# 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 4220.1G, "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 based on the lowest price (or most economically advantageous), responsiveness, 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 statues 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*~~ *Procurement Coordinator* and *Project Manager*, as well as all additional procedures assigned to the contract administration process.

The Procurement Coordinator is responsible for developing, controlling, revising, and communicating procurement policies and procedures. The ~~Purchasing~~ Procurement 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~~ Procurement 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~~ Procurement 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 $250,000 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

- Maintaining Davis-Bacon Act compliance reports in accordance with U.S. Department of Labor (DOL) regulations
- 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 >$250,000) 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~~ Procurement Coordinator before the Contract Amendment is processed and documented. Documentation of such instances will be provided to the ~~Purchasing~~ Procurement Coordinator, who 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 the 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—per FTA Circular 4220.1G, 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 $250,000.00, 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 over the micro-purchase threshold, 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.~~ A copy of supporting documents will be submitted to Finance with the PO request, such as an accepted quote, SAM.gov debarred vendors check document, and other documents depending on the size of the procurement. The issuance of a PO and its acceptance by the vendor (either through performance or signature on the PO) constitute a contract.

**FUTURE PAYMENTS / PAYABLES**

It is the responsibility of the organization to document and record all future payments for goods and services as described in a purchase order, agreement, or signed contract. The procedure for this process is as follows:

- The Executive Director or their designee will notify the Procurement Coordinator of any goods or services procured through a purchase order, contract, or agreement prior to the issuance of any payments.
- The Procurement Coordinator through the MAX finance software system, will create an accrual or liability entry through a purchase order generated by the MAX software system, that identifies future payment obligations to the vendor.
- The Procurement Coordinator will record future payments in the MDOT excel spreadsheet, as applicable based on the funding source, once an order is placed and the contract or agreement is signed.
- Quarterly, starting from the beginning of the new fiscal year, the Procurement Coordinator and Executive Director will conduct a comprehensive review of all obligations using an open purchase orders report generated by the MAX finance software system.

This report will be cross-referenced with the MDOT excel spreadsheet (as applicable) to ensure the following:

- Obligated payments are accurately recorded.
- If goods or services were rendered and invoices paid, purchase orders are closed in MAX finance software system.

- Additionally, a final review of obligations will be completed by the Procurement Coordinator and Executive Director in August, prior to the close of the fiscal year, to ensure all payables are accurately recorded and any outstanding payments are identified.

**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~~ Procurement Coordinator. Receipts for the petty cash purchases must be signed by the person making the purchase and submitted.

**CREDIT CARD USE**

Credit cards are issued to authorized employees to provide a convenient and efficient method for making approved purchases on behalf of the Authority for official business.

In accordance with the Authority's updated Credit Card Use Policy (effective April 28, 2025), employees who are issued a credit card by the Executive Director must:

- Submit all purchase receipts to the MAX Transit Administrative Assistant to support the reconciliation of bank statements.
- Ensure all transactions are processed as credit (not debit).
- Refrain from using the card for cash advances, which are strictly prohibited.

Employees are responsible for the security of their issued credit cards and must notify the Executive Director immediately if a card is lost or stolen.

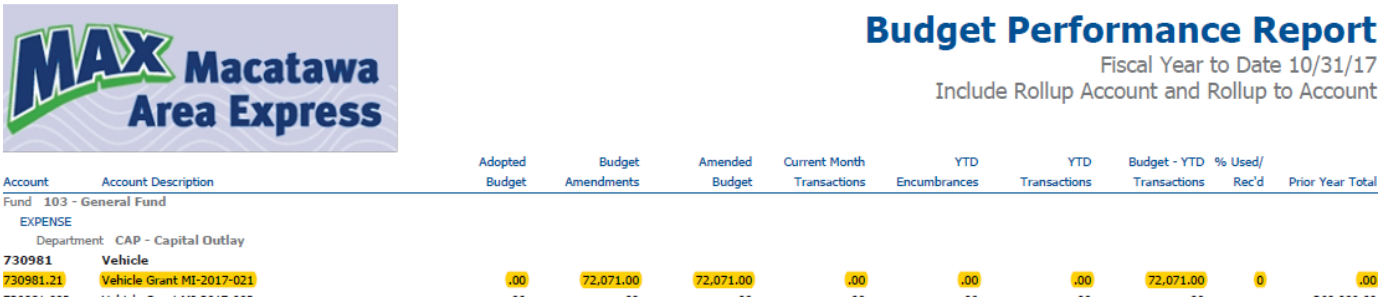
Receipts must clearly indicate the vendor name, items or services purchased, quantity, and date of the transaction. Monthly credit card statements are reconciled by the Executive Director or Deputy Director.

Credit card purchases are limited to the authorized credit limit assigned at the time of issuance, unless prior approval for a higher amount is granted by the Executive Director or Deputy 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. However, in cases where a grant has been apportioned but not yet obligated, procurement activities may proceed only with written confirmation of the award and appropriate authorization.

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.



MAX Macatawa Area Express

**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 |

## 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~~ Fair and Reasonable Form). MAX prohibits splitting of procurements to avoid competition. Micro-purchases should be distributed equitably among qualified suppliers within MAX's local area.

