

**MILWAUKEE TRANSPORT SERVICES  
1942 NORTH 17<sup>TH</sup> STREET MILWAUKEE,  
WI 53205  
(414) 937-3298  
(website: [www.ridemcts.com](http://www.ridemcts.com))**

**Purchasing Agent: Stephanie Baker / [sbaker@mcts.org](mailto:sbaker@mcts.org)  
Posted Date: 6/13/2019**

**BID 2019-15 BULK DEICING ROAD SALT**

Milwaukee Transport Services (MTS), operator of the Milwaukee County Transit System (MCTS), is a quasi-governmental instrumentality of Milwaukee County is seeking BIDS from qualified vendors to supply BULK DEICING ROAD SALT. The BIDS will be received by the Milwaukee Transport Services Materials Management Department at the above address until:

**July 19, 2019 -UNTIL 2:00 P.M. CDT**

Bids will be publicly opened and read at the above opening date and time in Room 104 of the Administration Building- Materials Management Department. The bid shall be manually signed by an officer of the firm and shall be returned in a sealed envelope, with the return address and "BID 2019-15" clearly marked on the outside. Late bids will not be opened or accepted for evaluation. Mail or deliver BIDS to:

Milwaukee Transport Services, Inc.  
1942 North 17<sup>th</sup>  
Street Milwaukee, WI 53205  
Attn: Materials Management Department - Room 104

**Requirements:**

To supply Milwaukee Transport Services with BULK DEICING ROAD SALT.

**Specifications:**

BULK DEICING ROAD SALT

**How to Bid and Award of Contract:**

Bid a price for Item 1 – 800,000 tons total, delivered pricing, to the two (2) locations listed.

Award will be based on what is deemed in the best interest of Milwaukee Transport Services, Inc. Award will be made to the lowest responsible, responsive bidder complying with the specifications. The award will be made in aggregate.

Bidders shall be responsible to obtain <http://www.ridemcts.com> all documents pertaining to bid via the website. Late bids will not be accepted. Multiple bids from a single vendor will not be accepted.

**Term of Contract:**

This is a one-time delivery for salt ordered.

**Right to Reject:**

MTS reserves the right to make an award based on its own determination, to reject any or all proposals or portions of same, if in the opinion of MTS, the best interest of MTS will be served thereby.

**Waiver of Informalities:**

In its sole discretion, MTS may waive informalities or minor irregularities in bids received.

**Binding Contract:**

A proposal received in response to this bid is an offer that can be accepted by Milwaukee Transport Services, Inc., to create a binding contract without negotiation with any Firm.

**Tax Exemption:**

MTS is an agency of Milwaukee County and is exempt from Wisconsin Sales Tax under Section 77.54 (9a) (b) of the Wisconsin Statutes, and is exempt from the Federal Excise Tax, and has been granted Exempt No. 39-73-0429K. Wisconsin Exempt No. CES014818. Bids shall be submitted excluding any of these taxes.

**Single Bid, If Received:**

If only a single bid is received, MTS may require that the Bidder provide the necessary cost or pricing data to enable MTS to perform a cost or price analysis to ensure that the bid price is fair and reasonable. If requested, the Bidder shall provide the cost or price data within five (5) working days of the date requested. MTS reserves the right to reject or accept the bid on the basis of the cost or pricing data.

Where only one responsive and responsible bid is received, MTS may also negotiate price with the sole responsive bidder.

**County Rights of Access and Audit:**

The Contractor, Lessee, or other party to the contract, its officers, directors, agents, partners and employees shall allow the County Audit Services Division and department contract administrators (collectively referred to as Designated Personnel) and any other party the Designated Personnel may name, with or without notice, to audit, examine and make copies of any and all records of the Contractor, Lessee, or other party to the contract, related to the terms and performance of the Contract for a period of up to three years following the date of last payment, the end date of this contract, or activity under this contract, whichever is later. Any subcontractors or other parties performing work on this Contract will be bound by the same terms and responsibilities as the Contractor. All subcontracts or other agreements for work performed on this Contract will include written notice that the subcontractors or other parties understand and will comply with the terms and responsibilities. The Contractor, Lessee, or other party to the contract, and any subcontractors understand and will abide by the requirements of Section [34.09](#) (Audit) and Section [34.095](#) (Investigations Concerning Fraud, Waste, and Abuse) of the Milwaukee County Code of General Ordinances

**Order of Precedence:**

An order of precedence is hereby formally established and will be used to form a binding contract. The order is as follows:

1. Purchase Order.
2. All documents contained within and related to BID 2019-15.
3. Proposal from the successful vendor.

The order of precedence establishes that any conflict between the proposal and the Purchase Order and/or BID Documents, the Purchase Order and/or BID Documents take precedence and control.

**Continuation Clause:**

Contractor recognizes that the services under this contract are vital to MTS and to the public and must be continued without interruption. Contractor agrees that MTS, in its sole discretion, and by written notice to Contractor at least 30 days prior to contract expiration, may extend this Agreement for up to an additional 120 days. If so, extended by MTS, Contractor shall continue to provide services under this Agreement, on the same terms as set forth in this Agreement. MTS may terminate any such extension by providing Contractor with 30 days' notice. Contractor further agrees to exercise its best efforts and cooperation to affect an orderly and efficient transition to any successor Contractor.

**Delivery:**

Delivery will be total of 800 TONS - 400 Tons each delivered to the following locations:

Milwaukee Transport Services  
2932 N. 35<sup>th</sup> Street  
Milwaukee WI 53210

Milwaukee Transport Services  
1525 W. Vine Street  
Milwaukee WI 53205

After delivery date(s) are agreed on by both parties - 24-hour notice must be given before delivery. Delivery cannot be to both locations on the same day – there will need to be will need at least one in between both deliveries.

Questions regarding this BID must be submitted in writing to Stephanie Baker at [sbaker@mcts.org](mailto:sbaker@mcts.org). Dead time to submit questions is June 28, 2019 - 4:30 PM. All questions will be answered via Addendum and posted to our site [www.ridemcts.com](http://www.ridemcts.com).

