

**MILWAUKEE TRANSPORT SERVICES, INC.**  
***Operator of the Milwaukee County Transit System***  
**1942 NORTH 17<sup>TH</sup> STREET**  
**MILWAUKEE, WI 53205**  
**(414) 937-3296**

**Purchasing Agent: Monique Alston**  
**[malston@mcts.org](mailto:malston@mcts.org) | [www.ridemcts.com](http://www.ridemcts.com)**

**BID NO 2020-08: TRANSIT BUS TIRES LEASE**  
**RELEASE DATE: MAY 19, 2020**

Milwaukee Transport Services (MTS), a quasi-governmental instrumentality of Milwaukee County and operator of the Milwaukee County Transit System (MCTS). MTS is accepting bids for **BUS TIRES LEASE** for Transit Coaches until

**DUE DATE: JUNE 30, 2020 by 2:00 P.M. CST.**

Bids will be publicly opened and read at the above opening date and time in Room 104 of the Administration Building- Materials Management Department. **Late bids will not be opened or accepted.** Any bids received after the established due date and time at the place designated for receipt of bids is late, without exception. **Faxed or emailed bids are not be allowed or accepted.**

**Specifications:**

To comply with Specification No. FM-01-20, dated 02/21/2020.

**Requirements:**

To supply Milwaukee Transport Services, Inc with transit coach bus tires lease per specification.

**Contract Type and Term**

This is a firm fixed price contract for three (3) years with the possible additional two (2) one (1) year options, for a potential total of five (5) years. The acceptance of each of the one (1) year options shall be determined solely by MTS at a firm fixed price.

Year One: January 1, 2021 through December 31, 2021

Year Two: January 1, 2022 through December 31, 2022

Year Three: January 1, 2023 through December 31, 2023

Potential additional option years.

Year Four: January 1, 2024 through December 31, 2024

Year Five: January 1, 2025 through December 31, 2025

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

Bid a unit price per tire for each year of contract.

Award will be based on Items 1 through 5, less invoice discount of 30 days (if any). Award will be made in the aggregate to the lowest responsible bidder complying with the specifications. Award will be based on what is deemed in the best interest of Milwaukee Transport Services, Inc.

**Run Out Options** – See 1.10 of Specification

In the calculation to determine the low compliant bidder, the two (2) year run out period which would extend for each option year, will be calculated and used in the determination of the low bid. The run-out rate will be .005019 and the tire mileage for year one (1) 77,700,000, for year two (2) 44,400,000 and year.

In accordance with FTC Docket # C-1957 the run-out rate shall not exceed .005019 as noted above. If the Incumbent offers a lower run out rate, it shall be noted in the Incumbents bid response.

**Bidders shall be responsible to obtain all documents pertaining to the bid via the website:**

[www.ridemcts.com](http://www.ridemcts.com)

**DBE Goal:** This project has a Disadvantaged Business Enterprise (DBE) goal of **4.8%**. To be considered for this project, the Prime must submit a Subcontractor/Supplier Information Sheet (DBE-02) with your Bid/Proposal. Additionally, the award of this Contract is conditioned upon your good faith efforts in achieving this project's DBE goal, and you must document those efforts by submitting with your Bid/Proposal one of the following:

- A signed and notarized *Commitment to Contract with DBE Firms* (DBE-14) form(s), one for each DBE documenting the participation achieved toward satisfying the goal \*, evidencing your proposed participation plan to meet or exceed the DBE goal;
- OR
- A signed and notarized *Certificate of Good Faith Efforts* (DBE-01) form\*\* and all relevant documentation, including a signed and notarized *Commitment to Contract with DBE Firms* (DBE-14) form for each DBE documenting the participation achieved toward satisfying the goal.

\*DBE-14 form(s) must identify (1) the DBE firm(s) by name and address, (2) the scope(s) of work/service(s) to be provided, (3) the dollar amount(s) of such work, and (4) the percentage of the DBE goal to be met. The form must be signed by the Prime and notarized to be considered responsive. The signature of the DBE firm in the affirmation section is not required at time of bid, but will be required for the participation plan to be approved. Milwaukee County is entitled to reject your Bid/Proposal for failing to identify this information for each DBE.

\*\*DBE-01 form(s) must be complete to the fullest extent possible and outline communications with both solicited DBE firm(s) and Milwaukee County's Community Business Development Partners department (CBDP). Submission of form(s) with supporting documentation such as emails and similar correspondence is strongly recommended. **A necessary step in the good faith efforts process and for documentation in the *Certificate of Good Faith Efforts* (DBE-01) form, is contacting CBDP at 414-278-4747 or [cbdp@milwaukeecountywi.gov](mailto:cbdp@milwaukeecountywi.gov) for assistance in identifying DBE firms and understanding the County's DBE Program procedures.**

During the Contract, the successful Bidder/Proposer and all subcontractors will use the County's online reporting system to document DBE participation. The *Disadvantaged Business Enterprise (DBE) Utilization Specifications* and forms to be used are included in the BID/RFP.

The official directory of eligible DBE firms can be accessed through the following link:

<http://wisconsindot.gov/Pages/doing-bus/civil-rights/dbe/certified-firms.aspx>

To access the North American Industry Classification System (NAICS), please go to Business Classifications by NAICS Code: <http://www.census.gov/eos/www/naics/>

Community Business Development Partners (CBDP) is responsible for monitoring and enforcing Milwaukee County's Disadvantaged Business Enterprise (DBE) Program, in compliance with County Ordinance and Federal Regulation. Data for compliance monitoring is collected through reporting by Contractors of payments received and paid to subcontractors. There is no cost to the contractor, the only requirement is to become a registered user and complete the online webinar training. Below is the link to the Diversity Management and Compliance System that will allow you to set up your account. When you access the site, locate the “**Help/First Time Visitors**” tab, the bottom selection on the far right list. The first step would be to set up account access, if your firm does not already have an account, and then register for training. Subcontractors must also set up their account and take the training, as they need to acknowledge receipt of payments from the Prime or higher tier subcontractors. If you are unsure if you have an account, enter your email address as your username, and click on “Forgot Password” to obtain a new temporary password. If you have not set up a password, you may need to contact customer service for assistance. <https://mke.diversitycompliance.com/Default.asp>

The recommended training is the compliance session, but you may also take the general system overview. Once training has been completed, if you encounter issues with responding to system audits, you are directed to contact customer service. They will handle all questions related to the software performance, otherwise, you may contact CBDP compliance and we will assist you with questions directly related to a particular project concern.

**Question Deadline & Amendments to Bid Document:**

Questions regarding the solicitation of this Bid, as well as, any clarifications or further instructions to bidders will be sent to all prospective offerors in addendum form. All questions and comments regarding this solicitation must be submitted via email to **Monique Alston** at [malston@mcts.org](mailto:malston@mcts.org) by **June 11, 2020 end of business day**.

**Right to Reject:**

MTS reserves the right to make an award based on its own determination, or to reject any or all bids or portions of same, if in the opinion of MTS, the best interest of MTS will be served thereby. In awarding a contract, MTS reserves the right to consider all elements entering the determination of the responsibility of the bidder. Any bid which is incomplete, conditional, obscure, or which contains additions not required, or irregularities of any kind, may be deemed non-responsive. In case of any discrepancy between the price written in the bid and that given in figures for any item, the price in writing will be considered as the bid. MTS also reserves the right to take into consideration the Bidders past performance with MTS or and other entity in determining if the Bidder is responsible and qualified.

**Waiver of Informalities:**

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

**Binding Contract:**

A proposal received in response to this solicitation is an offer that can be accepted by MTS to create a binding contract without negotiation with any Firm.

**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 of Services Agreement
2. Purchase Order
2. All documents contained within and related to Bid 2020-08, including all Addenda's
3. Bid from the successful vendor

The order of precedence establishes that, in any conflict between the bid and the Purchase Order and/or Bid

Documents, the Purchase Order and/or Bid Documents take precedence and control.

**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.

**Method of Award**

MTS reserves the right to make an award based upon the lowest, responsive, responsible bid or to reject any or all bids.

**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 based on the cost or pricing data.

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

**Inspection:**

Materials or equipment purchased are subject to inspection and approval at MTS's destination. MTS reserves the right to reject and refuse acceptance of items which are not in accordance with the instructions, specifications, or a part of the contractor's warranty (express or implied). Rejected materials or equipment shall be removed by, or at the expense of the contractor promptly after rejection.

**Buy America Requirement:**

The Bidders shall comply with the federal statute set out below, and complete the Buy America Certification, included in the Bid Forms. This form must be included in the bid package for the offer to be considered responsive.

**Contract Continuation:**

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.

**Mission Critical Contract:**

MTS has identified this Contract as critical to MTS's ability to provide essential services. During the duration of the current COVID-19 pandemic, while there are federal, state, and/or local orders relating to or arising from this pandemic, or during any future pandemic or state of emergency declared during the term of this contract by federal, state, or local governments, Contractor will:

Dedicate resources to identify and mitigate situations in the workplace or jobsite which may introduce, expose, or spread COVID-19.

Screen employees following current CDC guidelines to verify they have not: : a) Traveled to a Level 2 or 3 Country in the past 14 days, or visited an area that requires self-quarantine because of COVID-19 infection, b)

Had close contact (within 6 feet) with anyone known or suspected to have COVID19, c) Exhibited any symptoms (chest or back pain, cough, difficulty breathing) of COVID-19 or had a fever greater than 100.4 in the past 14 days.

Educate employees on key CDC recommendations including how employees can protect themselves and what employees should do if they feel sick.

Provide MTS services remotely, to the greatest extent possible.

Notify MTS within 24 hours of becoming aware of any employee who has been on site at any MTS building, or in contact with any MTS employee, that has a confirmed or suspected case of COVID-19.

Notify MTS immediately if Contractor believes, or has reason to believe, Contractor will be unable to provide services or goods under this Contract.

Agrees that MTS is not responsible for any costs, and will not be invoiced for any incomplete work, if MTS revokes permission for Contractor's employees to be on MTS property due to that employee exhibiting symptoms of COVID-19, or any other illness.

#### **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.

#### **Funds**

If funds are not appropriated for payment of this contract, Purchaser may terminate contract at the end of any fiscal year upon 30 days written notice.

MTS operates the transit system for, and under an agreement with, Milwaukee County, Wisconsin. All multi-year contracts / agreements with MTS are contingent upon Milwaukee County retaining MTS as the operator of the transit system. The continuation of this agreement beyond December 31 of any given year, shall be contingent upon MTS receiving the necessary funding from the government agency.

#### **Variations in Word and Figures**

In case of variation between the amounts in words and figures, the amount prescribed in words will prevail.

#### **Delays in Delivery**

Delays in delivery caused by bona fide strikes, government priority or requisition, riots, fires, sabotage, acts of God or any other delays deemed by the Director of Materials Management to be clearly and unequivocally beyond the contractor's control, will be recognized. The vendor may be relieved of meeting the delivery time specified if vendor files with the Director of Materials Management a request for an extension of time, signed by

a responsible official, giving in detail all the essential circumstances which upon verification by Director of Materials Management justifies such extension.

**Delivery Terms**

Bids shall include delivery costs to the specified delivery point, all transportation charges prepaid and borne by you. **MTS reserves the right to change the location of tire delivery at any time during the life of the contract.**

**Warranty:**

Warranty terms will be negotiated by MTS with excepted offer.

**Liquidated Damages:**

- A. Contractor agrees to reimburse MTS \$115/hr. for any labor or charges incurred by MTS to repair or address any quality defects in leased tires provided by Contractor that must be addressed immediately. If time is not of the essence, MTS will request Contractor to repair or replace leased tires.
- B. In the event that Contractor fails to comply with a request from MTS to repair, replace leased tires, MTS shall, upon written notice to Contractor, have the authority to deduct the cost(s) incurred by MTS to address the request from the next payment due under the contract.
- C. Contractor agrees to reimburse MTS for the cost of towing if towing is needed due to any quality defects in the leased tires provided by Contractor.

**Code of Ethics**

The Milwaukee County Code of Ethics states in part, "No person may offer to give to any Public official or employee or his immediate family, and no Public official or employee or his immediate family may solicit or receive anything of value pursuant to an understanding that such officers or employees' vote, official actions or judgment would be influenced thereby."

No person(s) with a personal financial interest in the approval or denial of a contract being considered by a County department or with an agency funded and regulated by a County department, may make a campaign contribution to any County official who has approval authority over that contract during its consideration. Contract consideration shall begin when a contract is submitted directly to a County department or to an agency until the contract has reached final disposition, including adoption, county executive action, proceedings on veto (if necessary) or departmental approval. This provision does not apply to those items covered by Section 9.15 unless an acceptance by an elected official would conflict with this section. The language in Section 9.05(2)(l) shall be included in all Request for Proposals (RFP) and bid documents.