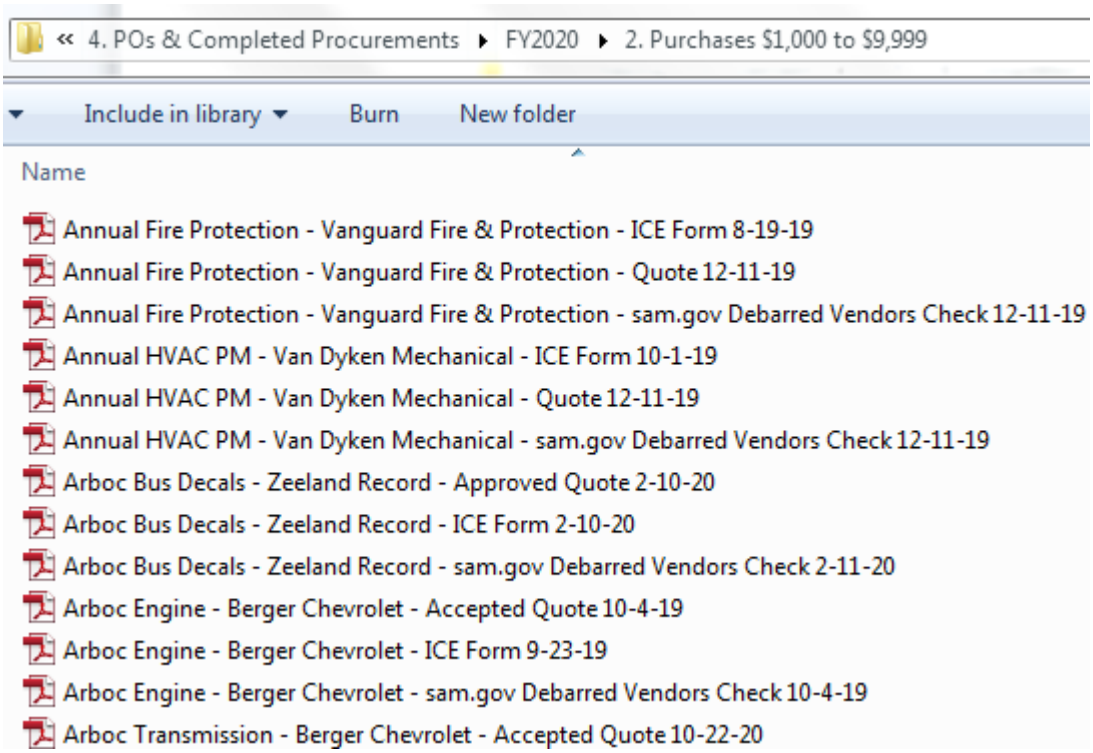
Methods to determine the fair and reasonable price include but are not limited to examples of similar procurements by the agency in the past six months, examples of similar procurements by other governmental agencies in the past six months. To ensure suspended or debarred contractors are not used, MAX 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 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 or Deputy 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.

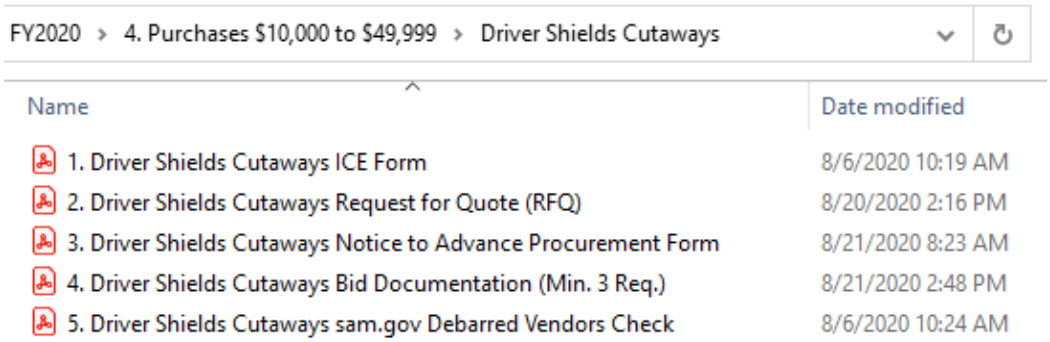
For this threshold, a *Written Record of Procurement History* for each purchase is housed electronically:




**SMALL PURCHASES ~~$10,000 to $50,000~~ $10,000 up to $250,000**

Small purchases are relatively simple and informal purchases of $10,000 or more, but less than $250,000. 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 for capital projects such as buses or equipment when operation expenses do not apply. Purchases with an estimated cost over $50,000 will require board approval prior to accepting any quotes received and entering into a contract. ***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:*




**COMPETITIVE BID METHOD ~~$50,000 or Greater~~ $250,000 or Greater**

1. Competitive Bid Methods

For purchases of $250,000 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 for capital projects when operation funds do not apply.

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 (RFP)
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. MAX may include use different naming conventions such as "Request for Offer", "Call for Proposal," or "Request for Solutions", etc., especially when piggybacking or using State contracts, these shall treated the same as an RFP.

Invitation for Bid (IFB)
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. MAX may include use different naming conventions such as "Request To Bid", especially when piggybacking or using State contracts, these shall treated the same as an IFB.

Purchases of $250,000 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)~~ two (2) qualified vendors and request their submission of a proposal or bid for purchases expected to be $250,000 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 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 Bidnet, APTA's (American Public Transportation Association) publication *Passenger Transport* or its website, and/or ctaa.org or 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. Once MAX has moved on to the next most qualified firm for negotiations, it may not return to or reopen negotiations with a previously considered firm. The opportunity to negotiate or award the contract to the originally ranked firm is forfeited once negotiations have commenced with the next ranked proposer.