**Enclosures:**

1. Bid 2019-15
2. Bid Pricing Sheet
3. Signature Sheet
4. Requirements/Certification Package – Federal
5. Bidder Form

**Documents to be returned with the Bid:**

1. Bid Pricing Sheet
2. Signature Sheet
3. EEO Certificate
4. Bidder Form
5. Non-Collusion form
6. Anti-lobby Form
7. Debarment Form
8. Conflict of Interest Statement

**Bid Pricing Sheet - 2019-15 BULK DEICING ROAD SALT**

The undersigned bidder proposes to furnish the materials and services herein described, and for the prices hereinafter named, per specification. And, if successful, hereby agrees to enter an agreement with Milwaukee Transport Services, Inc.

**ITEM 1: TOTAL OF 800 TONS OF BULK DEICING ROAD SALT. 400 TONS TO BE DELVIIRD TO THE TWO (2) LOCATIONS LISTED ABOVE. LIST DELIVERED PRICING ONLY.**

Price in numbers \$ \_\_\_\_\_ PER TON

Price in words: \_\_\_\_\_ PER TON

Vendor name: \_\_\_\_\_

DUNS #: \_\_\_\_\_

MILWAUKEE TRANSPORT SERVICES, INC. WILL WRITE THE PURCHASE ORDER. **SIGNATURE**

**SHEET**

**CASH DISCOUNT:**

Cash invoice discount for payment of invoices following receipt and acceptance of goods or services  
\_\_\_\_\_ % 30 days.

**DELIVERY:**

Price shall include delivery, FOB destination freight prepaid to Milwaukee Transport Services, Inc., 1525 W. Vine St., Milwaukee, WI 53205, unless otherwise noted in this bid.

**BY SIGNING THIS BID YOU ARE AGREEING WITH THE FOLLOWING STATEMENTS:**

1. This bid has been made without any connection with any other bidder and is in all respects fair and without collusion or fraud.
2. This bid has been made with the understanding that no elected officer/employee of Milwaukee Transport Services, Inc., or Milwaukee County is interested therein, directly or indirectly.
3. The specifications for this bid have been read and understood.
4. Your company has never defaulted on any contract with Milwaukee Transport Services, Inc., or Milwaukee County.

In signing and submitting this bid, the bidder assures Milwaukee Transport Services, Inc., that the furnishing of the subject materials, services or equipment is under his/her control and accepts and has read all the Terms and Conditions of MTS, of this BID/RFP and all of its documents. If the bidder's performance, in the event he/she is successful is contingent upon the act of another party, the bidder assures MTS that he/she has the necessary commitments to complete the contract which may be awarded him/her.

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

Submitted by: \_\_\_\_\_

Name of firm: \_\_\_\_\_

Address of firm: \_\_\_\_\_

Signed per: (manual signature required) \_\_\_\_\_

Print name: \_\_\_\_\_

Title: \_\_\_\_\_ Email: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

MILWAUKEE COUNTY – BIDDERS LIST FORM  
DOT ASSISTED CONTRACTS [49 CFR, Part 26]

49 CFR, Part 26 requires that all recipients of Federal Funds collect certain information from all bidders submitting responses to solicitations. To assist in the building of demographics for the area upon which reasonable and effective expectations of DBE opportunities may be based, all bidders are required to return this certificate with their offer. Any offer submitted that does not contain a completed copy of this form will be ruled as non-responsive and dropped from further consideration in the procurement process of the solicitation.

Firm Name: \_\_\_\_\_

Firm Address: \_\_\_\_\_

Firm Phone (\_\_\_\_) \_\_\_\_\_ Firm Email Address \_\_\_\_\_

Firm Fax: (\_\_\_\_) \_\_\_\_\_

General Classification of Firm by Quantity of Employees:

\_\_\_\_ Less than 10      \_\_\_\_ 11-50      \_\_\_\_ 51-100      \_\_\_\_ 101-500  
\_\_\_\_ 501-1000      \_\_\_\_ 1001-5000      \_\_\_\_ More than 5000

General Classification of Firm in Age of Existence:

\_\_\_\_ 0-5 years      \_\_\_\_ 6-10 years      \_\_\_\_ 11-50 years      \_\_\_\_ Over 50 years

General Classification by Type:

\_\_\_\_ Firm is a Small Business      \_\_\_\_ Firm is a Certified DBE  
\_\_\_\_ Firm is a Certified WBE      \_\_\_\_ Firm is not one of the above

General Classification by Annual Gross Income:

\_\_\_\_ The approximate annual gross income for this firm is less than \$100,000  
\_\_\_\_ The approximate annual gross income for this firm is \$100,000 - \$250,000  
\_\_\_\_ The approximate annual gross income for this firm is \$250,001 - \$500,000  
\_\_\_\_ The approximate annual gross income for this firm is \$500,000 - \$1M  
\_\_\_\_ The approximate annual gross income for this firm is \$1M - \$5M  
\_\_\_\_ The approximate annual gross income for this firm is greater than \$5M

I certify this information is accurate to the best of my knowledge.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

**NON-COLLUSION AFFIDAVIT**

The undersigned bidder or agent, being duly sworn on oath, says that he/she has not, nor has any other member, representative, or agent of the firm, company, corporation or partnership represented by him, entered into any combination, collusion or agreement with any person relative to the price to be bid by anyone at such letting nor to prevent any person from bidding nor to include anyone to refrain from bidding, and that this bid is made without reference to any other bid and without any agreement, understanding or combination with any other person in reference to such bidding.

He/She further says that no person or persons, firms, or corporation has, have or will receive directly or indirectly, any rebate, fee gift, commission or thing of value on account of such sale.

**OATH AND AFFIRMATION**

I HEREBY AFFIRM UNDER THE PENALTIES FOR PERJURY THAT THE FACTS AND INFORMATION CONTAINED IN THE FOREGOING BID FOR PUBLIC WORKS ARE TRUE AND CORRECT.

Dated this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
(Name of Organization)

\_\_\_\_\_  
(Title of Person Signing)

\_\_\_\_\_  
(Signature)

**ACKNOWLEDGEMENT**

STATE OF \_\_\_\_\_ )

) ss

COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public, personally appeared the above named and swore that the statements contained in the foregoing document are true and correct.

Subscribed and sworn to me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public Signature

My Commission Expires: \_\_\_\_\_

**CERTIFICATION REGARDING  
DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND  
OTHER RESPONSIBILITY MATTERS**

**A. The Proposer certifies to the best of its knowledge and belief that it and its principals:**

1. Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a ten-year period preceding this application 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 antitrust 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 for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (A)(2) of this certification; and
4. Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default.

