

**BID NO: 2020-09 - ASSESSMENT RIDES**

**DUE DATE: JUNE 24, 2020 @ 2:00 P.M., CST.**

**CONTACT PERSON: MONIQUE ALSTON**

**EMAIL: [MALSTON@MCTS.ORG](mailto:MALSTON@MCTS.ORG)**

e-Notify Category Listings

**BID NO: 2020-09 - ASSESSMENT RIDES**

CIRCLE THOSE VENDOR CLASSIFICATIONS TO BE INCLUDED IN YOUR E- NOTIFICATION

Bid Notices - Commodities		
Appliances and parts	Fire and police equipment	Plumbing equipment and supplies
Athletic/sports PE equipment	Fuel and Lubricants	Safety equipment
Automotive supplies	Furniture	School supplies-arts & crafts
Building materials and supplies	HVAC filters and equipment	Sewer and water equipment and supplies
Chemicals	Hardware and tools	Textbooks/Instructional Materials
Classroom & Instructional Supplies	Janitorial services	Traffic control equipment
Communications equipment	Landscape materials	Uniforms and apparel
Computer hardware and software	Library books	Vehicles and heavy equipment
Copiers and supplies	Light poles and fixtures	other commodities
Electrical supplies	Medical and safety supplies	
	Office supplies and equipment	
Bid Notices - Construction		
DPW Paving		General construction
Building maintenance repairs	DPW Recreation facilities	Masonry
DCD/NIDC Residential Rehabilitation	DPW Sewer & watermains	other construction
DPW Bridge structures	Elevator maintenance and repair	
DPW Forestry	Floor refinishing and repair	
Bid Notices - Services		
	Financial services	Printing and/or mailing services
Actuarial services	Food services-school lunch	Professional development
Advertising services	Grounds maintenance services	Professional services
Amour car services	HVAC maintenance services	Real estate services
Auditing services	Health services	Repair - athletic equipment
Consulting	Information technology services	Repair- two-way radios
DPW Administration	Janitorial services	Security services
DPW Buildings	Landscaping services	Snow removal
DPV Parking	Laundry services	Speech therapy services
DPW Sanitation	Legal services	Telecommunications services
DPW Snow plowing	MPS Community Learning Centers	Temporary help services
DPW Special Projects	MPS Grant Partners	<u>Transportation</u>
DPW Transportation	MPS Professional Development	Travel services
DPW Water works facilities	MPS Supplemental Services	Vehicle repair services
Demolition services	Moving services	other services
Electrical maintenance services	Nursing services	
Environmental services	Plumbing maintenance services	

**MILWAUKEE TRANSPORT SERVICES, INC.**  
**Operator of the Milwaukee County Transit System**  
**1942 NORTH 17<sup>TH</sup> STREET**  
**MILWAUKEE, WI 53205**  
**PURCHASING AGENT: Monique Alston**  
malston@mcts.org | www.ridemcts.com

**Bid No: 2020-09: Assessment Rides**

Released: May 14, 2020

Milwaukee Transport Services (MTS), a quasi-governmental instrumentality of Milwaukee County and operator of the Milwaukee County Transit System (MCTS). MTS is seeking Bids from experienced, qualified vendors to provide safe, reliable, on time rides for persons scheduled for Transit Plus Assessments. Bids for this service will be accepted until:

**JUNE 24, 2020 @ 2:00 P.M. CST.**

Bids will be opened and read at the above opening date and time in Room 104 of the Administration Building Materials Management Department. Please check with Buyer as to status of public bid opening, the pandemic will impact public openings, the opening may be closed to the public. **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. One bid per bidder.

**NOTE: DUE TO COVID-19, AT THE TIME OF THIS POSTING, ASSESSMENT RIDES ARE SUSPENDED AND WILL NOT RESUME UNTIL AN UNDETERMINED DATE.**

**RIDERSHIP DATA PROVIDED IS FOR HISTORICAL PURPOSES ONLY.**

**Specifications:**

To comply with Specification No. TP-01-20 which is included in this solicitation document.

**Requirements:**

To provide individuals scheduled for Assessment for the Transit Plus Program a ride to and from the scheduled appointment.

**Term of Contract:**

This is a two (2) year firm fixed price contract full pricing must be stated on price sheet. Contract term:

- Year One (1): August 7, 2020 through August 8, 2021
- Year Two (2): August 7, 2021 through August 8, 2022

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

Bid a unit price per each trip. Award will be based on the total cost of line Item 1 and 2, less invoice

discount of 30 days (if any). Award(s) will be made to the lowest responsible bidder complying with the specifications, & will be based on what is deemed in the best interest of MTS. All responses must be returned in a sealed envelope provided by the vendor with bid number **2020-09** for **ASSESSMENT RIDES** clearly marked on the outside of the envelope and received by **JUNE 24, 2020 – 2:00PM CST**. If bids are returned via Federal Express or UPS, the outer envelope must also be clearly identified with the bid number & title as stated above. **Faxed or emailed bids are not be allowed or accepted.**

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

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

**Question Deadline:**

No changes will be allowed to this Bid document unless confirmed in writing by MTS, Inc. Any clarifications or further instructions to bidders will be sent to all prospective offerors in addendum form. All communication regarding this Bid must be submitted in writing via email to Monique Alston at [malston@mcts.org](mailto:malston@mcts.org). The deadline to submit questions is June 11, 2020 – 4:30 PM (CST).

