

MILWAUKEE TRANSPORT SERVICES, INC.
Operator of the Milwaukee County Transit System
1942 NORTH 17TH STREET
MILWAUKEE, WI 53205

PURCHASING AGENT: TELICE GILLOM
(414) 937-3290 | (414) 344-7080 fax
tgillom@mcts.org | www.ridemcts.com

REQUEST FOR PROPOSALS NO. MM-05-18
IN-PLANT BUS INSPECTION & BUY AMERICA AUDIT

RFP RELEASE DATE: AUGUST 20, 2018

Milwaukee Transport Services, Inc. is a quasi-governmental instrumentality of Milwaukee County, and operator of the Milwaukee County Transit System (hereinafter referred to as "MTS"). MTS is seeking proposals for In-plant Bus Inspection and Post Delivery Audit Services for the Milwaukee County Transit System. Milwaukee County has a contract with Gillig LLC to manufacture twenty-eight (28) each low floor diesel transit buses per Specification.

Proposals for the service will be accepted until **OCTOBER 12, 2018 - 2:00PM CST.**

Vendors must submit a total of five (5) copies of their proposal in response to this solicitation: one (1) paper copy marked as the original, three (3) additional paper copies, and one (1) copy on a USB drive. Paper copies of the proposals shall be manually signed by an officer of the firm, and all copies shall be returned in a sealed envelope with the vendor's name, return address, and "Proposal No. MM-05-18, IN PLANT BUS INSPECTION & BUY AMERICA AUDIT" clearly marked on the outside. Mail or deliver proposals to:

Milwaukee Transport Services, Inc.
1942 North 17th Street
Milwaukee, WI 53205
Attn: Materials Management Department

Fax, email, and/or oral proposals will not be accepted. The proposal shall include the offer to provide the services as specified, based on the vendor's professional experience in the marketplace. The offer should be based upon specifications as outlined in this solicitation to include all services as specified. Proposals will be evaluated by MTS as defined in the RFP specification.

A vendor's failure to submit their proposal prior to the deadline stated above will cause their proposal to be disqualified. Late proposals or amendments will not be opened or accepted for evaluation. Vendors are responsible for all costs associated with the preparation and submittal of their proposal, & shall be responsible to obtain all documents pertaining to this RFP via MTS' website, www.ridemcts.com.

Contract Term:

The contract resulting from this RFP will be awarded in the aggregate. This will be a four (4) year, fixed price contract based on the inspection of newly manufactured buses at the Gillig plant in Livermore, California. The contract awardee will be responsible for conducting all of the build inspections for the duration of Gillig's contract for the manufacture of twenty-eight (28) transit coaches. The first build is tentatively scheduled to start in March 2019 and be completed by June 2019. An Inspection Schedule for

the first build will be released via addendum once the exact build dates have been released by Gillig. Subsequent build inspection dates will be provided to the awardee as soon as they become available each year.

Pre-Proposal Meeting:

A pre-proposal meeting will be held on **September 7, 2018 at 10:00 AM CST** at MTS' Administration Building, 1942 North 17th Street, Milwaukee, WI 53205, Room 105. Attendance at the pre-proposal meeting is encouraged in order to submit a responsive proposal. The purpose of the meeting will be to clarify requirements in an open forum. Any changes resulting from the pre-proposal meeting will be made in writing through addenda to this RFP. No changes will be allowed to the RFP documents unless confirmed in writing via addendum from MTS. Deadline for questions is **4:30pm CST on Friday, September 14, 2018.**

Right to Reject:

MTS reserves the right to make an award based on its own determination, or to reject any or all proposals or portions of same, if in the opinion of MTS, the best interest of MTS will be served thereby. **Proposals that do not include the required Bid Forms provided in the "Instructions for Proposal Submittal" section of this solicitation may be deemed non-responsive.**

Waiver of Informalities:

Proposers must comply with all of the terms of the RFP, and all applicable local, state, and Federal laws and regulations. MTS may reject any proposal that does not comply with all of the material and substantial terms, conditions, and performance requirements of the RFP. Minor informalities, that do not affect responsiveness, that are merely a matter of form or format; that do not change the relative standing or otherwise prejudice other offers; that do not change the meaning or scope of the RFP; that are trivial, negligible, or immaterial in nature; that do not reflect a material change in the work; or, that do not constitute a substantial reservation against a requirement or provision may be waived by the Director of Materials Management.

MTS reserves the right to refrain from making an award if it determines that to be in its best interest.