**Independent Contractor**

Nothing contained in the Agreement shall constitute or be construed to create a partnership or joint venture between MTS, Inc. or its successors and the Contractor or its successors or assigns. In entering into this Agreement, and in acting in compliance herewith, Contractor is at all times acting and performing as an independent Contractor, duly authorized to perform the acts required of it hereunder.

**Retention of Records**

Contractor agrees to retain all records related to this contract for a period of at least three years from final date of payment of this contract

### **Audit of Records**

Contractor shall permit the authorized representative of the Milwaukee County Auditor, after reasonable notice, the right to inspect and audit all data and records of Contractor related to carrying out the contract for a period of up to three years after completion of the contract. If subcontracts and/or associates are utilized, prime contractor shall have written contractual agreement with County approved subcontractors and/or associates which bind the subcontractor to the same audit contract terms and conditions as the prime Contractor.

### **Non-Discrimination**

The contractor, lessee, offeror, supplier, purchaser, etc., agrees not to discriminate against any employee or applicant for employment because of race, religion, color, national origin, age, sex, or handicap, which include, but not limited to: recruitment or recruitment advertising; employment; upgrading; demotion or 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.

### **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 changes not properly ordered by written modification to the contract and signed by the contracting officer.

Bidders shall complete and return all bid forms required. The required forms **must** be submitted using the exact forms provided and must be signed by an authorized representative of the Bidder. Any alterations of the Forms or failure to submit required Forms may cause the Bid to be rejected as non-responsive.

### **Enclosures:**

1. Bid Sheet
2. Specification FM-01-20
3. Price Sheet
4. Federal Clauses
5. Signature Sheet
6. Sample Purchase of Service Agreement
7. Buy America
8. Anti-Lobby
9. Debarment Form
10. Non-Collusion
11. DBE Forms
12. EEO Certificate
13. Bidders List
14. Vendor Form
15. Conflict of Interest Statement and Independent Contractor Form
16. False Claims Form

**Forms that must be returned with Bid:**

1. Price Sheet
2. Signature Sheet
3. Vendor Form
4. EEO Certificate
5. Buy America Certification
6. Anti-Lobbying Form
7. False Claims form
8. Debarment Form
9. Conflict of Interest Statement and Independent Contractor Form
10. Non-collusion affidavit
11. Bidders list
12. DBE Forms completed
13. Copy of Warranty for Proposed Bid Items
14. Insurance Certificate – **will be required from awarded vendor**

**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 solicitation.

**BY SIGNING THIS BID, YOU ARE AGREEING WITH 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 has 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 quote, the proposer 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 quote and all of its documents. If the proposer’s performance, in the event he/she is successful is contingent upon the act of another party, the proposer 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: \_\_\_\_\_

**DUNS #:** \_\_\_\_\_ **NAICS CODE #** \_\_\_\_\_

\_\_\_\_ No bid at this time

\_\_\_\_ Please retain on bidder list

**BID SHEET**

**Vendor Name:** \_\_\_\_\_

The undersigned bidder proposes to furnish the materials and services herein described at and for the prices hereinafter named, according to specification on file in the office of the Director of Materials Management, and, if successful, hereby agrees to enter into an agreement with Milwaukee Transport Services, Inc.

**ITEM 1 New Tire 305 70R 22.5 Low Profile Side Wall per section 1.1 of specs.**

**YEAR ONE (1) – January 1, 2021 through December 31, 2021**

Bid Price in Words \_\_\_\_\_ per tire mile.

Bid Price in Figures \$ \_\_\_\_\_ per tire mile.

**ITEM 2 New Tire 305 70R 22.5 Low Profile Side Wall per section 1.1 of specs.**

**YEAR TWO (2) -January 1, 2022 through December 31, 2022**

Bid Price in Words \_\_\_\_\_ per tire mile.

Bid Price in Figures \$ \_\_\_\_\_ per tire mile.

**ITEM 3 New Tire 305 70R 22.5 Low Profile Side Wall per section 1.1 of specs.**

**YEAR THREE (3) - January 1, 2023 through December 31, 2023**

Bid Price in Words \_\_\_\_\_ per tire mile.

Bid Price in Figures \$ \_\_\_\_\_ per tire mile.

**ITEM 4 New Tire 305 70R 22.5 Low Profile Side Wall per section 1.1 of specs.**

**YEAR FOUR (4) OPTION - January 1, 2024 through December 31, 2024**

Bid Price in Words \_\_\_\_\_ per tire mile.

Bid Price in Figures \$ \_\_\_\_\_ per tire mile.

**ITEM 5 New Tire 305 70R 22.5 Low Profile Side Wall per section 1.1 of specs.**

**YEAR FIVE (5) OPTION - January 1, 2025 through December 31, 2025**

Bid Price in Words \_\_\_\_\_ per tire mile.

Bid Price in Figures \$ \_\_\_\_\_ per tire mile.

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

**ITEM 6 New Tire 305 70R 22.5 Low Profile Side Wall per section 1.1 of specs.**

- A. The cost per bus mile for this 36-month run out period shall be the amount in effect for the final six (6) month period of the contract. (See 1.10A2)

**BID Price for 1/32 of inch of tread.**

Bid Price in Words \_\_\_\_\_ per each.

Bid Price in Figures \$ \_\_\_\_\_ per each.

- B. **State usable number of 1/32 per (See 1.10A4)**

Bid Price in Words \_\_\_\_\_ per each.

Bid Price in Figures \$ \_\_\_\_\_ per each.

- C. **Purchase Price of New Tire (Current 2020 Price)**

Bid Price in Words \_\_\_\_\_ per each.

Bid Price in Figures \$ \_\_\_\_\_ per each.

RUN OUT RATE YEAR 1: \_\_\_\_\_

RUN OUT RATE YEAR 2: \_\_\_\_\_

RUN OUT RATE YEAR 3: \_\_\_\_\_

RUN OUT RATE YEAR 4: \_\_\_\_\_

RUN OUT RATE YEAR 5: \_\_\_\_\_

Vendor DUNS # \_\_\_\_\_

**Specification No: FM-01-20**  
**For**  
**Bus Tire Lease**

**SCOPE**

It is the intent of this specification to describe the minimum requirements for a mileage-lease agreement on tires for use by Milwaukee Transport Services, Inc (MTS) operator of the Milwaukee County Transit System (MCTS). All parts, items or features not specifically mentioned which are necessary to provide a complete unit, shall be furnished by the successful respondent at the proposed price and shall conform in strength, quality of material and workmanship to that usually provided by the engineering practice indicated in this specification. The Milwaukee County Transit System is managed and operated by Milwaukee Transport Services, Inc. and shall be referred to as MTS hereinafter.

**CLASSIFICATION**

This contract shall require the contractor to provide only original tread (new) tubeless type radial tires. MTS operates approximately 360, 40-foot, low floor buses that will be covered by this contract. MTS buses each require six tires: two front axles tires, and four rear axle tires. MTS buses travel approximately 16,000,000 miles annually. This information is given as bid information only and is no indication of actual quantities to be used, nor a guarantee of an amount to be used. The tire requirements and fleet size may increase or decrease during the term of this contract.

**DEFINITIONS**

Bus or Coach: Shall refer to vehicles operated by MTS for revenue purposes. All MTS buses are equipped with six (6) steel wheels.

Contractor: Will refer to respondent and all of his/her designated subcontractors.

Tire: Shall refer to a casing in respect to tubeless tires.

**DOCUMENTS**Federal Trade Commission:

The tires furnished under this contract shall be subject to Federal Trade Commission Orders, including but not limited to FTC Docket C-1957.

State and Federal Regulations:

The contractor shall supply tires which meet or exceed all United States Government, State of Wisconsin and local regulations.

OSHA:

The contractor shall supply Safety Data Sheets (SDS) for all supplies used to repair tires. SDS sheets shall be supplied upon successful award of the contract.

## SECTION 1 – Requirements

### 1.1 Tire Types

- A. The tires furnished shall be radial ply Special Transit Mileage tires.
- B. MTS does not intend to use any re-grooved tires.
- C. All tires furnished shall meet or exceed all Federal, State and local laws, ordinances and regulations.
- D. The tires provided shall be 305 70R 22.5 low-profile sidewall designed specifically for low-floor transit vehicles.
- E. As established by the Federal Department of Transportation, at no time shall any tire remain in service on MTS buses with less than 4/32 (front) and 2/32" (rear) of an inch tread depth when measured in a major tread groove. The measurement shall not be made where the wear indicators, tie bars, bumps, or fillets are located.
- F. Blemished tires shall not be accepted by MTS.
- G. Tires furnished shall be designed for use in city and suburban service with speeds limited to 55 mph for continuous operation without time limitation. Tires furnished shall be capable of sustaining a continuous speed 70 MPH for up to one (1) hour.
- H. For new bus purchases, if the North America coach manufacturer requires a tire type and size currently furnished to MTS under the terms of this contract, contractor shall furnish these tires at the mileage rate in effect at the time of delivery. If the coach manufacturer requires a type or size of tire not currently supplied under the terms of this contract, MTS reserves the right to negotiate a separate rate or purchase these tires on the open market.
- I. Any tires lost, stolen, or damaged while in the possession of the bus manufacturer, dealer or seller, or while the bus is being delivered shall be paid for by MTS. Contractor agrees to notify MTS of any additional tires requested by a bus manufacturer, dealer or seller not authorized by MTS.

### 1.2 Service Required

- A. Contractor shall furnish a qualified Mileage Sales Field Manager or person of equal qualifications to inspect tire wear, other tire conditions and to assist MTS personnel with any problems associated with tires. The individual shall spend three (3) consecutive working days per month, unless released earlier by the Director of Maintenance or his designee. The individual shall be required to inspect tires and related problems as required. All three (3) garages and Fleet Maintenance shall be serviced each month.
- B. Contractor shall supply and maintain a 10% spare ratio of new.
- C. The Mileage Sales Field Manager shall inspect all tires on each vehicle each year. The engineer shall inspect all tires on a minimum of 50 buses each month.
- D. Mileage Sales Field Manager shall submit to the Director of Maintenance a typewritten report detailing bus number, tire number, location of coach, garage location and

condition of tires inspected each month. Recommendations on potential problem areas shall be included on these reports.

- E. The Mileage Sales Field Manager shall cooperate with the Garage Managers to arrange for tire inspections and special requests for particular buses.
- F. In the event of a problem requiring prompt attention the Mileage Sales Field Manager shall be required to be in Milwaukee within 72 hours of notification by the Director of Maintenance or his designee.

### **1.3 Price for Lease of Tires**

- A. The price quoted for tires on the bid form shall include the following:
  - TUBELESS TIRES: New Tire casings, valve stems (for aluminum and steel rims), cores and caps.
  - MISCELLANEOUS: All supplies required to repair and maintain tires to include, at a minimum, patches, plugs, cement, cleaners, and any necessary special tools that may be required to accomplish repairs.
- B. The price(s) quoted shall be for all tires furnished under this contract.
- C. The mileage used shall be actual vehicle miles as supplied by MTS as outlined in section 1.7A

### **1.4 Titles to Tires**

- A. Ownership and title to the leased tires and all equipment provided by the contractor shall remain with the contractor.
- B. Contractor is responsible for disposal of tires and all related costs.
- C. Contractor is responsible for all costs related to disposal of scrap tires.

### **1.5 Contractual Provisions**

- A. General Basic Provisions
  - The contract shall run for a period of three (3) years, beginning on January 1, 2021, with a possible additional two (2) one (1) year options, for a potential total of five (5) years. The acceptance of each of the one (1) year options shall be determined solely by MTS.

- The price shall be a firm fixed per tire for the first three years of the contract. The acceptance of each of the one (1) year options shall be determined solely by MTS at a firm fixed price. MTS will not allow bonus billing or damaged tire billing.
- B. Should the contractor retain a sub-contractor(s), MTS shall deal solely with the contractor. The Prime must have a written contract with any sub-contractor and must also hold any sub-contractor to all the Terms and Conditions of the Prime’s contract.
- C. All provisions referring to “contractor” in this specification shall also refer to all sub-contractor(s) retained by the contractor.
- D. If necessary, MTS will sign a service agreement with the successful respondent. If such an agreement is signed, it will be added into the Order of Precedence that is listed in the bid document.
- E. No changes whatsoever shall be acted on or allowed without prior written authorization of the Director of Materials Management or their designee.