**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.

**Waiver of Informalities:**

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

**Binding Contract:**

A bid 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 Order.
2. Purchase of Services Agreement
3. All documents contained within and related to **Bid 2020-09**.
4. Offer 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. When only one responsive and responsible bid is received, MTS may also negotiate price with the sole responsive bidder.

**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.

**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.

### **PROTESTS AND APPEALS Policy for Sealed Bids:**

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

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

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

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

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

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

1. Protest from the decision of the Director of Materials Management shall be made to the Purchasing Appeals Committee by delivering a written request for appeal hearing both to the

Materials Management Department and the Purchasing Appeals Committee within seventy-two (72) hours after the receipt of the Director of Materials Management's decision.

2. Written appeals to the Purchasing Appeals Committee shall be addressed as follows:

**Purchasing Appeals Committee  
C/O MTS Materials Management Department  
1942 North 17th Street  
Milwaukee, WI 53205**

3. The request shall state the grounds upon which the protest is based and shall request an appeal hearing. No contract shall be awarded until the final disposition of the protest.

4. The Chairperson of the Purchasing Appeals Committee shall notify all interested persons of the time and place of the hearing.

5. The Purchasing Appeals Committee shall affirm, reverse or modify the decision of the Director of Materials Management and its' decision shall be final.

### **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.

### **Mission Critical**

1.

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.

### **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

### **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. 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.

**Listed below are documents include in this Bid.**

### **Enclosures:**

1. Bid 2020-09
2. Specification No.: TP-01-20 w/ Attachments A & B
3. Signature Sheet
4. Price Sheet
5. Sample Purchase Service Agreement
6. Vendor Form
7. Bidders List
8. Debarment Form
9. EEOC
10. Insurance Minimums
11. Conflict of Interest
12. Anti-Lobby
13. False Claims
14. Non-Disclosure
15. Confidential Form
16. Independent Contractor Information
17. MTCS Federal Clauses
18. Non-Collusion

Vendors shall return all the forms listed below, in this order. **DO NOT return the full bid document.**

### **RETURN ONLY THESE DOCUMENTS**

1. EEOC
2. Price Sheet
3. Signature Sheet
4. Vendor Form
5. Bidders List Form
6. Conflict of Interest Form
7. Independent Contractor Information From
8. Debarment Form
9. Anti-Lobby Form
10. False Claims Form
11. Non-Disclosure Form
12. Confidential Form
13. Non-Collusion Affidavit
14. Insurance Certificate – **will be needed 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

**Milwaukee Transport Services**

**Price Sheet Bid No: 2020-09 Assessment Rides**

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

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

**ITEM 1 To provide Milwaukee Transport Services with Assessment Rides for Applicants for the Transit Plus Program. All items for this service shall comply with the Specifications TP-01-20.**

**Estimated number of rides each year:** approximately 70 one-way rides/month - approx. 840 one-way rides/year

**Year One (1) – August 7, 2020 through August 8, 2021**

Bid price in Figures \$ \_\_\_\_\_ Per Trip.

Bid price in Words \$ \_\_\_\_\_ Per Trip.

**Year Two (2) - August 7, 2021 through August 8, 2022**

Bid price in Figures \$ \_\_\_\_\_ Per Trip.

Bid price in Words \$ \_\_\_\_\_ Per Trip.

**No additional charges will be allowable (fuel, mileage, etc)**

**Insurance coverage shall not lapse**

**SPECIFICATION NO: TP-01-20, Revised May 1, 2020**  
**FOR**  
**TRANSPORTATION SERVICES**  
**FOR TRANSIT PLUS ASSESSMENTS**

1. SCOPE & CLASSIFICATION

- 1.1 The intent of this specification is to provide the minimum requirements for Transportation Services for Milwaukee Transport Services Inc., (MTS), Transit Plus Applicants. The Contractor(s), all drivers, vehicles and services provided under this contract shall meet all requirements of applicable federal, State and local laws, Wisconsin Statutes, The City of Milwaukee Public Passenger Vehicle Regulations and all other requirements outlined in this specification.
- 1.2 MTS Transit Plus will monitor performance of this contract closely. Strict adherence to the contract terms and conditions in providing safe, clean, reliable, client-friendly, cost-efficient service to individuals with disabilities is of paramount importance. Poor performance on the part of the Contractor(s) resulting from a failure of the Contractor(s) in exercising due diligence in the performance of the tasks listed herein may result in the imposition of liquidated damages, contract suspension or termination.