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. Proposals shall be submitted excluding any of these taxes.

Order of Precedence:

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

1. Purchase Order.
2. All documents contained within and related to RFP #MM-05-18.
3. Proposal from the successful Firm.

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

Binding Contract:

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

Non-Collusion Affidavit:

Proposer shall submit with their Proposal an affidavit stating that neither Proposer nor its agents, nor any other party on its behalf, has paid or agreed to pay, directly or indirectly, any person, firm, or corporation, any money or valuable consideration for assistance in procuring or attempting to procure the contract that will result from this RFP, and further agrees that no such money or consideration will be hereafter paid. This affidavit must be on the form provided, which is enclosed with the RFP.

Right of Award:

MTS reserves the right to select Contractor on the basis of Proposals received, without seeking further information or clarification from Proposers. A contract will be awarded to the Contractor who provides the most advantageous offer to MTS, with price and other factors considered.

Proposal Acceptance:

The submitted proposal shall be open for acceptance for ninety (90) days from the proposal due date. Any proposal submitted pursuant to this solicitation shall constitute an offer based on the terms included herein and shall constitute the contract under which MTS and the Contractor shall perform, unless otherwise modified by mutual agreement of the parties. In no event will changes, amendments, modifications or addendum, written or oral be considered after the Contractor's submission of his/her proposal without the express written consent of MTS' Director of Materials Management.

By signing the enclosed forms, vendor certifies that they have read and accepts all of the General Directions for this Request for Proposals, required contract clauses, requirements and will send via mail or return in person, any required certification, confirmations, cost submission sheets and manually signed signature sheet. **All responses must be returned in a sealed envelope provided by the vendor with the vendor's name, return address, RFP title and RFP number clearly marked on the outside of the envelope, and received by the due date and time listed above.**

Continuation Clause:

Contractor recognizes that the services under this contract are vital to MTS and to the public and must be continued without interruption. Contractor agrees that MTS, in its sole discretion, and by written notice to Contractor 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.

Personnel:

In submitting their proposals, Proposers are representing that the personnel described in their proposals shall be available to perform the services described, barring illness, accident or other unforeseeable events of a similar nature. Furthermore, all personnel shall be considered to be, at all times, the sole employees of the service provider, under his or her sole discretion, and not employees or agents of MTS.

Non-Discrimination:

Successful vendor shall be required to comply with Executive Order 82.2, dated May 28, 1982, Non-Discrimination Milwaukee County Contracts, and must provide proper documentation for approval by the EEO Compliance Auditor, prior to award of contract. MTS adheres to FTA Circular 4220.1F in its procurement policies.

Specifications to be Part of Contract:

Specifications, statements, and the requirements which accompany the offers which are accepted therewith, and which do not conflict with the provisions herein contained, shall be part of any contract that is entered for the purchase of any material or work, or both, herein anticipated by MTS.

Amendments to Bid Document:

Any clarifications or further instructions will be sent to all prospective vendors in addendum form. All questions and comments regarding this solicitation must be submitted via e-mail to Telice Gillom at tgillom@mcts.org on or before **SEPTEMBER 14, 2018 – 4:30 p.m. CST.**

- a. If the solicitation is amended, then all terms and conditions which are not modified remain unchanged.
- b. Prospective vendors shall acknowledge receipt of any amendment to this solicitation:
 - i. By signing and returning the ACKNOWLEDGEMENT OF ADDENDUM. MTS must receive the acknowledgement by the time and at the place specified for receipt of the proposal.
- c. If an Addendum is issued within 72 hours prior to the published proposal deadline (excluding Saturdays, Sundays, and legal holidays) then the deadline shall be extended one week with no further advertising of RFP required.

Any interpretation or clarification of the Contract Documents made in any manner other than a written addendum shall not be binding and the offerors shall not rely upon the interpretation or clarification that is not made in the form of a written addendum.

Contract/Contract Documents:

Contract Documents consist of the contract, the Request for Proposals, the definitions, the information to offerors, the specifications, the exhibits and the proposal forms including any modifications thereof incorporated in the documents prior to the contract award.

Equal Employment Opportunity:

In connection with the carrying out of any contract, the Contractor hereby certifies that it shall not discriminate against any employee or applicant for employment because of sex, handicap, religion, race, color or national origin. The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their sex, handicap, religion, race, color or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor shall at all times, comply with the provisions of Executive Order 11246, as amended, entitled "Equal Employment Opportunity".