**1.6 Projected Fleet Count, Location and Annual Mileage**

- A. The projected annual mileage for the MTS bus fleet is 16,000,000. The MTS garages and fleet count are as follows:
- Fond Du Lac Garage – 192 Buses  
2932 North 35<sup>th</sup> Street, Milwaukee, WI 53210
  - Kinnickinnic (KK) Garage – 162 Buses  
1710 South Kinnickinnic Avenue, Milwaukee, WI 53204
  - Fleet Maintenance Facility – 0  
1525 West Vine Street, Milwaukee, WI 53205
  - Total bus count 354 buses

**1.7 Record Keeping**

- A. MTS will determine the mileage of each bus and shall furnish the contractor with a list of the mileage on each vehicle at the end of each month during the course of the contract. This report shall be used by the contractor to compute the monthly statement. MTS will provide this record as soon as possible after the end of the month for which payment is due.
- B. MTS will send a record of the bus mileage and the payment due for a month by the 25<sup>th</sup> day of the following month.
- C. Tires will be group or individually branded, prior to delivery.

**1.8 Taxes**

- A. MTS is exempt from payment of Federal excise and Transportation tax, as well as State of Wisconsin tax on products furnished under this contract. These taxes shall not be included in the bid price.

- B. MTS shall provide tax exemption certificate upon request.

### **1.9 Product Liability**

- A. The contractor shall agree to save, keep, bear harmless and fully indemnify MTS and all of its employees or agents from any claim of any party on account of injuries to said party, or damage to his/her property, suffered in connection with this contract and from all claims, actions or causes of action for damage arising out of the use or possession of any tire furnished hereunder resulting from the negligence of the contractor or defective manufacturer of such tires arising from bid submitted by the contractor. Contractor shall not be held responsible for loss, damage, liability, injury or death occasioned by the active negligent acts or willful misconduct of MTS, its agents or employees. Notwithstanding any other provisions in this contract, in no case shall the Contractor be held responsible for consequential damages, including without limitation, lost profits, lost revenue, overhead, downtime, or any other speculative or indirect damages, except as indicated in section 1.14B.
- B. MTS will promptly notify the contractor of the institution of any suit or proceeding and permit the contractor through counsel, to defend same and will give all needed information, assistance and authority to enable the contractor to do so.

### **1.10 Run Out Options**

- A. MTS shall reserve the following options upon conclusion of the contract created upon award of the bid using these specifications:
  1. In the event of a change in supplier, MTS reserves the right to continue to use the contractor's tires for a 36-month run out period upon conclusion of this contract. MTS shall notify the respondent in writing not less than 30 days in advance of the conclusion of the contract if it elects to exercise this option.
  2. The cost per bus mile for this 36-month run out period shall be the amount in effect for the final six (6) month period of the contract.
  3. MTS shall use these tires until they are rendered permanently unfit for service, within the 36-month period.
  4. At the end of the 36-month run out period, MTS shall pay for any unused mileage remaining at the mileage rate in effect during the run out period. The remaining mileage shall be prorated by determining the percentage of tread rubber remaining multiplied by the contract fixed cost per 32<sup>nd</sup> of useable tread available.

- B. At the end of the contract, the contractor agrees to accept return of any new unused tires remaining in stock at MTS.
- C. All provisions of the contract shall remain in effect during the 36-month run out period except the previous contractor is no longer required to supply additional tires or service equipment during the run out period, unless agreed upon by the contractor and MTS.
- D. MTS reserves the right to exercise the run out option with its current supplier, Firestone for up to the 36-month time limit imposed by FTC Docket C-1957.
- E. MTS reserves the right to purchase tires outright at the end of the contract period as outlined in Section 1.10A-4 of this contract.
- F. MTS shall not mix different manufacturers tires on the same bus.

**1.11 Material Defect Failure**

MTS shall not be held responsible for additional payment on tires which fail because of material defects.

**1.12 Bus Removed from Service**

- A. MTS reserves the right to keep contractor's tires on buses removed from service and dedicated as reserve/contingency fleet. No prior notice need be furnished to the contractor.
- B. When tires are removed from buses that are taken out of service, MTS reserves the right to use these tires on other buses or to remove these tires from service. MTS may purchase tires by paying for mileage remaining at the mileage rate in effect, based on item 1.13A
- C. The contractor shall supply scrap tires, at no charge, to MTS in quantities sufficient to support the buses scheduled for disposal.

**1.13 Loss and Abuse**

- A. If any tires are purchased or sold, MTS shall reimburse contractor for those tires by paying for any mileage remaining thereon at the lease rate then in effect. The remaining mileage shall be prorated by determining the percentage of tread rubber remaining multiplied by the contract fixed cost per 32<sup>nd</sup> of useable tread available.
- B. When a tire is not available for inspection in the above formula, whether lost, stolen or otherwise missing, destroyed by a fire, MTS shall not reimburse contractor in excess of fifty percent (50%) of the current value as bid on Item 7 of bid price sheets, unless contractor can provide an auditable accounting of the tires accurate mileage prior to loss.
- C. MTS shall not be held responsible for additional payment on tires which fail as a result of, but not limited to curbing, running flat, improper wheel alignment, or involved in a collision, or because of defective rims or wheels, cost for damage tires, if any, shall be included in the price per tire mile.

**1.14 Liquidated Damages**

- A. Contractor agrees to reimburse MTS \$115/hr. for any labor or charges incurred by MTS to repair or address any quality defects in leased tires provided by Contractor that must

be addressed immediately. If time is not of the essence, MTS will request Contractor to repair or replace leased tires.

- B. In the event that Contractor fails to comply with a request from MTS to repair, replace leased tires, MTS shall, upon written notice to Contractor, have the authority to deduct the cost(s) incurred by MTS to address the request from the next payment due under the contract.
- C. Contractor agrees to reimburse MTS for the cost of towing if towing is needed due to any quality defects in the leased tires provided by Contractor.

#### **1.15 Delivery Delays**

- A. The contractor shall state the delivery time required for original tires in the bid.
- B. Contractor shall forfeit \$20.00 per tire per day, up to the cost of a new original tread tire for failure to deliver tires within the time stated in the bid if MTS determines such delays are within the control or power of the contractor. MTS' decision on said delays shall be final.
- C. When a delivery delay occurs and a penalty is due MTS, the amount due MTS, as outlined in Sections 1.14A and 1.14B, may be deducted from the monthly lease payment.

#### **1.16 Government Actions**

If the contractor must alter any portion of this contract due to governmental action, the contractor shall notify MTS in writing no later than 14 calendar days after the contractor is informed of said action or the action takes effect, whichever takes place first.

#### **1.17 Governing Laws**

- A. This contract shall be governed solely by the laws applicable in Milwaukee County, Wisconsin.
- B. The Contractor shall obtain a CITY OF MILWAUKEE license for "*RECYCLING, SALVAGING, OR TOWING PREMISES*".

#### **1.18 Proposed Contractual Forms**

If any contractual forms are submitted by the contractor, said forms shall not violate the intent of the specification requirements and are subject to negotiation and mutual agreement. In case of a discrepancy between the above, the stated Order of Precedence in the bid document shall

prevail.

**1.19 Services Provided by MTS**

- A. MTS will provide at no cost to contractor a suitable, safe and reasonable space to store tires supplied under this contract.
- B. MTS shall be responsible for tire mounting, dismounting, installation and removal from vehicles.
- C. MTS will maintain tire pressures, make all wheel changes on coaches, mount and dismount tires from rims and repair flats.
- D. MTS will make its best efforts to keep brakes properly adjusted, maintain proper wheel alignment, and maintain good mechanical conditions on all buses

**SECTION 2 – Samples, Tests, Inspection**

**2.1 Tests and Inspections**

- A. MTS reserves the right to use test tires on up to 10% of the total fleet of buses.
- B. A designated MTS employee may inspect tires upon delivery.

**SECTION 3 – Delivery and Preparation**

**3.1 Delivery**

- A. All tires shall be delivered freight prepaid, F.O.B. destination to:  
 Milwaukee County Transit System  
 1525 West Vine Street  
 Milwaukee, WI 53205  
 Tire Shop entrance
- B. All deliveries shall be made between 7:00 a.m. and 12:00 p.m. Monday through Friday. Contractor shall be responsible for tailgate loading and/or unloading.
- C. Used tires (when no longer suitable for further use), when available but only after inspection by contractor, shall be removed from MTS' facilities. Contractor shall remove used scrap tires within ten (10) days of notification by MTS that seventy-five (75) or more tires have accumulated. Contractor shall be responsible for loading and/or unloading.

**SECTION 4 – Changes to Specification**

- 4.1** No verbal responses from any agent of MTS shall be acted upon. For non-protest clarifications, submit questions in writing to:  
**Monique Alston at [malston@mcts.org](mailto:malston@mcts.org)**

<b>Bus</b>	5100	5200	5300	5400	5500	5600	5700	5800	5900	6000
<b>Vehicle Mfg/model</b>	NF D40LFR	NF D40LFR	NF D40LFR	XD40	XD40	XD40	XD40	XD40	Gillig 40	Gillig 40
<b>Vehicle Year</b>	2010	2011	2012	2013	2013	2015	2016	2017	2018	2020
<b>Vehicle Size</b>	<b>40 FT Bus</b>									

**Gross Vehicle Weight**

<b>GVAW Steer</b>	14,780 LB	14,770 LB	14,770 LB	14,780 LB	14,780 LB	14,770 LB	14,770 LB	14,770 LB	39,600	
<b>GVAW Drive</b>	27,760 LB	27,760 LB	27,760 LB	27,760	27,760	27,760 LB	27,760 LB	27,760 LB		
<b>Type of Wheel</b>	STEEL	STEEL	STEEL	STEEL	STEEL	STEEL	STEEL	ALUM	ALUM	ALUM
<b>QTY</b>	90	34	54	55	23	25	30	15	28	23

Est Monthly  
Vehicle  
Mileage: 4,100



# COMMUNITY BUSINESS DEVELOPMENT PARTNERS MILWAUKEE COUNTY

## DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION SPECIFICATIONS

1. The award of this contract is conditioned upon your good faith efforts in achieving this project's Disadvantaged Business Enterprise (DBE) goal of \_\_%, and you must document those efforts.
2. **DBE Goal:** This participation goal is based on the total dollar value of your base bid, initial offer or initial scope of work, less allowance and/or reimbursable items. Participation must be maintained throughout the contract, including additional contract work, e.g., acceptance of alternates, negotiated procurements, change orders, addendums, use of allowances, etc.

### BID/PROPOSAL CONSIDERATIONS

3. The County will reject your bid/proposal if it does not include documentation of your good faith efforts in one of the following ways:
  - a. When you meet or exceed the goal, include the **Commitment to Contract with DBE** (DBE-14) form(s).
  - b. When you **do not** meet or exceed the goal, include the **Certificate of Good Faith Efforts** (DBE-01) goal.

**EXAMPLE:** 20% goal. You have 4% participation in commitment(s). You submit the commitment(s) for the 4%, along with the **Certificate of Good Faith Efforts** (DBE-01) documenting the efforts undertaken to achieve the remaining 16%.

4. Your good faith efforts are those that one could reasonably expect to be taken if you were actively and aggressively trying to obtain DBE participation sufficient to meet the goal. Additional guidance is part of the **Certificate of Good Faith Efforts** (DBE-01) form).
5. If awarded the contract, you will enter into a contractual agreement, directly or through subcontractors, according to the **Commitment to Contract with DBE** (DBE-14) form(s) submitted with your bid/proposal. Copies of the executed contract(s) or purchase order(s) will be required to be submitted to the County.
6. DBE participation credit, for both DBE and non-DBE primes, is calculated as follows:
  - a. All of the identified scope(s) of work must have a commercially useful function in the actual work of the contract and must be performed directly by the DBE. This means that DBEs must perform the contract work with their own employees, as determined by the County.
  - b. One hundred percent (100%) for the work performed by a DBE. If a DBE subcontracts a portion of its work to another firm, the value of the subcontracted work will not be counted towards the DBE goals unless the work is performed by another DBE. Material, equipment and supplies provided and installed (put into use) by a DBE also count dollar for dollar to toward the goal.
  - c. One hundred percent (100%) for products manufactured by a DBE. DBE manufacturers operate or maintain a facility that produces goods from raw materials, or substantially alters the materials or supplies, on-site.
  - d. Sixty percent (60%) for materials or supplies purchased from a certified DBE regular dealer.

**Regular Dealers** own, operate, or maintain stores, warehouses, or other establishments where materials or supplies are kept in stock, and regularly sold to the public in the usual course of business. A regular dealer in bulk items such as steel, cement, gravel, stone, and petroleum products don't need to keep stock, if it owns or operates distribution equipment.



# COMMUNITY BUSINESS DEVELOPMENT PARTNERS MILWAUKEE COUNTY

- e. One hundred percent (100%) for the fees or commissions charged for assistance in the procurement of material and supplies. Fees or transportation charges for the delivery of material or supplies by a DBE to a job site also count dollar for dollar toward the goal. The cost of the materials and/or supplies themselves will not be credited towards its DBE goals.