6. Buy America / Buy America, Build America

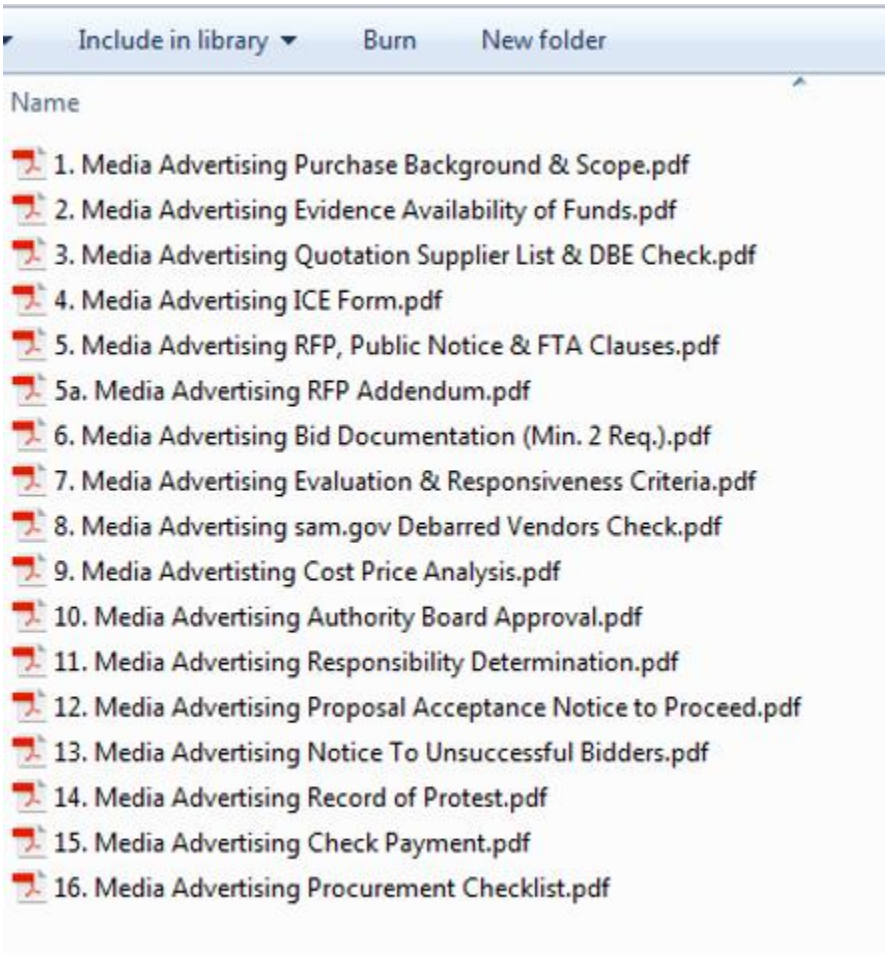
MAX complies with the Federal Transit Administration's (FTA) Buy America and Build America requirements (49 U.S.C. § 5323(j); 49 CFR Parts 661 & 663) for all federally funded procurements over $150,000 involving steel, iron, or manufactured products, including rolling stock. These provisions mandate that all applicable materials be produced in the United States and that final assembly of manufactured products occur domestically, meeting the required U.S. content thresholds. This requirement applies to the entire contract, not merely to the portion that includes steel or other covered materials, and is especially critical in construction and vehicle procurements. Contractors and vendors must submit the appropriate Buy America certifications with their bids or proposals; procurements cannot proceed without verified compliance or an approved FTA waiver.

To document compliance and maintain grant eligibility, MAX completes all FTA-required certifications for each applicable purchase:

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

Any contractor failing to meet these standards will be deemed non-responsive and ineligible for award.

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* (Communities often only have one utility supplier) *Limited rights in data, patent rights, or copyrights, or secret processes* (if one entity owns the patent on a process or product other venders may not be able to meet the need) *Major natural gas distribution line leak* (emergency situation requiring quick response). 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 a Fair and Reasonable form or ICE form (whichever applies) 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 Procurement 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 Executive Director.

## 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 $250,000 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). Appropriate approvals must be obtained for threshold amount prior to requesting a requisition. PO requests are entered into the finance software system and are approved by the Executive Director or Deputy Director and the Finance Office.

POs ~~-~~ requisitions are prepared by the ~~Purchasing Office~~ Procurement Coordinator or designee (MAX) and ~~forwarded~~ submitted to the Finance Office to ensure policy compliance. 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. The Procurement Coordinator or designee (MAX) will forward the PO to originating project manager which contains a link to all FTA clauses and clause applicability matrix. ~~MAX considers the vendor accepting the PO acknowledges and acceptance of all required federal clause.~~ By accepting the PO, the vendor is deemed to have acknowledged and accepted all required federal clauses.

## 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 $250,000 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 protester 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 federal interest from the disposition. If rolling stock or equipment 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. If rolling stock or equipment has met its useful life the Federal share of the proceeds may need to be returned to the FTA if over the FTA determined threshold.

**Retain and Used 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 $10,000 or more** —After the useful service life of equipment is reached, equipment with a current market value of $10,000 per unit or more, or unused supplies with a total aggregate fair market value of 10,000 may be retained or sold. If sold, MAX retains the first $5,000 with the remaining federal share percentage used at the time of procurement, being owed to the FTA. ~~an~~

~~80/20 split of remaining balance. 80% returned to FTA, 20% retained.~~ The typical federal share for capital is considered 80 percent. The grantee's transmittal letter should state whether the equipment will be retained or sold.