**B. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective primary participant shall attach an explanation to this proposal.**

Contractor Name: \_\_\_\_\_

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

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

DUNS #: \_\_\_\_\_

Name and Title of Authorized Representative: \_\_\_\_\_

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



### CONFLICT OF INTEREST STATEMENT

\_\_\_\_\_ hereby certifies that our Firm's officers and/or personnel assigned to this project or their immediate family members do not have a *Conflict of Interest* performing the duties outlined in our contract(s) with Milwaukee County Transit System (MCTS). To the best of our knowledge, no officer and/or personnel assigned or their immediate family members has a material financial interest in any commercial entity which may provide products or services as part of this MCTS project. If our Firm's officers and/or personnel that are assigned to this MCTS project become aware of any development that may create a conflict of interest and compromise the integrity of the project, they shall notify MCTS immediately and take the necessary action to address the conflict.

*Conflict of Interest:* A situation in which professional judgment or behavior concerning a primary interest of a MCTS project has been improperly influenced by a different interest (such as for financial gain).

*Immediate family member:* spouse/partner or son or daughter.

*Material financial interest:* ownership or beneficial ownership of more than \$10,000 worth of equity or one percent of the stock in a commercial entity.

\_\_\_\_\_  
(Name of Company)

\_\_\_\_\_ (Authorized Name, Print) \_\_\_\_\_ (Title)

\_\_\_\_\_ (Name of Assigned Consultant, Print) \_\_\_\_\_ (Signature of Consultant)

\_\_\_\_\_  
(Date)

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FOR  
BID REQUIREMENTS  
REQUIREMENTS/CERTIFICATIONS  
PACKAGE**

8/29/2018

A. Certifications

**THE FOLLOWING MUST BE SIGNED AND RETURNED WITH ALL BIDS:**

1. Equal Employment Opportunity Certificate
2. Designation of Confidential and Proprietary Information
4. Buy America Certificate
5. Certification of Restrictions On Lobbying

**THE SUBSTANCE ABUSE CERTIFICATION MUST BE SIGNED AND RETURNED WITH BIDS FOR SAFETY-SENSITIVE FUNCTIONS**

1. Substance Abuse Certification

B. General Directions/Terms and Conditions for Bidding

C. Federal Transit Administration (FTA) - Required Third-Party Contract Clauses

**EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATE  
FOR MILWAUKEE COUNTY  
CONTRACTS**

In accordance with Section 56.17 of the Milwaukee County General Ordinances and Title 41 of the Code of Federal Regulations, Chapter 60, SELLER or SUCCESSFUL BIDDER or CONTRACTOR or LESSEE or (other-specify \_\_\_\_\_) (henceforth referred to as **VENDOR**), certifies to MILWAUKEE COUNTY as to the following and agrees that the terms of this certificate are hereby incorporated by reference into any contract awarded.

**Non-Discrimination**

**VENDOR** certifies that it will not discriminate against any employee or applicant for employment because of race, color, national origin, age, sex or disability, which includes, but is not 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.

**VENDOR** will post, in conspicuous places available to its employees, notices to be provided by the County setting forth the provisions of the non-discriminatory clause.

A violation of this provision shall be sufficient cause for the County to terminate the contract without liability for the uncompleted portion or for any materials or services purchased or paid for by the contractor for use in completing the contract.

**Affirmative Action Program**

**VENDOR** certifies that it will strive to implement the principles of equal employment opportunity through an effective affirmative action program, which shall have as its objective to increase the utilization of women, minorities, and persons with disabilities and other protected groups, at all levels of employment in all divisions of the seller, successful respondent or contractor's work force, where these groups may have been previously under-utilized and underrepresented

**Non-Segregated Facilities**

**VENDOR** certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location under its control where segregated facilities are maintained.

**Subcontractors**

**VENDOR** certifies that it has obtained or will obtain certifications regarding non-discrimination, affirmative action program and non-segregated facilities from proposed subcontractors that are directly related to any contracts with Milwaukee County, if any, prior to the award of any subcontracts, and that it will retain such certifications in its files.

**Reporting Requirements**

Where applicable, **VENDOR** certifies that it will comply with all reporting requirements and procedures in Title Code 41 Code of Federal Regulations, Chapter 60.

**Affirmative Action Plan**

**VENDOR** certifies that, if it has 50 or more employees, it has filed or will develop and submit (within 120 days of contract award) for each of its establishments a written affirmative action plan. Current affirmative action plans, if required, must be filed with ANY one of the following: The Office of Federal Contract Compliance Programs, or the State of Wisconsin, or the Milwaukee County Department of Audit, Milwaukee County - City Campus, 9<sup>th</sup> Floor, 2711 W. Wells Street, Milwaukee, Wisconsin 53208. If a current plan has been filed, indicate where filed \_\_\_\_\_ and the year covered \_\_\_\_\_. Please provide proof of your AA Plan approval.

**VENDOR** will also require its lower-tier subcontractors who have 50 or more employees to establish similar written affirmative action plans.

**Employees**

**VENDOR** certifies that it has \_\_\_\_\_ employees in the Standard Metropolitan Statistical \_\_\_\_\_  
(No. of Employees)

Area (Counties of Milwaukee, Waukesha, Ozaukee and Washington, Wisconsin) and \_\_\_\_\_ employees in total.  
(Total No. of Employees)

**Compliance**

**VENDOR** certifies that it is not currently in receipt of any outstanding letters of deficiencies, show cause, probable cause, or other notification of noncompliance with EEO regulations.

Executed this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ by:

Firm Name: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip \_\_\_\_\_

Telephone: \_\_\_\_\_

(Title)

**WARNING:** An unsigned form shall be considered as a negative response.

By \_\_\_\_\_  
(Signature)

**DESIGNATION OF  
CONFIDENTIAL AND PROPRIETARY INFORMATION**

The attached material submitted in response to Proposal No. \_\_\_\_\_ includes proprietary and confidential information which qualifies as a trade secret, as provided in Section 19.36(5), Wis. Stats., or is otherwise material that can be kept confidential under the Wisconsin Open Records Law. As such, we ask that certain pages, as indicated below, of this proposal response be treated as confidential material and not be released without our written approval.