**Brokers, Trade Agents and Manufacturers'/Independent Sales Representatives** arrange or expedite transactions without taking title of the goods being sold and receive a commission or fee for their service.

- f. One hundred percent (100%) for DBE trucking firms. The DBE must be responsible for the management and supervision of the entire trucking operation for which it has contracted. The DBE must also use trucks it owns, insures, and operates using drivers it employs. The DBE may lease trucks from another firm, or an owner-operator, certified as a DBE. The DBE may also lease trucks from a non-DBE firm, or owner-operator, but credit will only be given for the fee or commission and not the trucking itself. Ready mix operations will not receive credit for deliveries made by non-DBE firms.
  - g. You are required to notify the County if any DBE contractor(s) working on this contract will sublet any portion of their work.
7. Only DBEs certified by the State of Wisconsin Unified Certification Program (UCP) prior to the bid/proposal submission deadline count towards the satisfaction of the goal. **If you want to use a firm certified in another state or with another agency, the firm must apply for certification with the UCP prior to submission of your offer/bid deadline.** For assistance related to DBE certification of firms, contact the Certification Compliance Administrator at (414) 278-4747.
  8. The County reserves the right to request supporting documentation from both you and any listed DBE. If you fail to respond within the time specified, the County will determine you to be non-responsive and remove you from further consideration for contract award.

## FOLLOWING CONTRACT AWARD

9. The County reserves the right to conduct compliance reviews and request, both from you and your subs or suppliers, supporting documentation to verify DBE participation, in addition to the information entered monthly into the County's online reporting system. The County will notify you if you are not in compliance with contract specifications. If you fail to take corrective action as directed, the County will take one or more of the following actions:
  - a. Terminate or cancel your contract, in whole or in part;
  - b. Remove you from the list of qualified contractors/consultants, and refuse to accept future bids/proposals from you for a period not to exceed three (3) years;
  - c. Withhold contract payments, or pay subs and/or suppliers directly, to cover shortfall; and/or
  - d. Bring suit to recover damages up to the amount of the shortfall, including interest at the rate of 12% annually, plus the County's costs, expenses and actual attorney's fees incurred in the collection action.
10. You must submit copies of the executed subcontract agreement(s) or purchase order(s) for each sub and/or supplier listed on the contract. Include copies with the first monthly request for payment. **REQUESTS FOR PAYMENT WILL NOT BE PROCESSED IF AGREEMENTS/PURCHASE ORDERS ARE NOT SUBMITTED.** In addition, you will document that each DBE is notified at least three (3) working days before start of their subcontract work.



## COMMUNITY BUSINESS DEVELOPMENT PARTNERS MILWAUKEE COUNTY

11. You are required to notify the County if any DBE contractor(s) working on this contract will sublet any portion of their work.
12. If the DBE(s) cannot perform, if you have a problem in meeting the goal, or any other issue such issues come up, you must immediately contact CDBP Compliance at (414) 278-4851. You must submit written notification of your desire for substitution to the DBE affected, and copy the County. This notice must state the reason for the request. The DBE has five (5) business days to provide written objection/acceptance to you. Approval must be obtained from County prior to making any substitutions. DBE contractors are also required to notify and obtain approval from the County prior to subletting work on this project.
13. **Requests for Payment:** You will enter payments to subs and suppliers directly into the County's online reporting system on a monthly basis. These entries will cover payments made during the preceding month and will include zero dollar (\$0) entries where no payment has occurred. You must also indicate on the AIA Document ***G703 - Continuation Sheet***, or equivalent, work being performed by DBEs. Either a) place the word "DBE" behind the work item or b) break out the work done by DBEs at the end of the report. If you don't do these things, the County will deny payments, or enforce other sanctions including those listed in Section 9, above.
14. The County has a revolving loan program for DBEs. If you use a DBE that is using these County funds, you must assist the County repayment of these funds. This may include, but is not limited to, providing written information regarding the sub's contract balance, prior payment (two or three party) agreements, and the issuance of two-party checks payable in the name of Milwaukee County and the DBE indebted to the County under this program.
15. The County reserves the right to waive any of these specifications when it is in our best interest.



## COMMUNITY BUSINESS DEVELOPMENT PARTNERS CERTIFICATE OF GOOD FAITH EFFORTS

**Completion of this form is required for all bidders who have not achieved participation goal. Submission of a complete form is a matter of responsiveness to this bid. Completion of all three tabs in this spreadsheet is required.**

### Certificate of Good Faith Efforts

#### **Guidance on completing these documents.**

This guidance and information is provided to assist bidders in compliance with the provisions under all Milwaukee County Ordinances and US DOT 49 CFR part 26, pertaining to the implementation of the US DOT disadvantaged business enterprise program. Like all guidance material, these questions and answers are not, in themselves, legally binding or mandatory, and do not constitute regulations. They are issued to provide an acceptable means, but not the only means, of compliance with Part 26 and other guiding statutes, regulations and laws. For US DOT projects the regulations in 49 CFR 26 and others can be reviewed at: <https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/dbe-program-overview> The Milwaukee County CBDP program can be reviewed in more detail at: <http://county.milwaukee.gov/cbdp> including links to relevant regulations.

When Milwaukee County assigns a participation goal, you will make good faith efforts to meet this goal prior to submitting a bid or proposal in order to be responsive. If you haven't met the goal, you can document adequate good faith efforts toward that end. This means that you must show that you took all necessary and reasonable steps to achieve the participation goal. The County will make a fair and reasonable judgment as to whether you made adequate good faith efforts according to the following guidelines. It is important to consider the quality, quantity, and intensity of the different kinds of efforts that were made. These efforts should be those that one could reasonably expect you to take if you were actively and aggressively trying to obtain participation sufficient to meet the participation goal. Going through the motions by making a phone call or two to a firm that you think should qualify is not good faith efforts to meet the project requirements. The County's determination concerning the sufficiency of your good faith efforts is a judgment call and meeting quantitative formulas is not required. The following is a list of types of actions the County considers as part of your good faith efforts. This isn't a mandatory checklist, nor is it all-inclusive. Other factors or types of efforts may be relevant in appropriate cases, see regulations for more information.



## COMMUNITY BUSINESS DEVELOPMENT PARTNERS CERTIFICATE OF GOOD FAITH EFFORTS

**Certificate of Good Faith Efforts**

This document is required to detail what your firm has done to meet this project's participation goal if the participation you have attained is less than the goal set for this project. Guidance as to acceptable 'good faith efforts' is found on the Guidance page of this spreadsheet. Failure to use and properly document good faith efforts to meet the assigned participation goal will result in the rejection of your bid/proposal. By submitting this document, do hereby acknowledge that I am authorized as the representative for the bidder/proposer on the following Milwaukee County Project and that we have provided documented proof of our firms good faith efforts to solicit, negotiate with and utilize certified firms to meet the participation goal of this contract as demonstrated by my response to the questions contained in this fully completed set of documents.

Prime Contractor Firm Name and Address	Authorized Representative	Email Address	Telephone Number	Other Contact Info	Is the Prime a DBE?

Project Number	Bid Number	Project Title	Total Contract Amount	DBE Total Project Percentage	
				Goal	Pledged

Provide a brief summary of why your firm is unable to meet the participation goal on this project.



# COMMUNITY BUSINESS DEVELOPMENT PARTNERS CERTIFICATE OF GOOD FAITH EFFORTS

<b>Contractible Work Items</b>
--------------------------------

You are required to determine portions of work to be contracted in a manner that will increase the likelihood of meeting the participation goal set for this project. In selecting work to be contracted, you must consider, where appropriate, breaking down contracts into economically feasible units to facilitate DBE participation. To assist in these efforts and to provide consistent definitions, use NAICS codes (<http://www.census.gov/eos/www/naics/>) to identify each category of work you identified. DBE firms are registered by NAICS code and a list is available in the Wisconsin UCP directory.

NAICS codes (Required)	Description of work	Estimated Dollar Value (Required)	Was this work made available to DBE Firms? If no, explain why.	Explanation





**COMMUNITY BUSINESS DEVELOPMENT PARTNERS  
CERTIFICATE OF GOOD FAITH EFFORTS**

<u>Firm Name</u>	<u>Describe Work Solicited</u> (NAICS codes pull from "Contractible Work Items")	<u>Date of Original Solicitation</u>	<u>Solicitation Method Used</u>	<u>Date of Follow Up Solicitation</u>	<u>Solicitation Follow Up Method Used</u>	<u>Quote Received Y/N</u>	<u>Quote Accepted (Y/N)</u>	<u>Reason for Rejecting Quote</u>



FIRM: \_\_\_\_\_ Project No: \_\_\_\_\_

**SUBCONTRACTOR/SUBCONSULTANT/SUPPLIER INFORMATION SHEET**

Milwaukee County requires the following collection of information on all subcontractors, sub-consultants and/or suppliers submitting quotes on Milwaukee County projects. This information is to be submitted with bid/proposal.

**PROVIDE THE FOLLOWING INFORMATION ON EACH BID/QUOTE**

Name	CERTIFICATION DBE or none	Address	Date Firm Established	Work or Service to be Performed

**Note: Information gathered on the background and financial status of firms is protected from disclosure by Federal Regulation.**



# COMMUNITY BUSINESS DEVELOPMENT PARTNERS MILWAUKEE COUNTY

## COMMITMENT TO CONTRACT WITH DBE

PROJECT No. \_\_\_\_\_ PROJECT TITLE \_\_\_\_\_

TOTAL CONTRACT AMOUNT (less allowances) \$ \_\_\_\_\_ DBE Goal: \_\_\_\_\_

Name & Address of DBE(*)	Scope of Work Detailed Description	DBE Contract Amount	% of Total Contract

**Bidder/Proposer Commitment (To be completed by firm committing work to DBE)**

I certify that the DBE firm quoted the identified service(s) and cost(s). I further acknowledge our firm having negotiated with, and having received confirmation, on partnering, pricing and delivery from DBE firm listed herein.  
 Our firm \_\_\_\_\_ Phone No. \_\_\_\_\_, or one of our subcontractors, will enter into contract with the DBE firm listed, for the service(s) and amount(s) specified when awarded this contract. A copy of the contract between our firm and that of the named DBE will be submitted directly to CBDP within seven (7) days from receipt of Notice-to-Proceed on this contract. The information on this form is true and accurate to the best of my knowledge. I further understand that falsification, fraudulent statement, or misrepresentation will result in appropriate sanctions under applicable law.

\_\_\_\_\_  
 Signature of Authorized Representative                      Name & Title of Authorized Representative                      Date

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

\_\_\_\_\_  
 Signature of Notary Public [SEAL]

State of \_\_\_\_\_ My Commission expires \_\_\_\_\_

\* Only firms certified as DBEs (within qualifying NAICS codes) by the Wisconsin UCP **prior to bid/proposal opening** will be credited on this contract

**DBE Affirmation (To be completed by DBE Owner/Authorized Representative)**

- I affirm that the Wisconsin UCP has certified our company as a DBE, and that our company is currently listed in the Wisconsin UCP Directory.
- I acknowledge and accept this commitment to contract with my firm for the service(s) and dollar amount(s) specified herein, as put forth by \_\_\_\_\_.
- I understand and accept that this commitment is for service(s) to be rendered in completion of the Milwaukee County project specified herein to be completed with my own forces, unless otherwise approved by CBDP.
- I affirm that approval from CBDP will be obtained prior to subletting any portion of this work awarded to my firm on this project.

\_\_\_\_\_  
 Signature of Authorized DBE Representative                      Name & Title of Authorized DBE Representative                      Phone Number                      Date

**FOR CBDP USE ONLY**

**Commitment number** \_\_\_\_ **of** \_\_\_\_ **Participation:** (A) \_\_\_\_\_ (V) \_\_\_\_\_ **Project Total** \_\_\_\_\_

\_\_\_\_\_  
 Authorized Signature \_\_\_\_\_  
 Date



# COMMUNITY BUSINESS DEVELOPMENT PARTNERS MILWAUKEE COUNTY

## COMMITMENT TO CONTRACT WITH DBE

### **ADDITIONAL INFORMATION & REQUIREMENTS:**

1. The Directory of Certified DBE firms eligible for credit toward the satisfaction of this project's DBE goal will be found at the following link, and can be searched by Name and/or NAICS code.

<http://wisconsin.gov/Pages/doing-bus/civil-rights/dbe/certified-firms.aspx>

2. **CONTRACT ADJUSTMENTS:** The successful Bidder/Proposer will maintain the approved DBE participation level during the term of the contract with the County, including any additional work on the contract, e.g., change orders, addendums, scope changes, etc. Contract adjustments shall include proportional DBE participation.

3. **WRITTEN CONTRACTS WITH DBEs:** The County requires that the successful Bidder/Proposer enter into contract, directly or through subcontractors, as stated in this form. Agreements must be submitted to the County within 7 days of receipt of the Notice-To-Proceed. By executing this commitment, you are certifying that you have had contact with the named DBE firm and that they will be hired if you are awarded the contract by the County.

