in which MAX performs or acquires a cost analysis. To establish a fair and reasonable profit, the following considerations will be made:

- (a) The complexity of the work to be performed;
- (b) The risk undertaken by the contractor;
- (c) The contractor's investment;
- (d) The amount of subcontracting;
- (e) The quality of the contractor's record of past performance;
- (f) The industry profit rates in the surrounding geographical area for similar work.

A cost analysis is appropriate in the following situations:

- The product or service being offered is not susceptible to being evaluated against other commercially available items of similar products or services. Examples include a procurement for professional services where no competing price proposals are submitted; a procurement for architectural/engineering services where only one cost

proposal is solicited from the highest-ranking firm; a sole source procurement for other types of services.

- Whenever change orders are issued to contracts requiring the contractor to do work whose cost can only be evaluated by examining the various cost elements, such as labor, materials, travel, etc.

All cost negotiations and resolution of final approved costs shall be documented in writing and included in procurement files.

### **PURCHASE ORDERS (\$1,000 or more)**

A purchase order (PO) is required for purchases over **\$1,000**, unless it is accomplished with a contract or a utility expense. A copy of the ICE form will be submitted to Finance with PO requests, and supporting documents, such as accepted quote and SAM.gov debarred vendors check document. The issuance of a PO and its acceptance by the vendor (either through performance or signature on the PO) constitute a contract.

### **PETTY CASH (Under \$50)**

MAX will maintain a nominal amount in petty cash to use for small purchases, or for reimbursement for small purchases less than \$50. Either a Petty Cash Issuance Voucher or a Reimbursement Form will be completed after the purchase and authorized by the Executive Director or designee or the Purchasing Coordinator. Receipts for the petty cash purchases must be signed by the person making the purchase and submitted.

### **CREDIT CARD USE (Under \$500 unless with Approval)**

Credit cards are available to provide Authorized employees with a convenient and expedited means for making authorized purchases on behalf of the Authority for official business, while reducing the costs associated with processing and paying vendors.

Consistent with the Authority's Credit Card Use Policy, updated 2/25/2019, employees authorized for credit card use must sign out the card in the established log, along with intended use and the date of use, and sign it in upon return.

All purchases made by MAX cardholders must also accompany a "Payment Voucher," signed and dated, with a signature from the Purchasing Coordinator. All credit cards will be processed as "credit" rather than "debit." Cash advances on credit cards are strictly prohibited.

Employees using Authority credit cards are responsible for their protection while in their possession, and shall immediately notify the Executive Director if the card is lost or stolen. Receipts for all credit card purchases must be submitted to verify the vendor, item purchased, quantity, and date of purchase. Monthly credit card statements are reconciled monthly by the Executive Director or designee. Credit card purchases are limited to items/services that cost less than \$500, unless approved for higher amounts by the Executive Director.

## GRANT FUNDING OVERSIGHT PROCEDURE

The MAX Executive Director, or designee managing federal and state grants, will work with MDOT Project Manager to receive project authorizations in a timely manner. All capital projects should be included in a project authorization reflecting that funds will be available the same fiscal year as the project/procurement.

Procurement Coordinator will collaborate with Executive Director or designee to ensure state and/or federal grant funds have been obligated and received prior to seeking proposals or bids.

The Executive Director or designee will meet with the City of Holland Finance Department on a quarterly basis to review grant updates and ensure that the Authority's General Ledger reflects appropriate balances.



### Budget Performance Report

Fiscal Year to Date 10/31/17  
Include Rollup Account and Rollup to Account

Account	Account Description	Adopted Budget	Budget Amendments	Amended Budget	Current Month Transactions	YTD Encumbrances	YTD Transactions	Budget - YTD Transactions	% Used/ Rec'd	Prior Year Total
Fund 103 - General Fund										
EXPENSE										
Department: CAP - Capital Outlay										
730981	Vehicle									
730981.21	Vehicle Grant MI-2017-021	.00	72,071.00	72,071.00	.00	.00	.00	72,071.00	0	.00

> 5. POs & Completed Procurements > FY2018 > 3. Purchases \$10,000 and Over > Support Vehicle

<input type="checkbox"/>	Name	Date modified
<input type="checkbox"/>	1. Support Vehicle Purchase Background & Scope.pdf	11/16/2017 8:33 AM
<input checked="" type="checkbox"/>	2. Support Vehicle Evidence Availability of Funds.pdf	11/21/2017 1:13 PM
<input type="checkbox"/>	3. Support Vehicle Quotation Supplier List & DBE Check.pdf	12/8/2017 3:24 PM
<input type="checkbox"/>	4. Support Vehicle ICE Form.pdf	10/19/2017 12:04 PM
<input type="checkbox"/>	5. Support Vehicle IFB, Public Notice, & FTA Clauses.pdf	12/12/2017 1:51 PM
<input type="checkbox"/>	5a. Support Vehicle IFB, Public Notice, & FTA Clauses Addendum.pdf	12/8/2017 2:56 PM
<input type="checkbox"/>	6. Support Vehicle Bid Documentation (Min. 2 Req.),pdf	12/11/2017 2:21 PM
<input type="checkbox"/>	7. Support Vehicle Evaluation & Responsiveness Criteria.pdf	12/8/2017 2:53 PM
<input type="checkbox"/>	8. Support Vehicle sam.gov Debarred Vendors Check.pdf	12/12/2017 3:35 PM
<input type="checkbox"/>	9. Support Vehicle Cost Price Analysis.pdf	12/20/2017 8:21 AM
<input type="checkbox"/>	10. Support Vehicle Authority Board Approval.pdf	12/21/2017 8:08 AM
<input type="checkbox"/>	11. Support Vehicle Responsibility Determination.pdf	12/27/2017 2:43 PM
<input type="checkbox"/>	12. Support Vehicle Proposal Acceptance Notice To Proceed.pdf	12/21/2017 9:03 AM
<input type="checkbox"/>	13. Support Vehicle Notice To Unsuccessful Bidders.pdf	12/19/2017 1:04 PM
<input type="checkbox"/>	14. Support Vehicle Record of Protest.pdf	12/27/2017 2:50 PM
<input type="checkbox"/>	15. Support Vehicle Check Payment.pdf	3/26/2018 8:36 AM
<input type="checkbox"/>	16. Support Vehicle Procurement Checklist.pdf	4/3/2018 7:26 AM

### MICRO-PURCHASES (\$9,999 and under)

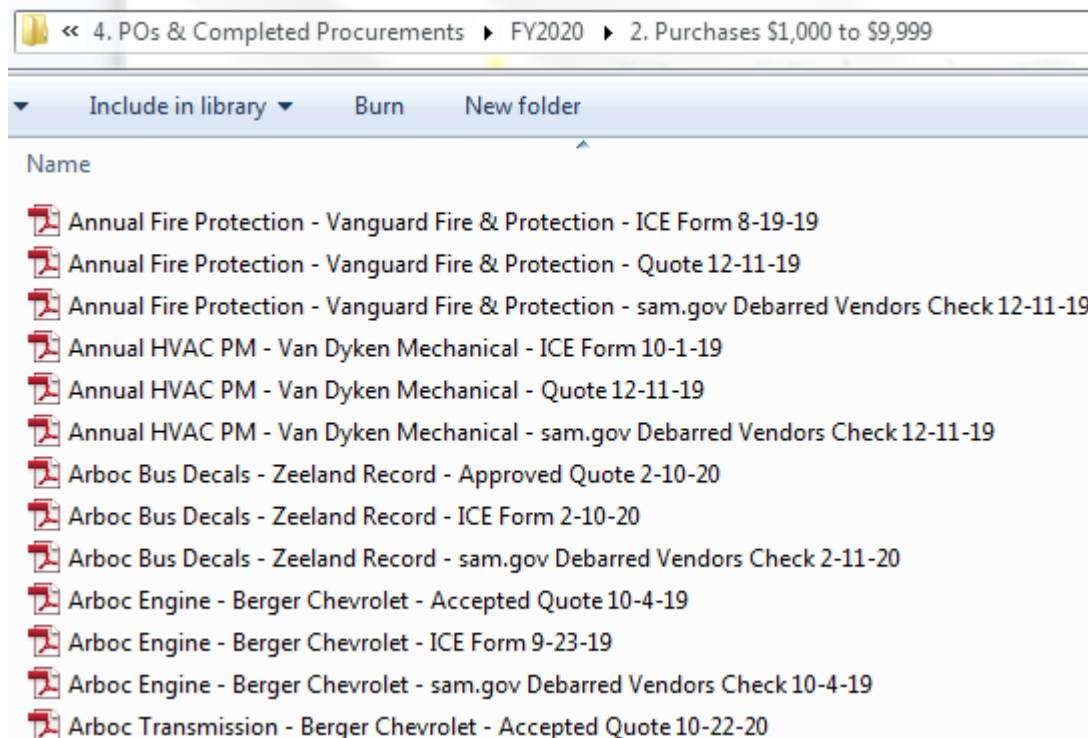
Micro-purchases defined by the FTA as those purchases under \$10,000 that may be made without obtaining competitive quotations if it is determined that the price to be paid is fair and reasonable (ICE Form). MAX prohibits splitting of procurements to avoid competition. Micro-purchases should be distributed equitably among qualified suppliers within MAX's local area.

Methods to determine the fair and reasonable price include but are not limited to examples of similar procurements by the agency in the past six months, examples of similar procurements by other governmental agencies in the past six months. To ensure suspended or debarred contractors are not used, MAX will document its review of the System for Award Management (SAM.gov) prior to each contract award.

Under MAX's policy, micro-purchases of **\$1,000 or more** require a prior approval from the Executive Director or Deputy Director. A purchase order is also required, unless it is accomplished with a contract or a utility expense. Purchases **less than \$1,000** can be made without a purchase order, but with the approval of the MAX Director if the cost has been included in the approved operating budget. This authorization also extends to capital outlay items, where those items have been specifically stated and approved by the MAX Board as part of the budget.

Construction projects over \$2,000 (example: tile flooring) must follow the Davis-Bacon Act and Copeland Anti-Kickback Act requirements.






For this threshold, a *Written Record of Procurement History* for each purchase is housed electronically:



## SMALL PURCHASES \$10,000 to \$50,000

Small purchases are relatively simple and informal purchases of \$10,000 or more, but less than \$50,000. Small purchases are not advertised and are a direct solicitation through a Request for Quote (RFQ) to three or more qualified vendors. **MAX will reference Appendix B to ensure all Federal Clauses and requirements are met.** All purchases at this threshold need the prior approval of the Executive Director, and a signed “Notice to Advance Procurement” form by the Executive Committee. **Note:** *Competitive Bid Method can be used at this threshold if pricing is not the only consideration.*

For this threshold, a *Written Record of Procurement History* for each purchase is housed electronically:

FY2020 > 4. Purchases \$10,000 to \$49,999 > Driver Shields Cutaways	
Name	Date modified
 1. Driver Shields Cutaways ICE Form	8/6/2020 10:19 AM
 2. Driver Shields Cutaways Request for Quote (RFQ)	8/20/2020 2:16 PM
 3. Driver Shields Cutaways Notice to Advance Procurement Form	8/21/2020 8:23 AM
 4. Driver Shields Cutaways Bid Documentation (Min. 3 Req.)	8/21/2020 2:48 PM
 5. Driver Shields Cutaways sam.gov Debarred Vendors Check	8/6/2020 10:24 AM

## COMPETITIVE BID METHOD \$50,000 or Greater

### 1. Competitive Bid Methods

For purchases of \$50,000 or more, the MAX Executive Director and MAX Executive Committee must approve the purchase prior to developing a Request for Proposal (RFP) or Invitation for Bid (IFB). A “Notice to Advance Procurement” form must be signed by the Executive Committee.

FTA Required Clauses will apply to each competitive bid method and will depend on the product or service procured. The appropriate bid method is identified by the following:

#### Request for Proposal

Use this method when describing a product or service’s general function, offering the best value for the agency considering both the price and technical qualifications such as performance on similar projects or quality of product; sealed bid process does not apply.

#### Invitation for Bid

Use this method when exact specifications are required for a product or service. Sealed bid applies at such a time and place as prescribed in the IFB.

Purchases of \$50,000 or more must be approved by the MAX Board prior to acceptance, and issuing the Offer Acceptance/Notice to Proceed. If the solicitation requests bidders to include a breakdown of costs, a format should be used by an evaluation committee to provide a fair comparison of each cost in the proposal with the costs included in the Independent Cost Estimate (ICE).

## 2. Number of Bidders

MAX will identify and contact a minimum of three (3) qualified vendors and request their submission of a proposal or bid for purchases expected to be \$50,000 or over.

## 3. DBE/Small Business Participation

FTA requires documentation of Good Faith Efforts to include Disadvantaged Business Enterprises (women and minority-owned businesses) in procurement efforts to meet the established DBE goal. A good faith effort is defined as one where the bidder:

- Documents that it has obtained enough DBE participation to meet the goal; or
- Documents adequate good faith efforts, even though it did not meet the goal.

Good Faith Efforts require that MAX identify and consider all qualified DBEs and SBPs (Small Business Program) that express an interest in performing work or providing services. A separate form should be filled out for each certified DBE vendor involved in a project with the correct dollar amount for that sub-contract indicated on the form.

Minority firms which are not certified through the Michigan Unified Certification Program (MUCP) cannot qualify for minority status until the certification process is complete. MAX staff is required to check our internal list of DBE/SBP Certified vendors prior to purchase or solicitation and invite qualified DBEs/SBPs to submit quotes or proposals. A DBE list can also be found on the MDOT website at:

<https://mdotcf.state.mi.us/public/docs/mucp/files/DBEUCPDirectory.pdf>

Per FTA regulations, DBEs registered outside the state that are not specifically certified in Michigan cannot be used toward DBE credit; the DBE must be certified in Michigan.

If no DBE participation is possible, the prime contractor should still sign the form but state on the back why DBEs were not utilized. Reasons for not utilizing a DBE firm could include: no DBE opportunity (no sub-contract opportunity); price not competitive; DBE vendor couldn't comply with production or delivery schedule; no local DBE's who perform that type of work, etc.

Every attempt must be made to identify certified DBE and SBP firms that are qualified to provide the product/service sought, and to invite them to submit a bid, which shall be documented by the DBE Coordinator.

MAX is committed to providing equal, open access for DBEs and small businesses and in ensuring that all small business designations receive adequate opportunities to participate in contracting and procurement activities. In addition to including MDOT's certified Small Business Program (SBP) businesses in MAX's Master Bidders Listing, one or more of the following strategies may be used in, but not limited to, fostering small business and DBE participation efforts:

1. Establishing a race-neutral small business set-aside for prime contracts under a stated amount (e.g., \$1 million).
2. In multi-year design-build contracts or other large contracts, (e.g., for "megaprojects") requiring bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.
3. On prime contracts not having DBE contract goals, requiring the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.
4. Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.
5. To meet the portion of our overall goal projected to be met through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.
6. At initial contract formation or during re-evaluation of an open-bid contract renewal, due consideration will be given with an emphasis of breaking down a single contract into smaller, separate contracts to enable DBEs and small businesses the opportunity to bid and more reasonably perform.

Further information relating to Small Business Outreach and the Michigan Department of Transportation's (MDOT) Small Business Certification Program can be found in MAX's written *DBE Program*, a copy of which is provided on the Authority's [www.catchamax.org](http://www.catchamax.org) website.

#### 4. Public Notice

A public notice will be mailed/emailed to the bidders list whenever sealed bids are required to allow for fair, full and open competition. A posting on the agency's website will always be used, though additional postings—such as APTA's (American Public Transportation Association) publication *Passenger Transport* or its website, and/or [ctaa.org](http://ctaa.org) or [mptaonline.org](http://mptaonline.org) websites—may be used depending on the nature of the product or service sought (e.g., in the case of specialized consulting or bus purchases).

Federal contract clauses as listed in Appendix B shall be included with each formal Request for Proposal (RFP) and Invitation for Bid (IFB).

## 5. Architectural & Engineering Purchases

For all purchases involving Architectural and Engineering (including design build procurements) work, The Brooks Act must be followed using a qualifications-based process. Price must **not** be considered during the selection phase in Architectural and Engineering services procurements.

Firms are selected based only on their qualifications. Price is then negotiated with the most qualified firm. If an agreement cannot be reached, MAX will negotiate with the next most qualified firm and so on until an agreement is reached.