**Value Less Than $10,000**—Equipment with a unit market value of $10,000 or less, or supplies with a total aggregate market value of less than $10,000, 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 $10,000, 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 Procurement Coordinator before making purchases over $250,000 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 $250,000 or more).*

REFERENCE:
As required by Federal Transit Administration Circular FTA C 4220.1G Third Party Contracting Guidance, January 17, 2025, and all subsequent editions, as available on FTA's website, www.fta.dot.gov.

**BIDDERS LIST INFORMATION FORM**

**A COPY OF THIS FORM IS REQUIRED FOR ALL BIDDERS, PRIME CONTRACTORS, POTENTIAL SUBCONTRACTORS, AND SUBCONTRACTORS**

**PLEASE FILL OUT EACH SECTION OF THIS FORM COMPLETELY**

**PROJECT NAME PROPOSAL SUBMITTED FOR:** _____ **DATE:** ___/___/_____

Contractor Information

Company Name: _____

Company Address: _____

Company City: _____ Company State: _____ Company Zip Code: _____

Age of the Firm *(number of years doing business under current name and/or incorporation):* _____

Company Status:

☐ Prime Contractor ☐ Subcontractor

Gender of Company's Majority Owner:

☐ Male ☐ Female

Race of Company's Majority Owner:

☐ White/Non-Minority (NH)
☐ Black/African American (NH)
☐ Asian-Pacific American (NH)
☐ Subcontinent Asian American (NH)
☐ Native American/Alaska Native (NH)
☐ Mixed/Multi-Racial (NH)
☐ Some Other Race (NH)
☐ Hispanic/Latino American

*(NH = Non-Hispanic) Note: The US Census treats Hispanic/Latino as an ethnic category. This chart excludes Latinos from the racial categories and assigns them to a separate category. Hispanics/Latinos can be of any race.*

Annual Gross Receipts *(most recently completed/audited year):*

☐ <$500,000
☐ $500,000 - $1 million
☐ $1 million - $3 million
☐ $3 million - $6 million
☐ $6 million - $10 million
☐ Above $10 million

*NAICS Code (applicable to each scope of work proposed by the firm in its bid)*: _____
(NAICS codes can be found at www.naics.com)

Is your company certified in the State of Michigan as a Disadvantaged Business Enterprise (DBE)?

☐ Yes ☐ No

# FAIR AND REASONABLE DETERMINATION

**DATE:**

**DEPARTMENT:**

**PERSON REQUESTING THE PROCUREMENT:**

**PROJECT:** NAME OF PROJECT

**Micro-purchases ($10,000 or less) do not require more than one price or quote, but must certify that the price paid is fair and reasonable.**

Please describe how you determined the price was Fair and Reasonable:

☐ Compared the quoted prices received for the same type of item.
☐ Compared the quoted price to the price paid recently for the same type of item Previous purchase date for similar item (attach).
☐ Published advertisement that shows regular and sale prices. (attach).
☐ Item is a standard commercial item sold in the open marketplace with published price list from advertising, internet, and catalogs (attach).
☐ Purchase was made from an existing blanket purchase agreement for which competition was obtained.
☐ Analysis of price components against current published standards, such as labor rate, cost per unit, etc. (attach).
☐ Other (describe) _____

_____

_____
Printed Name / Title

_____
Signature of Authorized Representative

# NOTICE TO ADVANCE PROCUREMENT

**DATE:**

**DEPARTMENT:**

**PERSON REQUESTING THE PROCUREMENT:**

**PROJECT:** NAME OF PROJECT

***This form is to be completed prior to seeking quotes/bids/proposals for capital projects such as buses or equipment exceeding $10,000 and when operation funds do not apply.***

The Macatawa Area Express Transportation Authority ("MAX") Executive Committee hereby approves the request to advance procurement of the above-named product 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 $250,000
☐ Request for Proposal (RFP) $250,000 and above
☐ Invitation for Bid (IFB) $250,000 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:

_____

Signature of Project Manager or Person Making the Purchase

_____

Signature of Executive Director or Procurement Coordinator

# BID ABSTRACT FORM

| | |
|---|---|
| Opening Date/Time: | |
| Issuing Department: | |
| Project Title: | |
| Page _____of _____ | |

| No. | Name of Bidder | Bid Delivery Date/Time Met* | Std or Legal** | Cost Option 1 | Cost Option 2 | Cost Option 3 | Remarks |
|---|---|---|---|---|---|---|---|
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|---|---|
| *Indicate with an X if offer conforms to delivery time specifications in solicitation.<br>**Indicate S for Standard envelope, L for Legal envelope or B for package/box. | PRINTED NAME AND TITLE DATE |
| I CERTIFY THAT I HAVE OPENED, READ ALOUD, AND RECORDED ON THIS ABSTRACT ALL OFFERS RECEIVED IN RESPONSE TO THE SOLICITATION. | SIGNATURE OF PERSON OPENING SOLICITATIONS<br>WITNESS NAME AND TITLE DATE<br>WITNESS SIGNATURE |

## 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***

_____
Printed Name

_____
Title

_____
Signature of Authorized Representative

_____
Date

***MAX Authority Authorization***

_____
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 quote/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, PRICE ANALYSIS***)

☐ Sole Source Procurement (Requires: ***COST ANALYSIS***)

☐ Change Order (Requires: ***COST ANALYSIS***)

☐ Procurement is $250,000 or more and requires the completion of an Independent Cost Estimate (ICE) Form.