4. **SUBSTITUTIONS, DBE SUBCONTRACTING WORK, TRUCKING FIRMS:** The successful Bidder/Proposer must submit written notification of desire for substitution to the DBE affected, and send a copy to the County, stating the reason(s) for the request. The DBE will have five (5) business days to provide written objection/acceptance of the substitution. The "right to correct" must be afforded any DBE objecting to substitution/termination for less than good cause as determined by the County. Approval must be obtained from the County prior to making any substitutions. DBEs are also required to notify and obtain approval from the County prior to seeking to subcontract out work on this project. In the case of DBE trucking firms, credit will be given for trucks leased from other DBE firms; however, if the DBE leases trucks from non-DBE firms, the commission or fee will be counted for DBE crediting.

5. **REQUESTS FOR PAYMENT:** The successful Bidder/Proposer must indicate on the Continuation Sheet (AIA form G703, or equivalent) the work being performed by DBE by either a) placing the word "DBE" behind the work item or b) breaking out the work done by DBEs at the end of the report. The successful Bidder/Proposer shall notify DBE firms of the date on which they must submit their invoices for payment.

6. **DBE UTILIZATION REPORTS:** The successful Bidder/Proposer will enter payments to subs and suppliers directly into the County's online reporting system on a monthly basis. These entries will cover payments made during the preceding month and will include zero dollar (\$0) entries where no payment has occurred.

If you have any questions related to Milwaukee County's DBE Program, please contact:

**414.278.4747** or [cbdpcompliance@milwaukeecountywi.gov](mailto:cbdpcompliance@milwaukeecountywi.gov)

# VENDOR INFORMATION SHEET

New

Change

Vendor # \_\_\_\_\_ Date \_\_\_\_\_

Vendor Name \_\_\_\_\_

Vendor Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_ Country \_\_\_\_\_

Phone 1 \_\_\_\_\_ Alt Phone \_\_\_\_\_ Fax Number \_\_\_\_\_

## REMIT TO ADDRESS:

Address #1 \_\_\_\_\_ Address #2 \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_ Country \_\_\_\_\_

Website \_\_\_\_\_ Email Address \_\_\_\_\_

COMMENTS \_\_\_\_\_

Contact Person(s) \_\_\_\_\_

Are you a DBE? \_\_\_\_\_ Written By \_\_\_\_\_

Tax ID # \_\_\_\_\_ Date Business Started \_\_\_\_\_

NAICS Code \_\_\_\_\_

DUNS # \_\_\_\_\_ DBE Expiration Date \_\_\_\_\_

Annual Gross Receipts for business \_\_\_\_\_  
(average over past 3 years)

## CERTIFIED DBE:

41 = Black American Male

42 = Hispanic American Male

43 = Native American Male

44 = Other Male

45 = Asian Pacific American Male

46 = Subcontinent Asian American Male

47 = Designated SBA Male

51 = Black American Female

52 = Hispanic American Female

53 = Native American Female

54 = Other Female

55 = Asian Pacific American Female

56 = Subcontinent Asian American Female

57 = Designated SBA Female

58 = Female

Will Vendor come on MTS' Property at any time?  Yes  No

If YES, Purchasing Agent will Need to obtain a Certificate of Liability Insurance (COI)

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

## 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)

# INDEPENDENT CONTRACTOR INFORMATION

(For Professional Services Contract Only)

As per 1995 Wisconsin Act 118, amending Wisconsin Statute 108.02(12)b; comprehensive revisions to the Wisconsin Unemployment Compensation Act includes a new definition for "independent contractor", which became effective on January 4, 1996.

1. Are you a Corporation?  YES  NO

If yes, in what state: \_\_\_\_\_

If no:

2. Federal Employer Identification Number: \_\_\_\_\_

If no number issued, date of application \_\_\_\_\_, or Social Security Number: \_\_\_\_\_

3. Year of last business or self-employment tax return: \_\_\_\_\_

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

\_\_\_\_\_  
Signature of Authorized Owner/Agent

\_\_\_\_\_  
Printed name and title of Authorized Owner/Agent

\_\_\_\_\_  
Date

## False Claims Act Form

A recent amendment to the Federal Acquisition Regulation requires contractors to disclose violations of criminal law and the False Claims Act in connection with the award and performance of government contracts and subcontracts.

By signing this form, it assures Milwaukee Transport Services, Inc., that Contractors are subject to debarment and suspension from government contracting for knowingly failing to disclose such violations and overpayments on government contracts in a timely manner.

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

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

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

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

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

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

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

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

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: \_\_\_\_\_

# Insurance Minimums

## **Insurance:**

Contractor agrees to maintain policies of insurance and proof of financial responsibility to cover costs as may arise from claims for damages to property of and/or claims which may arise out of or result from Contractors activities, by whomever performed, in such coverage and amounts as required and approved by MTS. Acceptable proof of such coverage shall be furnished to MTS prior to commencement of activities under this agreement. A Certificate of Insurance including declarations page, shall be submitted for review for each successive period of coverage for the duration of this agreement, unless otherwise specified by MTS, in the minimum amounts specified below.

Contractor shall provide evidence of the following coverages and minimum amounts:

<u>Type of Coverage</u>	<u>Minimum Limits</u>
Wisconsin Workers' Compensation and Employer's Liability & Disease	Statutory/Waiver of Subrogation \$100,000/\$500,000/\$100,000
General Liability Bodily Injury and Property Damage to include: Personal Injury, Fire, Products and Completed Operations	\$1,000,000 Per Occurrence \$2,000,000 Aggregate
Automobile Liability Bodily Injury and Property Damage All Autos	\$1,000,000 Per Accident
Professional Liability Refer to Additional Provision A.1.	\$1,000,000 Per Occurrence \$3,000,000 Aggregate
Umbrella Liability Policy will follow form to underlying Employer's, General, and Automobile Liability policies	\$5,000,000 Per Occurrence \$5,000,000 Aggregate

Milwaukee Transport Services, Inc (MTS) and Milwaukee County shall be named as an Additional Insured on the General and Automobile Liability policies as respects the services provided in this agreement. A Waiver of Subrogation shall be afforded to MTS on the

Workers' Compensation policy. A thirty (30) day written notice of cancellation or non-renewal shall be afforded to Milwaukee County.

The insurance specified above shall be placed with a Carrier approved to do business in the State of Wisconsin. All carriers must be A rated or better per AM Best's Rating Guide. Any requests for deviations from or waivers of required coverages or minimums shall be submitted in writing and approved by MTS's Risk Manager as a condition of this agreement.

A.1. Professional Liability – Additional Provision.

Contractor agrees to provide additional information on its professional liability coverage as respects policy type, i.e. errors and omissions for consultants, architects, and/or engineers, etc.; applicable retention levels; coverage form, i.e. claims made, occurrence; discover clause conditions, and effective retroactive and expiration dates, to MTS's Procurement Department as may be requested to obtain approval of coverage as respects this section.

It is understood and agreed that coverage which applies to the services inherent in this agreement will be extended for two (2) years after completion of all work contemplated on this project if coverage is written on a claims-made basis.

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

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

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

**CERTIFICATION REGARDING LOBBYING  
CERTIFICATION FOR CONTRACTS, GRANTS,  
LOANS AND COOPERATIVE AGREEMENTS**

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

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

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

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

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Typed Name & Title of Authorized Representative

---

Signature and Date of Authorized Representative

Milwaukee Transport Services, Inc.  
2020 Sample Purchase of Service Contract  
Vendor Name \_\_\_\_\_

This Contract is made and entered between Milwaukee Transport Services, a quasi-governmental instrumentality of Milwaukee County, 1942 North 17<sup>th</sup> Street, Milwaukee, Wisconsin 53205 (hereinafter called MTS) Name and address of provider \_\_\_\_\_ (hereinafter called Contractor).

1. Dates of Performance

This Contract is for three (3) years at a firm fixed price with the possibility of three (2) additional one (1) year options, for a potential total of five (5) years.

Starting:

Year 1: January 1, 2021 through December 31, 2021

Year 2: January 1, 2022 through December 31, 2022

Year 3: January 1, 2023 through December 31, 2023

Provide MCTS with only original tread (new) tubeless type radial tires. This contract may be extended for three (2) additional year(s) upon the agreement of the parties.

Option Years:

Year 4: January 1, 2024 through December 31, 2024

Year 5: January 1, 2025 through December 31, 2025

2. Scope of Service

Contractor shall specifically perform all of the services and achieve the objectives as set forth in the proposal submitted by Contractor to MTS, which is attached hereto. Contractor shall perform all services provided under this Contract in the manner prescribed by the relevant BID or Specifications, which are herein incorporated by reference and made a part of this Contract as if physically attached hereto.

3. Staffing and Delivery of Programs/Services

- A. Contractor shall provide all personnel required to perform the programs or services under this Contract. Such personnel shall not be employees of MTS, or have any other contractual relationships with MTS. Any replacement of personnel listed in Contractor's proposal shall be by persons of like qualifications, which shall be attested to by Contractor. Whenever possible, notification of replacement of personnel shall be provided to MTS prior to replacement.
- B. Contractor will provide proper supervision to all employees providing programs or services under this Contract.

- C. Except as provided herein and relevant BID and Specifications, Contractor shall determine the methods, procedures, and personnel policies to be used in services under this contract.
- D. This Contract in its entirety is at all times subject to such local, state, and federal laws and administrative regulations as exist at the time this Contract is executed and as shall become effective after execution but prior to termination of this Contract. Contractor shall comply with all federal, state, and local laws and regulations and shall maintain in good standing all licenses, permits, and certifications relating to the services referred to herein.
- H. Contractor shall complete all forms and documents requested by the MTS within timeframes outlined by the MTS.

4. Compensation

- A. Contractor shall be compensated for work performed as stated in Contractor's proposal attached hereto and made a part of this Contract. Contractor recognizes that the total service needs of MTS may not be met. MTS is unable to guarantee the volume of services funded by this Contract. Under no circumstances shall payments under this Contract exceed the amount(s) authorized for this Contract. The parties agree that section 66.0135, Wisconsin Statutes, Prompt Pay Law, shall not apply to payment for programs and services provided hereunder.
- B. MTS and Contractor acknowledge that funding of this Contract is completely dependent upon state and federal grants and contracts. The obligation of the MTS to purchase the services described herein is contingent upon present state and federal grants and contracts continuing at their present levels. Should such funding sources terminate or be reduced, MTS reserves the right, in its sole discretion, either to terminate this agreement or revise the scope of services being purchased to reflect any reduction in such funding. It is further recognized and agreed by MTS and Contractor that the programs and services provided under this Contract are subject to all provisions of said federal and state grants and contracts, and Contractor agrees to comply with all such provisions for the period of this Contract, including all applicable provisions of the standard State/County contract.
- C. MTS will not accept any changes to the compensation stated in Contractor's proposal during the term of this contract.

5. Billing and Reporting

- A. Contractor shall provide MTS with monthly billings and reports for programs and services provided under this contract by the fifteenth (15th) working day of the month following the month in which services are provided. Contractor shall submit billings and reports according to the manner specified by MTS.
- B. Within thirty (30) days of the receipt of all required billings and reports, MTS shall make payment to Contractor of the net amount due. The 30 days does not start to run until all forms are accurate, complete, and include all revisions requested by MTS.

6. Record Keeping and Access to Records

- A. Contractor shall maintain and, upon request, furnish to MTS, at no cost to MTS, any and all information requested by MTS relating to the quality, quantity, and cost of services covered by this Contract and shall allow authorized representatives of MTS and MTS's funding sources to have access to all records necessary to confirm Contractor's compliance with law and the Bid or Specifications for this Contract. Access to information shall include computerized data and/or other electronic information used by the Contractor, made available in formats suitable for data analysis, such as queries, using conventional software programs.
- B. Contractor shall maintain written verification of programs and services provided under this Contract, including the dates of programs and services performed for all of the purchased programs and services rendered, as specified by MTS. Contractor shall maintain clearly identified and readily accessible documentation of costs supported by properly executed payrolls, time records, invoices, contracts, vouchers, or other official documentation evidencing in proper detail the nature and propriety of the programs and services provided. Contractor shall retain all such records for a period of at least four (4).

7. 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 MTS 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 Chapter Section 34.09 (Audit) and Section 34.095 (Investigations concerning fraud, waste, and abuse) of the Milwaukee County Code of General Ordinances.

8. Affirmative Action, TBE Goals, Non-Discrimination and Equal Employment Opportunity

A. Affirmative Action.

The Contractor assures that it will undertake an affirmative action program as required by Milwaukee County Code of General Ordinances (MCCGO) 56.17(1d), to insure that no person shall, on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in MCCGO 56.17(1d). The Contractor assures that no person shall be excluded, on these grounds, from participating in or receiving the services or benefits of any program or activity covered by this subpart. The Contractor assures that it will

require that its covered organizations provide assurances to the Contractor that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by MCCGO 56.17(1d), to the same effect.