## 6. Buy America

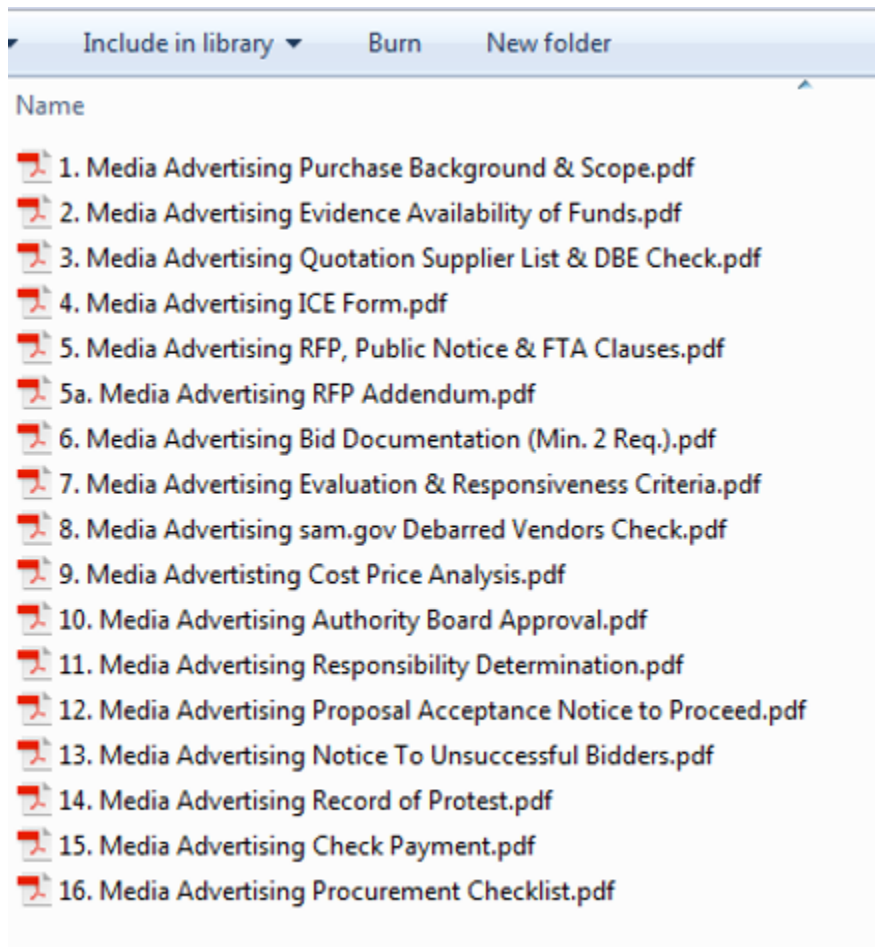
The Buy America Certification is required on all procurements over \$150,000 for steel, iron, and manufactured products, including rolling stock. This certification requires that all steel or manufactured goods are made in the United States. This certification is crucial in construction contracts. It applies to the entire contract, and not merely the portion which may be steel.

MAX will complete the following FTA-required certifications (Title 49 CFR Part 663):

- a. Pre-Award Buy America Compliance Certification or Pre-Award Buy America Exemption Certification
- b. Pre-Award Purchaser's Requirements Certification
- c. Pre-Award FMVSS Certification or Pre-Award FMVSS Exemption Certification (*Rolling Stock*)
- d. Post-Delivery Buy America Compliance Certification or Post Delivery Buy America Exemption Certification
- e. Post Delivery Purchaser's Requirement Certification
- f. Post Delivery FMVSS Compliance Certification or Post Delivery FMVSS Exemption Certification (*Rolling Stock*)



For this threshold, a *Written Record of Procurement History* for each purchase is housed electronically:



### SOLE SOURCE – NON-COMPETITIVE PROCUREMENTS

Under certain circumstances, a recipient may conduct procurements without providing for full and open competition. Non-competitive negotiation or sole source procurement is accomplished through solicitation or acceptance of a proposal from only one source or when, after solicitation of a number of sources, competition is determined inadequate. A contract amendment or change order not within the original scope of a contract also is considered a non-competitive procurement, as is exercise of an option clause in a contract if the option prices were not evaluated at the time of contract award.

Examples of sole-source procurements may include: *Utility services* (how many sources do you have for electricity in your community?) *Limited rights in data, patent rights, or copyrights, or secret processes* (if one entity owns the patent on a process or product you require, can anyone else meet your need?) *Relocation of a major natural gas distribution line from your rail right of way* (the natural gas utility company is the only source available to work on the gas line).

Purchase by non-competitive negotiation will be used only when the award of a contract is infeasible under small purchase procedures, sealed bids (formal advertising), or competitive proposal methods and at least one (1) of the four (4) following circumstances exists:

- (a) The item is only available only from a single source;
- (b) Public exigency for the requirement did not permit a delay resulting from a competitive solicitation;
- (c) An emergency for the requirement did not permit a delay resulting from a competitive solicitation;
- (d) The FTA authorized non-competitive negotiations;
- (e) Competition was determined inadequate after solicitation of a number of sources.

Department managers or project managers making the purchase shall:

1. Complete an Independent Cost Estimate form (ICE) prior to procurement;
2. Develop a written sole-source purchase or contract justification;
3. Seek necessary approvals according to threshold cost per MAX's Purchasing Policy.
4. A Cost Analysis verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required.

The Purchasing Coordinator will ensure all necessary sole-source documentation has been prepared to support the purchase and justify cost, including but not limited to:

1. If a claim is made that time requirements dictate a sole source, MAX will factually demonstrate that the delivery schedule is critical and must furnish a precise statement of the damage that will be sustained if the delivery schedule is changed to allow completion.
2. If it is claimed that only one source can furnish a particular product or service, MAX will also demonstrate why another product or service, which is obtainable competitively cannot be procured in lieu of the sole source item.
3. The summary statement must make the firm declaration that, for the reasons listed, only the proposed is capable of performing the required effort.
4. Finally, the justification statement must be signed by the project manager or department manager, and the Executive Director or Purchasing Coordinator.

## PREQUALIFICATION SYSTEM

Prequalification lists are most commonly used in procurements of property involving lengthy evaluations needed to determine whether it satisfies the recipient's standards. A system of prequalification must 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. The system must also provide that potential bidders may not be precluded from qualifying during the solicitation period, which is from issuance of the solicitation to its closing date. As of the date of the latest program revision, MAX does not prequalify bidders and offerors.

## AWARD TO A SINGLE BIDDER

If a single bid is received in response to a solicitation that was issued to multiple sources, a determination must be made to determine whether or not competition is adequate. This should include a review of the specifications for undue restrictiveness and might also include surveying potential sources that chose not to submit a bid or proposal. Once adequate competition has been determined, the Authority may proceed with the award as a competitive award. Additionally, MAX may only award a contract to a single bidder provided that an analysis can be completed which documents the price is fair and reasonable.

*Inadequate Competition*—FTA acknowledges competition to be inadequate when caused by conditions within the recipient's control. For example, if the specifications used were within the recipient's control and those specifications were unduly restrictive, competition will be inadequate.

The following examples of reasons for not submitting a bid or proposal may be considered as restrictive of competition, which—if confirmed—will direct that the solicitation be canceled and re-solicited after correcting any such conditions:

- Unreasonable qualifications or experience requirements.
- Insufficient time provided to submit bids or proposals.
- Work statement/specifications appear directed to a particular contractor, and other contractors cannot fulfill such requirements.
- Inability of MAX to adequately address legitimate questions and requests for clarifications prior to receipt of bids or proposals.

*Adequate Competition*—FTA acknowledges competition to be adequate when the reasons for few responses were caused by conditions beyond the recipient's control. Many unrelated factors beyond the recipient's control might cause potential sources not to submit a bid or proposal. If the competition can be determined adequate, FTA's competition requirements will be fulfilled, and the procurement will qualify as a valid competitive award.

If it is determined that the following or similar reasons for not submitting a bid or proposal, it can be determined that adequate competition exists for that particular procurement:

- The work statement or scope of work is not within the interest or specialty of contractor. (Though care must be taken by MAX to solicit those contractors that may reasonably be expected to have the capacity and ability to perform the work).
- The work statement or scope of work is within the interest or specialty of the contractor, but the contractor does not have the available resources to undertake the work at that particular time.
- The contractor was unable to submit a bid or proposal within the timeframe required due to its own internal or administrative failures or shortcoming.

In such cases where it has been determined that adequate competition exists but only a single bid was received, MAX will take one of the following steps:

- Cancel the solicitation and re-solicit if the overall schedule/timing permits and there is a reasonable expectation that re-solicitation will result in additional competition.
- Award the contract to the single bidder/proposer provided that the bid or proposal is responsive, the contractor has been determined to be responsible, and a cost/price analysis has been conducted and the price has been determined to be fair and reasonable.
- Reject the single bid/proposal and negotiate with the single bidder/proposer. In this instance, MAX may not change the scope of work as a part of negotiations. The requirements for responsiveness, responsibility, and fair and reasonable pricing determination apply.

All activity conducted with respect to single bid/proposal situations and final disposition of the procurement will be documented in writing, and included in the procurement file.

### **USE OF OPTIONS**

MAX shall not employ options, unless options were included and evaluated at time of contract award. Pricing shall be obtained for all options and/or extension years on contracts.

MAX may exercise an option only after making a written determination that the exercise of the option is the most advantageous method of fulfilling MAX's needs, considering price and other factors. Options may be included in anticipation of available future funding, swings in pricing or market value, future unavailability of products/services, or more competitive pricing can be obtained with options. For certain service contracts for continuity of operations and the potential cost of disrupted support, options may be included in service contracts for extensions if there is an anticipated need for a similar service beyond the first contract period and competition is infeasible. The total of the basic and option periods shall not exceed five (5) years in the case of rolling stock and replacement parts.

### **COST PLUS CONTRACTS—PROHIBITED**

Cost plus percentage of cost and percentage of construction cost methods of contracting are prohibited and shall not be used.

### **USE OF TIME & MATERIALS CONTRACTS—RESTRICTED**

Time and material contracts are listed as a restricted type of procurement. They are contracts in which the contractor charges a single rate that includes overhead and profit for labor, and materials are billed at cost. Generally, the total value of a time and materials type contract is an indeterminate amount.

As such, MAX is not permitted to use FTA funds for time-and-materials type contracts unless it determines—**in writing**—that no other type of contract is suitable for the procurement. If time-and-materials type contracts are used, MAX will specify a **ceiling price** that the contractor shall not exceed, except at its own risk.

### **AWARD OF CONTRACTS**

Contracts and purchases shall be awarded according to the criteria that shall be listed in the solicitation for quote, Request for Proposal or Invitation for Bid. In most cases but not all, the bid will be awarded to the lowest “responsible” bidder, meaning the bidder met all specifications and requirements. Consideration shall be given to contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

The evaluation criteria, proposal review process, and ranking or rating system shall be specified in the solicitation. In awarding a contract, MAX shall document the criteria used to rate or rank each proposal according to the specified criteria, and retain and file the actual tabulation sheets. For projects of \$50,000 or more, an evaluation committee of two or more individuals shall be assembled to evaluate proposals, select a preferred vendor based on the merits of their proposal, and make a recommendation for approval to the Board of Directors.

MAX retains the right to accept or reject any or all bids, in whole or part, or rebid if it is in its best interest to do so. MAX also retains the right to waive any informalities/ irregularities in the bids, as well as the right to split the award or bid between two or more bidders.

### **ASSIGNABILITY RIGHTS**

The Bidder shall not assign a contract—wholly or in part—without the written consent of MAX. No assignment shall relieve the Bidder of any obligations under the contract. Per 49 U.S.C. Section 5325 (j), MAX is required to ensure—to the best of its knowledge and belief—that none of its principals, affiliates, third-party contractors, and subcontractors is suspended, debarred, ineligible, or voluntarily excluded from participation in federally assisted transactions or procurements. For each third-party contract expected to equal or exceeds \$1,000, MAX will verify that the bidder is not excluded or disqualified by checking the System for Award Management

(SAM) Exclusions at SAM.gov; or collecting a certification; or adding a clause or condition to the covered transaction.

### **PURCHASE ORDER PROCEDURES**

Purchase Orders (POs) are required for any purchase over \$1,000 (with the exception of purchases covered under contracts or payment of utilities) and are initiated or requested by the project manager for the purchase, Executive Director or designee, or the Procurement Coordinator.

Appropriate approvals must be obtained for threshold amount prior to requesting a requisition. PO requests are entered into the New World finance software system, and are approved by the Executive Director or Deputy Director through New World.

POs are prepared by the Purchasing Office (MAX) and forwarded to the Finance Office for a certification regarding the availability of funds for purchase. Competitive bids, quotes and SAM.gov debarred vendors verification document shall be submitted with the PO request.

The Purchasing Office (MAX) sends a copy of the PO to the originating project manager, who will mail to the vendor along with any FTA clauses that apply to the purchase. Once product is received or service is complete, the Purchasing Office (MAX) will send the PO and vendor invoice to the City Finance Office to request payment.

### **EMERGENCY PURCHASES**

When there is a threat to public health, safety or welfare, or threat of significant property damage, an emergency purchase may be authorized by the Executive Director or designee without obtaining a Purchase Order. If the emergency purchase exceeds \$50,000 the Executive Director will inform the Executive Committee of the Board of the need for the emergency purchase. The Executive Committee will assess the situation and decide whether an emergency board meeting is necessary.

### **WRITTEN PROTEST PROCEDURES**

Any contractor/vendor/firm that has submitted a formal bid/quote/proposal to the Macatawa Area Express, and who is adversely affected by an intended decision with respect to the award of the formal bid/quote/proposal, can file a bid protest.

Bid protests must be made in writing and submitted to: Macatawa Area Express Transportation Authority, Attention: Executive Director, 171 Lincoln Avenue, Suite 20, Holland MI 49423.

The written protest must include the following:

- The name of the bid/quote/proposal title.
- The name and address of the affected party, and the title of the person submitting the protest.

- A clear articulation of the procedure or decision being protested, and the reason(s) for the protest.
- A statement indicating the relief sought by the affected (protesting) party.
- Any other relevant information that the affected party deems to be material to the Protest.

All protests must be filed **within ten (10) business days** of the MAX Authority Board decision. The Executive Director or his/her designee will review the written protest and provide a written response to the protestor.

The protestor can appeal MAX's decision/response to the MAX Authority Board, provided that the appeal is filed with the Executive Director or designee within ten (10) business days of MAX's decision.

In the event of an appeal, the MAX Authority Board will make the final decision on the protest. All protests involving FTA funds will be disclosed to the Federal Transit Administration for its information, and FTA will be kept informed about the status of the protest. A protestor must exhaust all administrative remedies with the grantee before pursuing a protest with FTA.

## DISPOSITION OF BUSES & EQUIPMENT

Procedures for the disposition of any federally and state funded buses and equipment will occur as follows:

**Disposition Before the End of Useful Life**—Any disposition of buses or equipment before the end of its useful service life requires Federal Transit Administration (FTA) approval prior to disposal. FTA must be reimbursed its share of the proceeds from the disposition. If revenue rolling stock is being removed from service before the end of its useful life, the return to FTA is the greater of the FTA share of the unamortized value of the remaining service life per unit, based on the straight-line depreciation of the original purchase price, or the Federal share of the sales price (even though the unamortized value is \$5,000 or less).

**Retain and Use Elsewhere**—When original or replacement equipment is no longer needed for use by MAX, it may be used by another governmental agency for other projects or programs. FTA prior approval of this alternative is required. FTA retains its interest in the property.

**Value More Than \$5,000**—After the useful service life of equipment is reached, equipment with a current market value exceeding \$5,000 per unit, or unused supplies with a total aggregate fair market value of \$5,000 may be retained or sold, with reimbursement to FTA of an amount calculated by multiplying the total aggregate fair market value at the time of disposition, or the net sale proceeds, by the percentage of FTA's participation in the original grant. The grantee's transmittal letter should state whether the equipment will be retained or sold.

**Value Less Than \$5,000**—Equipment with a unit market value of \$5,000 or less, or supplies with a total aggregate market value of \$5,000 or less, may be retained, sold, or otherwise disposed of with no obligation to reimburse FTA, providing the useful service life requirements have been met. Records of this action must be retained.