Deadline for Questions:

Any questions and/or comments regarding the information contained within this solicitation must be submitted via e-mail to Telice Gillom at tgillom@mcts.org on or before 4:30 p.m. CST on SEPTEMBER 14, 2018. No questions or inquiries will be responded to by phone, and any clarification requests received after the deadline for questions will not receive a response.

EVALUATION OF PROPOSALS

The evaluation and scoring will primarily be based on the technical response to the criteria set out in the “Proposal Submission” section of this RFP; a total of up to 100 points will be possible.

In addition to the technical response, the proposed cost will also be considered in determining the best offer/value. After technical scores are complete, proposed cost will be evaluated alongside technical merit in a trade-off fashion to choose the proposal that represents the best value to MTS. When determining the best offer/value, proposed cost will have approximately equal value to the technical response.

The Proposer is responsible for all costs associated with the preparation and submittal of his/her proposal. Proposers **MUST** submit five (5) copies of their proposal: one (1) hard copy marked as the original, three (3) additional hard copies, and one (1) electronic copy on a USB drive.

Evaluation Committee:

An evaluation committee made up of MTS staff will evaluate and score proposals. MTS reserves the right to establish the evaluation committee composed of qualified personnel who will review proposals submitted by all vendors. Vendors who submit a proposal may be required to make an oral presentation of their proposal to the MTS Evaluation Committee. Presentations, if required, will be scheduled through the MTS Materials Management Department and will be at the vendor’s expense. Selected vendors will be given adequate notice of the date and time of the presentation.

Negotiations:

This is a negotiated procurement. Negotiation is a procedure that includes the receipt of proposals from Vendors, permits bargaining, and usually affords an opportunity to revise offers before award of a contract. “Bargaining” is used in the sense of discussion, persuasion, alteration of initial assumption and position and give-and-take that may apply to price, schedule, technical requirements, type of contract, or other terms of a proposed contract.

Disclosure of Proposal Contents:

All proposal information, including detailed cost information, will be held in confidence during the evaluation process and prior to the time a notice of intent to award is issued. Thereafter, proposals will become public information.

Confidentiality of Proposals:

Access to government records is governed by the State of Wisconsin. Except as otherwise required by law, MTS will be exempt from disclosure of proprietary information, trade secrets and confidential commercial and financial information submitted in the proposal. Any such proprietary information, trade secrets or confidential commercial and financial information which an offeror believes should be exempted from disclosure shall be specifically identified and marked as such. Blanket-type identification by designating whole plates or sections as containing proprietary information, trade secrets or confidential commercial and financial information will not assure confidentiality. The specific proprietary information, trade secrets or confidential commercial and financial information must be clearly identified as such.

Although all material will be considered by MTS in the selection process, the primary basis for evaluation shall be the specifications in the Proposal Submission section.

PROPOSAL SUBMISSION

Proposals should be formatted as follows:

Section 1. Title Page

The title page should reflect the Request for Proposal subject, name of the firm, telephone number, and contact person.

Section 2. Letter of Transmittal

A letter of transmittal must be submitted with an offeror's proposal. The letter must include:

- a) A statement of the offeror's understanding of the services required by the Request for Proposal and scope of services.
- b) The names of the persons who are authorized to make representations on behalf of the offeror (include their titles, addresses, telephone and fax numbers as e-mail address.)
- c) A statement that the individual who signs the transmittal letter is authorized to bind the offeror to a contract with MTS.

Section 3. Technical Response

The Technical Response should address the "Minimum Requirements" in Section 1.2 of Specification No. MM-05-18 included in this solicitation document. Offerors shall pay attention to the evaluation criteria listed below, and should be specific in presenting their qualifications. Offerors shall structure their technical response so that it contains tabs and/or sections that include responses to the Requirements, and include any other information the offeror feels is pertinent. **Do not provide cost information in your technical response.**

Evaluation Criteria and Scoring

The proposals will be evaluated by MTS based on the following criteria:

- Understanding of the Project (**up to 50 points**)
See 1.2a of Specification #FM-12-18
- Key Personnel and Staffing/Subcontracts (**up to 50 points**)
See 1.2b and 1.3 of Specification #FM-12-18

Section 4. Summary of Proposal Requirements

Cost Response: (to be submitted separately from the Technical Response)

The cost figures shall be furnished on the proposal price sheets provided and shall be submitted in a sealed envelope **completely separate from your technical response**. Your cost response shall include the price sheet and the signature sheet. **Only one (1) original copy of your cost response is required; do not send multiple copies of your cost response.** Pricing information should also be included with the electronic copy that is submitted on the USB drive.