2. APPLICABLE DOCUMENTS

- 2.1 The following documents are hereby incorporated into this document by reference.
  - 2.1a **Wis. State Statute 62.11(5)** - Powers of the Common Council
  - 2.1b **Wis. State Statute 349.24** - Authority to license taxicab operators and taxicabs
  - 2.1c **City of Milwaukee Ordinance 100** - City of Milwaukee Vehicle Regulations. Additional requirements are outlined in this specification.
  - 2.1d All other applicable laws and regulations.

1. ADDITIONAL REQUIREMENTS

- 3.1 Transit Plus is a service of Milwaukee Transport Services Inc. (MTS) and the services contracted for will be operated by Contractor(s) in accordance with policies and regulations adopted by MTS, Milwaukee County and other applicable City of Milwaukee, State of Wisconsin and Federal regulations and laws and in such a manner as to ensure compliance with current and future regulations.
- 3.2 Transportation services under this contract shall be advanced reservation service and will utilize inaccessible or accessible vehicles, as needed during the service hours contracted for. Service will be provided by authorized drivers on a priority basis utilizing vehicle equipped as specified in this contract.
- 3.3 The term of this contract shall be for 2 years. Year 1 from August 7, 2020 through August 6, 2021 and year 1 from August 7, 2021 through August 6, 2022.

3.4 Contractor(s) is required to have available sufficient vehicles to meet the demand generated by this program.

3.5 The successful Contractor(s) is required to provide personnel including, but not limited to; drivers, call takers, dispatchers, supervisory, and any other personnel required to adequately fulfill all responsibilities associated with the provision of transportation services as described herein.

3.6 The successful Contractor(s) is required to provide vehicles and facilities including, but not limited to; buildings, utilities, office materials and supplies, any vehicles, fuel, parts and supplies, and all other items required to adequately fulfill all responsibilities associated with the provision of paratransit services as described herein.

3.7 Service Area: is all of Milwaukee County and certain MCTS ‘bubble areas’ in Waukesha and Ozaukee Counties (see attached map, labeled Attachment A).

3.8 Service Hours: Hours of transportation services are Monday through Friday from 9:00 AM to 1:00 PM, excepting the following holidays:

New Year’s Eve	New Year’s Day	Memorial Day
July 4 <sup>th</sup>	Labor Day	Thanksgiving Day
Day After Thanksgiving	Christmas Eve	Christmas Day

3.9 Reservations/scheduling

3.9a The successful Contractor(s) shall be responsible for providing facilities and staffing for the purpose of accepting ride requests from Transit Plus.

3.9b Transit Plus shall provide the following information to the contractor via email for each reservation, generally a week or more in advance of the trip:

- Rider name
- Address
- Phone Number
- Mobility Device used
- Whether a PCA is traveling with the applicant
- Date and Time of assessment appointment
- Any special instructions

3.9c The Contractor must call to confirm the pick-up with the applicant and agree upon a time for pick-up. Contractor must provide each client with a pick-up time that assures they will be dropped off no later than the scheduled assessment appointment time. The Contractor will work directly with each client or their caregiver to negotiate an agreed upon, reasonable pick up time. Contractor will notify MCTS staff of any pick-up time that will result in a client arriving later than their appointment time.

3.10 Client Service Requirements

3.10a Service shall be curb to curb, except where door to door service is requested. Drivers are, in such cases, required to assist clients from the first exterior door to

the first exterior door. Drivers may not leave line of sight of the vehicle.

- 3.10b Drivers shall assist clients in collapsing and storing mobility devices including but not limited to collapsible wheelchairs and walkers.
- 3.10c Drivers shall respect the dignity of individuals at all times. Drivers shall not deny service to clients with service animals.
- 3.10d In the event that a driver cannot locate a client upon arrival, the driver shall radio Contractor(s) dispatcher to report a no show. The dispatcher must verify the location of the vehicle in relation to the pick-up address. The driver will not leave the pick-up location until authorized to do so by Contractor(s) dispatcher. No shows must be accurately documented by the driver and verified by the dispatcher. The driver must wait 5 (five) minutes from the designated pick up time for the ride to be a no show. Dispatcher or supervisor in turn must notify Transit Plus immediately of the “no show”.
- 3.10e The Contractor(s) shall allow one Companion or PCA to travel with the applicant at no additional cost to MTS. The Companion MUST be provided service in the same vehicle and between the same origin and destination as the program applicant.
- 3.10f Only rides to and from Transit Plus eligibility assessment appointments are allowed, and only as arranged and booked through Transit Plus. MTS will not provide reimbursement for unauthorized trips.
- 3.10g The use of cell phones, Bluetooth devices or other personal electronic equipment, other than medically necessary hearing aids, is prohibited while operating a vehicle under this contract.
- 3.10h No social media use or commenting or appearing on a matter of public concern in a public forum is allowed by a driver while providing service under this contract.
- 3.10i Drivers are prohibited from accepting any tip, gratuity, or any other additional payment from applicants served under this contract. Engaging in such conduct may be grounds for immediate dismissal as an authorized driver for this contract or the Transit Plus program.
- 3.10j Drivers shall be courteous towards clients. In the event of an abusive client, drivers and all other staff shall at all times conduct themselves in a professional and non-abusive manner. Drivers and all other staff shall refrain from negative comments or behavior toward riders at all times.
- 3.10k The Successful Contractor(s) shall report to Transit Plus all incidents in which program applicants engage in violent, seriously disruptive or illegal conduct. Such reports must be made to Transit Plus within 24 hours of occurring.
- 3.10l Rides provided for assessments may not be commingled with rides provided under any other contract. Rides must be directly routed to and from the Transit Plus office (1942 N. 17<sup>th</sup> Street, Milwaukee) and the individual’s origin and destination.