**Like-Kind Trade-In or Offset Exchange**—With prior FTA approval, the grantee may elect to use the trade-in value of the sales proceeds to offset the cost of a replacement bus (or vehicle or equipment) to acquire a replacement bus (or vehicle or equipment), applying 100 percent of the net sales proceeds to acquisition of the replacement bus (or vehicle or equipment). Excess proceeds—if any—are returned to FTA minus a deduction for the prorated local share.

**Transfer to Public Agency for Non-Transit Use**—With prior FTA approval, the grantee may follow procedures for publication in the Federal Register to transfer property (including land and equipment) to a public agency with no repayment to FTA. These procedures are available from the FTA regional office.

**Sell and Use Proceeds for Other Capital Projects**—With prior FTA approval, the grantee may sell equipment or supplies and use the proceeds to reduce the gross project cost of other FTA eligible transit projects. The grantee is expected to record the receipt of the proceeds in the grantee's accounting system, showing that the funds are restricted for use in a subsequent capital project, and reduce the liability as the proceeds are applied to one or more FTA approved, capital projects. The subsequent capital grant application should contain information showing FTA that the gross project cost has been reduced with the proceeds from the earlier transaction.

**Unused Supplies**—Disposition of unused supplies before the end of the industry standard life expectancy is determined in total aggregate fair market value and if found to exceed \$5,000, the grantee or sub-grantee shall compensate FTA for its share; or transfer the sales proceeds to reduce gross project cost of other capital projects.

### **Procedures for Disposal of Any Property**

**Sell and Reimburse FTA**—Competitively market and sell the property and pay FTA its share of the fair market value of the property. This is the percentage of the FTA participation in the original grant times the best obtainable price, net of the reasonable costs.

**Offset**—Sell property and apply the net proceeds from the sale to the cost of the replacement property under the same program. Return any excess proceeds to FTA.

**Sell and Use Proceeds for Other Capital Projects**—Sell property and use proceeds to reduce the gross project cost of another FTA eligible capital transit project. MAX is expected to record the receipt of the proceeds in the accounting system, showing that the funds are restricted for use in a subsequent capital project, and reduce the liability as the proceeds are applied to one or more FTA approved capital projects. The subsequent capital grant application should contain information showing FTA that the gross project cost has been reduced with proceeds from the earlier transaction.



**Sell and Keep Proceeds in Open Project**—If the grant is still open, the grantee may sell excess property and apply the proceeds to the original cost of the total real property purchased for the project.

**Transfer to Public Agency for Non-Transit Use**—Follow procedures for publication in the Federal Register to transfer property (land or equipment) to public agency with no repayment to FTA. This is a competitive process and there is no guarantee that a particular agency will be awarded the excess property.

**Transfer to Other Project**—Transfer property to another eligible FTA project; the Federal interest continues.

**Retain Title with Buyout**—Compensate FTA by computing percentage of FTA participation in the original cost. Multiply the current fair market value of the property by this percentage. MAX must document in writing the basis for the value determination; typically, this is an appraisal or market survey.

All computers, tablets, and anything with sensitive information should be cleaned of all said data before being disposed of. For additional details related to the disposition of Rolling Stock, Equipment, and Facilities, please refer to MAX's *Transit Asset Management (TAM) Plan* documents.

## APPENDIX A

### FORMS



### INDEPENDENT COST ESTIMATE (ICE) FORM

*This form is to be completed and sent to the Purchasing Coordinator before making purchases over \$1,000 to determine the reasonableness of price in writing before procurement begins. An ICE is an independent assessment of what you would expect to pay for a product/service based on reliable sources. Completing these actions will in fact develop and result in "an estimate" of what the product or service should cost.*

Date:

Project Manager or person making the purchase:

Department:

Description of product/service to be purchased:

Please indicate sources of estimated cost, and include any supporting documentation:

- Published price list from advertising, internet, catalogs (attach).
- Historical payments or invoices (attach documentation).
- Engineering, technical, or mechanic's estimate (attach).
- Independent third-party estimate (attach).
- Comparable purchases by other agencies (attach any email correspondence).
- Analysis of price components against current published standards, such as labor rate, cost per unit, etc., of the product or service.
- Other (please describe, attach documentation):

Estimated Cost:

- DISADVANTAGED BUSINESS ENTERPRISE (DBE)** – Acknowledgement is made to include available minority or women-owned DBE firms during the procurement process in effort to meet MAX's annual DBE goals (include an additional DBE review notation in each project bidders list for purchases of \$50,000 or more).

REFERENCE:

As required by Federal Transit Administration Circular FTA C 4220.1F Third Party Contracting Guidance, Rev. 4, March 18, 2013, and all subsequent editions, as available on FTA's website, [www.fta.dot.gov](http://www.fta.dot.gov).



**NOTICE TO ADVANCE PROCUREMENT**

**DATE:**

**DEPARTMENT:**

**PERSON REQUESTING THE PROCUREMENT:**

**PROJECT:** NAME OF PROJECT (i.e. Snow Plowing Contract)

***This form to be completed by the Purchasing Coordinator prior to seeking quotes/bids/proposals over \$10,000.***

The Macatawa Area Express Transportation Authority (“MAX”) Executive Committee hereby approves the request to advance procurement of the above-named product or service with an estimated cost to MAX of **\$XXX,XXX.XX**. A Request for Quote (RFQ), Request for Proposal (RFP) or Invitation for Bid (IFB) will serve as the method of procurement, and will include specifications, terms, clauses/certifications, requirements and conditions of the purchase in accordance with Federal Transit Administration (FTA) regulations.

Procurement shall commence on or about **Month Day, Year**. The calendar date for the completion of work for this project shall be on or about **Month Day, Year**.

***Check which procurement method will apply:***

- Request for Quote (RFQ) \$10,000 up to \$50,000
- Request for Proposal (RFP) \$50,000 and above
- Invitation for Bid (IFB) \$50,000 and above

***MAX Authority Authorization – Executive Committee Member***

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

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

\_\_\_\_\_  
Date



## SOLE SOURCE JUSTIFICATION FORM

*Under certain circumstances, a recipient may conduct procurements without providing for full and open competition. Non-competitive negotiation or sole source procurement is accomplished through solicitation or acceptance of a proposal from only one source or when award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals. A sole source purchase must include the necessary approvals and documentation.*

Date:

Project Manager or person making the purchase:

Department:

Description of product/service to be purchased:

Non-competitive negotiation or sole source procurement can only be used when the award of a contract is infeasible under small purchase procedures, sealed bids (formal advertising), or competitive proposal methods and at least one (1) of the four (4) following circumstances exists (please mark):

- 1). The item is only available from a single source.
- 2). Public exigency for the requirement did not permit a delay resulting from a competitive solicitation.
- 3). An emergency for the requirement did not permit a delay resulting from a competitive solicitation.
- 4). FTA authorized non-competitive negotiations.
- 5). Competition was determined inadequate after solicitation of a number of sources.

*The Summary Statement must make the firm declaration that, for the reasons listed, only the proposed is capable of performing the required effort. If it is claimed that only one source can furnish a particular product or service, demonstrate why another product or service obtainable competitively cannot be procured in lieu of the sole source item. If a claim is made that time requirements dictate a sole source, demonstrate that the delivery schedule is critical and furnish a precise statement of damage that will be sustained if the delivery schedule is changed to allow completion.*

SUMMARY STATEMENT:

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Signature of Project Manager or Person Making the Purchase

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Signature of Executive Director or Purchasing Coordinator





**PROPOSAL/BID ACCEPTANCE - NOTICE TO PROCEED**

**DATE:** Month Day, Year

**PROPOSER:** Company Name  
 Contact Name, Title  
 Address  
 City State Zip  
 Phone

**PROJECT:** NAME OF PROJECT (i.e. Snow Plowing Contract)

The Macatawa Area Express Transportation Authority (“MAX”) hereby accepts the above-named vendor’s proposal totaling \$XXX,XXX.XX. All of the specifications, terms, requirements and conditions contained in the Request for Proposals (RFP) or Invitation for Bids (IFB) will serve as the basis of this contract and are binding with a Proposal/Bid Acceptance signed by both MAX and the successful Proposer/Bidder.

The effective date of the Notice to Proceed (or Beginning of Contract Time) is **Month Day, Year**. The calendar date for the completion of work to be performed for this project shall be on or about **Month Day, Year**.

Prior to commencing work, the Vendor and MAX shall hold a conference for the purpose of discussing essential matters pertaining to the satisfactory completion of this project or work. Among the notable terms of this contract, agreed upon by both parties, include the following:

1. Bonding/Retainage/Payment Terms:
2. Annual Maintenance:
3. Proof of Insurance:
4. Proof of Current Licensing:
5. Project Management:
6. Termination for Breach of Contract:
7. Tax Exemption:

***Proposer’s Authorization***

***MAX Authority Authorization***

\_\_\_\_\_  
 Printed Name

\_\_\_\_\_  
 Title

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

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Printed Name

\_\_\_\_\_  
 Title

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

\_\_\_\_\_  
 Date



## COST/PRICE ANALYSIS

**DATE:**

**PROPOSER/BIDDER:**

**PROCUREMENT:**

*A Cost or Price Analysis is used to evaluate the reasonableness of a bid/proposal received from a vendor and to ensure dollar amounts are fair and reasonable. Profit must be negotiated for each contract in which there has been no price competition, and in all acquisitions in which MAX performs or acquires a Cost Analysis. See SECTION I. COST/PRICE ANALYSIS of the MAX Purchasing Policy & Manual for additional information.*

Please indicate the type of procurement:

- Competitive Procurement (In addition, choose one option below):
  - 2 or More Bids Received (Requires: **PRICE ANALYSIS**)
  - Single Bid Received (Requires: **COMPETITION DETERMINATION, COST ANALYSIS**)
- Sole Source Procurement (Requires: **COST ANALYSIS**)
- Change Order (Requires: **COST ANALYSIS**)

The completed Independent Cost Estimate (ICE) dated **XX/XX/20XX** indicated an approx. cost of **\$00,000.00**.

Online searches or past procurements (*choose one or the other*)—as indicated in the ICE—show similar pricing at **\$00,000.00**.

The winning bidder ENTER COMPANY NAME submitted pricing of **\$00,000.00**.

Cost/Price (indicate which) of the winning bidder has been determined fair and reasonable.

### **MAX Authority Authorization**

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

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

\_\_\_\_\_  
Date

## APPENDIX B

### FTA REQUIRED CLAUSES & MATRIX

The following terms and conditions are incorporated herein by reference and made a part of any contract and/or purchase orders issued as a result of a Macatawa Area Express Transportation Authority Request for Quotation (RFQ), Invitation for Bid (IFB), Request for Proposal (RFP) or Request for Qualifications (RFQ).

Provision	TYPE OF PROCUREMENT				
	Professional Services / A&E	Operations / Management	Rolling Purchase Stock	Construction	Materials & Supplies
No Federal Government Obligations to Third Parties (by Use of a Disclaimer)	All	All	All	All	All
False Statement or Claims Civil and Criminal Fraud	All	All	All	All	All
Access to Third Party Contract Records	All	All	All	All	All
Change to Federal Requirements	All	All	All	All	All
Termination	>\$10,000	>\$10,000	>\$10,000	>\$10,000	>\$10,000
Civil Rights (Title VI, ADA, EEO except Special DOL EEO clause for construction projects)	All	All	All >\$10,000	All	All
Special DOL EEO clause for construction projects				>\$10,000	
Veteran's Employment Preference				All	
Disadvantaged Business Enterprises (DBEs)	All	All	All	All	All
Incorporation of FTA Terms	All	All	All	All	All
Debarment and Suspension	All	All	All	All	All
Buy America			>\$150,000 49 USC 5323(j)(13)	>\$150,000 49 USC 5323(j)(13)	>\$150,000 49 USC 5323(j)(13)
Resolution of Disputes, Breaches, or Other Litigation - Notification of Contractor and/or Subcontractor to Agency and Agency notification to FTA	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000
Lobbying	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Air	>\$150,000	>\$150,000	>\$150,000	>\$150,000	>\$150,000
Clean Water	>\$150,000	>\$150,000	>\$150,000	>\$150,000	>\$150,000
Cargo Preference			Transport by Ocean vessel.	Transport by Ocean vessel.	Transport by Ocean vessel.
Fly America	Foreign air transp. / travel	Foreign air transp. / travel	Foreign air transp. / travel	Foreign air transp. / travel	Foreign air transp. / travel
Davis-Bacon Act				>\$2,000 (also ferries).	



Provision	Professional Services / A&E	Operations / Management	Rolling Purchase Stock	Construction	Materials & Supplies
Contract Work Hours and Safety Standards Act		>\$100,000 (transportation services excepted).	>\$100,000	>\$100,000 (also ferries).	
Copeland Anti-Kickback Act Section 1 Section 2				All >\$2,000 (also ferries).	
Bonding				>\$250,000	
Seismic Safety	A&E for new buildings & additions			New buildings & additions	
Transit Employee Protective Arrangements		Transit Operations.			
Charter Service Operations		All			
School Bus Operations		All			
Drug Use and Testing		Transit Operations.			
Alcohol Misuse and Testing		Transit Operations.			
Patent Rights	R & D				
Rights in Data and Copyrights	R & D				
Rights to Inventions Made Under a Contract or Agreement	R & D with Small Business or Non-Profit				
Energy Conservation	All	All	All	All	All
Recycled Products		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	ITS projects.	ITS projects.	ITS projects.	ITS projects.	ITS projects.
ADA Access	All	All	All	All	All
Notification of Federal Participation for States	Limited to States	Limited to States	Limited to States	Limited to States	Limited to States
Safety Operation of Motor Vehicles 1. Seat Belt Use 2. Distracted Driving	All	All	All	All	All
Prohibition on certain telecommunications and video surveillance services or equipment	All	All	All	All	All

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**FLY AMERICA REQUIREMENTS**  
**49 USC 40118**  
**41 CFR Part 301-10**

**Applicability to Contracts**

The Fly America requirements apply to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation. Transportation on a foreign air carrier is permissible when provided by a foreign air carrier under a code share agreement when the ticket identifies the U.S. air carrier's designator code and flight number. Transportation by a foreign air carrier is also permissible if there is a bilateral or multilateral air transportation agreement to which the U.S. Government and a foreign government are parties and which the Federal DOT has determined meets the requirements of the Fly America Act.

**Flow Down Requirements**

The Fly America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

**Model Clause/Language**

The relevant statutes and regulations do not mandate any specified clause or language. FTA proposes the following language.

**Fly America Requirements**

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

## BUY AMERICA REQUIREMENTS

49 U.S.C. 5323(j)

49 CFR Part 661

### Applicability to Contracts

The Buy America requirements apply to the following types of contracts: Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$150,000).

### Flow Down

The Buy America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance. The \$150,000 threshold applies only to the grantee contract, subcontracts under that amount are subject to Buy America.

### Mandatory Clause/Language

The Buy America regulation, at 49 CFR 661.13, requires notification of the Buy America requirements in FTA-funded contracts, but does not specify the language to be used. The following language has been developed by FTA.

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless 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, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification (below) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

### **Certification requirement for procurement of steel, iron, or manufactured products.**

#### *Certificate of Compliance with 49 U.S.C. 5323(j)(1)*

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 C.F.R. Part 661.5.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

*Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)*

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

**Certification requirement for procurement of buses, other rolling stock and associated equipment.**

*Certificate of Compliance with 49 U.S.C. 5323(j)(2)(C).*

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 C.F.R. Part 661.11.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

*Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C)*

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11, but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 CFR 661.7.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

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## CHARTER BUS REQUIREMENTS

**49 U.S.C. 5323(d) and (r)**

**49 CFR Part 604**

### **Applicability to Contracts**

The Charter Bus requirements apply to the following type of contract: Operational Service Contracts.

### **Flow Down Requirements**

The Charter Bus requirements flow down from FTA recipients and subrecipients to first tier service contractors.

### **Model Clause/Language**

The relevant statutes and regulations do not mandate any specific clause or language. The following clause has been developed by FTA.

**Charter Service Operations** - The contractor agrees to comply with 49 U.S.C. 5323(d) and (r) and 49 CFR 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 under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.

## SCHOOL BUS REQUIREMENTS

**49 U.S.C. 5323(F)**

**49 CFR Part 605**

### **Applicability to Contracts**

The School Bus requirements apply to the following type of contract: Operational Service Contracts.