We request that the following pages not be released:

Section	Page #	Topic

**IN THE EVENT THE DESIGNATION OF CONFIDENTIALITY OF THIS INFORMATION IS CHALLENGED, THE UNDERSIGNED HEREBY AGREES TO PROVIDE LEGAL COUNSEL OR OTHER NECESSARY ASSISTANCE TO DEFEND THE DESIGNATION OF CONFIDENTIALITY.**

This does not apply to proposal prices. Prices are always open. Other information usually cannot be kept confidential unless it is a trade secret. Trade secret is defined in s.134.90(1)(c), Wis. Stats. as follows: "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique or process to which all of the following apply:

1. The information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.
2. The information is the subject of efforts to maintain its secrecy that are reasonable under the circumstances.

Failure to include this form in the proposal response may mean that all information provided as part of the proposal response will be open to examination and copying. Milwaukee Transport Services, Inc., considers other markings of confidential in the proposal document to be insufficient. The undersigned agrees to hold Milwaukee Transport Services, Inc., harmless for any damages arising out of the release of any materials unless they are specifically identified above.

\_\_\_\_\_  
Name-Authorized Representative

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

---

Signature-Authorized Representative

---

Date

***Provisions A.1.10, A.1.14, A.1.7 Apply to – Awards exceeding \$100,000 by Statute Provision A.1.10***

**LOBBYING**

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

**49 CFR Part 19**

**49 CFR Part 20**

**Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.]**

Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR Part 20,

“New Restrictions on Lobbying.” Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

APPENDIX A, 49 CFR PART 20 – CERTIFICATION REGARDING LOBBYING

**Certification for Contracts, Grants, Loans, and Cooperative Agreements** *(To be submitted with each bid or offer exceeding \$100,000)*

*Certificate Regarding Lobbying*

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

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form—LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions [as amended by “Government wide Guidance for New Restrictions on Lobbying,” 61 Fed. Req. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

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

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

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

\_\_\_\_\_ Name of Contractor’s Authorized Official

\_\_\_\_\_ Title of Contractor’s Authorized Official

\_\_\_\_\_ Date

## **Substance Abuse Certifications**

The Milwaukee County Transit System adheres to the Federal Transit Administration's (FTA) regulations which requires any contractor of MCTS that is involved in safety sensitive functions must annually submit the following substance abuse Certifications:

### **A. Drug-Free Workplace Agreement**

As required by U.S. DOT regulations, "Drug-Free Workplace Requirements (Grants)," 49 CFR part 29, Subpart F, and as modified by 41 U.S.C. 702, the Applicant agrees that it will provide a drug-free workplace by:

- (1) Publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in



- its workplace and specifying the actions that will be taken against its employees for violation of that prohibition;
- (2) Establishing an ongoing drug-free awareness program to inform its employee about:
    - (a) The dangers of drug abuse in the workplace;
    - (b) Its policy of maintaining a drug-free workplace;
    - (c) Any available drug counseling, rehabilitation, and employee assistance programs; and
    - (d) The penalties that may be imposed upon its employees for drug abuse violations occurring in the workplace;
  - (3) Making it a requirement that each of its employees to be engaged in the performance of the grant or cooperative agreement be given a copy of the statement required by paragraph (1) of this certification;
  - (4) Notifying each of its employees in the statement required by paragraph (1) of this certification that, as a condition of employment financed with Federal assistance provided by the grant or cooperative agreement, the employee will be required to:
    - (a) Abide by the terms of the statement; and
    - (b) Notify the employer (Applicant) in writing of any conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after that conviction;
  - (5) Notifying FTA in writing, within ten (10) calendar days after receiving notice required by paragraph (4)(b) above from an employee or otherwise receiving actual notice of that conviction. The Applicant, as employer of any convicted employee, must provide notice, including position title, to every project officer or other designee on whose project activity the convicted employee was working. Notice shall include the identification number(s) of each affected grant or cooperative agreement;
  - (6) Taking one of the following actions within thirty (30) calendar days of receiving notice under paragraph (4)(b) of this agreement with respect to any employee who is so convicted:
    - (a) Taking appropriate personnel action against that employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
    - (b) Requiring that employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, state, or local health, law enforcement, or other appropriate agency; and
  - (7) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (1), (2), (3), (4), (5), and (6) of this agreement. The Applicant agrees to maintain a list identifying its headquarters location and each workplace it maintains in which project activities supported by FTA are conducted, and make that list readily accessible to FTA

## B. Prevention of Alcohol Misuse and Prohibited Drug Use Certification

If the Applicant is required by Federal regulations to provide the following certification concerning its activities to prevent alcohol misuse of prohibited drug use in its transit operations, FTA may not provide Federal assistance to that Applicant until it provides this certification by selecting Category ``10."

As required by FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," at 49 CFR part 655, subpart I, the Applicant certifies that it has established and implemented an anti-drug and alcohol misuse program, and has complied with or will comply with applicable requirements of FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," at 49 CFR part 655.

All contractors who perform safety-sensitive functions for the Milwaukee County Transit Systems (e.g. overhaul and or rebuild engines, parts and vehicles) are required to certify. (Detailed information regarding the substance abuse certification can be obtained at [www.fta.dot.gov](http://www.fta.dot.gov).)

The undersigned contractor hereby certifies that it will comply with the requirements.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
(Company)

By \_\_\_\_\_  
(Authorized Signature) (Print/type Name)

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

## ***FTA Required Third-Party Contract Clauses***

(Excluding micro-purchases, except for construction contracts over \$2,000)

Updated 12/2011

transfer, layoff or termination; rates of pay or other forms of compensation; selection for training, including apprenticeship. A violation of this provision shall be sufficient cause for MTS to terminate the contract, lease, order, etc. pursuant to County Ordinance 56.17 - Non Discriminatory Contracts.

### **17. Disadvantaged Business Enterprise**

The contractor, sub recipient 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 CFR part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

Milwaukee County has assigned an overall annual goal for participation of certified disadvantaged business enterprises (DBE) contracts. All bidders/proposers are hereby directed to consider certified DBE subcontractors when carrying out the requirements of this contract.

The directory of firms can be obtained by contacting Community Business Development Partners (CBDP) at (414) 278-4747 or by visiting the following Internet site:

<https://app.mylcm.com/wisdot/Reprts/WisDotUCPDdirectory.aspx>

For additional certified firms or understanding Milwaukee County procedures regarding the DBE Program, contact CBDP at (414) 278-5248.

### **18. Termination for Convenience**

MTS may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in MTS's best interest. The Contractor shall be paid its cost, 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 MTS to be paid the Contractor. If the Contractor has any property in its possession belonging to MTS, the Contractor will account for the same and dispose of it in the manner MTS directs.