### 3.11 General Contractor Personnel Requirements

- 3.11a The Successful Contractor(s) shall maintain sufficient. Operations and Administrative personnel on staff to provide the necessary service for this contract. Contractor(s) personnel shall not be employees of MTS.
- 3.11b The Successful Contractor(s) shall designate an individual to serve as the principal point of contact between the Contractor(s) and MTS or designee for questions and concerns on particular trips. Communication between contractor and MTS shall be by telephone or email.
- 3.11c MTS reserves the right to require the retraining, suspension or removal of any driver from Transit Plus service if the employee's performance, in MTS's opinion, is detracting from the quality or efficiency of the service.

### 3.12 General Driver Requirements

- 3.12a Driver Pre-Hire Requirements: Prior to hiring or utilizing any individual for a Transit Plus driving position, the Contractor(s) shall ensure that the applicant meets all of the requirements stated in the Applicable documents listed in Section 2 of this specification.
- 3.12b The Successful Contractor(s) shall provide MTS with a driver form along with a copy of the city-issued public passenger driver permit prior to services being provided by driver. Contractor(s) shall notify MTS within 24 hours when a driver is no longer registered and authorized by the Contractor(s).

### 3.13 Driver Training Requirements

The Contractor(s) shall provide training and instruction to each driver in:

- Transit Plus Policies and Program Specifics
- Driver Sensitivity to Various Disabilities
- Passenger Relations (including conflict resolution, courteous and respectful language, conversations and topics to avoid, dealing with difficult passengers, etc.)
- Proper passenger securement and lift operation
- Map Reading

### 3.14 Non-driving Staff Requirements

The successful Contractor(s) shall provide the operations and support staff necessary to provide the services required under this contract.

### 3.15 Vehicle Requirements

- 3.15a The Contractor(s) shall provide all vehicles required in performing the services under this agreement. A Transit Plus vehicle form and licensing and inspection documentation for each vehicle must be on file with MTS, Inc. before services may be provided by said vehicles.

3.15b The Successful Contractor(s) shall ensure that all vehicles assigned to this service meet all Local, State and Federal regulations. Vehicle inspections shall be performed as required and vehicles re-licensed by the appropriate governing authority. Copies of vehicle registrations and inspections shall be sent to MTS Transit Plus at minimum once per year or upon request.

3.15c The Successful Contractor(s) will have the operational capability to schedule up to four separate round trip transports each day.

### 3.16 Contractor Facility Requirements

3.16a The Successful Contractor(s) shall independently maintain the type of facility required to comply with the requirements of this agreement, including appropriate vehicle storage

3.16b The Successful Contractor(s) shall be responsible for meeting all Federal, State and Local laws/regulations regarding its facilities. Any permits and approvals required for the facilities shall be the responsibility of the Contractor(s).

### 3.17 Contractor Reporting Requirements

3.17a In addition to information specified under other sections of this specification, Contractor(s) shall provide invoices to MTS Transit Plus on a monthly basis. These invoices shall provide supporting information for payment requests and other information on the operation of the system. At a minimum, these invoices shall include the following types of information and shall be provided to Transit Plus within 10 business days from the completion of the service period.

- Date of service and name/identification # of client
- Pick up and Drop off times and locations
- Driver and vehicle numbers
- Total Trip Charges-broken down by one-way trip
- Monthly Trip Totals
- Supporting documentation for the work completed (if applicable.)
- Other information as deemed appropriate summarizing the reporting period's activities and overall system performance.

3.17b In addition to the above mentioned invoices reports, the Contractor(s) shall keep up-to-date and accurate records of the following information. This information, except for accident reports, need not be submitted to Transit Plus on a regular basis. However, such records shall be made available to Transit Plus by the Contractor(s) upon request.

- Daily driver logs
- Vehicle and equipment maintenance records
- Accident reports
- Complaint logs
- Set pick up times for all clients on daily basis (any pick up later than 15 minutes is considered late and subjected to liquidated damages.