### **Flow Down Requirements**

The School Bus requirements flow down from FTA recipients and subrecipients to first tier service contractors.

### **Model Clause/Language**

The relevant statutes and regulations do not mandate any specific clause or language. The following clause has been developed by FTA.

**School Bus Operations** - Pursuant to 49 U.S.C. 5323(f) and 49 CFR Part 605, recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under

an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles, or facilities.

## **CARGO PREFERENCE REQUIREMENTS**

**46 USC 55305**

**46 CFR Part 381**

### **Applicability to Contracts**

The Cargo Preference requirements apply to all contracts involving equipment, materials, or commodities which may be transported by ocean vessels.

### **Flow Down**

The Cargo Preference requirements apply to all subcontracts when the subcontract may be involved with the transport of equipment, material, or commodities by ocean vessel.

### **Model Clause/Language**

The MARAD regulations at 46 CFR 381.7 contain suggested contract clauses. The following language is proffered by FTA.

**Cargo Preference - Use of United States-Flag Vessels** - The contractor agrees: a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; b. to furnish within 20 working 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 the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.) 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.

## **SEISMIC SAFETY REQUIREMENTS**

**42 U.S.C. 7701 et seq.**

**49 CFR Part 41**

**Executive Order (E.O.) 12699**

### **Applicability to Contracts**

The Seismic Safety requirements apply only to contracts for the construction of new buildings or additions to existing buildings.

**Flow Down**

The Seismic Safety requirements flow down from FTA recipients and subrecipients to first tier contractors to assure compliance, with the applicable building standards for Seismic Safety, including the work performed by all subcontractors.

**Model Clauses/Language**

The regulations do not provide suggested language for third-party contract clauses. The following language has been developed by FTA.

**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 Seismic Safety Regulations 49 CFR 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.

**ENERGY CONSERVATION REQUIREMENTS**

**42 USC 6321 et seq.  
49 CFR Part 622, subpart C**

**Applicability to Contracts**

The Energy Policy and Conservation requirements are applicable to all contracts.

**Energy Conservation** - The Recipient agrees to, and assures that its subrecipients, if any, will comply with the mandatory energy standards and policies of its state energy conservation plans under the Energy Policy and Conservation Act, as amended, 42 U.S.C. § 6201 et seq., and perform an energy assessment for any building constructed, reconstructed, or modified with federal assistance as required under FTA regulations, "Requirements for Energy Assessments," 49 C.F.R. part 622, subpart C.

**Flow Down**

These requirements extend to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

**Model Clause/Language**

No specific clause is recommended in the regulations because the Energy Conservation requirements are so dependent on the state energy conservation plan. Recipients can draw on the following language for inclusion in their federally funded procurements.

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**CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT****33 U.S.C. 1251****Applicability to Contracts**

The Clean Air and Clean Water Act requirements apply to each contract and subcontract exceeding \$150,000. Each contract and subcontract must contain a provision that requires the recipient to agree 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 the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

**Flow Down**

The Clean Air Act and Federal Water Pollution Control Act requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

**Model Clause/Language**

Recipients can draw on the following language for inclusion in their federally funded procurements.

The Contractor agrees:

- 1) It will not use any violating facilities;
- 2) It will report the use of facilities placed on or likely to be placed on the U.S. EPA “List of Violating Facilities;”
- 3) It will report violations of use of prohibited facilities to FTA; and
- 4) It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

**BUS TESTING****49 U.S.C. 5318(e)****49 CFR Part 665****Applicability to Contracts**

The Bus Testing requirements pertain only to the purchase or lease of any new bus model, or any bus model with a major change in configuration or components to be acquired or leased with funds obligated by FTA. Recipients are responsible for determining whether a vehicle to be acquired requires full or partial testing or has already satisfied the bus testing requirements by achieving a passing test score in accordance with 49 C.F.R. part 665. Recipients must certify



compliance with FTA's bus testing requirements in all grant applications for FTA funding for bus procurements.

### **Flow Down**

There is no flow down requirement for Bus Testing.

### **Model Clause/Language**

The operator of the bus testing facility is required to provide the resulting test report to the entity that submits the bus for testing. The manufacturer or dealer of a new bus model or a bus produced with a major change in component or configuration is required to provide a copy of the corresponding full bus testing report and any applicable partial testing report(s) to the recipient during the point in the procurement process specified by the recipient, but in all cases before final acceptance of the first bus by the recipient. The complete bus testing reporting requirements are provided in 49 C.F.R. § 665.11. Although no specific certification and bus testing language is required, recipients can draw on the following language for inclusion in their federally funded procurements.

### **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.

## **PRE-AWARD AND POST DELIVERY AUDITS REQUIREMENTS**

**49 U.S.C. 5323(m)**

**49 CFR Part 663**

### **Applicability to Contracts**

Recipients purchasing revenue service rolling stock with FTA funds must comply with the pre-award and post-delivery audit requirements set forth in 49 U.S.C. 5323(m) and supplemented by 49 C.F.R. part 663. For more information about pre-award and post-delivery audit requirements, please go to FTA's Buy America page on its website.

### **Flow Down**

There is no flow down requirement for Pre-Award and Post-Delivery Audits of Rolling Stock.

### **Model Clause/Language**

Part 663 of Title 49, Code of Federal Regulations, does not contain specific language to be included in third party contracts but does contain requirements applicable to subrecipients and third-party contractors. Recipients are advised to use the model certificates and language

contained in the audit handbook. Additionally, recipients can draw on the following language for inclusion in their federally funded procurements.

### **Pre-Award and Post-Delivery Audit Requirements**

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.

### **LOBBYING RESTRICTIONS**

**31 U.S.C. 1352**

**2 CFR 200.450**

**2 CFR part 200 appendix II (j)**

**49 CFR Part 20**

#### **Applicability to Contracts**

The lobbying requirements apply to all contracts and subcontracts of \$100,000 or more at any tier under a Federal grant. If any funds other than Federal appropriated funds have been paid or will be paid to 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 this agreement, the payor must complete and submit the Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

#### **Flow Down**

The lobbying requirements mandate the maximum flow down pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5).

#### **Model Clause/Language**

49 C.F.R. part 20, Appendices A and B provide specific language for inclusion in FTA funded third party contracts as follows:

#### **Lobbying Restrictions**

The undersigned 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 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 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.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, 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 section 1352, title 31, U.S. Code. 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.

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

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

\_\_\_\_\_ Date

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## ACCESS TO RECORDS AND REPORTS

**49 USC 5325(g)**

**2 CFR 200.333**

**49 CFR 633**

### **Applicability to Contracts**

The record keeping and access requirements apply to all contracts funded in whole or in part with FTA funds. Under 49 U.S.C. § 5325(g), FTA has the right to examine and inspect all records, documents, and papers, including contracts, related to any FTA project financed with Federal assistance authorized by 49 U.S.C. Chapter 53.

### **Flow Down**

The record keeping and access requirements extend to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

### **Model Clause/Language**

There is no required language for record keeping and access requirements. Recipients can draw on the following language for inclusion in their federally funded procurements.

#### **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, sub-agreements, leases, subcontracts, arrangements, other third-party agreements 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. § 200.333. 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 related to performance of this contract as reasonably may be required.
- 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 as reasonably may be required.

## FEDERAL CHANGES

### Applicability to Contracts

The Federal Changes requirement applies to all contracts.

### Flow Down

The Federal Changes requirement flows down appropriately to each applicable changed requirement.

### Model Clause/Language

No specific language is mandated. The following language has been developed by FTA.

**Federal Changes** - Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

## BONDING REQUIREMENTS

**2 CFR 200.325**

**31 CFR part 223**

### Applicability to Contracts

Bonds are required for all construction or facility improvement contracts and subcontracts exceeding the simplified acquisition threshold. FTA may accept the bonding policy and requirements of the recipient if FTA has determined that the Federal interest is adequately protected. If such a determination has not been made, the following minimum requirements apply:

- 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 obligations 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.

**Flow Down**

These requirements extend to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier that exceed the simplified acquisition threshold.

**Model Clauses/Language**

There is no required language for bonding requirements. Recipients can draw on the following language for inclusion in their federally funded procurements.

**Bond Requirements****Bid Guarantee**

Bidders shall furnish a bid guaranty in the form of a bid bond, or certified treasurer's or cashier's check issued by a responsible bank or trust company, made payable to the RECIPIENT. The amount of such guaranty shall be equal to \$\$\$\$ or X% of the total bid price.

In submitting this bid, it is understood and agreed by bidder that the RECIPIENT reserves the right to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [90] days subsequent to the opening of bids, without the written consent of RECIPIENT.

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within [90] days after the bid opening without the written consent of the RECIPIENT, 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 RECIPIENT'S damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, 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 RECIPIENT for the damages occasioned by default, then the undersigned bidder agrees to indemnify RECIPIENT and pay over to RECIPIENT the difference between the bid guarantee and RECIPIENT'S total damages so as to make RECIPIENT whole.

The undersigned 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 Recipient 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 Agreement. The successful Bidder shall certify that it will provide the

requisite Performance Guarantee to the RECIPIENT within ten (10) business days from Contract execution. The RECIPIENT requires all Performance Bonds to be provided by a fully qualified surety company acceptable to the RECIPIENT and listed as a company currently authorized under 31 C.F.R. part 22 as possessing a Certificate of Authority as described hereunder. RECIPIENT 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 RECIPIENT 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 RECIPIENT if:

1. A bank in good standing issues it. The RECIPIENT 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 RECIPIENT 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 this Agreement.
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 RECIPIENT 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 (similar to the attached forms contained in Sections X and Y) 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 Recipient 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 (Recipient) and listed as a company currently authorized under 31 C.F.R. part 223 as possessing a Certificate of Authority as described thereunder.

**Sample Bond**

**Certifications Performance Guarantee Certification**

The undersigned hereby certifies that the Bidder shall provide a Performance Guarantee in accordance with the Specifications.

Designate below which form of Performance Guarantee shall be provided:

\_\_\_\_\_ Performance Bond

\_\_\_\_\_ Irrevocable Stand-By-Letter of Credit

BIDDER'S NAME: \_\_\_\_\_

AUTHORIZED SIGNATURE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_



**Performance Bond**

KNOW ALL MEN BY THESE PRESENTS: that \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
(Insert full name and address and legal title of Contractor) as Principal, hereinafter called Contractor, and

\_\_\_\_\_  
\_\_\_\_\_  
(Insert full name and address or legal title of Surety) as Surety, hereinafter called Surety, are held and firmly bound unto RECIPIENT as Obligee, hereinafter called Authority, in the amount of Dollars (\$) for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Contractor has by written agreement dated, 20\_\_\_\_, entered into a contract with the RECIPIENT for Contract No.\_\_\_\_\_, which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly and faithfully perform said Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the RECIPIENT.

Whenever Contractor shall be, and is declared by the RECIPIENT to be in default under the Contract, the RECIPIENT having performed RECIPIENT’S obligations thereunder, the Surety may promptly remedy the default, or shall promptly

1. Complete the Contract in accordance with it terms and conditions, or
2. Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or, if the RECIPIENT elects, upon determination by the RECIPIENT and the Surety jointly of the lowest responsible bidder, arrange for a contract between such bidder and the Authority, and make available as Work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under

this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, the amount set forth in the first paragraph hereof. The term "balance of the contract price," as used in this paragraph, shall mean the total amount payable by the RECIPIENT to Contractor under the Contract and any amendments thereto, less the amount properly paid by the RECIPIENT to Contractor.

Any suit under this bond must be instituted before the expiration of two (2) years from the date on which final payment under the Contract falls due.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the RECIPIENT or the heirs, executors, administrators or successors of the RECIPIENT.

Signed and sealed this \_\_\_\_\_ day of 20\_\_\_\_\_.

WITNESS

PRINCIPAL

\_\_\_\_\_ (SEAL)

\_\_\_\_\_ (Title)

WITNESS

SURETY

\_\_\_\_\_ (SEAL)

\_\_\_\_\_ (Title)

Attach hereto proof of authority of officers or agents to sign bond.

**Irrevocable Stand-By Letter Of Credit Certificate**

The undersigned states that he/she is \_\_\_\_\_(Title) of the  
 \_\_\_\_\_(Name of Beneficiary) (The "Beneficiary") and  
 hereby Certifies on behalf of the Beneficiary to \_\_\_\_\_ (Name of  
 Issuing Bank) (the "Bank), with Reference to Irrevocable Standby Letter of Credit No.  
 \_\_\_\_\_ Issued by the Bank (the "Letter of Credit"), that:

1. The undersigned is duly authorized to execute and deliver this certificate on behalf of the Beneficiary.
2. The Beneficiary is making a drawing under the Letter of Credit.
3. An Event of Default has occurred under Contract No. \_\_\_\_\_.
4. The amount of the draft presented with this certificate does not exceed the total maximum amount drawable today under the Letter of Credit as provided therein.

**IN WITNESS WHEREOF**, this certificate is executed this day of\_\_\_\_, 20\_\_\_\_.

(NAME OF BENEFICIARY)

By: \_\_\_\_\_

Its: \_\_\_\_\_

**Bank Draft**

**FOR VALUE RECEIVED**

Pay on presentment to \_\_\_\_\_ (Name of Beneficiary) the sum of  
\_\_\_\_\_ Dollars (\$)

Charge the Account of \_\_\_\_\_ (Name of Issuing Bank)

Irrevocably Standby Letter of Credit No. \_\_\_\_\_ Dated: 20 \_\_\_\_ .

To \_\_\_\_\_ (Name of Issuing Bank)

**NAME OF BENEFICIARY**

By \_\_\_\_\_

Its \_\_\_\_\_

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## RECYCLED PRODUCTS

**42 U.S.C. 6962**

**40 CFR Part 247**

**2 CFR part 200.322**

### **Applicability to Contracts**

The Resource Conservation and Recovery Act, as amended, (42 U.S.C. § 6962 *et seq.*), requires States and local governmental authorities to provide a competitive preference to products and services that conserve natural resources, protect the environment, and are energy efficient. Recipients are required to procure only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. 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.

### **Flow Down**

These requirements extend to all third-party contractors and their contracts at every tier and sub-recipients and their subcontracts at every tier where the value of an EPA designated item exceeds \$10,000.

### **Model Clause/Language**

There is no required language for preference for recycled products. Recipients can draw on the following language for inclusion in their federally funded procurements.

## Recovered Materials

The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), “Comprehensive Procurement Guideline for Products Containing Recovered Materials,” 40 C.F.R. part 247.

## NO GOVERNMENT OBLIGATION TO THIRD PARTIES

### **Applicability to Contracts**

The No Obligation clause applies to all third-party contracts that are federally funded.

### **Flow Down**

The No Obligation clause extends to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

**Model Clause/Language**

There is no required language for the No Obligations clause. Recipients can draw on the following language for inclusion in their federally funded procurements.

**No Federal 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.

**EMPLOYEE PROTECTIONS****49 USC 5333(a)****40 USC 3141 – 3148****29 CFR part 5****18 USC 874****29 CFR part 3****40 USC 3701-3708****29 CFR part 1926****Applicability to Contracts**

Certain employee protections apply to all FTA funded contracts with particular emphasis on construction related projects. The recipient will ensure that each third-party contractor complies with all federal laws, regulations, and requirements, including:

**1. Prevailing Wage Requirements**

- a. Federal transit laws, specifically 49 U.S.C. § 5333(a), (FTA’s “Davis-Bacon Related Act”);
- b. The Davis-Bacon Act, 40 U.S.C. §§ 3141 – 3144, 3146, and 3147; and
- c. U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. part 5.

## 2. “Anti-Kickback” Prohibitions

- a. Section 1 of the Copeland “Anti-Kickback” Act, as amended, 18 U.S.C. § 874;
- b. Section 2 of the Copeland “Anti-Kickback” Act, as amended, 40 U.S.C. § 3145; and
- c. U.S. DOL regulations, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States,” 29 C.F.R. part 3.

## 3. Contract Work Hours and Safety Standards

- a. Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701-3708; and supplemented by Department of Labor (DOL) regulations, 29 C.F.R. part 5; and
- b. U.S. DOL regulations, “Safety and Health Regulations for Construction,” 29 C.F.R. part 1926.

### **Flow Down**

These requirements extend to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier. The Davis-Bacon Act and the Copeland “Anti-Kickback” Act apply to all prime construction, alteration or repair contracts in excess of \$2,000. The Contract Work Hours and Safety Standards Act apply to all FTA funded contracts in excess of \$100,000 that involve the employment of mechanics or laborers.