### **19. Termination for Default**

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract 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, MTS 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 only be paid 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 MTS 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, MTS 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.

### **20. Opportunity to Cure**

MTS in its sole discretion may, in the case of a termination for default, allow the Contractor thirty (30) days 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 MTS' satisfaction the default or any other terms covenants, or conditions of this Contract within the thirty (30) days after receipt by the Contractor of written notice from MTS setting forth the nature of said default, MTS shall have the right to terminated the Contract without any further

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obligation to the Contractor. Any such termination for default shall not in any way operate to preclude MTS from also pursuing all available remedies against the Contractor and its sureties for said default.

### **21. Employee's Right to Know**

It is a direct condition of the terms of this proposal that if there be any toxic substances, materials, or infectious agents, the offeror shall supply copies of material safety data sheets in accordance with Wisconsin Statutes, Chapter 364.

### **22. Brand Names**

In all cases materials must be furnished as specified, but where brand names are used, consider the term "approved equal" to follow. However, if an approved equal is requested the bidder shall request consideration for approved equal status by submitting the appropriate documentation demonstrating equal status a minimum of ten (10) working days prior to the time scheduled for bid opening. Requests submitted without adequate documentation and/or less than 10 working days prior to the time scheduled for bid opening will not be considered.

### **23. Price and Cost Analysis**

In the event a single bid is received, MTS will conduct a price and/or cost analysis of the bid based on data which shall be provided by the bidder. A cost analysis is the process of examining the bid and evaluating the separate cost elements. It should be recognized that a price analysis through comparison to other similar procurement must be based on an established or competitive price of the elements used in the comparison. The comparison must be made to a purchase of similar quantity and involving similar specifications. Where a difference exists, a detailed analysis must be made of this difference and costs attached thereto. Where it is impossible to obtain a valid price analysis, it may be necessary for MTS to conduct a cost analysis of the bid price. The price and/or cost analysis shall be made by competent and experienced auditors or price analysts. An engineer's estimate or comparison of the prices involved is insufficient for cost analysis purposes.

### **24. Written Change Orders**

Oral change orders are not permitted. No change in this contract shall be made unless the contracting officer gives his prior written approval therefore. The contractor shall be liable for all costs resulting from and/or for satisfactorily correcting, any specification change not properly ordered by written modification to the contract and signed by the contracting officer.

### **25. Waiver of Irregularities**

1. MTS may waive informalities and minor irregularities in bids received.

### **26. PROTESTS AND APPEALS**

#### **Protest Policy for Sealed Bids:**

Calculation of time in days and hours shall exclude Saturdays, Sundays and major holidays.

#### **A. Prior to sealed bid opening:**

1. Protests to form and content of bid documents shall be received by the Director of Materials Management not less than five (5) days prior to the time scheduled for bid opening. Protests shall be in writing and state the reason for it.
2. The Director of Materials Management shall review protests and if modification is necessary, the bid opening date shall be extended and addenda containing the changes shall be sent to each bidder. If the modification is rejected, the protestor shall be notified. The decision of the Director of Materials

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Management is final.

### **B. After sealed bid opening:**

1. Protests concerning irregularities on sealed bid opening procedures or compliance by bidders with bid documents shall be received by the Director of Materials Management within seventy-two (72) hours after time of bid opening.
2. When a sealed bid is awarded to other than the lowest bidder, all bidders shall be notified in writing by certified mail, return receipt requested, or by fax machine transmission of the proposed award. Protest to the award must be delivered to the Director of Materials Management within seventy-two (72) hours after receipt of notice. A copy of the fax transmission cover sheet, or the department's fax log, shall be conclusive proof of the time and date of receipt by a bidder.
3. A protest under either (B.1.) or (B.2.) above must be in writing and state the reason for it. The Director of Materials Management shall review the protest and notify the protestor of a decision in writing by certified mail return receipt requested, or by fax machine transmission, within five (5) days. No contract shall be awarded while a protest is pending. A protest that is untimely or fails to clearly state the reason for it or shall have been made prior to bid opening is invalid. The decision of the Director of Materials Management disqualifying the protest for these reasons is final and cannot be appealed. A copy of the fax transmission cover sheet, or the department's fax log, shall be conclusive proof of the time and date of receipt by a bidder.

### **C. Appeals to the Purchasing Appeals Committee:**

1. Protest from the decision of the Director of Materials Management shall be made to the Purchasing Appeals Committee by delivering a written request for appeal hearing both to the Materials Management Department and the Purchasing Appeals Committee within seventy-two (72) hours after the receipt of the Director of Materials Management's decision.
2. **Written appeals to the Purchasing Appeals Committee shall be addressed as follows:**  
**Purchasing Appeals Committee**  
**C/O MTS Materials Management Department**  
**1942 North 17<sup>th</sup> Street**  
**Milwaukee, WI 53205**
3. The request shall state the grounds upon which the protest is based and shall request an appeal hearing. No contract shall be awarded until the final disposition of the protest.
4. The Chairperson of the Purchasing Appeals Committee shall notify all interested persons of the time and place of the hearing.
5. The Purchasing Appeals Committee shall affirm, reverse or modify the decision of the Director of Materials Management and its' decision shall be final. Milwaukee Transport Services (MTS) reserves the right to immediately act on the decision of the Purchasing Appeals Committee regardless of a potential appeal to the FTA.

### **D. Appeals To FTA**

A protest may be filed with FTA following an adverse decision by the Purchasing Appeals Committee. The protest must be filed in accordance with procedures set forth in FTA Circular 4220.IF. Any protest must be filed with FTA in writing not later than five days of notification of an adverse decision by the Purchasing Appeals Committee. Protest should be filed with FTA, Region V, 200 West Adams Street, Suite 320, Chicago, IL 60606 and a concurrent copy sent to Milwaukee Transport Services, Inc. FTA's review of any protests will be limited to:

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1. Alleged failure of Milwaukee Transport Services to have a written protest procedure.
2. Alleged failure of Milwaukee Transport Services to follow such procedure or its' failure to review a complaint or protest.
3. Alleged violation of a specific Federal requirement that provides an applicable complaint procedure shall be submitted and processed in accordance with that Federal regulation.

Protest filed with FTA shall:

1. Include name and address of the protestor.
2. Identify the Milwaukee Transport Services' solicitation number.
3. Contain a statement of the grounds for protest and any supporting documentation. This statement shall detail the alleged failure to follow protest procedures or the alleged failure to have procedures and be fully supported to the extent possible.
4. Include a copy of the local protest filed with Milwaukee Transport Services and a copy of the Purchasing Appeals Committee decision.