Other information as deemed appropriate

- 3.17c Accidents/Incidents: The Contractor(s) shall report to MTS, Inc. all passenger and vehicle related accidents/incidents involving any property damage or personal injury resulting from service provided under this agreement. An incident report shall be completed within 72 hours of said incident and submitted to MTS. The Contractor(s) shall investigate and report all accidents and incidents.

If the Contractor(s) fails to report an accident/incident within the required time period or fails to document such accident/incidents, the Contractor(s) may be assessed liquidated damages of \$400 per accident or incident.

#### 4. DIVISION OF RESPONSIBILITIES

4.1 MTS, or its designee shall be responsible for the following tasks:

- Making applicant trip requests
- Monitoring of service compliance
- Complaint Management (in conjunction with contractor)
- Government and Community Relations
- Management of the contract(s)
- Initiating and implementing any service changes
- Overall program direction

4.2 The successful Contractor(s) shall maintain the confidentiality of any information regarding program applicants which may be obtained from any source associated with this program, other than that information necessary for the performance of service under this contract. The Contractor(s) is prohibited from using the images, names or contact information of program applicants other than for legitimate needs related to providing trips or billing for services provided.

#### 5. PROGRAM APPLICANTS

Participation in this program is restricted to those individuals who have been referred for service by MTS Transit Plus.

#### 6. BILLING AND COMPENSATION

6.1 The Contractor(s) hereby agrees to provide transportation services as outlined in this Bid at the rates stated on the Bid sheet.

6.2 MTS Transit Plus will reimburse the Contractor(s) for all valid and documented trips. The following terms and conditions will apply:

- No reimbursement will be given for trips provided to persons who are not Transit Plus applicants or whose rides were not requested by Transit Plus staff.
- No reimbursement will be given for trips provided by ineligible drivers.

- Vendor will be compensated for the first leg of a client “no show”.
- MTS will make every effort to pay within 10 business days, but MTS’s policy is to pay NET 30 from date of receipt of invoice.

6.3 **Billing Statement:** In addition to any other requirements set forth in this contract with respect to what constitutes a proper billing statement or for the Contractor(s) to be entitled to receive payment, the Contractor’s monthly billing statement report must include:

- Vendor number, contract number and invoice number.
- The signature of a designated representative of the Contractor(s) certifying that all information contained in the report and supporting documentation is correct to the best of his/her knowledge. Any false certification shall render the report void, and MTS shall be entitled to recover immediately any monies paid on such invoices.

6.4 **Incentives and Liquidated Damages:** In an effort to ensure that Transit Plus delivers high quality, safe, and reliable ADA compliant services to all Program Participants, MTS has developed the following performance incentives for Contractor performance that exceeds basic expectations and liquidated damages for performance that does not meet expectations and/or program requirements.

Incentives for On Time Performance:

- On time shall mean that the vehicle arrives within 0-15 minutes of the agreed upon drop off appointment window at the assessment location. If the monthly on time performance is 92% or higher, MTS will pay an incentive bonus of 10% over the contract rate as calculated on the total monthly trip cost.

Liquidated Damages:

If the contractor fails to provide at least 92% of trips on time each month, then MTS will assess damages at the following rates:

- Between 85-91% MTS will assess 10% of invoice as liquidated damages
- Between 75-84% MTS will assess 20% of invoice as liquidated damages
- Less than 74% MTS will assess 30% of invoice as liquidated damages

Any drop off at our facility later than 15 minutes is considered late and subjected to liquidated damages.

Any return pick-up later than 1 hour after the requested time is considered late and subjected to liquidated damages.

6.5 Upon completion of the work or upon termination of the contract, all completed or partially completed data, records, computations, and all other material that the Contractor(s) has collected or prepared in carrying out the provisions of the contract shall be provided to and become the exclusive property of MTS, Inc. Any reports, information and data, given to, prepared, or assembled by the Contractor(s) shall not be made available to any individual or organization by the Contractor(s) without the prior written approval of MTS, Inc.

## 7. AUDIT AND INSPECTION OF RECORDS

- 7.1 The successful Contractor(s) shall permit the authorized representatives of MTS, after reasonable notice, to inspect and audit all data and records of the Contractor(s) pertaining to the performance of the terms and conditions of this contract for a period up to three (3) years after completion of the contract. The Contractor(s) shall also permit MTS to review and examine records of all other trips provided by the Contractor(s) within Milwaukee County but outside of this contract including, but not limited to, Title XIX and DVR programs.

## 8. SITE INSPECTION

- 8.1 MTS reserves the right to conduct site inspection to verify specification compliance prior to award.

## 9. DELIVERY (Not Applicable)

## 10. NOTES

### 10.1 Subcontracts and Third-Party Contracts

- 10.1a Assignment of any portion of the work by subcontract shall have the prior written approval of MTS, Inc.

- 10.1b In the event of approved subcontractors, insurance shall be evidenced in the same coverages and amounts as required by the Contractor(s). Such evidence must be submitted to MTS for approval prior to the use of any subcontractor. In the event that the approved subcontractor is unable to furnish proof of General and Automobile Liability coverages to the satisfaction of MTS, the Contractor(s) shall endorse the subcontractor as an insured on the policies of the Contractor(s) and provide proof of such endorsement.