### **Model Clause/Language**

The recipient must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. In addition, recipients can draw on the following language for inclusion in their federally funded procurements.

### **Prevailing Wage and Anti-Kickback**

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.

### **Contract Work Hours and Safety Standards**

For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, the Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the DOL regulations at 29 C.F.R. part 5. Under 40 U.S.C. § 3702 of the Act, the Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, 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. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.

In the event of any violation of the clause set forth herein, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the 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 this clause 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 this clause.

The FTA 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 this section.

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in 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 this agreement.



### **Contract Work Hours and Safety Standards for Awards Not Involving Construction**

The Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 *et seq.*, and U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. part 5.

The Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

Such records maintained under this paragraph shall be made available by the Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and the Contractor will permit such representatives to interview employees during working hours on the job.

The contractor shall require the inclusion of the language of this clause within subcontracts of all tiers.

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

**49 USC 5323(I) (1)**

**31 USC 3801-3812**

**18 USC 1001**

**49 CFR Part 31**

#### **Applicability to Contracts**

The Program Fraud clause applies to all third-party contracts that are federally funded.

#### **Flow Down**

The Program Fraud clause extends to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier. These requirements flow down to contractors and subcontractors who make, present, or submit covered claims and statements.

#### **Model Clause/Language**

There is no required language for the Program Fraud clause. Recipients can draw on the following language for inclusion in their federally funded procurements.

### **Program Fraud and False or Fraudulent Statements or 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.

### **TERMINATION**

#### **2 CFR 200.339**

#### **2 CFR part 200, Appendix II (B)**

#### **Applicability to Contracts**

All contracts in excess of \$10,000 must address termination for cause and for convenience, including the manner by which it will be affected and the basis for settlement.

#### **Flow Down**

For all contracts in excess of \$10,000, the Termination clause extends to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

#### **Model Clause/Language**

There is no required language for the Terminations clause. Recipients can draw on the following language for inclusion in their federally funded procurements.

### **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 affected 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.

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### **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.

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.

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## GOVERNMENT-WIDE DEBARMENT AND SUSPENSION

**2 CFR part 180**

**2 CFR part 1200**

**2 CFR 200.213**

**2 CFR part 200 Appendix II (I)**

**Executive Order 12549**

**Executive Order 12689**

### **Background and Applicability**

A contract award (of any tier) in an amount expected to equal or exceed \$25,000 or a contract award at any tier for a federally required audit (irrespective of the contract amount) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. part 180. The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Recipients, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) with which they propose to contract or subcontract is not excluded or disqualified. This is done by: (a) checking the SAM exclusions; (b) collecting a certification from that person; or (c) adding a clause or condition to the contract or subcontract.

### **Flow Down**

Recipients, contractors, and subcontractors who enter into covered transactions with a participant at the next lower level, must require that participant to: (a) comply with subpart C of 2 C.F.R. part 180, as supplemented by 2 C.F.R. part 1200; and (b) pass the requirement to comply with subpart C of 2 C.F.R. part 180 to each person with whom the participant enters into a covered transaction at the next lower tier.

### **Model Clause/Language**

There is no required language for the Debarment and Suspension clause. Recipients can draw on the following language for inclusion in their federally funded procurements.

### **Debarment, Suspension, Ineligibility and Voluntary Exclusion**

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.

## **PRIVACY ACT**

### **5 USC 552**

#### **Applicability to Contracts**

When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts.

#### **Flow Down**

The Federal Privacy Act requirements flow down to each third-party contractor and their contracts at every tier.

#### **Model Clause/Language**

The text of the following clause has not been mandated by statute or specific regulation, but has been developed by FTA.



**Contracts Involving Federal Privacy Act Requirements** - The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974,

5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

## CIVIL RIGHTS LAWS AND REGULATIONS

### Applicability to Contracts

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

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 and gender identity), 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, and Executive Order No. 11246, "Equal Employment Opportunity," September 24, 1965, as amended, prohibit 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.

### **Flow Down**

The Civil Rights requirements flow down to all third-party contractors and their contracts at every tier.

### **Model Clause/Language**

Every federally funded contract must include an Equal Opportunity clause. Recipients can draw on the following language for inclusion in their federally funded procurements.

### **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 Agreement, 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. **Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e *et seq.*, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. 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.

## VIOLATION AND BREACH OF CONTRACT

### 2 CFR 200.326

### 2 CFR part 200, Appendix II (A)

#### Applicability to Contracts

All contracts in excess of the Simplified Acquisition Threshold (currently set at \$150,000) shall contain administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

#### Flow Down

The Violations and Breach of Contracts clause flow down to all third-party contractors and their contracts at every tier.

#### Model Clauses/Language

FTA does not prescribe the form or content of such provisions. The provisions developed will depend on the circumstances and the type of contract. Recipients should consult legal counsel in developing appropriate clauses. The following clauses are examples of provisions from various FTA third party contracts. Recipients can draw on these examples for inclusion in their federally funded procurements.

### **Rights and Remedies of the AGENCY**

The AGENCY shall have the following rights in the event that the AGENCY deems the Contractor guilty of a breach of any term under the Contract.

1. The right to take over and complete the work or any part thereof as agency for and at the expense of the Contractor, either directly or through other contractors;
2. The right to cancel this Contract as to any or all of the work yet to be performed;
3. The right to specific performance, an injunction or any other appropriate equitable remedy; and
4. The right to money damages.

For purposes of this Contract, breach shall include [AGENCY to define, if applicable].

### **Rights and Remedies of Contractor**

Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Contract, which may be committed by the AGENCY, the Contractor expressly agrees that no default, act or omission of the AGENCY shall constitute a material breach of this Contract,

entitling Contractor to cancel or rescind the Contract (unless the AGENCY directs Contractor to do so) or to suspend or abandon performance.

### Remedies

Substantial failure of the Contractor to complete the Project in accordance with the terms of this Agreement will be a default of this Agreement. In the event of a default, the AGENCY will have all remedies in law and equity, including the right to specific performance, without further assistance, and the rights to termination or suspension as provided herein. The Contractor recognizes that in the event of a breach of this Agreement by the Contractor before the AGENCY takes action contemplated herein, the AGENCY will provide the Contractor with sixty (60) days written notice that the AGENCY considers that such a breach has occurred and will provide the Contractor a reasonable period of time to respond and to take necessary corrective action.

### Disputes

**Example 1:** 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 AGENCY's [title of employee]. 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 [title of employee]. 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 [title of employee] shall be binding upon the Contractor and the Contractor shall abide by the decision.

**Example 2:** The AGENCY and the Contractor intend to resolve all disputes under this Agreement to the best of their abilities in an informal manner. To accomplish this end, the parties will use an Alternative Dispute Resolution process to resolve disputes in a manner designed to avoid litigation. In general, the parties contemplate that the Alternative Dispute Resolution process will include, at a minimum, an attempt to resolve disputes through communications between their staffs, and, if resolution is not reached at that level, a procedure for review and action on such disputes by appropriate management level officials within the AGENCY and the Contractor's organization.

In the event that a resolution of the dispute is not mutually agreed upon, the parties can agree to mediate the dispute or proceed with litigation. Notwithstanding any provision of this section, or any other provision of this Contract, it is expressly agreed and understood that any court proceeding arising out of a dispute under the Contract shall be heard by a Court de novo and the court shall not be limited in such proceeding to the issue of whether the Authority acted in an arbitrary, capricious or grossly erroneous manner.

Pending final settlement of any dispute, the parties shall proceed diligently with the performance of the Contract, and in accordance with the AGENCY's direction or decisions made thereof.

### **Performance during Dispute**

Unless otherwise directed by AGENCY, 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 its employees, agents or others for whose acts it is legally liable, a claim for damages therefor 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 AGENCY and the 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**

The 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.

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

**2 CFR part 200, Appendix II (F)**

**37 CFR part 401**

### **Applicability to Contracts**

If the recipient or subrecipient wishes to enter into a contract (or subcontract) with a small business firm or nonprofit organization for the performance of experimental, developmental, or research work under the FTA award, the recipient or subrecipient must comply 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 the awarding agency. Except in the case of an "other agreement" in which the Federal Government has agreed to take more limited rights, the Federal

Government is entitled to a non-exclusive, royalty free license to use the resulting invention, or patent the invention for Federal Government purposes. The FTA has the right to:

1. Obtain, reproduce, publish, or otherwise use the data produced under a Federal award; and
2. Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

### **Flow Down**

The Patent Rights and Rights in Data requirements flow down to all third-party contractors and their contracts at every tier that meet the definition of a research-type project under 37 U.S.C. § 401.2.

### **Model Clause/Language**

Recipients can draw on language provided in 37 C.F.R. § 401.3 for appropriate Patent Rights and Data Rights Clauses for use in their federally funded research, development, demonstration, or special studies projects. Recipients should consult legal counsel for guidance in developing an appropriate Intellectual Property Agreement. At a minimum, recipients can include the following language in their standard boilerplates.

### **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 Agreement 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 Agreement 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 agreement, 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 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.

## **PUBLIC TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS**

### **49 USC 5333(b) (“13(c)”) 29 CFR Part 215**

#### **Applicability to Contracts**

The Public Transportation Employee Protective Arrangements apply to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator.

#### **Flow Down**

The employee protective arrangements clause flows down to all third-party contractors and their contracts at every tier.

#### **Model Clause/Language**

There is no required language for the Public Transportation Employee Protective Arrangements clause. Recipients can draw on the following language for inclusion in their federally funded procurements.

### **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.

## DISADVANTAGED BUSINESS ENTERPRISE (DBE)

### 49 CFR Part 26

#### **Background and Applicability**

The Disadvantaged Business Enterprise (DBE) program applies to FTA recipients receiving planning, capital and/or operating assistance that will award prime contracts (excluding transit vehicle purchases) exceeding \$250,000 in FTA funds in a Federal fiscal year. All FTA recipients above this threshold must submit a DBE program and overall triennial goal for DBE participation. The overall goal reflects the anticipated amount of DBE participation on DOT-assisted contracts. As part of its DBE program, FTA recipients must require that each transit vehicle manufacturer (TVM), as a condition of being authorized to bid or propose on FTA assisted transit vehicle procurements, certify that it has complied with the requirements of 49 C.F.R. § 26.49. Only those transit vehicle manufacturers listed on FTA's certified list of Transit Vehicle Manufacturers, or that have submitted a goal methodology to FTA that has been approved or has not been disapproved at the time of solicitation, are eligible to bid.

FTA recipients must meet the maximum feasible portion of their overall goal using race-neutral methods. Where appropriate, however, recipients are responsible for establishing DBE contract goals on individual DOT-assisted contracts. FTA recipients may use contract goals only on those DOT-assisted contracts that have subcontracting responsibilities. See 49 C.F.R. § 26.51(e). Furthermore, while FTA recipients are not required to set a contract goal on every DOT-assisted contract, they are responsible for achieving their overall program goals by administering their DBE program in good faith.

FTA recipients and third-party contractors can obtain information about the DBE program at the following website locations:

Federal Transit Administration website, Disadvantaged Business Enterprise:

[www.transit.dot.gov/dbe](http://www.transit.dot.gov/dbe)

Department of Transportation website, Disadvantaged Business Enterprise Program:

[www.transportation.gov/civil-rights/disadvantaged-business-enterprise](http://www.transportation.gov/civil-rights/disadvantaged-business-enterprise)

#### **Flow Down**

The DBE contracting requirements flow down to all third-party contractors and their contracts at every tier. It is the recipient's and prime contractor's responsibility to ensure the DBE requirements are applied across the board to all subrecipients/contractors/subcontractors. Should a subcontractor fail to comply with the DBE regulations, FTA would look to the recipient to make sure it intervenes to monitor compliance. The onus for compliance is on the recipient.

**Clause Language**

For all DOT-assisted contracts, each FTA recipient must include assurances that third party contractors will comply with the DBE program requirements of 49 C.F.R. part 26, when applicable. The following contract clause is required in all DOT-assisted prime and subcontracts:

The contractor, subrecipient 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 recipient 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).

Further, recipients must establish a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the recipient makes to the prime contractor. 49 C.F.R. § 26.29(a). Finally, for contracts with defined DBE contract goals, each FTA recipient must include in each prime contract a provision stating that the contractor shall utilize the specific DBEs listed unless the contractor obtains the recipient's written consent; and that, unless the recipient'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).

As an additional resource, recipients can draw on the following language for inclusion in their federally funded procurements.

**Overview**

It is the policy of the AGENCY and the United States Department of Transportation ("DOT") that Disadvantaged Business Enterprises ("DBEs"), 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. It is also the policy of the AGENCY to:

1. Ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;

3. Ensure that the DBE program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet 49 C.F.R. part 26 eligibility standards are permitted to participate as DBEs;
5. Help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To promote the use of DBEs in all types of federally assisted contracts and procurement activities; and
7. Assist in the development of firms that can compete successfully in the marketplace outside the DBE program.

This Contract is subject to 49 C.F.R. part 26. Therefore, the Contractor must satisfy the requirements for DBE participation as set forth herein. These requirements are in addition to all other equal opportunity employment requirements of this Contract. The AGENCY shall make all determinations with regard to whether or not a Bidder/Offeror is in compliance with the requirements stated herein. In assessing compliance, the AGENCY may consider during its review of the Bidder/Offeror's submission package, the Bidder/Offeror's documented history of non-compliance with DBE requirements on previous contracts with the AGENCY.

#### **Contract Assurance**

The Contractor, subrecipient 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.

#### **DBE Participation**

For the purpose of this Contract, the AGENCY will accept only DBEs who are:

1. Certified, at the time of bid opening or proposal evaluation, by the [*certifying agency or the Unified Certification Program (UCP)*]; or
2. An out-of-state firm who has been certified by either a local government, state government or Federal government entity authorized to certify DBE status or an agency whose DBE certification process has received FTA approval; or
3. Certified by another agency approved by the AGENCY.

**DBE Participation Goal**

The DBE participation goal for this Contract is set at \_\_\_\_%. This goal represents those elements of work under this Contract performed by qualified Disadvantaged Business Enterprises for amounts totaling **not less than** \_\_\_\_% of the total Contract price. Failure to meet the stated goal at the time of proposal submission **may** render the Bidder/Offeror non-responsive.

**Proposed Submission**

Each Bidder/Offeror, as part of its submission, shall supply the following information:

1. A completed **DBE Utilization Form** (see below) that indicates the percentage and dollar value of the total bid/contract amount to be supplied by Disadvantaged Business Enterprises under this Contract.
2. A list of those qualified DBEs with whom the Bidder/Offeror intends to contract for the performance of portions of the work under the Contract, the agreed price to be paid to each DBE for work, the Contract items or parts to be performed by each DBE, a proposed timetable for the performance or delivery of the Contract item, and other information as required by the **DBE Participation Schedule** (see below). No work shall be included in the Schedule that the Bidder/Offeror has reason to believe the listed DBE will subcontract, at any tier, to other than another DBE. If awarded the Contract, the Bidder/Offeror may not deviate from the DBE Participation Schedule submitted in response to the bid. Any subsequent changes and/or substitutions of DBE firms will require review and written approval by the AGENCY.
3. An original **DBE Letter of Intent** (see below) from each DBE listed in the **DBE Participation Schedule**.
4. An original **DBE Affidavit** (see below) from each DBE stating that there has not been any change in its status since the date of its last certification.

**Good Faith Efforts**

If the Bidder/Offeror is unable to meet the goal set forth above (DBE Participation Goal), the AGENCY will consider the Bidder/Offerors documented good faith efforts to meet the goal in determining responsiveness. The types of actions that the AGENCY will consider as part of the Bidder/Offerors good faith efforts include, but are not limited to, the following:

1. Documented communication with the AGENCY's DBE Coordinator (questions of IFB or RFP requirements, subcontracting opportunities, appropriate certification, will be addressed in a timely fashion);

2. Pre-bid meeting attendance. At the pre-bid meeting, the AGENCY generally informs potential Bidder/Offerors of DBE subcontracting opportunities;
3. The Bidder/Offerors own solicitations to obtain DBE involvement in general circulation media, trade association publication, minority-focus media and other reasonable and available means within sufficient time to allow DBEs to respond to the solicitation;
4. Written notification to DBE's encouraging participation in the proposed Contract; and
5. Efforts made to identify specific portions of the work that might be performed by DBE's.