### **E. Contract Continuation Clause:**

Contractor recognizes that the services under this contract are vital to MTS and to the public and must be continued without interruption. Contractor agrees that MTS, in its sole discretion, and by written notice to Contractor at least 30 days prior to contract expiration, may extend this Agreement for up to an additional 90 days. If so extended by MTS, Contractor shall continue to provide services under this Agreement, on the same terms as set forth in this Agreement. MTS may terminate any such extension by providing Contractor with 30 day notice. Contractor further agrees to exercise its best efforts and cooperation to effect an orderly and efficient transition to any successor Contract.

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## ***FTA Required Third-Party Contract Clauses***

(Excluding micro-purchases, except for construction contracts over \$2,000)

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### ***Provisions A.1.19, A.1.20, A.1.11, A.1.12, A.1.24, A.1.28, A.1.30, A.1.6***

***Apply to – All FTA-assisted third-party contracts and subcontracts.***

#### ***Provision A.1.19***

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

- (1) The Purchaser 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 Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- (2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

#### ***Provision A.1.20***

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

**31 U.S.C. 3801 et seq.  
49 CFR Part 31 18 U.S.C. 1001  
49 U.S.C. 5307**

- (1) 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.
- (2) 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 or any other Federal law, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323 (1), or other applicable Federal law on the Contractor, to the extent the Federal Government deems appropriate.



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(3) 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.

### ***Provision A.1.11***

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

**49 U.S.C. 5325**

**49 CFR 18.36(i)**

**49 CFR 633.17**

The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a sub-grantee to the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the U.S. Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after final payment is made by the grantee and all other matters are closed.
7. FTA does not require the inclusion of these requirements in subcontracts.

### ***Provision A.1.12***

#### **FEDERAL CHANGES**

**49 CFR Part 18**

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

### ***Provision A.1.24***

#### **CIVIL RIGHTS REQUIREMENTS**

**29 U.S.C. § 623, 42 U.S.C. § 2000**

**42 U.S.C. § 6102, 42 U.S.C. § 12112**

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(Excluding micro-purchases, except for construction contracts over \$2,000)

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### **42 U.S.C. § 12132, 49 U.S.C. § 5332 29 CFR Part 1630, 41 CFR Parts 60 et seq.**

**Civil Rights** – The following requirements apply to the underlying contract

(1) **Non-discrimination** – In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and 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, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) **Equal Employment Opportunity** – The following equal employment opportunity requirements apply to the underlying contract:

- (a) **Race, Color, Creed, National Origin, Sex** – In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, 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. Parts 60 et seq., (which implement Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,: 42 U.S.C. §2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. 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, creed, national origin, sex, or age. 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. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- (b) **Age** – In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 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.
- (c) **Disabilities** – In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirement FTA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

### ***Provision A.1.30***

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

##### **FTA Circular 4220.1F**

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

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***Provision A.1.6***

**ENERGY CONSERVATION REQUIREMENTS**

**42 U.S.C. 6321 et seq.**

**49 CFR Part 18**

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.

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(Excluding micro-purchases, except for construction contracts over \$2,000)

Updated 12/2011

### ***Provision A.1.21***

***Apply to - Contracts > \$10,000. For contracts with nonprofit organizations and institutions of higher education, the threshold is \$100,000.***

### **TERMINATION**

#### **49 U.S.C. Part 18**

#### **FTA Circular 4220.1F**

**a. Termination for Convenience (General Provision)** Milwaukee County may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government'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 Milwaukee County to be paid the Contractor. If the Contractor has any property in its possession belonging to Milwaukee County, the Contractor will account for the same and dispose of it in the manner Milwaukee County directs.

**b. 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, Milwaukee County 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 only be paid 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 Milwaukee County 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, Milwaukee County, 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.

**c. Opportunity to Cure (General Provision)** Milwaukee County in its sole discretion may, in the case of a termination for breach or default, allow the Contractor appropriately thirty (30) days 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 Milwaukee County's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within thirty (30) days after receipt by Contractor of written notice from Milwaukee County setting forth the nature of said breach or default, Milwaukee County 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 Milwaukee County from also pursuing all available remedies against Contractor and its sureties for said breach or default.

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

**e. Termination for Convenience (Professional or Transit Service Contracts)** Milwaukee County by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, Milwaukee County shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

**f. 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

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provisions of this contract, Milwaukee County may terminate this contract for default. Milwaukee County 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 Milwaukee County.

**g. 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, Milwaukee County may terminate this contract for default. Milwaukee County 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 Recipient goods, the Contractor shall, upon direction of Milwaukee County, protect and preserve the goods until surrendered to the Recipient or its agent. The Contractor and Milwaukee County 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 Milwaukee County.

**h. Termination for Default (Construction)** If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure 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 provisions of this contract, Milwaukee County may terminate this contract for default. Milwaukee County shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Recipient may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Recipient 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 Recipient in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor 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 the Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. The Contractor, within **[10]** days from the beginning of any delay, notifies Milwaukee County in writing of the causes of delay. If in the judgement of Milwaukee County, the delay is excusable, the time for completing the work shall be extended. The judgement of Milwaukee County shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

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 the Recipient.

**i. Termination for Convenience or Default (Architect and Engineering)** Milwaukee County may terminate this contract in whole or in part, for the Recipient's convenience or because of the failure of the contractor to fulfill the contract obligations. Milwaukee County shall terminate by delivering to the Contractor a Notice of Termination

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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 Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the Recipient, the 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 Recipient may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Recipient.

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 Recipient.

**j. Termination for Convenience of Default (Cost-Type Contracts)** Milwaukee County may terminate this contract, or any portion of it, by serving a notice or termination on the Contractor. The notice shall state whether the termination is for convenience of Milwaukee County 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 Milwaukee County, or property supplied to the Contractor by Milwaukee County. If the termination is for default, Milwaukee County 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 Milwaukee County and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of Milwaukee County, 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, Milwaukee County determines that the Contractor has as excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, Milwaukee County, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

### ***Provision A.1.22***

***Apply to - All grantee contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contract or subcontract (at any level) for Federally required auditing services.***

### **GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NON-PROCUREMENT)**

**2 CFR Part 180 & 200**

**Executive Order 12549**

**Executive Order 12689**

**31 USC 6101 note (Section 2455, Public Law 103-355, 108 Stat. 3327)**

This contract is a covered transaction for purposes of 42 CFR Part 180 & 200. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 2 CFR 180 & 200, or affiliates, as defined at 2 CFR 180 & 200, are excluded or disqualified as defined at 2 CFR 180 & 200

The contractor is required to comply with 2CFR 2180 & 200, Subpart C and must include the requirement to comply with 2 CFR 180 & 200, Subpart C in any lower tier covered transaction it enters into.