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

Catalog postings/past procurements —as indicated in the Fair and Reasonable Form—show similar pricing at **$00,000.00.**

The winning bidder WINNING COMPANY submitted pricing of up to **$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 & CERTIFICATIONS MATRIX

Applicability of Third-Party Contract Provisions (excluding micro-purchases, except Davis-Bacon requirements apply to contracts exceeding $2,000) Includes provisions from 2 CFR 200, Master Agreement 32 (FY25) and Circular 4220.1G

| TYPE OF PROCUREMENT | | | | | |
|---|---|---|---|---|---|
| **Provision** | **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 |
| Federal Tax Liability and Recent Felony Convictions | All | All | All | All | All |
| 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 ActSection 1Section 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<br>1. Seat Belt Use<br>2. Distracted Driving | All | All | All | All | All |
| Prohibition on certain telecommunications and video surveillance services or equipment | All | All | All | All | All |

# FEDERALLY REQUIRED CLAUSES

Third-Party Contract Provisions including applicability to contracts, flow down requirements, model clause language as required by the 2 CFR 200, Master Agreement 30 and Circular 4220.1G.

## ACCESS TO RECORDS AND REPORTS

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

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

c. Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract in accordance with 2 CFR § 200.337.

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

## AMERICANS WITH DISABILITIES ACT (ADA)

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

## BOND REQUIREMENTS

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the

bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

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

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

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

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

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

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

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

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

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

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

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

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

## BUS TESTING

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

## BUY AMERICA REQUIREMENTS

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661 and 2 CFR §

200.322 Domestic preferences for procurements, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7.

Construction materials used in the Project are subject to the domestic preference requirement of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 – 70927 (2021), as implemented by the U.S. Office of Management and Budget, the U.S. Department of Transportation, and FTA. The Recipient acknowledges that this agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).
Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C), 49 U.S.C. § 5323(u) and 49 C.F.R. § 661.11. Domestic preferences for procurements
The bidder or offeror must submit to the Agency the appropriate Buy America certification. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive. For more information, please see the FTA's Buy America webpage at: https://www.transit.dot.gov/buyamerica

**CARGO PREFERENCE REQUIREMENTS**

The contractor agrees:
a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of 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.); and
c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

**CHANGES TO FEDERAL REQUIREMENTS**

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

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

**CHARTER SERVICE**

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

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

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

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

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

**CIVIL RIGHTS LAWS AND REGULATIONS**

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

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

1 Federal Equal Employment Opportunity (EEO) Requirements. These include, but are not limited to:

a) Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation 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.

Civil Rights and Equal Opportunity

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

1. Nondiscrimination. In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

2. 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.

5. Promoting Free Speech and Religious Liberty. The Contractor shall ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

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

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

Clean Air Act

(1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(2) The contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by FTA.

Federal Water Pollution Control Act

(1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
(2) The contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by FTA."

**CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

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

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall

require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless

such laborer or mechanic receives compensation at a rate not less than one and one- half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
(3) Withholding for unpaid wages and liquidated damages. The agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section."

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

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

in Whole or in part by Loans or Grants from the United States." The Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

**DEBARMENT AND SUSPENSION**

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

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

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

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

**DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

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

It is the policy of the Agency and the United States Department of Transportation ("DOT") that

Disadvantaged Business Enterprises ("DBE's"), as defined herein and in the Federal regulations published at 49 C.F.R. part 26, shall have an equal opportunity to participate in DOT-assisted contracts.
The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Agency deems appropriate, which may include, but is not limited to:

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

Prime contractors are required to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the Agency makes to the prime contractor. 49 C.F.R. § 26.29(a).
Finally, for contracts with defined DBE contract goals, the contractor shall utilize the specific DBEs listed unless the contractor obtains the Agency's written consent; and that, unless the Agency's consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

**ENERGY CONSERVATION**

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

**EQUAL EMPLOYMENT OPPORTUNITY**

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination;

rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees

and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or

vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes

involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

**FLY AMERICA**

a) Definitions. As used in this clause—

1) "International air transportation" means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.
2) "United States" means the 50 States, the District of Columbia, and outlying areas.
3) "U.S.-flag air carrier" means an air carrier holding a certificate under 49 U.S.C. Chapter 411.
b) When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, Agencys, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.
c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.
d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:
Statement of Unavailability of U.S.-Flag Air Carriers
International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. [State reasons]:

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

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

The provisions within include, in part, certain Standard Terms and Conditions required under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR § 200), whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, detailed in 2 CFR § 200 or as amended by 2 CFR §

1201, or the most recent version of FTA Circular 4220.1 are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any request which would cause a violation of the FTA terms and conditions.

**NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

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

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

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

(1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.

(2) Matters that may affect the Federal Government include, but are not limited to, the Federal

Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal

laws, regulations, and requirements.

(3) The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct. This responsibility occurs whether the Project is subject to this

Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient.

**PATENT RIGHTS AND RIGHTS IN DATA**

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

The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Contract and shall, at a minimum, include the following restrictions: Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of FTA, until such time as FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution.
For purposes of this Contract, the term "subject data" means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of "subject data" include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial

reports, cost analyses, or other similar information used for performance or administration of the Contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:
1) Procure or obtain;
2) Extend or renew a contract to procure or obtain; or
3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.
(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
b) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.
c) See Public Law 115-232, section 889 for additional information.

d) See also § 200.471.