The Bidder/Offeror shall provide the following details, at a minimum, of the specific efforts it made to negotiate in good faith with DBE's for elements of the Contract:

1. The names, addresses, and telephone numbers of DBEs that were contacted;
2. A description of the information provided to targeted DBEs regarding the specifications and bid proposals for portions of the work;
3. Efforts made to assist DBE's contacted in obtaining bonding or insurance required by the Bidder or the Authority.

Further, the documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted when a non-DBE subcontractor was selected over a DBE for work on the contract. 49 C.F.R. § 26.53(b) (2) (VI). In determining whether a Bidder has made good faith efforts, the Authority may take into account the performance of other Bidders in meeting the Contract goals. For example, if the apparent successful Bidder failed to meet the goal, but meets or exceeds the average DBE participation obtained by other Bidders, the Authority may view this as evidence of the Bidder having made good faith efforts.

#### **Administrative Reconsideration**

Within five (5) business days of being informed by the AGENCY that it is not responsive or responsible because it has not documented sufficient good faith efforts, the Bidder/Offeror may request administrative reconsideration. The Bidder should make this request in writing to the AGENCY's [Contact Name]. The [Contact Name] will forward the Bidder/Offerors request to a reconsideration official who will not have played any role in the original determination that the Bidder/Offeror did not document sufficient good faith efforts.

As part of this reconsideration, the Bidder/Offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The Bidder/Offeror will have the opportunity to meet in person with the assigned reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The AGENCY will send the Bidder/Offeror a written decision

on its reconsideration, explaining the basis for finding that the Bidder/Offeror did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

### **Termination of DBE Subcontractor**

The Contractor shall not terminate the DBE subcontractor(s) listed in the **DBE Participation Schedule** (see below) without the AGENCY's prior written consent. The AGENCY may provide such written consent only if the Contractor has good cause to terminate the DBE firm. Before transmitting a request to terminate, the Contractor shall give notice in writing to the DBE subcontractor of its intent to terminate and the reason for the request. The Contractor shall give the DBE five days to respond to the notice and advise of the reasons why it objects to the proposed termination. When a DBE subcontractor is terminated or fails to complete its work on the Contract for any reason, the Contractor shall make good faith efforts to find another DBE subcontractor to substitute for the original DBE and immediately notify the AGENCY in writing of its efforts to replace the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the Contract as the DBE that was terminated, to the extent needed to meet the Contract goal established for this procurement. Failure to comply with these requirements will be in accordance with Section 8 below (Sanctions for Violations).

### **Continued Compliance**

The AGENCY shall monitor the Contractor's DBE compliance during the life of the Contract. In the event this procurement exceeds ninety (90) days, **it will be the responsibility of the Contractor to submit quarterly written reports to the AGENCY that** summarize the total DBE value for this Contract. These reports shall provide the following details:

- DBE utilization established for the Contract;
- Total value of expenditures with DBE firms for the quarter;
- The value of expenditures with each DBE firm for the quarter by race and gender;
- Total value of expenditures with DBE firms from inception of the Contract; and
- The value of expenditures with each DBE firm from the inception of the Contract by race and gender.

Reports and other correspondence must be submitted to the DBE Coordinator with copies provided to the [Agency Name1] and [Agency Name2]. Reports shall continue to be submitted quarterly until final payment is issued or until DBE participation is completed.

The successful Bidder/Offeror shall permit:

- The AGENCY to have access to necessary records to examine information as the AGENCY deems appropriate for the purpose of investigating and determining compliance with this provision, including, but not limited to, records of

expenditures, invoices, and contract between the successful Bidder/Offeror and other DBE parties entered into during the life of the Contract.

- The authorized representative(s) of the AGENCY, the U.S. Department of Transportation, the Comptroller General of the United States, to inspect and audit all data and record of the Contractor relating to its performance under the Disadvantaged Business Enterprise Participation provision of this Contract.
- All data/record(s) pertaining to DBE shall be maintained as stated within this section of the policy, using the DBE Participation Schedule form.

### **Sanctions for Violations**

If at any time the AGENCY has reason to believe that the Contractor is in violation of its obligations under this Agreement or has otherwise failed to comply with terms of this Section, the AGENCY may, in addition to pursuing any other available legal remedy, commence proceedings, which may include but are not limited to, the following:

- Suspension of any payment, in whole or in part, due the Contractor until such time as the issues concerning the Contractor's compliance are resolved; and
- Termination or cancellation of the Contract, in whole or in part, unless the successful Contractor is able to demonstrate within a reasonable time that it is in compliance with the DBE terms stated herein.



**DBE UTILIZATION FORM**

The undersigned Bidder/Offeror has satisfied the requirements of the solicitation in the following manner (please check the appropriate space):

\_\_\_\_\_ The Bidder/Offer is committed to a minimum of \_\_\_\_\_% DBE utilization on this contract.

\_\_\_\_\_ The Bidder/Offeror (if unable to meet the DBE goal of %) is committed to a minimum of \_\_\_\_\_% DBE utilization on this contract and submits documentation demonstrating good faith efforts.

**DBE PARTICIPATION SCHEDULE**

The Bidder/Offeror shall complete the following information for all DBEs participating in the contract that comprises the DBE Utilization percent stated in the DBE Utilization Form. The Bidder/Offeror shall also furnish the name and telephone number of the appropriate contact person should the Authority have any questions in relation to the information furnished herein.

**DBE IDENTIFICATION AND INFORMATION FORM**

<b>Name and Address</b>	<b>Contact Name and Telephone Number</b>	<b>Participation Percent (Of Total Contract Value)</b>	<b>Description Of Work To Be Performed</b>	<b>Race and Gender of Firm</b>

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## **INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS FTA Circular 4220.1F**

### **Applicability to Contracts**

The incorporation of FTA terms applies to all contracts.

### **Flow Down**

The incorporation of FTA terms has unlimited flow down.

### **Model Clause/Language**

FTA has developed the following incorporation of terms language:

**Incorporation of Federal Transit Administration (FTA) Terms** - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

## **SAFE OPERATION OF MOTOR VEHICLES**

### **23 USC 402**

**Executive Order No. 13043**

**Executive Order No. 13513**

**US DOT Order No. 3902.10**

### **Applicability to Contracts**

The Safe Operation of Motor Vehicles requirements apply to all federally funded third-party contracts. In compliance with Federal Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. Section 402 note, FTA encourages each third-party contractor to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company owned, rented, or personally operated vehicles, and to include this provision in each third-party subcontract involving the project. Additionally, recipients are required by FTA to include a Distracted Driving clause that addresses distracted driving, including text messaging in each of its third-party agreements supported with Federal assistance.

### **Flow Down Requirements**

The Safe Operation of Motor Vehicles requirements flow down to all third-party contractors at every tier.

### **Model Clause/Language**

There is no required language for the Safe Operation of Motor Vehicles clause. Recipients can draw on the following language for inclusion in their federally funded procurements.

### **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 agreement.

### **SUBSTANCE ABUSE REQUIREMENTS**

**49 USC 5331**

**49 CFR part 655**

**49 CFR part 40**

#### **Applicability to Contracts**

Third-party contractors who perform *safety-sensitive functions* must comply with FTA’s substance abuse management program under 49 C.F.R. part 655, “Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations.” Under 49 C.F.R. § 655.4, *Safety-sensitive function* means any of the following duties, when performed by employees of recipients, subrecipients, operators, or contractors:

1. Operating a revenue service vehicle, including when not in revenue service;
2. Operating a nonrevenue service vehicle, when required to be operated by a holder of a Commercial Driver's License;
3. Controlling dispatch or movement of a revenue service vehicle;
4. Maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service. This section does not apply to the following: an employer who receives funding under 49 U.S.C. § 5307 or § 5309, is in an area less than 200,000 in population, and contracts out such services; or an

employer who receives funding under 49 U.S.C. § 5311 and contracts out such services;

5. Carrying a firearm for security purposes.

Additionally, third-party contractors providing testing services involving the performance of safety sensitive activities must also comply with 49 C.F.R. part 40, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs."

### **Flow Down Requirements**

The Substance Abuse requirements flow down to all third-party contractors at every tier who perform a safety-sensitive function for the recipient or subrecipient.

### **Model Clause/Language**

FTA's drug and alcohol rules, 49 C.F.R. part 655, are unique among the regulations issued by FTA. First, they require recipients to ensure that any entity performing a safety-sensitive function on the recipient's behalf (usually subrecipients and/or contractors) implement a complex drug and alcohol testing program that complies with part 655. Second, the rules condition the receipt of certain kinds of FTA funding on the recipient's compliance with the rules; thus, the recipient is not in compliance with the rules unless every entity that performs a safety-sensitive function on the recipient's behalf is in compliance with the rules. Third, the rules do not specify how a recipient ensures that its subrecipients and/or contractors comply with them.

How a recipient does so is dependent on several factors, including whether the contractor is covered independently by the drug and alcohol rules of another Department of Transportation operating administration, the nature of the relationship that the recipient has with the contractor, and the financial resources available to the recipient to oversee the contractor's drug and alcohol testing program. In short, there are a variety of ways a recipient can ensure that its subrecipients and contractors comply with the rules.

FTA has developed three model contract provisions for recipients to use "as is" or to modify to fit their particular situations.

## **Explanation of Model Contract Clauses**

### **Option 1**

The recipient ensures the contractor's compliance with the rules by requiring the contractor to participate in a drug and alcohol program administered by the recipient. The advantages of doing this are obvious: the recipient maintains total control over its compliance with 49 C.F.R. part 655. The disadvantage is that the recipient, which may not directly employ any safety-sensitive employees, has to implement a complex testing program. Therefore, this may be a practical option for only those recipients that have a testing program for their employees, and can add the contractor's safety-sensitive employees to that program.

**Option 2**

The recipient relies on the contractor to implement a drug and alcohol testing program that complies with 49 C.F.R. part 655, but retains the ability to monitor the contractor's testing program; thus, the recipient has less control over its compliance with the drug and alcohol testing rules than it does under Option 1. The advantage of this approach is that it places the responsibility for complying with the rules on the entity that is actually performing the safety-sensitive function. Moreover, it reserves to the recipient the power to ensure that the contractor complies with the program. The disadvantage of Option 2 is that, without adequate monitoring of the contractor's program, the recipient may find itself out of compliance with the rules.

**Option 3**

The recipient specifies some or all of the specific features of a contractor's drug and alcohol compliance program. Thus, it requires the recipient to decide what it wants to do and how it wants to do it. The advantage of this option is that the recipient has more control over the contractor's drug and alcohol testing program, yet it is not actually administering the testing program. The disadvantage is that the recipient has to specify and understand clearly what it wants to do and why.

**SUBSTANCE ABUSE TESTING****Option 1**

The Contractor agrees to participate in AGENCY's drug and alcohol program established in compliance with 49 C.F.R. part 655.

**SUBSTANCE ABUSE TESTING****Option 2**

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. parts 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 of [name of State], 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 parts 655 before [insert date] and to submit the Management Information System (MIS) reports before [insert date before March 15] to [insert title and address of person responsible for receiving information]. To certify compliance, the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit

Administration Grants and Cooperative Agreements," which is published annually in the *Federal Register*.

### **SUBSTANCE ABUSE TESTING**

#### **Option 3**

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 of [name of State], 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 parts 655 before [insert date] and to submit the Management Information System (MIS) reports before [insert date before March 15] to [insert title and address of person responsible for receiving information]. To certify compliance the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register. The Contractor agrees further to [Select a, b, or c] (a) submit before [insert date or upon request] a copy of the Policy Statement developed to implement its drug and alcohol testing program; OR (b) adopt [insert title of the Policy Statement the recipient wishes the contractor to use] as its policy statement as required under 49 C.F.R. part 655; OR (c) submit for review and approval before [insert date or upon request] a copy of its Policy Statement developed to implement its drug and alcohol testing program. In addition, the Contractor agrees to: [to be determined by the recipient, but may address areas such as: the selection of the certified laboratory, substance abuse professional, or Medical Review Officer, or the use of a consortium].

#### **ACCESS REQUIREMENT FOR PERSONS WITH DISABILITIES (ADA)**

**49 USC 5301**

**29 USC 794**

**42 USC 12101**

#### **ACCESS REQUIREMENTS FOR PERSONS WITH DISABILITIES (ADA)**

The Contractor agrees to comply with the requirements of 49 U.S.C. § 5301(d) which expresses the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement those policies. The Contractor also 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, and with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires the provision of accessible facilities and services, and with the following Federal regulations, including any amendments thereto:

- (1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
- (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
- (3) Joint U.S. Architectural and Transportation Barriers Compliance Board/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
- (4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
- (5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
- (6) U.S. GSA regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
- (7) U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
- (8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and
- (9) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and any implementing requirements FTA may issue.

## APPENDIX C - ESTIMATE GUIDE

Estimate Type	Items to Include	Where to find supporting information
Services (Other than A & E)	<ol style="list-style-type: none"> <li>1. Description of services</li> <li>2. Qualifications of service providers</li> <li>3. Estimates hours by position or tasks</li> <li>4. Hourly rates or fees, salaries or commissions</li> <li>5. Prevailing wage rate category applied</li> <li>6. Direct Expenses</li> <li>7. Completion Schedule</li> </ol>	<ol style="list-style-type: none"> <li>1. Current or past contracts for similar services.</li> <li>2. Other transit agencies doing similar work.</li> </ol>
Architects, Engineers, Designers	<ol style="list-style-type: none"> <li>1. The tasks you want done.</li> <li>2. The types of people needed (i.e. engineers, admin. Assistant, other)</li> <li>3. The positions: Project Manager, Deputy PM, Senior Engineer/Planner, other)</li> <li>4. The estimated hours by position.</li> <li>5. The salary/billing rates applied.</li> <li>6. The profit/applied fee</li> <li>7. Overhead rate %</li> <li>8. Direct Expenses</li> <li>9. Completion Schedule</li> </ol>	<ol style="list-style-type: none"> <li>1. Current or past contracts for similar services.</li> <li>2. Other properties during similar work.</li> </ol>
Goods/Equipment	<ol style="list-style-type: none"> <li>1. Product needed</li> <li>2. Quantity</li> <li>3. Unit Price</li> <li>4. Delivery Schedule desired</li> <li>5. Warranty</li> </ol>	<ol style="list-style-type: none"> <li>1. Vendor survey/Market Survey or informal quotes</li> <li>2. Price lists</li> <li>3. Current or past contracts for the same or similar product</li> <li>4. Catalog or Internet prices</li> </ol>
Construction	<ol style="list-style-type: none"> <li>1. Product Needed</li> <li>2. Labor (at a minimum use Davis Bacon)</li> <li>3. Materials</li> <li>4. Bonds</li> <li>5. Insurance</li> <li>6. Mobilization</li> <li>7. Equipment</li> <li>8. Mark ups; fringes; overheads; profits</li> <li>9. Completion Schedule</li> </ol>	<ol style="list-style-type: none"> <li>1. "Means Book"</li> <li>2. "Blue Book"</li> <li>3. Davis Bacon Wage Rates <a href="http://www.gpo.gov/davisbacon">www.gpo.gov/davisbacon</a></li> </ol>



## APPENDIX D

### PROCUREMENT CHECKLIST & INSTRUCTIONS

*As an FTA grantee, MAX is responsible for managing its programs and projects in compliance with applicable Federal requirements, and the FTA is responsible for ensuring that recipients comply with those requirements. This also applies to each subrecipient, under an FTA grant or cooperative agreement that enters into contracts with other parties financed with FTA assistance. The Checklists on the following pages are intended to offer guidance through a procurement process when utilizing federal and state funding; it does not constitute full compliance and local procurement guidelines may supersede federal and state procedures.*

STEP 1 – Complete Project Information

STEP 2 – Prepare Independent Cost Estimate (ICE)

STEP 3 – Identify Solicitation Process to Be Used

STEP 4 – Solicitation Development & Submission Requirements

- Method 1 - Required Documentation (Rolling Stock Solicitation)
- Method 2 - Required Documentation (Non-Competitive Solicitation)
- Method 3 - Required Documentation (Competitive Solicitation)
- Method 4 - Required Documentation (Piggyback Solicitation)
- Method 5 - Required Documentation (Sole Source Solicitation)
- Method 6 - Required Documentation (Qualified Based - BROOKS ACT)

STEP 5 – Solicitation & Bid Opening Submission Requirements

STEP 6 – Award & Contract Administration Requirements

STEP 7 – Project Closeout & Reimbursement Requirements

## COMPREHENSIVE PROCUREMENT CHECKLIST

### STEP 1 – Complete Project Information Below

Project Manager/Dept.: \_\_\_\_\_ Date: \_\_\_/\_\_\_/\_\_\_

PROCUREMENT TYPE		PROJECT DESCRIPTION
<input type="checkbox"/> Professional Services	<input type="checkbox"/> Operations/Management	
<input type="checkbox"/> Architectural	<input type="checkbox"/> Rolling Stock	
<input type="checkbox"/> Engineering	<input type="checkbox"/> Construction	
<input type="checkbox"/> Architectural & Engineering	<input type="checkbox"/> Material & Supplies	

Person making purchase:

\_\_\_\_\_

### STEP 2 – Prepare Independent Cost Estimate (ICE Form in Appendix A)

Complete the ICE Form in Appendix A of the MAX Purchasing Policy to prepare a cost/price analysis prior to purchases. The ICE Form is submitted to and retained by the Purchasing Coordinator in central procurement files.