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The contractor is required to review the “Excluded Parties Listing System” at <http://sam.gov> before entering into any subagreement, lease, third party contract, or other arrangement in connection with the Project and must include this review requirement in any lower tier covered transaction it enters into.

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 Milwaukee County and Milwaukee County Transit System. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to Milwaukee County and Milwaukee County Transit System, 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 49 CFR 29, Subpart C 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.

### ***Provision A.1.25***

#### **BREACHES AND DISPUTE RESOLUTION**

##### **49 CFR Part 18**

##### **FTA Circular 4220.1F**

**Disputes** – Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative, Director of Materials Management, Milwaukee County Transit System (MCTS). This decision shall be final and conclusive unless within [*ten (10)*] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Director of Materials Management, Milwaukee County Transit System (MCTS). 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 Director of Materials Management, Milwaukee County Transit System (MCTS) shall be binding upon the Contractor and the Contractor shall abide by the decision.

**Performance During Dispute** – Unless otherwise directed by Milwaukee County, 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 therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

**Remedies** – Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between Milwaukee County and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within Wisconsin.

**Rights and Remedies** – The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by Milwaukee County, (*Architect*) 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.

## ***FTA Required Third-Party Contract Clauses***

(Excluding micro-purchases, except for construction contracts over \$2,000)

Updated 12/2011

***Provision A.1.14 Apply to all contracts exceeding \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year***

### **CLEAN AIR**

**42 U.S.C. 7401 et seq**

**40 CFR 15.61**

**49 CFR Part 18**

- (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. The contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

***Provision A.1.7 Applies to each contract and subcontract, which exceeds \$100,000***

### **CLEAN WATER REQUIREMENTS**

**33 U.S.C. 1251**

- (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. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

***Provisions A.1.4, A.1.1 Apply to – Transport of property or persons.***

***Provision A.1.4 Applies when acquiring property suitable for shipment by ocean vessel***

### **CARGO PREFERENCE REQUIREMENTS**

**46 U.S.C. 1241**

**46 CFR Part 381**

**Cargo Preference – Use of United States-Flag Vessels** - The Contractor agrees: a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of lading shipments originating outside the United States, a legible copy of a rated, “on-board” commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor’s bill-of-lading) ;  
c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.



## ***FTA Required Third-Party Contract Clauses***

(Excluding micro-purchases, except for construction contracts over \$2,000)

Updated 12/2011

***Provision A.1.1 Applies when property or persons transported by air between US and foreign destinations or between foreign locations, or between foreign locations when the FTA will participate in the costs of such air transportation***

### **FLY AMERICA REQUIREMENTS**

**49 U.S.C. § 40118**

**41 CFR Part 301-10**

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

***Provisions A.1.16, A.1.17, A.1.13, A.1.5 Apply to – Construction activities***

***Provision A.1.16 Provisions of Davis-Bacon Act apply except for contracts < \$2,000 or third party contracts for supplies, materials, or articles ordinarily available on the open market. Provisions of Copeland Anti-Kickback Act apply to contracts > \$2,000.***

### **DAVIS-BACON and COPELAND ANTI-KICKBACK ACTS**

**40 USC 3141, et seq.**

**18 USC 874**

#### **(1) Minimum wages –**

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the DavisBacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rates and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer’s payroll records accurately set for the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted

## *FTA Required Third-Party Contract Clauses*

(Excluding micro-purchases, except for construction contracts over \$2,000)

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at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
- (4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination of shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v) (A) The contracting officer shall require that any class of laborers or mechanics with is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

## ***FTA Required Third-Party Contract Clauses***

(Excluding micro-purchases, except for construction contracts over \$2,000)

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- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

- (2) **Withholding** – Milwaukee County 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 the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to DavisBacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, Milwaukee County may, after written notice to the contractor, sponsor, applicant, or owner, take such action as maybe necessary to cause the suspension of any further payment, advance or guarantee of funds until such violations have ceased.

### (3) **Payrolls and basic records** –

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. When ever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the DavisBacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

## ***FTA Required Third-Party Contract Clauses***

(Excluding micro-purchases, except for construction contracts over \$2,000)

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(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to Milwaukee County for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

- (1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;
- (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
- (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of the title 18 and section 231 of title 31 of the United States Code. (iii)

The contractor or subcontractor shall make the records required under paragraph (a)(3)(I) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

### **(4) Apprentices and trainees –**

(i) Apprentices – Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the

## ***FTA Required Third-Party Contract Clauses***

(Excluding micro-purchases, except for construction contracts over \$2,000)

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registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees – Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity – The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

- (5) **Compliance with Copeland Act requirements** – The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.
- (6) **Subcontracts** – The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.
- (7) **Contract termination: debarment** – A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided 29 CFR 5.12.
- (8) **Compliance with Davis-Bacon and Related Act requirements** – All rulings and interpretations of the DavisBacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
- (9) **Disputes concerning labor standards** – Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

## ***FTA Required Third-Party Contract Clauses***

(Excluding micro-purchases, except for construction contracts over \$2,000)

Updated 12/2011

- (10) **Certification of eligibility** – (I) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

### ***Provision A.1.17 Applies to contracts > \$100,000***

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

**40 U.S.C. 3701, et seq.**

**29 C.F.R. 5.2 (h)**

**49 C.F.R. 18.36 (i)(6)**

- (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 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** – Milwaukee County 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 paragraphs (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.

***Provision A.1.13 Apply to construction activities >\$100,000. Bond minimums are: 5% bid guarantee bond; 100% performance bond; Payment bond equal to 50% for contracts <\$1M, 40% for contract >\$1M - <\$5M, \$2.5M for contracts > \$5M.***

#### **BONDING REQUIREMENTS**

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(Excluding micro-purchases, except for construction contracts over \$2,000)

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### **Bid Bond Requirements (Construction)**

#### (a) Bid Security

A Bid Bond must be issued by a fully qualified surety company acceptable to Milwaukee County and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder.