B. Disadvantaged Business Enterprises.

**This project has a Disadvantaged Business Enterprise (DBE) goal of 4.8%.** To be considered for this project, the Prime *must* submit a Subcontractor/Supplier Information Sheet (DBE-02) with your Bid/Proposal. Additionally, the award of this Contract is conditioned upon your good faith efforts in achieving this project's DBE goal, and you must document those efforts by submitting with your Bid/Proposal one of the following:

A signed and notarized *Commitment to Contract with DBE Firms* (DBE-14) form(s), one for each DBE documenting the participation achieved toward satisfying the goal \*, evidencing your proposed participation plan to meet or exceed the DBE goal;

OR

A signed and notarized *Certificate of Good Faith Efforts* (DBE-01) form\*\* and all relevant documentation, including a signed and notarized *Commitment to Contract with DBE Firms* (DBE-14) form for each DBE documenting the participation achieved toward satisfying the goal.

\*DBE-14 form(s) must identify (1) the DBE firm(s) by name and address, (2) the scope(s) of work/service(s) to be provided, (3) the dollar amount(s) of such work, and (4) the percentage of the DBE goal to be met. The form must be signed by the Prime and notarized to be considered responsive. The signature of the DBE firm in the affirmation section is not required at time of bid,

but will be required for the participation plan to be approved. MTS is entitled to reject your Bid/Proposal for failing to identify this information for each DBE.

\*\*DBE-01 form(s) must be complete to the fullest extent possible and outline communications with both solicited DBE firm(s) and Milwaukee County's Community Business Development Partners department (CBDP). Submission of form(s) with supporting documentation such as emails and similar correspondence is strongly recommended. **A necessary step in the good faith efforts process and for documentation in the *Certificate of Good Faith Efforts* (DBE-01) form, is contacting CBDP at 414-278-4747 or [cbdp@milwaukeecountywi.gov](mailto:cbdp@milwaukeecountywi.gov) for assistance in identifying DBE firms and understanding the County's DBE Program procedures.**

During the Contract, the successful Bidder/Proposer and all subcontractors will use the County's online reporting system B2G to document DBE participation. The *Disadvantaged Business Enterprise (DBE) Utilization Specifications* and forms to be used are included in the BID/RFP.

The official directory of eligible DBE firms can be accessed through the following link:

<http://wisconsin.gov/Pages/doing-bus/civil-rights/dbe/certified-firms.aspx>

To access the North American Industry Classification System (NAICS), please go to Business Classifications by NAICS Code: <http://www.census.gov/eos/www/naics/>

C. Non-Discrimination, Equal Employment Opportunity, and Affirmative Action Goals.

In the performance of work or execution of this contract, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, national origin or ancestry, age, sex, sexual orientation, gender identity and gender expression, disability, marital status, family status, lawful source of income, or status as a victim of domestic abuse, sexual

assault or stalking, which 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 apprenticeships. The Contractor will post in conspicuous places, available for employment, notices to be provided by MTS setting forth the provisions of the nondiscriminatory clause. A violation of this provision shall be sufficient cause for MTS 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.

The Contractor agrees that it will strive to implement the principles of equal employment opportunities through an effective affirmative action program, and will so certify prior to the award of the Contract, which program shall have as its objective to increase the utilization of women, minorities and handicapped persons, and other protected groups, at all levels of employment in all divisions of the contractor's workforce, where these groups may have been previously under-utilized and under-represented. The Contractor also agrees that in the event of any dispute as to compliance with the aforesaid requirements, it shall be his/her responsibility to show that he/she has met all such requirements.

The Contractor agrees that it will strive to implement the principles of active and aggressive efforts to assist Milwaukee in meeting or exceeding its overall annual goal of participation of target enterprise firms.

When a violation of the non-discrimination, equal opportunity or Affirmative Action provisions of this section has been determined by MTS Contractor shall immediately be informed of the violation and directed to take all action necessary to halt the violation, as well as such action as may be necessary to correct, if possible, any injustice to any person adversely affected by the violation, and immediately take steps to prevent further violations.

If, after notice of a violation to Contractor, further violations of the section are committed during the term of the Contract, MTS may terminate the Contract without liability for the uncompleted portion or any materials or services purchased or paid for by the Contractor for use in completing the Contract, or it may permit Contractor to complete the Contract, but, in either event, Contractor shall be ineligible to bid on any future contracts let by County.

9. Indemnity

- A. The Contractor agrees to the fullest extent permitted by law, to indemnify, defend, and hold harmless, the MTS, and its agents, officers, and employees, from and against all loss or expense including costs and reasonable attorney's fees by reason of liability for damages including statutory benefits under Workers' Compensation laws, suits at law or in equity, caused by any wrongful, intentional, or negligent act or omission of the Contractor, or its (their) agents which may arise out of or are connected with the activities covered by this Contract.
- B. Contractor shall indemnify and save MTS harmless from any award of damages and costs against MTS for any action based on intellectual property infringement regarding materials, including, but not limited to, computer programs involved in the performance of the programs and services covered by this Contract.

- C. Contractor agrees to indemnify MTS for any amount(s) MTS may be required to repay MTS by virtue of payments made to Contractor by MTS under this Contract that MTS, Milwaukee County, or FTA determines to be overpayments or inappropriate payment.

10. Insurance

Contractor agrees to strictly comply with the insurance requirements set forth on Exhibit I.

11. Liquidated Damages

- A. Failure of Contractor to comply with Contract requirements may result in withholding or forfeiture of any payments otherwise due Contractor from MTS by virtue of any MTS obligation to Contractor until such time as the Contract requirements are met.
- B. Contractor agrees to reimburse MTS \$115/hr. for any labor or charges incurred by MTS to repair or address any quality defects in leased tires provided by Contractor that must be addressed immediately. If time is not of the essence, MTS will request Contractor to repair or replace leased tires.
- C. In the event that Contractor fails to comply with a request from MTS to repair, replace leased tires, MTS shall, upon written notice to Contractor, have the authority to deduct the cost(s) incurred by MTS to address the request from the next payment due under the contract.
- D. Contractor agrees to reimburse MTS for the cost of towing if towing is needed due to any quality defects in the leased tires provided by Contractor.

12. Contract Termination

- A. MTS or Contractor may terminate this Contract for any reason, with or without cause, following thirty (30) days written notice. In the event of termination, the MTS will only be liable for programs and services rendered through the date of termination and not for the uncompleted portion or any materials or services purchased or paid for by Contractor for use in completing this Contract.
- B. Contractor shall notify MTS in writing, whenever it is unable to provide the required quality or quantity of programs and services. Upon such notification, MTS and Contractor shall determine whether such inability to provide the required quality or quantity of programs and services will require a revision or early termination of this Contract.
- C. Notwithstanding any other right of termination, MTS reserves the right to immediately terminate, or reduce in scope, its obligations under this contract in the event that the sources of funding to the MTS derived through State or Federal grants or contracts is terminated or reduced. This right of immediate termination for loss of funding applies even if Contractor has not been paid for services previously rendered.

13. Mission Critical Contract

MTS has identified this Contract as critical to MTS's ability to provide essential services. During the duration of the current COVID-19 pandemic, while there are federal, state, and/or local orders relating to or arising from this pandemic, or during any future pandemic or state of emergency declared during the term of this contract by federal, state, or local governments, Contractor will:

- a. Dedicate resources to identify and mitigate situations in the workplace or jobsite which may introduce, expose, or spread COVID-19.
- b. Screen employees following current CDC guidelines to verify they have not: : a) Traveled to a Level 2 or 3 Country in the past 14 days, or visited an area that requires self-quarantine because of COVID-19 infection, b) Had close contact (within 6 feet) with anyone known or suspected to have COVID19, c) Exhibited any symptoms (chest or back pain, cough, difficulty breathing) of COVID-19 or had a fever greater than 100.4 in the past 14 days.
- c. Educate employees on key CDC recommendations including how employees can protect themselves and what employees should do if they feel sick.
- d. Provide MTS services remotely, to the greatest extent possible.
- e. Notify MTS within 24 hours of becoming aware of any employee who has been on site at any MTS building, or in contact with any MTS employee, that has a confirmed or suspected case of COVID-19.
- f. Notify MTS immediately if Contractor believes, or has reason to believe, Contractor will be unable to provide services or goods under this Contract.
- g. Agrees that MTS is not responsible for any costs, and will not be invoiced for any incomplete work, if MTS revokes permission for Contractor's employees to be on MTS property due to that employee exhibiting symptoms of COVID-19, or any other illness.

14. Coordination of Services

Contractor agrees to coordinate its service efforts with other health and human service providers to eliminate unnecessary duplication of services.

15. Modifications

Contractor recognizes the right of MTS to make reasonable modifications in the programs and services purchased under this Contract. Contractor shall be notified in writing 30 days prior to any such modifications.

16. Contract Renegotiation or Revision

- A. This Contract may be renegotiated in the event of changes required by law, regulations, court action, or inability of either party to perform as committed in this Contract.

- B. This contract may be revised in a written amendment signed by the authorized representatives of both parties.

17. Independent Contractor

Nothing contained in this Contract shall constitute or be construed to create a partnership, joint venture, or employer-employee relationship between MTS or its successors or assigns and Contractor or its successors or assigns. In entering into this Contract and in acting in compliance herewith, Contractor is at all times acting and performing as an independent contractor duly authorized to perform the acts required of it hereunder.

18. Subcontracts

Assignment of any portion of the services by subcontract is prohibited except upon prior written approval of MTS.

19. Assignment Limitation

This Contract shall be binding upon and inure to the benefit of the parties and their successors and assigns provided, however, that neither party could assign its obligations hereunder without the prior written consent of the other.

20. Prohibited Practices

- A. During the period of this Contract, Contractor shall not hire, retain, or utilize for compensation, any member, officer, or employee of the MTS of Aging representing MTS or any person who to the knowledge of Contractor has a conflict of interest. No employee of the MTS on Aging representing MTS shall be an officer, member of the Board of Directors, or have a proprietary interest in Contractor's business.
- B. Contractor shall furnish MTS with written disclosure of any financial interest, purchase or lease agreements, employment relationship, or professional services/consultant relationship which any of Contractor's employees, officers, board members, stockholders, or members of their immediate family may have with respect to any supplier to Contractor of goods and services under this Contract.
- C. Contractor attests that it is familiar with Milwaukee County's Code of Ethics (Chapter 9 of the General Ordinances of Milwaukee County) which states in part, "No person shall offer or give to any public official or employee, directly or indirectly, and no public official or employee shall solicit or accept from any person, directly or indirectly, anything of value if it could reasonably be expected to influence the public official's or employee's vote, official actions or judgment, or could reasonably be considered as a reward for any official action or inaction or omission by of the public official or employee."

21. Certification Regarding Contractor Debarment or Suspension

Contractor certifies to the best of its knowledge and belief, that it and its principals; (1) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal MTS or agency; (2) have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State 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 charged by a governmental entity (Federal, State or local) with commission of any of the offences enumerated in (2) of this certification; and (4) have not within a three-year period preceding this contract had one or more public transactions (Federal, state or local) terminated for cause or default.

By: \_\_\_\_\_ Date: \_\_\_\_\_  
(Signature of Official Authorized to Sign Contract)

22. Certification Regarding Lobbying

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 any agency, a member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.
- 2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, land, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- 3) The undersigned shall require that the language of this certification be included in the award documents for all 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 entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

By: \_\_\_\_\_  
(Signature of Official Authorized to Sign Contract)

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

23. Political Activity of Employees

Where applicable, Contractor shall comply with the provisions of the Hatch Act, which limit the political activity of employees who work in federally funded programs.

24. Notices

Notices to MTS provided for in this Contract shall be sufficient if sent by certified or registered mail, postage prepaid, and notices to Contractor shall be sufficient if sent by certified or registered mail, postage prepaid, to the respective addresses stated in this Contract or to such other respective addresses as the parties may designate to each other in writing. Contractor agrees, that in conduct of its meetings, it will be guided by Wisconsin Statutes 19.81 et. seq.

25. Contract Content

The entire Contract of the parties, with all attached exhibits and assurances, together with the relevant BID or Specifications as negotiated is contained herein. This Contract supersedes all oral agreements and negotiations and all writings not herein referred to and incorporated. This Contract may be executed in two or more counterparts, each of which shall be deemed as original.

26. Approval

It is expressly understood and agreed that the parties' obligations hereunder are subject to state approval and federal concurrence with this Contract.