**PROMPT PAYMENT**

(Does not apply to projects fully funded by the Tribal Transportation Program (TTP).)
The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work. In addition, the contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.
The contractor must promptly notify the Agency, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the Agency.
PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS

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

1. U.S. DOL Certification. Under this Contract or any Amendments thereto that involve public transportation operations that are supported with federal assistance, a certification issued by U.S. DOL is a condition of the Contract.
2. Special Warranty. When the Contract involves public transportation operations and is supported with federal assistance appropriated or made available for 49 U.S.C. § 5311, U.S. DOL will provide a Special Warranty for its Award, including its Award of federal assistance under the Tribal Transit Program. The U.S. DOL Special Warranty is a condition of the Contract.

3. Special Arrangements. The conditions of 49 U.S.C. § 5333(b) do not apply to Contractors providing public transportation operations pursuant to 49 U.S.C. § 5310. FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate, and, in those instances, any special arrangements required by FTA will be incorporated herein as required.

**RESTRICTIONS ON LOBBYING**

Conditions on use of funds.

(a) No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(b) Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement shall file with that agency a certification, that the person has not made, and will not make, any payment prohibited by paragraph (a) of this section.

(c) Each person who requests or receives from an agency a Federal contract, grant, loan, or a cooperative agreement shall file with that agency a disclosure form if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (a) of this section if paid for with appropriated funds.

(d) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a statement, whether that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

(e) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a disclosure form if that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

Certification and disclosure.

(a) Each person shall file a certification, and a disclosure form, if required, with each submission that initiates agency consideration of such person for:

(1) Award of a Federal contract, grant, or cooperative agreement exceeding $100,000; or

(2) An award of a Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding $150,000.

(b) Each person shall file a certification, and a disclosure form, if required, upon receipt by such person of:
(1) A Federal contract, grant, or cooperative agreement exceeding $100,000; or
(2) A Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding $150,000,

Unless such person previously filed a certification, and a disclosure form, if required, under paragraph (a) of this section.
(c) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraphs (a) or (b) of this section. An event that materially affects the accuracy of the information reported includes:
(1) A cumulative increase of $25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
(2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or,
(3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.
(d) Any person who requests or receives from a person referred to in paragraphs (a) or (b) of this section:
(1) A subcontract exceeding $100,000 at any tier under a Federal contract;
(2) A subgrant, contract, or subcontract exceeding $100,000 at any tier under a Federal grant;
(3) A contract or subcontract exceeding $100,000 at any tier under a Federal loan exceeding
$150,000; or,
(4) A contract or subcontract exceeding $100,000 at any tier under a Federal cooperative agreement,
Shall file a certification, and a disclosure form, if required, to the next tier above.
(e) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraphs (a) or (b) of this section. That person shall forward all disclosure forms to the agency.
(f) Any certification or disclosure form filed under paragraph (e) of this section shall be treated as a material representation of fact upon which all receiving tiers shall rely. All liability arising from an erroneous representation shall be borne solely by the tier filing that representation and shall not be shared by any tier to which the erroneous representation is forwarded. Submitting an erroneous certification or disclosure constitutes a failure to file the required certification or disclosure, respectively. If a person fails to file a required certification or disclosure, the United States may pursue all available remedies, including those authorized by section 1352, title 31, U.S. Code.
(g) For awards and commitments in process prior to December 23, 1989, but not made before that date, certifications shall be required at award or commitment, covering activities occurring between December 23, 1989, and the date of award or commitment. However, for

awards and commitments in process prior to the December 23, 1989 effective date of these provisions, but not made before December 23, 1989, disclosure forms shall not be required at time of award or commitment but shall be filed within 30 days.
(h) No reporting is required for an activity paid for with appropriated funds if that activity is allowable under either subpart B or C.

**SAFE OPERATION OF MOTOR VEHICLES**

Seat Belt Use
The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or Agency.
Distracted Driving
The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contactor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract.

**SCHOOL BUS OPERATIONS**

The contractor agrees to comply with 49 U.S.C. 5323(f), and 49 C.F.R. part 604, and not engage in school bus operations using federally funded equipment or facilities in competition with private operators of school buses, except as permitted under:
1. Federal transit laws, specifically 49 U.S.C. § 5323(f);
2. FTA regulations, “School Bus Operations,” 49 C.F.R. part 605;
3. Any other Federal School Bus regulations; or
4. Federal guidance, except as FTA determines otherwise in writing.

If Contractor violates this School Bus Agreement, FTA may:
1. Bar the Contractor from receiving Federal assistance for public transportation; or
2. Require the contractor to take such remedial measures as FTA considers appropriate.

When operating exclusive school bus service under an allowable exemption, the contractor may not use federally funded equipment, vehicles, or facilities.
The Contractor should include the substance of this clause in each subcontract or purchase under this contract that may operate public transportation services.

**SEISMIC SAFETY**

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of

Transportation (DOT) Seismic Safety Regulations 49 C.F.R. part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety regulations and the certification of compliance issued on the project.