#### (b) Rights Reserved

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

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within [*ninety (90)*] days after the bid opening without the written consent of Milwaukee County, shall refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of Milwaukee County's damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor.

It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by Milwaukee County as provided in [*Item x "Bid Security" of the Instructions to Bidders*]) shall prove inadequate to fully recompense Milwaukee County for the damages occasioned by default, then the undersigned bidder agrees to indemnify Milwaukee County and pay over to Milwaukee County the difference between the bid security and Milwaukee County's total damages, so as to make Milwaukee County whole.

The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested, will render the bid unresponsive.

### **Performance and Payment Bonding Requirements (Construction)**

The Contractor shall be required to obtain performance and payment bonds as follows:

#### (a) Performance bonds

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless Milwaukee County determines that a lesser amount would be adequate for the protection of Milwaukee County.
2. Milwaukee County may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. Milwaukee County may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

#### (b) Payment bonds

1. The penal amount of the payment bonds shall equal:
  - (i) Fifty percent of the contract price if the contract price is not more than \$1 million.
  - (ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
  - (iii) Two and one half million if the contract price is more than \$5 million.

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2. If the original contract price is \$5 million or less, Milwaukee County may require additional protection as required by subparagraph 1 if the contract price is increased.

### **Performance and Payment Bonding Requirements (Non-Construction)**

The Contractor may be required to obtain performance and payment bonds when necessary to protect the Milwaukee County's interest.

(a) The following situations may warrant a performance bond:

1. Milwaukee County property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).
2. A contractor sells assets to or merges with another concern, and the Milwaukee County, after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.
3. Substantial progress payments are made before delivery of end items starts.
4. Contracts are for dismantling, demolition, or removal of improvements.

(b) When it is determined that a performance bond is required, the Contractor shall be required to obtain

performance bonds as follows:

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless Milwaukee County determines that a lesser amount would be adequate for the protection of Milwaukee County.
2. Milwaukee County may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. Milwaukee County may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(c) A payment bond is required only when a performance bond is required, and if the use of payment bond is in Milwaukee County's interest.

(d) When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:

1. The penal amount of payment bonds shall equal:

- (i) Fifty percent of the contract price if the contract price is not more than \$1 million;
- (ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
- (iii) Two and one half million if the contract price is increased.

### **Advance Payment Bonding Requirements**

The Contractor may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. Milwaukee County shall determine the amount of the advance payment bond necessary to protect Milwaukee County.

### **Patent Infringement Bonding Requirements (Patent Indemnity)**

The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. Milwaukee County shall determine the amount of the patent indemnity to protect Milwaukee County.



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(Excluding micro-purchases, except for construction contracts over \$2,000)

Updated 12/2011

### **Warranty of the Work and Maintenance Bonds**

1. The Contractor warrants to Milwaukee County, the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by Milwaukee County, free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by the [***Project Manager***], the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

The work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by Milwaukee County and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to Milwaukee County. As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment [***as provided in Item X below***], furnish separate Maintenance (or Guarantee) Bonds in form acceptable to Milwaukee County written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all)

***Provision A.1.5 Applies to contracts for construction of new buildings or additions to existing buildings excluding micro purchases (under \$3,000), except for construction contracts over \$2,000.***

### **SEISMIC SAFETY REQUIREMENTS**

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

**49 CFR Part 41**

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify 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.

***Provision A.1.31 Apply to safety sensitive functions. Applies to Section 5307, 5309, and 5311 projects.***

### **DRUG AND ALCOHOL TESTING**

**49 U.S.C. § 5331**

**49 CFR Parts 653 and 654**

The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of Wisconsin, or Milwaukee County, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 before (***January 31***) and to submit the Management Information System (MIS) reports before (***February 15***) to the (***Director of Transportation Planning and Programming***), Milwaukee County – City Campus, 2711 W. Wells Street, Suite 300, Milwaukee, WI 53208. To certify compliance the contractor shall use the “Substance Abuse Certifications” in the

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“Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements,” which is published annually in the Federal Register.

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***Provision A.1.15 Applies to contracts for items designated by EPA, when procuring \$10,000 or more per year***

**RECYCLED PRODUCTS**

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

**40 CFR Part 247**

**Executive Order 12873**

**Recovered Materials** - The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

***Provision §12.g Applies to contracts for rolling stock or facilities construction or renovation. Language taken from Master Agreement***

**AMERICANS With DISABILITIES ACT (ADA)**

Access Requirements for Persons with Disabilities The recipient agrees to comply with the requirements of 49 U.S.C. § 5301(d) which states the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement that policy. The Recipient also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, and with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act. In addition, the Recipient agrees to comply with all applicable requirements of the following regulations and any subsequent amendments thereto:

- (1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
- (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
- (3) Joint U.S. Architectural and Transportation Barriers Compliance Board(U.S.ATBCB)/U.S. DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
- (4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
- (5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
- (6) U.S. General Services Administration (US. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
- (7) U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
- (8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment of the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and
- (9) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194; and
- (10) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and
- (11) Any implementing requirements FTA may issue.

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***Provision 16 Applies to piggyback procurements***

**ASSIGNABILITY**

Milwaukee County reserves the right to assign all or a portion of the specified deliverables of this contract under the terms originally advertised, competed, evaluated and awarded. Such assignment shall be limited to another FTA grantee. The assignment, should it occur, will be honored by the contractor and will be in force through the duration of the contract.

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### **COUNTY RIGHTS OF ACCESS AND AUDIT**

The Contractor, Lessee, or other party to the contract, its officers, directors, agents, partners and employees shall allow the County Audit Services Division and department contract administrators (collectively referred to as Designated Personnel) and any other party the Designated Personnel may name, with or without notice, to audit, examine and make copies of any and all records of the Contractor, Lessee, or other party to the contract, related to the terms and performance of the Contract for a period of up to three years following the date of last payment, the end date of this contract, or activity under this contract, whichever is later. Any subcontractors or other parties performing work on this Contract will be bound by the same terms and responsibilities as the Contractor. All subcontracts or other agreements for work performed on this Contract will include written notice that the subcontractors or other parties understand and will comply with the terms and responsibilities. The Contractor, Lessee, or other party to the contract, and any subcontractors understand and will abide by the requirements of Section [34.09](#) (Audit) and Section [34.095](#) (Investigations Concerning Fraud, Waste, and Abuse) of the Milwaukee County Code of General Ordinances.