MTS enters into this Contract as authorized under ss. 59.17 (2) (b) 4, 59.255 (2) (e), and 59.42 (2) (b) 5 Wisconsin Statutes. Contractor enters into this Contract pursuant to and by authority of its owners/ Board of Directors.

## 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 under-represented

#### **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 sub-contracts, 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:

FirmName: \_\_\_\_\_

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

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

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

(Title)

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

By \_\_\_\_\_

(Signature)

## **FEDERAL CLAUSES**

### **FTA REQUIRED CLAUSES FOR THIRD PARTY CONTRACTORS AND SUB-AGREEMENTS**

In order for MTS to use FTA financial assistance to purchase goods/services MTS, and the third party contractor(s) qualified to perform these projects, must comply with all applicable Federal requirements. FTA's Master Agreement contains a current description of statutory and regulatory requirements that may affect MTS's procurement. Appendix D of FTA Circular 4220.1F contains matrices of the list of clauses and their appropriate uses in different procurement types. Please refer to this appendix and use the appropriate matrices as a checklist. The model language for each clause, to use for the appropriate procurement action, follows in this Appendix. The list is in the same order as Appendix D in the above mentioned FTA Circular.

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

#### **FTA Master Agreement**

Federal grant monies fund this contract, in whole or in part. As such, agencies receiving such funds and contractors awarded contracts that use such funds must comply with certain Federal certifications and clause requirements. This includes, for purchases of rolling stock over \$100,000, compliance with Buy America Act requirements, including pre-award and post-delivery audit requirements and certifications, as well as requirements and certifications applicable under the Federal Motor Vehicle Safety Standard (FMVSS). It is the contractor's responsibility to be aware of the pertinent certifications and contract clauses, as identified by the Issuing Agency for the instant procurement and ensure compliance with such requirements prior to award and throughout the term of any resultant contract.

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### **FLY AMERICA REQUIREMENTS**

**49 U.S.C. §40118  
41 CFR Part 301-10**

#### **Applicability to Contracts**

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

**Applicability to Micro-Purchases:** Micro-purchases are defined as those purchases under \$3,000. These requirements do not apply to micro-purchases; except for construction contracts over \$2,000.

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

**Model Clause/Language:** The relevant statutes and regulations do not mandate any specified clause or language. FTA proposes the following language.

**Fly America Requirements -** The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to

use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

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

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### **BUY AMERICA REQUIREMENTS**

#### **49 U.S.C. 5323(j) 49 CFR Part 661**

##### Applicability to Contracts

The Buy America requirements apply to the following types of contracts: Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$100,000).

Flow Down Requirements: The Buy America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance. The \$100,000 threshold applies only to the grantee contract, subcontracts under that amount are subject to Buy America.

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

Buy America - The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

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

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

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

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

Date \_\_\_\_\_

Signature \_\_\_\_\_

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

Title \_\_\_\_\_

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

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

Date \_\_\_\_\_

Signature \_\_\_\_\_

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

Title \_\_\_\_\_

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

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

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

Date \_\_\_\_\_

Signature \_\_\_\_\_

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

Title \_\_\_\_\_

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

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

Date \_\_\_\_\_

Signature \_\_\_\_\_

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

Title \_\_\_\_\_



## **CARGO PREFERENCE REQUIREMENTS**

**46 U.S.C. 1241  
46 CFR Part 381**

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

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under \$3,000. These requirements do not apply to micro-purchases; except for construction contracts over \$2,000.

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

Model Clause/Language: The MARAD regulations at 46 CFR 381.7 contain suggested contract clauses. The following language is proffered by FTA.

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

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## **SEISMIC SAFETY REQUIREMENTS**

**42 U.S.C. 7701 et seq. 49  
CFR Part 41**

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

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under \$3,000. These requirements do not apply to micro-purchases; except for construction contracts over \$2,000.

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

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

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

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## **ENERGY CONSERVATION REQUIREMENTS**

**42 U.S.C. 6321 et seq.  
49 CFR Part 18**

Applicability to Contracts: The Energy Conservation requirements are applicable to all contracts.

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under \$3,000. These requirements do not apply to micro-purchases; except for construction contracts over \$2,000.

Flow Down Requirements: The Energy Conservation requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subagreements at every tier.

Model Clause/Language: No specific clause is recommended in the regulations because the Energy Conservation requirements are so dependent on the state energy conservation plan. The following language has been developed by FTA.

Energy Conservation - The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

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## **CLEAN WATER REQUIREMENTS**

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

Applicability to Contracts: The Clean Water requirements apply to each contract and subcontract which exceeds \$100,000.

Flow Down Requirements: The Clean Water requirements flow down to FTA recipients and subrecipients at every tier.

Model Clause/Language: While no mandatory clause is contained in the Federal Water Pollution Control Act, as amended, the following language developed by FTA contains all the mandatory requirements.

Clean Water - (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.

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## LOBBYING

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

**49 CFR Part 19**

**49 CFR Part 20**

Applicability to Contracts: The Lobbying requirements apply to Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts over \$100,000.

Flow Down Requirement: The Lobbying requirements mandate the maximum flow down, pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5) and 49 C.F.R. Part 19, Appendix A, Section 7.

Mandatory Clause/Language: Clause and specific language therein are mandated by 49 CFR Part 19, Appendix A. Modifications have been made to the Clause pursuant to Section 10 of the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.* ]

Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d)

Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 CFR Part 20, Appendix A.

Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A.

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)*

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

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

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96)]. Note:

Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*.)]

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

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

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

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

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

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

\_\_\_\_\_ Date

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

**49 U.S.C. 5325**  
**18 CFR 18.36 (i)**  
**49 CFR 633.17**

Applicability to Contracts: Reference Chart "Requirements for Access to Records and Reports by Type of Contracts"

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under \$3,000. These requirements do not apply to micro-purchases; except for construction contracts over \$2,000.

Flow Down Requirement: FTA does not require the inclusion of these requirements in subcontracts.

Model Clause/Language: The specified language is not mandated by the statutes or regulations referenced, but the language provided paraphrases the statutory or regulatory language.

Access to Records - 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 subgrantee of 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.

2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the 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. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.

3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

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 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 the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

7. FTA does not require the inclusion of these requirements in subcontracts.

**Requirements for Access to Records and Reports by Types of Contract**

Contract Characteristics		Operational Service Contract	Turnkey	Construction	Architectural Engineering	Acquisition of Rolling Stock	Professional Services
<p><u>I State Grantees</u></p> <p>a. Contracts below SAT (\$100,000)</p> <p>b. Contracts above \$100,000/Capital Projects</p>		<p>None</p> <p>None unless<sup>1</sup> non-competitive award</p>	<p>Those imposed on state pass thru to Contractor</p>	<p>None</p> <p>Yes, if non-competitive award or if funded thru<sup>2</sup> 5307/5309/5311</p>	<p>None</p> <p>None unless non-competitive award</p>	<p>None</p> <p>None unless non-competitive award</p>	<p>None</p> <p>None unless non-competitive award</p>
<p><u>II Non State Grantees</u></p> <p>a. Contracts below SAT (\$100,000)</p> <p>b. Contracts above \$100,000/Capital Projects</p>		<p>Yes<sup>3</sup></p> <p>Yes<sup>3</sup></p>	<p>Those imposed on non-state Grantee pass thru to Contractor</p>	<p>Yes</p> <p>Yes</p>	<p>Yes</p> <p>Yes</p>	<p>Yes</p> <p>Yes</p>	<p>Yes</p> <p>Yes</p>

Sources of Authority: 49 USC 5325 (a), 49 CFR 633.17, 18 CFR 18.36 (i)

## **FEDERAL CHANGES**

### **49 CFR Part 18**

Applicability to Contracts: The Federal Changes requirement applies to all contracts.

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under \$3,000. These requirements do not apply to micro-purchases; except for construction contracts over \$2,000.

Flow Down Requirement: The Federal Changes requirement flows down appropriately to each applicable changed requirement.

Model Clause/Language: No specific language is mandated. The following language has been developed by FTA.

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

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## **BONDING REQUIREMENTS**

Applicability to Contracts: For those construction or facility improvement contracts or subcontracts exceeding \$100,000, FTA may accept the bonding policy and requirements of the recipient, provided that they meet the minimum requirements for construction contracts as follows:

- a. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantees" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- b. A performance bond on the part to the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts required from Contractors are as follows:
  - (1) 50% of the contract price if the contract price is not more than \$1 million;
  - (2) 40% of the contract price if the contract price is more than \$1 million but not more than \$5 million;  
or
  - (3) \$2.5 million if the contract price is more than \$5 million.
- d. A cash deposit, certified check or other negotiable instrument may be accepted by a grantee in lieu of performance and payment bonds, provided the grantee has established a procedure to assure that the interest of FTA is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond.

Flow Down Requirement: Bonding requirements flow down to the first tier contractors.

Model Clauses/Language: FTA does not prescribe specific wording to be included in third party contracts. FTA has prepared sample clauses as follows:

### **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 (Recipient'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 (Recipient'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.
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 (Recipient'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 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.

#### **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.
2. 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).

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### **CLEAN AIR**

**42 U.S.C. 7401 et seq**  
**40 CFR 15.61**  
**49 CFR Part 18**

Applicability to Contracts: The Clean Air requirements apply to all contracts exceeding \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year.

Flow Down Requirement: The Clean Air requirements flow down to all subcontracts which exceed \$100,000.

Model Clauses/Language: No specific language is required. FTA has proposed the following language.

(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.

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### **RECYCLED PRODUCTS**

**42 U.S.C. 6962**  
**40 CFR Part 247**  
**Executive Order 12873**

Applicability to Contracts: The Recycled Products requirements apply to all contracts for items designated by the EPA, when the purchaser or contractor procures \$10,000 or more of one of these items during the fiscal year, or has procured \$10,000 or more of such items in the previous fiscal year, using Federal funds. New requirements for "recovered materials" will become effective May 1, 1996. These new regulations apply to all procurement actions involving items designated by the EPA, where the procuring agency purchases \$10,000 or more of one of these items in a fiscal year, or when the cost of such items purchased during the previous fiscal year was \$10,000.

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under \$3,000. These requirements do not apply to micro-purchases.

Flow Down Requirement: These requirements flow down to all to all contractor and subcontractor tiers.

Model Clause/Language: No specific clause is mandated, but FTA has developed the following language.

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.

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

### **Background and Application**

The Davis-Bacon and Copeland Acts are codified at 40 USC 3141, et seq. and 18 USC 874. The Acts apply to grantee construction contracts and subcontracts that “at least partly are financed by a loan or grant from the Federal Government.” 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i)(5). The Acts apply to any construction contract over \$2,000. 40 USC 3142(a), 29 CFR 5.5(a). ‘Construction,’ for purposes of the Acts, includes “actual construction, alteration and/or repair, including painting and decorating.” 29 CFR 5.5(a). The requirements of both Acts are incorporated into a single clause (see 29 CFR 3.11) enumerated at 29 CFR 5.5(a) and reproduced below.

The clause language is drawn directly from 29 CFR 5.5(a) and any deviation from the model clause below should be coordinated with counsel to ensure the Acts’ requirements are satisfied.

### **Clause Language**

#### **Davis-Bacon and Copeland Anti-Kickback Acts**

(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 Davis-Bacon 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 rate 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 forth 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 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, and 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 30-day 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 or 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 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 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

(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, and 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 with 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.

(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 Davis-Bacon 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 may be 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. Whenever 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 Davis-Bacon 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.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the 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 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 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 in 29 CFR 5.12.

(8) **Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon 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.

(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.

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

### **Background and Application**

The Contract Work Hours and Safety Standards Act is codified at 40 USC 3701, et seq. The Act applies to grantee contracts and subcontracts "financed at least in part by loans or grants from ... the [Federal] Government." 40 USC 3701(b)(1)(B)(iii) and (b)(2), 29 CFR 5.2(h), 49 CFR 18.36(i)(6). Although the original Act required its application in any construction contract over \$2,000 or non-construction contract to which the Act applied over \$2,500 (and language to that effect is still found in 49 CFR 18.36(i)(6)), the Act no longer applies to any "contract in an amount that is not greater than \$100,000." 40 USC 3701(b)(3)(A)(iii).

The Act applies to construction contracts and, in very limited circumstances, non-construction projects that employ "laborers or mechanics on a public work." These non-construction applications do not generally apply to transit procurements because transit procurements (to include rail cars and buses) are deemed "commercial items." 40 USC 3707, 41 USC 403 (12). A grantee that contemplates entering into a contract to procure a developmental or unique item should consult counsel to determine if the Act applies to that procurement and that additional language required by 29 CFR 5.5(c) must be added to the basic clause below.

The clause language is drawn directly from 29 CFR 5.5(b) and any deviation from the model clause below should be coordinated with counsel to ensure the Act's requirements are satisfied.

### **Clause Language**

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

(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** - The (write in the name of the grantee) 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.