**SIMPLIFIED ACQUISITION THRESHOLD**

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

**SOLID WASTES (RECOVERED MATERIALS)**

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

**SPECIAL DOL EEO CLAUSE FOR CONSTRUCTION PROJECTS**

The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any

Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or

pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

**SPECIAL NOTIFICATION REQUIREMENTS FOR STATES**

Applies to States –

a. To the extent required under federal law, the State, as the Recipient, agrees to provide the following information about federal assistance awarded for its State Program, Project, or related activities:

(1) The Identification of FTA as the federal agency providing the federal assistance for a State Program or Project;

(2) The Catalog of Federal Domestic Assistance Number of the program from which the federal assistance for a State Program or Project is authorized; and

(3) The amount of federal assistance FTA has provided for a State Program or Project.

b. Documents - The State agrees to provide the information required under this provision in the following documents: (1) applications for federal assistance, (2) requests for proposals or solicitations, (3) forms, (4) notifications, (5) press releases, and (6) other publications.

SUBSTANCE ABUSE REQUIREMENTS

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

**TERMINATION**

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

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

control of the Contractor, the Agency, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

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

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

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

Termination for Convenience (Professional or Transit Service Contracts)
The Agency, by written notice, may terminate this contract, in whole or in part, when it is in the Agency's interest. If this contract is terminated, the Agency shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.
Termination for Default (Supplies and Service)
If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.
If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Agency.
Termination for Default (Transportation Services)
If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the Agency may terminate this contract for

default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

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

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

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

The Contractor's right to proceed shall not be terminated nor shall the Contractor be charged with damages under this clause if:
1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of Agency, acts of another contractor in the performance of a contract with Agency, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. The Contractor, within [10] days from the beginning of any delay, notifies Agency in writing of the causes of delay. If, in the judgment of Agency, the delay is excusable, the time for completing the work shall be extended. The judgment of Agency shall be final and conclusive for the parties, but subject to appeal under the Disputes clause(s) of this contract.
3. If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of Agency.

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

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

If the termination is for failure of the Contractor to fulfill the contract obligations, the Agency may complete the work by contact or otherwise and the Contractor shall be liable for any additional cost incurred by the Agency.
If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Agency.

Termination for Convenience or Default (Cost-Type Contracts)
The Agency may terminate this contract, or any portion of it, by serving a Notice of Termination on the Contractor. The notice shall state whether the termination is for convenience of Agency or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the Contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the Agency, or property supplied to the Contractor by the Agency. If the termination is for default, the Agency may fix the fee, if the contract provides for a fee, to be paid the Contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the Agency and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of Agency, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.
If, after serving a Notice of Termination for Default, the Agency determines that the Contractor has an excusable reason for not performing, the Agency, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

## VETERANS HIRING PREFERENCE

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

## VIOLATION AND BREACH OF CONTRACT

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

Performance During Dispute:
Unless otherwise directed by the agencies authorized representative, contractor shall continue performance under this contract while matters in dispute are being resolved.
Claims for Damages:
Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

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

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

## CONFORMANCE WITH ITS NATIONAL ARCHITECTURE

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

## FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS

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

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

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

**SEVERABILITY**

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

**TRAFFICKING IN PERSONS**

The contractor agrees that it and its employees that participate in the Recipient's Award, may not:
(a) Engage in severe forms of trafficking in persons during the period of time that the Recipient's Award is in effect;
(b) Procure a commercial sex act during the period of time that the Recipient's Award is in effect; or
(c) Use forced labor in the performance of the Recipient's Award or subagreements thereunder.

# FEDERALLY REQUIRED CLAUSES

## CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

As required by U.S. Department of Transportation regulations on Government and Suspension at 49 CFR 29.510, the Contractor certifies to the best of its knowledge and belief, that it and its principals:

(1) Are presently not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) transaction or contract under a public transaction; violation of Federal or state anti-trust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.

(3) Are not presently indicted or otherwise criminally or civilly charged by a government entity (Federal, state, or local) with the commission of any of the offenses listed in paragraph (2) of this certification.

(4) Have not within a three-year period preceding this contract had one or more public transactions (Federal, state, or local) terminated for cause of default.

The contractor certifies that if it becomes aware of any later information that contradicts the statements of paragraphs (1) through (4) above, it will promptly inform FTA. Should the contractor be unable to certify to the statements of paragraphs (1) through (4) above, it shall acknowledge on its signature page and provide a written explanation to FTA.

_____

Signature of Authorized Individual

_____

Title

## ACKNOWLEDGEMENT FORM FOR TERMS & CONDITIONS

I have received, read, understand, and agree to comply with the Terms & Conditions and the Required FTA Clauses included in the Macatawa Area Express Transportation Authority.

I understand that failure to acknowledge or comply with any of these terms, conditions, or requirements will deem our firm unresponsive to this RFP or result in our default of the contract after its execution.

Date: _____

Printed Name of Authorized Representative: _____

Signature of Authorized Representative: _____

Name of Firm: _____

Address, City, State: _____

**CERTIFICATION OF COMPLIANCE WITH FTA'S BUS TESTING REQUIREMENTS**

The undersigned [Contractor/Manufacturer] certifies that the vehicle offered in this procurement complies with 49 U.S.C. A 5323(c) and FTA's implementing regulation at 49 CFR Part 665.

The undersigned understands that misrepresenting the testing status of a vehicle acquired with Federal financial assistance may subject the undersigned to civil penalties as outlined in the Department of Transportation's regulation on Program Fraud Civil Remedies, 49 CFR Part 31. In addition, the undersigned understands that FTA may suspend or debar a manufacturer under the procedures in 49 CFR Part 29.

Date: _____

Signature: _____

Company Name: _____

Title: _____

## CERTIFICATION REGARDING LOBBYING

(Applies to all contracts and subcontracts of $100,000 or more at any tier under a Federal grant.)