### 10.2 Changes to Agreement

- 10.2a MTS, Inc. may at any time and with mutual consent of Contractor(s), change or amend this agreement in a manner not materially affecting the substance thereof by.

### 10.3 Interpretation, Jurisdiction, and Venue

- 10.3a This Agreement and other Agreement documents shall be construed and interpreted solely in accordance with the laws of the State of Wisconsin. Contractor(s) hereby consents and submits to the jurisdiction of the appropriate courts of Wisconsin for adjudication of any suit, right or cause of action arising under or in connection with the Agreement documents.

10.4 Severability (Invalid Provisions)

10.4a If any provision of the Agreement documents or the application thereof to any person or circumstance, is rendered or declared illegal for any reason and shall be invalid or unenforceable, the remainder of the Agreement documents and the application of such provisions to other persons or circumstances shall not be affected thereby but shall be enforced to the greatest extent permitted by applicable law.

10.5 Independent Contractor

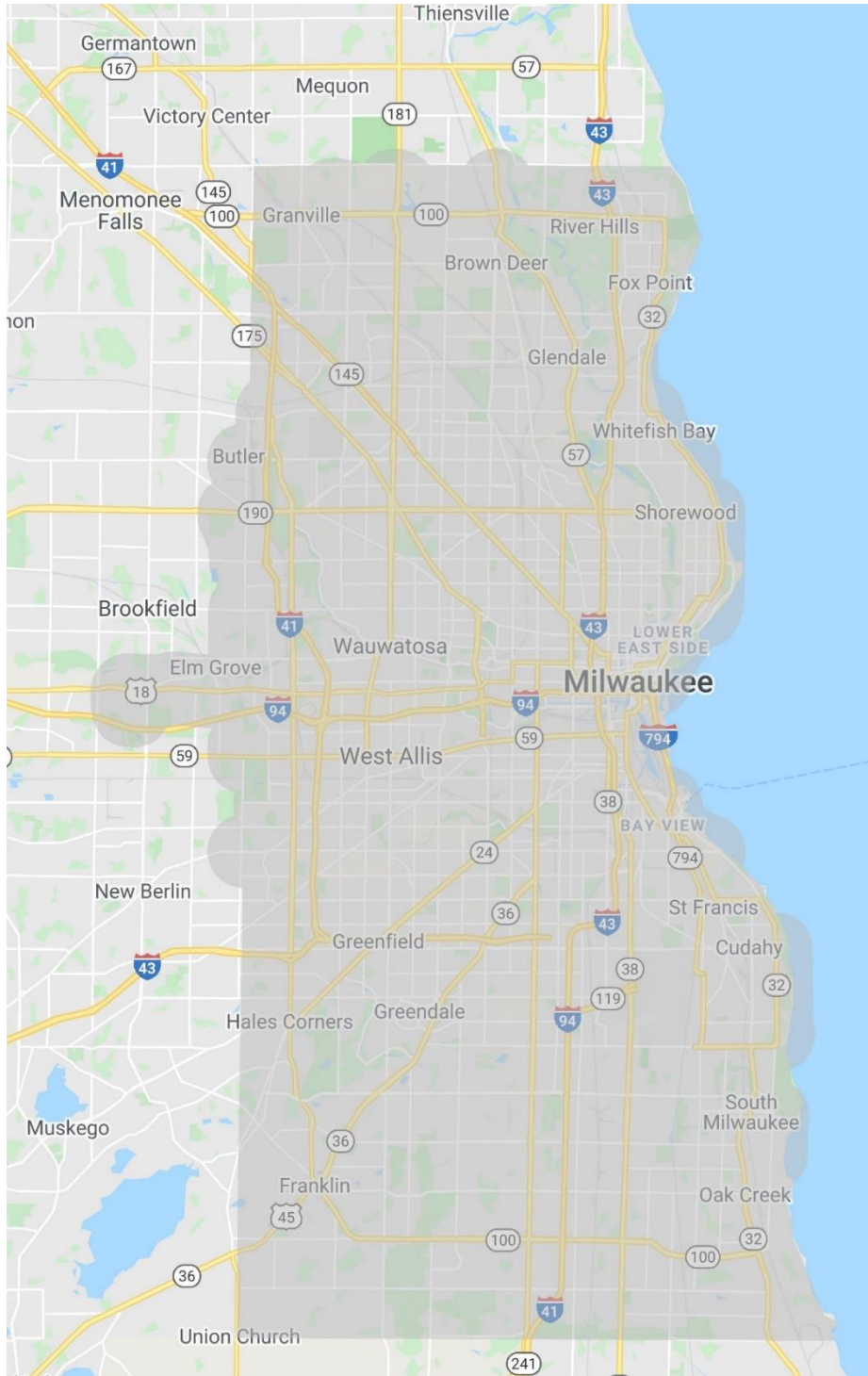
10.5a Nothing contained in the Agreement shall constitute or be construed to create a partnership or joint venture between MTS, Inc. or its successors or assigns and Contractor(s) or its successors or assigns. In entering into this Agreement, and in acting in compliance herewith, Contractor(s) is at all times acting and performing as an independent Contractor(s), duly authorized to perform the acts required of it hereunder.10.6Notices