### STEP 3 – Complete Solicitation Process to Be Used Below

*Choose the solicitation process used from categories below*

- Non-Competitive Solicitation** *Use for purchases of less than \$50,000*

#### Competitive Solicitation (Choose ONE)

- Information for Bid (IFB)
- Request For Proposal (RFP)
- Request for Quote (RFQ)
- Piggyback
- Sole Source/Single Bid
- Qualification Based (Brooks Act)
- Other \_\_\_\_\_

*For Competitive Solicitations, continue to STEP 4 using the proper method of procurement.*

### STEP 4 – Solicitation Development and Requirements (6 methods of choice)

Select the “Method” of acquisition chosen above from the 6 methods below to determine necessary requirements to follow.

**Method 1 - Required Documentation (Rolling Stock Solicitations Only)** all required documents are to be submitted to the Executive Director for review and approval. “Notice to Advance Procurement” form to be signed by Executive Committee prior to project advancement to be eligible for applicable funding.

	Requirement	Performed		Requirement	Performed
1	Obtain written approval from Executive Director and Executive Committee to purchase rolling stock	Yes ___ No ___	5	<u>Price/cost Analysis</u> – Perform a price or cost analysis to assure price is reasonable.	Yes ___ No ___
2	Develop technical specs and cost sheet and submit for review and approval	Yes ___ No ___	6	<u>Copy of contract or purchase order</u> Submit a copy of contract or PO containing all federally required clauses and signed certifications.	Yes ___ No ___
3	<u>Excluded Parties List System (EPLS)</u> – Review the Excluded Parties List at, <a href="https://www.sam.gov/">https://www.sam.gov/</a> to assure the contractor hasn’t been declared ineligible from receiving Federal contracts.	Yes ___ No ___	7	Was written approval received from the MAX Board to proceed?	Yes ___ No ___
4	Review <u>FTA’s TVM website</u> prior to award to verify TVM Certification. Include a print out of the website page (Rolling Stock Procurements only) ( <a href="http://www.fta.dot.gov/civilrights/12891.html">http://www.fta.dot.gov/civilrights/12891.html</a> )	Yes ___ No ___ N/A ___	8	Develop a Record of Procurement Histor to maintain details of a procurement history	Yes ___ No ___

Continue to **“STEP 5 – Award and Contract Administration Requirements”**

**Method 2 -Required Documentation (Non-Competitive Solicitation)** all required documents are to be submitted to Executive Director for review and approval prior to project advancement to be eligible for applicable funding. Procurements of \$10,000 or more require Executive Committee approval prior to project advancement. (If you are **NOT** purchasing via the **“Non-Competitive Solicitation”** process please skip this section and move to the appropriate section above or below).

1) Was an Independent Cost Estimate (ICE) Performed? Yes \_\_\_ No \_\_\_

2) Search the DBE directory to identify potential qualified DBE vendors (Check the Vendor database on the shared drive or visit [www.FTA.gov](http://www.FTA.gov) for a DBE list) Was this performed? Yes \_\_\_ No \_\_\_

- 3) Was approval obtained at the proper level to proceed with the project solicitation? Yes \_\_\_ No \_\_\_
- 4) A "Written Record of Procurement History" is required to maintain details of a procurement history. Was this file created? Yes \_\_\_ No \_\_\_

Continue to **"STEP 5– Solicitation and Bid Opening Submission Requirements"**

**Method 3 - Required Documentation (Competitive Solicitation)** *all required documents are to be submitted to Executive Director and Executive Committee (MAX) for review and approval prior to project advancement to be eligible for applicable funding. (If you are **NOT** purchasing via the "**Competitive Solicitation**" process skip this section and move to the appropriate section above or below).*

- 1) Was an Independent Cost Estimate Performed? Yes \_\_\_ No \_\_\_
- 2) Submit final version of Solicitation and Specification Development Package to Executive Director and Executive Committee for review and approval prior to project advancement

**The solicitation package should contain at minimum the following content**

- |   |                |
|---|----------------|
| a) Project Scope and Technical Specifications                             | Yes ___ No ___ |
| b) Written Standards of Conduct and Conflicts of Interest                 | Yes ___ No ___ |
| c) Contract Term Limitations (e.g. 5yr limit for Rolling Stock contracts) | Yes ___ No ___ |
| d) Evaluation and Selection Criteria (See Guidelines)                     | Yes ___ No ___ |
| e) DBE Requirements to encourage DBE participation.                       | Yes ___ No ___ |
| f) Assignability Rights   | Yes ___ No ___ |
| g) Protest and Appeals Process  | Yes ___ No ___ |

**Federal Requirements**

- Are required Federal Clauses and Certification attached? Yes \_\_\_ No \_\_\_

*One of the principles of contracting with Federal funds received directly or indirectly from FTA is a recognition that, as a condition of receiving the funds, certain specific Federal requirements must be met not only by the recipient of the funds (the grantee) but also by sub recipients and a grantee's third-party contractors. The Federal requirements to be met by the grantee's third-party contractors will be defined by the clauses and certifications included in the grantee's third party contracts. See comprehensive checklist of required FTA clauses & certifications and FTA matrix.*

- 3) Was the final version of the Solicitation and Specification Development Package submitted to the Purchasing Coordinator, Executive Director and Executive Committee for review with approval to proceed with the solicitation? Yes \_\_\_ No \_\_\_

Continue to **"STEP 5 – Solicitation and Bid Opening Submission Requirements"**

**Method 4 - Required Documentation (PIGGYBACK Solicitation)** *Your Agency may be able to take advantage of existing contracts awarded by other governmental entities for goods/services which you currently need. This practice is called "piggybacking." Required documents are to be submitted to Executive Director and Executive Committee for review and approval prior to project advancement to be eligible for*

*applicable funding. Due to FTA geographical preference rules, MiDeal contracts apply to revenue vehicles only. (If you are **NOT** purchasing via the “PIGGYBACK” process please skip this section and move to the appropriate section above or below).*

- 1) Was an Independent Cost Estimate performed and sent to Purchasing Coordinator? Yes \_\_\_ No \_\_\_
- 2) Request in writing to the contracting agency the right to piggyback of the existing contract. *Was a written request sent to the contracting agency?* Yes \_\_\_ No \_\_\_
- 3) Obtain written approval from contracting agency for rights to piggyback of the existing contract. *Was written approval received from contracting agency?* Yes \_\_\_ No \_\_\_
- 4) Obtain and review from original contracting agency, the original contract, and review for compliance with federal procurement requirements as stated below.
  - a) Was Procurement Competitively Procured? Yes \_\_\_ No \_\_\_
  - b) Have you obtained a copy of the contract and the solicitation document, including the specifications and any Buy America requirements? Yes \_\_\_ No \_\_\_
  - c) Does the solicitation contain an express "assignability" clause that provides for the assignment of the specified deliverables? Yes \_\_\_ No \_\_\_
  - d) Did it include the signed "certifications" required? See “Exhibit 1”. Yes \_\_\_ No \_\_\_
  - e) Did it contain the clauses required by Federal regulations? See “Exhibit 1”. Yes \_\_\_ No \_\_\_
  - f) Were the piggyback quantities (including indefinite quantity) included in the original solicitation; and were they evaluated as part of the contract award decision? Yes \_\_\_ No \_\_\_
  - g) If an indefinite quantity contract, did the original solicitation/contract contain minimum and maximum quantity/value, and represent the foreseeable needs? Yes \_\_\_ No \_\_\_
  - h) If this piggybacking action represents the exercise of an option is it still valid? Yes \_\_\_ No \_\_\_
  - i) Does State law allow for the procedures used by original contracting agency? Yes \_\_\_ No \_\_\_
  - j) Was a cost/price analysis performed by the original contracting agency? Yes \_\_\_ No \_\_\_
  - k) Does the contract meet FTA term limitations (i.e.: 5yr for rolling stock)? Yes \_\_\_ No \_\_\_
  - l) Was there a proper evaluation of the bids or proposals? Yes \_\_\_ No \_\_\_
  - m) If changes are required to deliverables, are they within scope of the contract. Yes \_\_\_ No \_\_\_ N/A \_\_\_
- 5) Was a copy of the original contract obtained? Yes \_\_\_ No \_\_\_
- 6) Were you able to answer yes or N/A to the 13 points of number 4 above? Yes \_\_\_ No \_\_\_
- 7) Have you checked the “Excluded Parties List System” (EPLS) to assure the contractor hasn’t been declared ineligible from receiving Federal contracts? Yes \_\_\_ No \_\_\_
- 8) All piggyback acquisitions require a new municipal/vendor contract be established, including the required federal clauses and certifications. Is there a new municipal/vendor contract? Yes \_\_\_ No \_\_\_
- 9) Was there a current “Price/Cost Analysis performed? Yes \_\_\_ No \_\_\_
- 10) Was new “Buy America” pre-award/post-delivery audits done, if applicable, to ensure nothing has changed since the original award? Yes \_\_\_ No \_\_\_ N/A \_\_\_
- 11) Was the full draft procurement package forwarded to MAX and was written approval received from MAX to proceed? Yes \_\_\_ No \_\_\_
- 12) A "Written Record of Procurement History" is required of grantees to maintain details of a procurement history (see Exhibit II), *was this file created?* Yes \_\_\_ No \_\_\_
- 13) Enter Milestones in database, if applicable

Continue to **“STEP 5 – Solicitation and Bid Opening Submission Requirements”**

**Method 5 - Required Documentation (SOLE SOURCE Solicitation)** *When the recipient requires supplies or services available from only one source, and no other supplies or services will satisfy its requirements, the recipient may make a sole source award. Subsequently, when the recipient requires an existing contractor/worker to make a change to its contract that is beyond the scope of that contract, the recipient has made a sole source award. These scenarios must be justified in writing and supported with evaluation of continuing best value. The determination of unique capability or availability of property or services from one source will be a consideration if one of the conditions described below are present and justified.*

**CONDITIONS:**

1. The item was available only from a single source.
2. Public exigency for the requirement did not permit a delay resulting from a competitive solicitation.
3. An emergency for the requirement did not permit a delay resulting from a competitive solicitation.
4. The FTA authorized noncompetitive negotiations.
5. Competition was determined inadequate after solicitation of a number of sources.

The development of a Sole Source justification should be well documented and have several supporting components to it, and have met one or more of the above conditions.

**Justification should contain at minimum the following checklist credentials:**

- Justification** – Why items/services to be purchased or performed are available only from a single source.
- Business Rational** – Reason for acquiring items or services and their applicability to the project.
- Alternative Evaluation** – Narrative of sole source preference verses performing a re-solicitation and award.
- Cost/Price Analysis** – A cost/price analysis is necessary for all sole source procurements to assure continued best value is being sought.
- Reasonableness of Price** – Narrative of reasonable of price, demonstrating the level of work being performed is a prudent use of resources.

- Certification** – Administrative sign-off on the justification in support of all documentation having been reviewed and approved. “Notice to Advance Procurement” form to be signed by Executive Committee for all procurements of \$10,000 or greater.
  - Scope of Services** – Attach a current “Scope of Services” pertaining to the sole source award.
- 1) Has at least one (1) of the five (5) conditions above been met? Yes \_\_\_ No \_\_\_
  - 2) Has a justification been submitted to Executive Director and Executive Committee for review? Yes \_\_\_ No \_\_\_
  - 3) Was written approval received from Executive Director and Executive Committee to proceed? Yes \_\_\_ No \_\_\_
  - 4) A "Written Record of Procurement History" is required of grantees to maintain details of a procurement history (see Exhibit II), was this file created? Yes \_\_\_ No \_\_\_
  - 5) Enter Milestones in database, if applicable

*Continue to **“STEP 5– Solicitation and Bid Opening Submission Requirements”***

### **Method 6 - Required Documentation (QUALIFICATION BASED - BROOKS ACT)**

*For applicable projects related to or leading to construction, an FTA recipient must use the qualifications-based procurement procedures (Brooks Act procedures) when contracting for A&E services and other services including program and construction management, feasibility studies, preliminary engineering, design, architectural, surveying, mapping, or related services.*

*Not all projects involving construction require qualifications-based procurement procedures such as: end products used in construction, design of message signs, signals, movable barriers, intelligent transportation system (ITS) projects, and actual construction. Whether qualifications-based procurement procedures are necessary depends on the actual services.*

**Qualifications-Based Procurement Procedures** - *The following procedures apply to qualifications-based procurements:*

1. **Qualifications** - Unlike other two-step procurement procedures in which price is an evaluation factor, an offeror’s qualifications are evaluated to determine contract award.
2. **Price** - Price is excluded as an evaluation factor in A&E services only.
3. **Most Qualified** - Negotiations are first conducted with only the most qualified offeror.
4. **Next Most Qualified** - Only after failing to agree on a fair and reasonable price may negotiations be conducted with the next most qualified offeror.

### **Applicability to Design-Bid-Build and Design-Build Procurements**

**Design-Bid-Build** - The design-bid-build procurement method requires separate contracts for design services and for construction.

1. Design Services - For design services, the recipient must use qualifications-based procurement procedures, in compliance with applicable Federal, State and local law.
2. Construction - Because the recipient may not use qualifications-based procurement procedures for the actual construction, alteration or repair of real property, the recipient generally must use competitive procedures for the construction.

Design-Build - The design-build procurement method consists of contracting for design and construction simultaneously with contract award to a single contractor or team.

1. Procurement Method Determined by Value - First separate out the various activities into design or construction costs, and then calculate the estimated total value of each.
2. Construction Predominant - When construction costs are predominant use competitive negotiations or sealed bids for the entire procurement unless determines otherwise in writing.
3. Design Services Predominant - When design costs are predominant use qualifications-based procurements for the entire procurement.
4. Enter Milestones in database, if applicable

Continue to **“STEP 5 – Solicitation and Bid Opening Submission Requirements”**

## STEP 5 – Solicitation & Bid Opening Submission Requirements

The solicitation and BID Opening phase encompasses the Advertising, Opening, Review, Analysis, and the Selection processes of competitive and non-competitive procurements. Detailed and comprehensive execution of this phase can help avoid conflicts that could result in delay or possibly even a re-bid of the entire project. Opportunity for clarification of Solicitation Documents may be necessary. A process to address any potential questions should be offered well in advance of the submission deadline (e.g. Q&A via email, pre-bid conference, etc.)

Examination of all proposals received for responsiveness to all corresponding instructions, forms, terms and specifications contained in the solicitation is necessary to provide a proper evaluation. Failure to do so may affect the evaluation of the Bid.

The Checklist below is intended to offer guidance through the opening and review phase if a solicitation/bid was performed utilizing federal funding, it does not constitute full compliance. State and local procurement guidelines may supersede federal practices and should be reviewed for further compliance requirements.

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*All required documents are to be submitted to the Executive Director and Executive Committee for review and approval prior to project advancement to be eligible for applicable funding. If your purchase is off the MiDeal State Contract, please go to Step 6. All other purchases must complete all questions.*

- 1) Advertisement of the solicitation without geographic preference, except in A/E under certain



circumstances is required.