As required by U.S. Department of Transportation regulations restricting lobbying at 31 U.S.C. 1352, 2 C.F.R. 200.450, 2 C.F.R. part 200 appendix II (J), 49 C.F.R. part 20, 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, or 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 sub recipients 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.C. 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 Authorized Official _____

Name & Title of Authorized Official _____

Date: _____

**BUY AMERICA CERTIFICATE OF COMPLIANCE WITH FTA REQUIREMENTS FOR BUSES, OTHER ROLLING STOCK, OR ASSOCIATED EQUIPMENT**

(To be submitted with a bid or offer exceeding the small purchase threshold for Federal assistance programs, currently set at $100,000.)

**Certificate of Compliance**

The bidder hereby certifies that it will comply with the requirements of 49 U.S.C. Section 5323(j)(2)(C), Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, and the regulations of 49 C.F.R. 661.11:

Date: _____

Signature: _____

Company Name: _____

Title: _____

**Certificate of Non-Compliance**

The bidder hereby certifies that it cannot comply with the requirements of 49 U.S.C. Section 5323(j)(2)(C) and Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, but may qualify for an exception to the requirements consistent with 49 U.S.C. Sections 5323(j)(2)(B) or (j)(2)(D), Sections 165(b)(2) or (b)(4) of the Surface Transportation Assistance Act, as amended, and regulations in 49 C.F.R. 661.7.

Date: _____

Signature: _____

Company Name: _____

Title: _____

## CERTIFICATION FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS

(This form MUST be submitted with the Contract)

The CONTRACTOR hereby certifies the following:

(A) Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and

(B) Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months.

The CONTRACTOR agrees to require all subcontractors to provide this certification and to flow this requirement down to participants at all lower tiers, without regard to the value of any subcontract. The undersigned is authorized to execute this certification on behalf of the CONTRACTOR and certifies on the CONTRACTOR behalf that the information presented is true and correct.

Company Name: _____

Signature:_____

Printed Name: _____Title: _____

Date: _____

# APPENDIX C - ESTIMATE GUIDE

| Estimate Type | Items to Include | Where to find supporting information |
|---|---|---|
| Services (Other than A & E) | 1. Description of services<br>2. Qualifications of service providers<br>3. Estimates hours by position or tasks<br>4. Hourly rates or fees, salaries or commissions<br>5. Prevailing wage rate category applied<br>6. Direct Expenses<br>7. Completion Schedule | 1. Current or past contracts for similar services.<br>2. Other transit agencies doing similar work. |
| Architects, Engineers, Designers | 1. The tasks you want done.<br>2. The types of people needed (i.e. engineers, admin. Assistant, other)<br>3. The positions: Project Manager, Deputy PM, Senior Engineer/Planner, other)<br>4. The estimated hours by position.<br>5. The salary/billing rates applied.<br>6. The profit/applied fee<br>7. Overhead rate %<br>8. Direct Expenses<br>9. Completion Schedule | 1. Current or past contracts for similar services.<br>2. Other properties during similar work. |
| Goods/Equipment | 1. Product needed<br>2. Quantity<br>3. Unit Price<br>4. Delivery Schedule desired<br>5. Warranty | 1. Vendor survey/Market Survey or informal quotes<br>2. Price lists<br>3. Current or past contracts for the same or similar product<br>4. Catalog or Internet prices |
| Construction | 1. Product Needed<br>2. Labor (at a minimum use Davis Bacon)<br>3. Materials<br>4. Bonds<br>5. Insurance<br>6. Mobilization<br>7. Equipment<br>8. Mark ups; fringes; overheads; profits<br>9. Completion Schedule | 1. “Means Book”<br>2. “Blue Book”<br>3. Davis Bacon Wage Rates www.gpo.gov/davisbacon |

# 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) if applicable

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 COMPETITIVE PROCUREMENT CHECKLIST

## STEP 1 – Complete Project Information Below

**Project Manager/Dept.:** _____ **Date:** ___/___/___

| PROCUREMENT TYPE | | PROJECT DESCRIPTION |
|---|---|---|
| ☐ Professional Services | ☐ Operations/Management | |
| ☐ Architectural | ☐ Rolling Stock | |
| ☐ Engineering | ☐ Construction | |
| ☐ Architectural & Engineering | ☐ 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 Procurement 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~~ $250,000*

**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 | Price/cost Analysis – 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 | Copy of contract or purchase order Submit a copy of contract or PO containing all federally required clauses and signed certifications. | Yes __ No __ |
| 3 | Excluded Parties List System (EPLS) – Review the Excluded Parties List at, *https://www.sam.gov/ t*o 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 FTA's TVM website prior to award to verify TVM Certification. Include a print out of the website page (Rolling Stock Procurements only) (http://www.fta.dot.gov/civilrights/12891.html) | Yes __ No __ N/A___ | 8 | Develop a Record of Procurement History to maintain details of a procurement history | Yes __ No __ |

Continue to ***"STEP 5 – Award and Contract Administration Requirements"***

**Method 2 -Required Documentation (Non-Co*mpetitive 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. Capital 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 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 Procurement 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 Procurement 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. Dept. 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;
- □ Bidders List Information Form;
- □ 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 if 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 $250,000+ 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 $250,000 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 November 24, 2025 of the Procurement Policies and Procedures Manual at the Board meeting held on day 24 of November, 2025.

_____

Russell TeSlaa, Board Chairman – Macatawa Area Express