10.6 Notices to MTS provided for in the Agreement shall be sufficient if sent by Certified or Registered Mail, postage prepaid addressed to:

Milwaukee Transport Services, Inc.  
Attn: Materials Management Department  
Monique Alston  
1942 North 17<sup>th</sup> St.  
Milwaukee, WI 53205

# Attachment A

## MCTS Paratransit Coverage Area



## Attachment B

Month	One-way rides provided
August 2018	107
September 2018	57
October 2018	71
November 2018	32
December 2018	70
January 2019	43
February 2019	76
March 2019	87
April 2019	55
May 2019	79
June 2019	53
July 2019	76
August 2019	70
September 2019	88
October 2019	86
November 2019	47
December 2019	85
January 2020	88
February 2020	70
<b>There is no data on rides for March 2020 &amp; April 2020. No rides were performed due to the pandemic.</b>	

# 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

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

## 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)

# 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.

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

**MUTUAL NON-DISCLOSURE AGREEMENT**

This Agreement is made and entered into this day, \_\_\_\_\_, by and between Milwaukee Transport Services, Inc. with its principal place of business at 1942 North 17th Street, Milwaukee, WI 53205-1697 (herein called "MTS") and \_\_\_\_\_ with its principal place of business at \_\_\_\_\_ (herein called "Supplier"), under the following terms and conditions:

1. **Nature and Purpose**

The parties enter into this Agreement for the following purpose:

To enable MTS to evaluate NXP Mifare 1K Classic Smart Cards provided by Supplier. MTS intends to make available to Supplier the layout for smart cards to be used in the automated fare collection system being provided by Scheidt & Bachmann to MTS. MTS will also make available to Supplier a test key exchange and key derivation methods. Both the layout and the test key exchange and key derivation methods, and all information relating to these elements, constitute Confidential Information for the purposes of this Agreement. Other information may also constitute Confidential Information if it comes within the definition of that term as set out below.

This Agreement does not oblige either party to disclose any information to the other or to enter into any other agreement or arrangement. Disclosure of information under this Agreement does not transfer or create any property rights in that information.

2. **Confidential Information**

In fulfilling the purposes of this Agreement, one party (the "Discloser") may make available to the other party (the "Recipient") information that is to be treated as confidential ("Confidential Information").

Confidential Information is information that is marked "Proprietary" or "Confidential", or that is marked with a similar legend, or that is of such a nature or disclosed in such circumstances that a reasonable person would consider it confidential or proprietary.

Confidential Information does not include any information which

- (a) is or becomes publicly known through no wrongful act or failure to act on the part of the Recipient, or
- (b) is already known by the Recipient, or
- (c) becomes known to the Recipient without proprietary restrictions and without breach of agreement from a source other than the Discloser, or
- (d) is independently developed by the Recipient without reference to or use of the Confidential Information disclosed by the Discloser.

Confidential Information is not in the public domain merely because related information is embodied in general disclosures.

3. **Degree of Care**

The Recipient receives and maintains Confidential Information in the strictest confidence. The Recipient treats and safeguards the Confidential Information with the same degree of care as is used by the Recipient to protect its own Confidential Information, which shall not be less than reasonable.

4. **Use and Non-disclosure**

The Recipient uses Confidential Information only for the purposes of this Agreement. The Recipient does not disclose Confidential Information other than as permitted by this Agreement.

5. **Disclosure**

The Recipient may disclose Confidential Information to those employees who need that information to fulfill the purposes of this Agreement. For the purposes of this section, the term 'employees' includes employees of any parent, subsidiary or related company of the Recipient.

The Recipient may not disclose Confidential Information to any other person, company or other legal or political entity without the prior written consent of the Discloser to make such disclosure, and then only on the terms of such consent. This prohibition on disclosure applies even if the Recipient is doing business with such person, company or other legal or political entity and even if the Discloser is aware of this. It is the Recipient's obligation to seek and obtain such consent, and to do so in a timely manner.

6. **Notice of Legal Action Requiring Disclosure**

If the Recipient is ordered to disclose Confidential Information to comply with applicable laws, regulations, or judicial orders, or is faced with legal action to disclose Confidential Information, the Recipient promptly notifies the Discloser. If requested by the Discloser, the Recipient cooperates with the Discloser in contesting such a disclosure.

7. **Notification of Unauthorized Use or Disclosure**

The Recipient informs the Discloser immediately on becoming aware of any unauthorized use or disclosure of Confidential Information. The Recipient assists the Discloser in dealing with any such unauthorized use or disclosure so as to protect the Discloser's interests.