*MAX will require documented proof this was performed.*

*Was this project advertised without geographic preference?* Yes \_\_\_ No \_\_\_ N/A \_\_\_

- 2) Approved Equals/Request for Clarifications process. *Was an approved equal's process documented?*  
Yes \_\_\_ No \_\_\_ N/A \_\_\_
- 3) Responding to Solicitation Questions - Communicating with potential contractors through pre-bid conferences or Q&A format is a good way to control costs, and minimize disruptions and claims. The grantee "should" post and make the materials distributed and discussed at the conference available to the potential offeror, upon request.  
*Was a Pre-Bid Meeting or Q&A format used?* Yes \_\_\_ No \_\_\_ N/A \_\_\_  
*If so, was all material and discussions posted and made available?* Yes \_\_\_ No \_\_\_
- 4) Bid opening and recording - The opening of bids are public events and open to the general public. The bids are opened at a specified time and recorded on a document called an Abstract of Bids and this document is available for public inspection after completion. *Was a Bid Opening and Recording performed?* Yes \_\_\_ No \_\_\_ N/A \_\_\_
- 5) Review of all Request for Proposals or Invitation for Bids in accordance with selection criteria  
*Were all proposals or bids evaluated based on established Evaluation and Selection Criteria (see Exhibit III) set forth in the solicitation for responsiveness?* Yes \_\_\_ No \_\_\_ N/A \_\_\_
- 6) Disadvantaged Business Enterprises (DBE)- *Were all proposals or bids evaluated to determine if a "Good Faith Effort" to involve DBE's and documentation provided?* Yes \_\_\_ No \_\_\_ N/A \_\_\_
- 7) Tabulation of Bids/Proposals – Document in a tabular format all bids/proposals including selection criteria, responsibility determination and grading. *Was the process of tabulating all bid/proposals performed?* Yes \_\_\_ No \_\_\_ N/A \_\_\_
- 8) Cost or Price Analysis - A cost or price analysis is required for every contract and every change order so that the essential objective of a reasonable price is assured. *Was a cost/price analysis (ICE) performed?* Yes \_\_\_ No \_\_\_
- 9) Debarred Vendors – Review of the list of Excluded Parties at, <https://www.sam.gov/> to assure the contractor hasn't been declared ineligible or debarred from receiving Federal contracts. *Was this process performed and a copy printed?* Yes \_\_\_ No \_\_\_
- 10) Review FTA's TVM website (<http://www.fta.dot.gov/civilrights/12891.html>) prior to bid award to verify TVM Certification. Include a print out of the website page with bid documentation. *Was this process performed?* Yes \_\_\_ No \_\_\_ N/A \_\_\_
- 11) Award Selection and Justification - The potential winning vendor selected, based on evaluation criteria to offer a contract to must be supported with documented justification explaining the decision. If procurement was low bid, provide justification if award is to be to someone other than lowest bidder. *Was this process performed?* Yes \_\_\_ No \_\_\_
- 12) Formal Protests - Were any filed? (if your answer is no, move onto number 13) Yes \_\_\_ No \_\_\_  
If you answered yes, has MAX received all documentation? Yes \_\_\_ No \_\_\_

- 13) Draft copy of proposed Contract – A draft copy of a contract should be developed, containing all federally required clauses and certifications for review prior to actual contract being entering into. *Was this performed and has the Purchasing Office sent the vendor a copy of the required FTA clauses with the Purchase Order?* Yes \_\_\_ No \_\_\_
- 14) Provide copies of all documentation gathered and prepared in steps 1-13 above to MAX Authority Board for review and approval. Proceeding to contract award prior to approval can render the project ineligible for funding. Has all documentation been submitted to MAX Authority Board for review? Yes \_\_\_ No \_\_\_
- 15) Did MAX issue an Award of Contract and/or Notice to Proceed? Yes \_\_\_ No \_\_\_
- 16) Have copies of all required documentation gathered above been sent to the central purchasing files? Yes \_\_\_ No \_\_\_

Continue to **“STEP 6 – Award and Contract Administration Requirements”**

## **STEP 6 – Award and Contract Administration Requirements**

*The Project Award and Contract Administration phase encompasses the contract development, contract award, and order to precede portion of purchasing. If the RFP specifies, the RFP can become the basis for a binding contract with the selected vendor. Clarity of work task expectations should be clear to avoid conflicts or misinterpretations that could result in project delays or unintended results. For example, include deliverables, benchmarks and expectations, and approval process for each step.*

The Checklist below is intended to offer guidance through the Award and Contract Administration phase if a solicitation/bid will use federal funding.

- 1) Award contract, adhering to applicable contract term limitations.  
Was a correspondence for contract award performed? Yes \_\_\_ No \_\_\_
- 2) Finalize Contract w/appropriate clauses & certifications. Was this Performed? Yes \_\_\_ No \_\_\_
- 3) Secure Bonds and Insurance as required. Was this Performed? Yes \_\_\_ No \_\_\_ N/A \_\_\_
- 4) Develop milestones and closeout procedures. Was this Performed? Yes \_\_\_ No \_\_\_
- 5) Awarded Vendor Information – Capture all necessary vendor information, including name, address, phone, fax, email, web, Federal ID, DUNS number, contract amount, and DBE/WMBE status. Yes \_\_\_ No \_\_\_
- 6) Submitted documentation to MAX Authority Board for review and approval. Yes \_\_\_ No \_\_\_
- 7) Written order to Proceed, upon approval from MAX Authority Board. Was this Performed? Yes \_\_\_ No \_\_\_
- 8) Change Orders will require approval before project can proceed further.
  - a. *Were there any “Change Orders”?* Yes \_\_\_ No \_\_\_
  - b. *Did all change orders receive approval to proceed in writing?* Yes \_\_\_ No \_\_\_
  - c. *Did a Price/Cost Analysis accompany all change orders?* Yes \_\_\_ No \_\_\_
- 9) Submit all documentation gathered above to MAX and place in the "Written Record of Procurement History" file? Yes \_\_\_ No \_\_\_
- 10) Enter Vendor data and Milestones in database, if applicable

Continue to **“STEP 7 – Project Closeout and Reimbursement Requirements”**

## STEP 7 – Project Closeout and Reimbursement Requirements

A completed contract is one that is both *physically* and *administratively* complete. A contract is physically complete only after all deliverable items and services called for under the contract have been delivered and accepted by the grantee. A contract is administratively complete when all payments have been made and all administrative actions accomplished. The steps that must be completed to close out a contract will depend upon the type and/or nature of the contract.

The closeout of routine purchase orders or contracts will need to ensure that all acquisitions have been inspected and accepted in conformance with the purchase order/contract specifications. An inspection/acceptance form should be in the file attesting to the contractor's delivery of all contract end items, including any descriptive literature or warranty documentation. There must also be documentation attesting to final payment by the accounts payable department.

Non-routine contracts for services, construction, rolling stock, etc. - Contracts for personal services, complex equipment, construction, and other one-of-kind items will require a number of steps to affect an administrative closeout. Major elements of the closeout process, and related documentation, might include:

1. Has resolution of all contract changes, claims, and final quantities to be delivered taken place? Yes \_\_\_ No \_\_\_ N/A\_\_\_
2. Has settlement of all prime and subcontracts as well as any retainage taken place? Yes \_\_\_ No \_\_\_ N/A\_\_\_
3. Have all post-delivery inspections been performed and documented as acceptable? Yes \_\_\_ No \_\_\_ N/A\_\_\_
4. Have all post-delivery certifications, as applicable, been signed, received and documented, including post-delivery buy America requirements? Yes \_\_\_ No \_\_\_ N/A\_\_\_
5. Did submittal of all required documentation (final reports, lease & service agreements, maintenance policy and plans, etc.) take place? Yes \_\_\_ No \_\_\_ N/A\_\_\_
6. Have all cancelled checks, electronic transfers, project invoice(s), signed agreements and certifications been submitted to MAX for review and final approval of project close-out? Yes \_\_\_ No \_\_\_ N/A\_\_\_
7. Enter Milestones in database, if applicable

### **Important information:**

*Record Retention - The Recipient agrees to maintain intact and readily accessible all data, documents, reports, records, contracts, and supporting materials relating to the Project as the FTA may require during the course of the Project and for three (3) years thereafter.*

*Access to Records of Recipients and Subrecipients - Upon request, the Recipient agrees to permit and require its Subrecipients to permit the Secretary of Transportation, the Comptroller General of the United States,*

*and, if appropriate, the State, or their authorized representatives, to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts of the Recipient and its Subrecipient pertaining to the Project.*

Project Closeout - *Project closeout does not alter these reporting and record retention requirements.*

## APPENDIX E - GUIDELINES

### 1. REQUIRED PURCHASING DOCUMENTATION

Many procurement reviews may find few problems with the fundamental decisions leading to the results of procurement, but may lead to non-compliance issues because decisions were not well documented. Stating briefly why a decision was made may justify the decision/purchase and satisfy the requirements of applicable third-party contracting requirements. Where appropriate, the procurement documentation file should contain:

- Purchase request, acquisition planning info, and other pre-solicitation documents;
- Evidence of funding availability (i.e. Department budget or MAX's Operating Budget);
- Rationale for the method of procurement (negotiations, formal advertising);
- List of vendors solicited & DBE review documentation;
- Independent Cost Estimate (ICE);
- Statement of work/scope of services;
- Public Notices or letter of solicitation to vendors
- Copy of the actual RFP/IFB or solicitation, all addenda, and amendments, and documentation of the questions and responses provided offerors;
- Copies of proposals/quotes received (preferably the one marked "original")
- Documentation of sam.gov debarred vendors check;
- Contractor's contingent fee representation and other certifications and representations;
- Evaluation Criteria, ranking and selection rationale (must include responsiveness to proposal, and cost in criteria) and any raw tabulation sheets used by the selection committee;
- Cost/price analysis that proposed cost is fair and reasonable (after solicitation) and the required internal approvals for award;
- Notice of Award and notice to unsuccessful bidders, and Notice to Proceed
- Record of any protest;
- Bid, Performance, Payment, or other bond documents, and notices to sureties;
- Required insurance documents, if any

Purchase order forms (electronic or manual) and standard files for small purchases can be designed to make the recording of most of the relevant data for small purchases automatic. Bid and proposal files, particularly if you use sealed bids for \$50,000+ purchases can also be standardized to facilitate recording the appropriate data. For larger procurements, there are often memoranda or correspondence that, if assembled in the file, addresses many of the key issues.

The procurement file and the contract administration file can be coordinated by standard practice, so that nothing between bid opening and notice of award is omitted.

## 2. EVALUATION & SELECTION CRITERIA

The required feature that distinguishes an RFP from an IFB is the listing of evaluation factors. These factors typically include responsibility factors (financial, human, and physical capacity to perform), and technical factors (ability to perform based on information submitted and the relative qualifications of the proposer's personnel). Some criteria also list order of importance, weighting and the scoring methods use in selection. For instance, in the case of Qualification-Based purchases, the elimination of cost as being a deciding factor emphasizes the importance of writing to technical, educational and experience skillsets.

The purposes for disclosing of the evaluation process are so that:

- Offerors can more accurately respond to your needs; and
- Clearly present the information you need to conduct your evaluation; and

The competitive proposal process involves a subjective evaluation process and discussions that are typically confidential. Acceptance by the public and dissatisfied offerors is more likely if the evaluation and selection process is well documented.

The following is a listing of elements commonly found in the competitive proposal method of procurement.

- 1) *Technical and cost proposal may be requested under separate cover so that they may be evaluated, frequently by separate staff. Where the appearance of technical objectivity is important, it is a better practice to initially evaluate the technical proposals without knowledge of costs, so that an objective and impartial evaluation can be obtained;*
- 2) *The evaluation factors to be considered (past performance, technical criteria, key personnel, education and experience, cost, and relative importance) in the award are identified in the RFP along with the relative importance of each. While this requires only the ranking of the factors without quantifying the importance or describing the process for applying the factors to proposals, some agencies disclose their selection process in detail. (CAUTION: Disclosing the specific weights and scoring processes may encourage proposers to distort their proposals, and may strengthen the disappointed proposer's attack on an agency's decision);*
- 3) *Provide a full description of the process to be undertaken to guide proposers in a strong understanding your needs. This can also strengthen the impartiality of your evaluation team, encourages openness in a negotiation process.*
- 4) *Notify prospective offerors that award may be made on the basis of initial proposals submitted without any negotiations or discussions. This clearly states the initial proposal should be their best effort.*

### 3. “FULL AND OPEN COMPETITION”

The Federal Transit Administration requires all procurements to be conducted in a manner providing for full and open competition. This requirement limits the use of noncompetitive contract awards to those situations when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and at least one of several specifically named circumstances are present. Thus, contracts with a value of more than \$50,000 shall be awarded by sealed bid or competitive negotiation unless there is an explicit exception, and acceptance of the proposal is subject to MAX Board approval.

The FTA considers the following practices to be restrictive of competition:

- Unreasonable requirements placed on firms in order for them to qualify to do business;
- Unnecessary experience and excessive bonding requirements;
- Noncompetitive pricing practices between firms or between affiliated companies;
- Noncompetitive awards to any person or firm on retainer contracts;
- Restrictive use of brand names;
- Any arbitrary action in the procurement process;
- Geographic preferences;
- Organizational Conflicts of Interest; and
- Prohibitive or restrictive type contracts.

*Brand Names - A name of a product or service that is limited to the product or service produced or controlled by one private entity or by a closed group of private entities. Brand names may include trademarks, manufacturer names, or model names or numbers that are associated with only one manufacturer. The FTA considers use of brand names restrictive without opportunity for an Approved Equals process (an item or service which has been approved by the procuring agency as equal to the brand name item originally specified).*

*Prohibition Against Geographic Preferences - Grantees 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.*

## 4. DISADVANTAGED BUSINESS ENTERPRISE (DBE) “Good Faith Efforts”

MAX maintains procedures that document our Good Faith Efforts to encourage DBE participation on contracts that use federal funds that have an established DBE goal. A good faith effort is defined as one where the bidder:

1. *Documents that it has obtained enough DBE participation to meet the goal; or*
2. *Documents adequate good faith efforts, even though it did not meet the goal.*

Below are suggested actions that MAX should perform and document to demonstrate good faith efforts to encourage DBE participation in solicitations. These efforts must be active steps, which could reasonably be expected to lead to sufficient DBE participation to meet the contract DBE participation goal.

Good Faith Efforts require that the bidder consider all qualified DBEs, who express an interest in performing work under the contract. This means that the bidder cannot reject a DBE as unqualified unless the bidder has sound reasons based on a thorough investigation of the DBE's capabilities. Further, the DBEs standing within its industry, membership in specific groups, organizations or associations and political or social affiliation (e.g. union vs. non-union employee status) are not legitimate reasons for the rejection or non-solicitation of bids in the Contractor's efforts to meet the contract DBE participation goal.

The following, which is not all inclusive, list types of actions which indicate good faith efforts on the part of a bidder to meet MAX's DBE goal. The extent and type of actions required will vary depending on such things as industry practice; the time available for submitting a bid and the type of contract.

1. Attendance at a pre-bid meeting, if any, scheduled to inform DBEs of subcontracting opportunities under a given solicitation.
2. Advertisement in general circulation media, trade association publications, and minority-focus media.
3. Written notification to capable DBEs that their interest in the contract is solicited.
4. Documentation of efforts to negotiate with DBEs for specific sub-contracts including at a minimum:
  - a. The names, addresses, and telephone numbers of DBEs contacted and the date.
  - b. A description of the information provided to DBEs.
  - c. A statement explaining why additional agreements with DBEs were not reached.
5. For DBE bidders contacted but rejected as unqualified, the reason for that conclusion.
6. Documentation of efforts made to assist the DBEs contacted that needed assistance in obtaining bonding or insurance required by the bidder.



7. Documentation of efforts to utilize the services of small business organizations, community and contractor groups to locate qualified DBEs.
8. Documentation that the bidder has broken out contract work items into economically feasible units in fields where there are available DBE firms to perform the work.
9. Evidence that adequate information was provided to DBEs about the plans, specifications and requirements of the contract, and that information was communicated in a timely manner.
10. Documentation of any efforts made to assist interested DBEs in obtaining necessary equipment, supplies, materials or related assistance or services.

**Approval by Governing Board**

The Macatawa Area Express Board of Directors hereby approves revision dated August 28, 2023 of the Procurement Policies and Procedures Manual at the Board meeting held on day 28 of August 2023.



Russell TeSlaa, Board Chairman – Macatawa Area Express