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## EQUAL EMPLOYMENT OPPORTUNITY

### Master Agreement §13.c(3)

Applicability to Contracts: Construction contracts over \$10,000.

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under \$3,000. These requirements do not apply to micro-purchases.

Flow Down Requirement: Not required by statute or regulation for either primary contractors or subcontractors, this concept should flow down to all levels to clarify, to all parties to the contract, that the Federal Government does not have contractual liability to third parties, absent specific written consent.

Model Clause/Language: Federal Requirements and Guidance. The Recipient agrees to prohibit, and assures that each Third Party Participant will prohibit, discrimination on the basis of race, color, religion, sex, or national origin, and:

- (a) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*,
- (b) Facilitate compliance with Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note, and as further amended by Executive Order 13672, "Further Amendments to Executive Order 11478, Equal Employment Opportunity in the Federal Government, and Executive Order 11246, Equal Employment Opportunity," July 21, 2014,
- (c) Comply with Federal transit law, specifically 49 U.S.C. § 5332, as provided in section 13.a of this Master Agreement, and
- (d) Follow Federal guidance pertaining to Equal Employment Opportunity laws and regulations, and prohibitions against discrimination on the basis of disability,

Specifics. The Recipient agrees:

- (a) Prohibited Discrimination. As provided by Executive Order 11246, as amended, and as specified by U.S. Department of Labor regulations, to ensure that applicants for employment are employed and employees are treated during employment without discrimination on the basis of their:
  1. Race,
  2. Color,
  3. Religion,
  4. National origin,
  5. Disability,
  6. Age,
  7. Sexual origin,
  8. Gender identity, or
  9. Status as a parent, and
- (b) Affirmative Action. Take affirmative action that includes, but is not limited to:

1. Recruitment advertising, recruitment, and employment,
  2. Rates of pay and other forms of compensation,
  3. Selection for training, including apprenticeship, and upgrading, and
  4. Transfers, demotions, layoffs, and terminations, but
- (c) Indian Tribe. Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of "Employer," and

Equal Employment Opportunity Requirements for Construction Activities. In addition to the foregoing, when undertaking "construction" as recognized by the U.S. Department of Labor (U.S. DOL), the Recipient agrees to comply, and assures that each Third Party Participant will comply, with:

- (a) U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and
- (b) Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note.

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

Applicability to Contracts Applicable to all contracts

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under \$3,000. These requirements do not apply to micro-purchases; except for construction contracts over \$2,000.

Flow Down Requirement: Not required by statute or regulation for either primary contractors or subcontractors, this concept should flow down to all levels to clarify, to all parties to the contract, that the Federal Government does not have contractual liability to third parties, absent specific written consent.

Model Clause/Language: While no specific language is required, FTA has developed the following language.

No Obligation by the Federal Government.

(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.

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### **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**

Applicability to Contracts: These requirements are applicable to all contracts.

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under \$3,000. These requirements do not apply to micro-purchases; except for construction contracts over \$2,000.

Flow Down Requirement: These requirements flow down to contractors and subcontractors who make, present, or submit covered claims and statements.

Model Clause/Language: These requirements have no specified language, so FTA proffers the following language.

Program Fraud and False or Fraudulent Statements or Related Acts.

(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. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(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.

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## **TERMINATION**

### **49 U.S.C. Part 18 FTA Circular 4220.1E**

Applicability to Contracts: All contracts (with the exception of contracts with nonprofit organizations and institutions of higher education,) in excess of \$10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement. (For contracts with nonprofit organizations and institutions of higher education the threshold is \$100,000.) In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

Flow Down Requirement: The termination requirements flow down to all contracts in excess of \$10,000, with the exception of contracts with nonprofit organizations and institutions of higher learning.

Model Clause/Language: FTA does not prescribe the form or content of such clauses. The following are suggestions of clauses to be used in different types of contracts:

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 [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If Contractor fails to remedy to Milwaukee County's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) 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, the Recipient 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 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 the Recipient.

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] ten days from the beginning of any delay, notifies Milwaukee County in writing of the causes of delay. If in the judgment of Milwaukee County, the delay is excusable, the time for completing the work shall be extended. The judgment 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 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 of 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 an 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.

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## **GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)**

### **49 CFR Part 29 Executive Order 12549**

#### **Background and Applicability**

In conjunction with the Office of Management and Budget and other affected Federal agencies, DOT published an update to 49 CFR Part 29 on November 26, 2003. This government-wide regulation implements Executive Order 12549, *Debarment and Suspension*, Executive Order 12689, *Debarment and Suspension*, and 31 U.S.C. 6101 note (Section 2455, Public Law 103-355, 108 Stat. 3327).

The provisions of Part 29 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. 49 CFR 29. 220(b). This represents a change from prior practice in that the dollar threshold for application of these rules has been lowered from \$100,000 to \$25,000. These are contracts and subcontracts referred to in the regulation as "covered transactions."

Grantees, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) they propose to contract or subcontract with is not excluded or disqualified. They do this by (a) Checking the Excluded Parties List System, (b) Collecting a certification from that person, or (c) Adding a clause or condition to the contract or subcontract. This represents a change from prior practice in that certification is still acceptable but is no longer required. 49 CFR 29.300.

Grantees, contractors, and subcontractors who enter into covered transactions also must require the entities they contract with to comply with 49 CFR 29, subpart C and include this requirement in their own subsequent covered transactions (i.e., the requirement flows down to subcontracts at all levels).

#### **Clause Language**

The following clause language is suggested, not mandatory. It incorporates the optional method of verifying that contractors are not excluded or disqualified by certification.

#### **Suspension and Debarment**

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C 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

Transport Services, Inc. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to Milwaukee Transport Services, 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.

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## **PRIVACY ACT**

### **5 U.S.C. 552**

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

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under \$3,000. These requirements do not apply to micro-purchases; except for construction contracts over \$2,000.

Flow Down Requirement: The Federal Privacy Act requirements flow down to each third party contractor and their contracts at every tier.

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

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

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

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

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## **CIVIL RIGHTS REQUIREMENTS**

**29 U.S.C. § 623, 42 U.S.C. § 2000  
42 U.S.C. § 6102, 42 U.S.C. § 12112  
42 U.S.C. § 12132, 49 U.S.C. § 5332  
29 CFR Part 1630, 41 CFR Parts 60 et seq.**

Applicability to Contracts: The Civil Rights Requirements apply to all contracts.

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under \$3,000. These requirements do not apply to micro-purchases; except for construction contracts over \$2,000.

Flow Down Requirement: The Civil Rights requirements flow down to all third party contractors and their contracts at every tier.

Model Clause/Language: The following clause was predicated on language contained at 49 CFR Part 19, Appendix A, but FTA has shorten the lengthy text.

**Civil Rights - The following requirements apply to the underlying contract:**

The following requirements apply to the underlying contract:

(1) Nondiscrimination - 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 requirements 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.

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**BREACHES AND DISPUTE RESOLUTION**

**49 CFR Part 18**  
**FTA Circular 4220.1E**

Applicability to Contracts: All contracts in excess of \$100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

Flow Down: The Breaches and Dispute Resolutions requirements flow down to all tiers.

Model Clauses/Language: FTA does not prescribe the form or content of such provisions. What provisions are developed will depend on the circumstances and the type of contract. Recipients should consult legal counsel in developing appropriate clauses. The following clauses are examples of provisions from various FTA third party contracts.

**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 of Milwaukee Transport Services, Director of Materials Management. 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. 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 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 the State in which Milwaukee County is located.

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

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## **PATENT AND RIGHTS IN DATA**

### **37 CFR Part 401 49 CFR Parts 18 and 19**

Applicability to Contracts: Patent and rights in data requirements for federally assisted projects ONLY apply to research projects in which FTA finances the purpose of the grant is to finance the development of a product or information. These patent and data rights requirements do not apply to capital projects or operating projects, even though a small portion of the sales price may cover the cost of product development or writing the user's manual.

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under \$3,000. These requirements do not apply to micro-purchases; except for construction contracts over \$2,000.

Flow Down Requirement: The Patent and Rights in Data requirements apply to all contractors and their contracts at every tier.

Model Clause/Language: The FTA patent clause is substantially similar to the text of 49 C.F.R. Part 19, Appendix A, Section 5, but the rights in data clause reflects FTA objectives. For patent rights, FTA is governed by Federal law and regulation. For data rights, the text on copyrights is insufficient to meet FTA's purposes for awarding research grants. This model clause, with larger rights as a standard, is proposed with the understanding that this standard could be modified to FTA's needs.

**CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.**

**A. Rights in Data** - This following requirements apply to each contract involving experimental, developmental or research work:

(1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

(2) The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

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

(b) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and
2. Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.

(c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c) , however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

(d) Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

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

(f) Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.

(g) Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

(3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (*i.e.*, a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in

U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(4) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

**B. Patent Rights** - This following requirements apply to each contract involving experimental, developmental, or research work:

(1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

(2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

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## **TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS**

### **49 U.S.C. § 5310, § 5311, and § 5333 29 CFR Part 215**

Applicability to Contracts: The Transit Employee Protective Provisions apply to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator. (Because transit operations involve many activities apart from directly driving or operating transit vehicles, FTA determines which activities constitute transit "operations" for purposes of this clause.)

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under \$3,000. These requirements do not apply to micro-purchases.

Flow Down Requirement: These provisions are applicable to all contracts and subcontracts at every tier.

Model Clause/Language: Since no mandatory language is specified, FTA had developed the following language. Transit Employee Protective Provisions. (1) The Contractor agrees to the comply with applicable transit employee protective requirements as follows:

(a) General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

(b) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C.

§ 5310(a)(2) for Elderly Individuals and Individuals with Disabilities

- If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

(c) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C.

§ 5311 in Nonurbanized Areas

- If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

(2) The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

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

### **49 CFR Part 26**

Background and Applicability: The newest version on the Department of Transportation's Disadvantaged Business Enterprise (DBE) program became effective July 16, 2003. The rule provides guidance to grantees on the use of overall and contract goals, requirement to include DBE provisions in subcontracts, evaluating DBE participation where specific contract goals have been set, reporting requirements, and replacement of DBE subcontractors. Additionally, the DBE program dictates payment terms and conditions (including limitations on retainage) applicable to all subcontractors regardless of whether they are DBE firms or not.

The DBE program applies to all DOT-assisted contracting activities. A formal clause such as that below must be included in all contracts above the micro-purchase level. The requirements of clause subsection b flow down to subcontracts.

A substantial change to the payment provisions in this newest version of Part 26 concerns retainage (see section 26.29). Grantee choices concerning retainage should be reflected in the language choices in clause subsection d.

#### Clause Language

The following clause language is suggested, not mandatory. It incorporates the payment terms and conditions applicable to all subcontractors based in Part 26 as well as those related only to DBE subcontractors. The suggested language allows for the options available to grantees concerning retainage, specific contract goals, and evaluation of DBE subcontracting participation when specific contract goals have been established.

#### Disadvantaged Business Enterprises

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is 5.7 %. A separate contract goal has been established for this procurement.

b. The contractor 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 this DOT-assisted contract. 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 Milwaukee Transport Services deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

c. Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the completed DBE-14 or DBE GFE forms, that will be approved by the local CDBP office.

1. The names and addresses of DBE firms that will participate in this contract;
2. A description of the work each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose

participation it submits to meet the contract goal;

5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and

6. If the contract goal is not met, evidence of good faith efforts to do so.

Responses to this BID/RFP must present the information required above as a matter of responsiveness (see 49 CFR 26.53(3)).

If no separate contract goal has been established, the following applies. The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

d. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 10 calendar days after the contractor's receipt of payment for that work from the Milwaukee Transport Services. In addition, is required to return any retainage payments to those subcontractors within 10 calendar days after incremental acceptance of the subcontractor's work by Milwaukee Transport Services and contractor's receipt of the partial retainage payment related to the subcontractor's work.

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

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

### **FTA Circular 4220.1E**

Applicability to Contracts: The incorporation of FTA terms applies to all contracts.

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under \$3,000. These requirements do not apply to micro-purchases; except for construction contracts over \$2,000.

Flow Down Requirement: The incorporation of FTA terms has unlimited flow down.

Model Clause/Language: FTA has developed the following incorporation of terms language:

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

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## **ADA ACCESS**

### **49 USC 531 (d)**

Applicability to Contracts: The ADA Access Requirements apply to all contracts.

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under \$3,000. These requirements do not apply to micro-purchases; except for construction contracts over \$2,000.

Flow Down Requirement: The ADA Access Requirements flow down to all third party contractors and their contracts at every tier.

Model Clause/Language: ADA Access. The Americans with Disabilities Act of 1990 (ADA) prohibits discrimination and ensures equal opportunity and access for persons with disabilities.

### **Access Requirements for Persons with Disabilities**

Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.