8. **Return Or Destruction Of Confidential Information**

The Recipient agrees to return or destroy, within thirty (30) days after receipt of written request by the Discloser, all documents and tangible materials in its possession (including all copies stored in electronic data systems) which contain Confidential Information.

9. **Term**

This Agreement is effective as long as confidential information is retained by the Recipient. This Agreement may be terminated by either party upon the return or destruction of confidential information pursuant to the required written request. Rights and obligations accruing prior to termination survive as long as confidential information is retained by the Recipient.

10. **Injunctive Relief**

Each party acknowledges that unauthorized disclosure or use of Confidential Information may cause substantial harm and damage to the business of the Discloser which may be difficult to ascertain and which may not be adequately compensated by damages at law. Therefore, each party agrees that, in the event of a breach or threatened breach of the terms of this Agreement, the Discloser is entitled to seek an injunction prohibiting any unauthorized disclosure or use of its Confidential Information. Any such injunctive relief is in addition to, and not in lieu of, any appropriate monetary damages.

11. **Validity**

If any provision of this Agreement is held invalid, illegal or unenforceable, the parties shall negotiate in good faith so as to replace each invalid, illegal or unenforceable provision with a valid, legal and enforceable provision which will most nearly and fairly approach the intent of the parties as originally expressed in this Agreement.

12. **Assignment**

This Agreement may not be assigned by either party without the prior written consent of the other party. Any purported assignment without such consent is void. This approval requirement does not apply to the assignment to any successor corporation in the event of a merger or consolidation.

13. **Miscellaneous**

This Agreement is binding upon, and inures to, the benefit of the parties' successors in interest. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all previous communications, representations, understandings, and agreements, either oral or written, between the parties. This Agreement may not be changed or modified except by a written agreement signed by the parties hereto or by their successors in interest.

14. **Governing law and exclusive jurisdiction**

This Agreement is governed by and construed in accordance with the laws of the State of Wisconsin without regard to its conflict of law provisions. Any action or suit related to the interpretation and or performance of this Agreement shall be brought exclusively in the Courts of the State of Wisconsin.

15. **Notice**

All notices required by this Agreement are given in writing. They are effective three (3) business days after mailing, if sent by U.S. registered or certified mail, return receipt requested, one (1) business day after delivery to a reputable shipping service for overnight delivery, or if given by any other means, when received. Notices are addressed as follows:

To: Milwaukee Transport Services, Inc.  
1942 North 17th Street  
Milwaukee, WI 53205-1697  
Attn: Daniel Boehm  
Tele: 414-937-3272  
Fax: 414-344-0148

To: \_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Tele: \_\_\_\_\_  
Fax: \_\_\_\_\_

**Signed, for and on behalf of the parties to this Agreement:**

Milwaukee Transport Services, Inc. \_\_\_\_\_

BY: \_\_\_\_\_

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

NAME: \_\_\_\_\_

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

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

**DESIGNATION OF  
CONFIDENTIAL AND PROPRIETARY  
INFORMATION**

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

We request that the following pages not be released:

Section	Page #	Topic
_____	_____	_____
_____	_____	_____
_____	_____	_____

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

This does not apply to proposal prices. Prices are always open. Other information usually cannot be kept confidential unless it is a trade secret. Trade secret is defined in s.134.90(1)(c), Wis. Stats. as follows: "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique or process to which all of the following apply: 1. The information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use. 2. The information is the subject of efforts to maintain its secrecy that are reasonable under the circumstances.

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

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

\_\_\_\_\_  
Signature-Authorized Representative Date

# 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

Milwaukee Transport Services, Inc.  
2020 Purchase of Service Contract - Sample  
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 two (2) years. Starting August 7, 2020 through August 8, 2022 for Assessment rides for the Transit Plus program. There are no extension years offered with this contract.

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 and 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 or 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 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.

Contractor shall use reasonable efforts to establish Disadvantaged Business Enterprise ("TBE") participation goals, consistent with Milwaukee County TBE goals of seventeen percent (17%) for professional services, and to use good faith efforts to achieve those goals. The parties agree that no TBE goal has been established and no goal is required under this contract.

The Milwaukee County Community Business Development Partners shall assist Contractor in soliciting potential TBE vendors for the improvements and monitor such goal attainment. Contractor's contact regarding TBE participation is:

Milwaukee County Community Business Development Partners  
633 W. Wisconsin Avenue, 9th Floor  
Milwaukee, WI 53233  
cbdp@milwaukeecountywi.gov

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. (Attach insurance requirements to the bid).

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. See bid scope of work or specification for details.

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. Coordination of Services

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

14. 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.

15. 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.

16. 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.

17. Subcontracts

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

18. 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.

19. 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."

20. 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)

21. 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: \_\_\_\_\_

22. 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.

23. 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.

24. 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.

25. Approval

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

## **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**

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

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/offeree 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.