These requirements will be used in the evaluation of qualifications for development of a short list of those offerors to be considered for interviews and/or potential negotiations. MTS may perform a pre-award survey to determine the prospective Contractor's performance capability under the terms of the proposed contract. The survey may include oral interviews by members of the evaluating committee. MTS reserves the right to award a contract based on submittals alone and award portions of this contract if it deems so necessary.

Preparation of Proposal:

Each proposal shall be prepared simply and economically avoiding the use of elaborate promotional materials beyond what is sufficient to provide a complete, accurate, and reliable presentation. This RFP sets forth specific questions that must be answered in each proposal. Each response should be clearly numbered and the full question listed.

Careful attention must be paid to all requested items contained in this RFP.

Please read the entire solicitation document before preparing a proposal.

ANTICIPATED SCHEDULE:

MTS has established the following anticipated schedule with regard to this solicitation:

Release of RFP	August 20, 2018
Pre-Proposal Meeting	September 7, 2018, 10:00 AM CST
Deadline for Questions	September 14, 2018, 4:30 PM CST
Submission Deadline	October 12, 2018, 2:00 PM CST
Evaluation Committee Review	as required
Vendor Presentations	as required
Award of Contract	after completion of review

Proposal Due Date:

All sealed, clearly marked proposals in response to this solicitation are due to the address on page 1 of this document on or before **OCTOBER 12, 2018 – 2:00 PM CST.**

Enclosures:

- 1. Technical Specification No. FM-12-18**
- 2. RFP Requirements/Certification Package**

Prospective vendors are advised that the Inspection Schedule will be released as an addendum.

Instructions for Proposal Submittal:

Vendors will be required to submit the following documents in their proposal, following the instructions outlined in this RFP document:

- 1. Technical Response (One (1) hard copy Original, three (3) additional hard copies, and one (1) electronic copy saved on a USB drive)
- 2. Signature Sheet (One (1) signed original in a separate sealed envelope labeled as Cost Response)
- 3. Proposal Price Sheet (One (1) original, included with the Cost Response)
- 4. Independent Contractor Certification
- 5. EEO Certificate
- 6. Designation of Confidentiality Form
- 7. Certification of Restrictions on Lobbying
- 8. Certification Regarding Debarment and Other Responsibility Matters
- 9. Bidder List Form
- 10. Conflict of Interest Statement
- 11. False Claims Act

FM- 12-18

Technical Specification
For
In-Plant Bus Inspection & Post-Delivery Buy America Audit

Table of Contents

	Page
Technical Proposal Requirements.....	<u>3</u>
Overview	<u>3</u>
Minimum Requirements for Proposal Response ..	<u>3</u>
Subcontracts	<u>4</u>
Scope of Services	<u>4</u>
Pre-Inspection/Production Line Inspection	<u>4</u>
Post-Delivery Audits.....	<u>5</u>

1. Technical Proposal Requirements

1.1 Overview

- a. Milwaukee County Transit System (MCTS) has awarded to Gillig, LLC, a contract for the production of twenty-eight (28) 40-foot low floor diesel transit buses which will be manufactured in Livermore, California. Gillig LLC has tentatively scheduled the start of production for MCTS beginning on March 4, 2019 with final completion and delivery of all units scheduled for mid-June 2019. The Contractor will be required to perform work described in this scope of services during the full production period for all of the twenty-eight (28) buses.

1.2 Minimum Requirements for Proposal Response

- a. Understanding of the project

The Proposal must include a statement of work that describes the Proposer's understanding of the project. The Proposer is expected to discuss the following to demonstrate its understanding of the proposed Scope of Services:

The complexity, challenges and problems involved in performing the work.
Approach and philosophy for dealing with problems.
Experience dealing with key issues.
Any additional issues or matters relating to the Scope of Services which the Proposer wishes to address

- b. Key Personnel and Staffing

- (1) Key personnel identified in the proposal will be expected to remain assigned to the project for the term of the agreement. Requests for a change in key personnel assignments during the term of the agreement must be approved in advance, in writing, by MCTS. The proposal should also include a discussion that outlines staffing levels/man-hour requirements that should be expected from MCTS to support the implementation and day-to-day operation of the system. This information will be a recommendation only for discussion purposes. The Proposer should describe other potential burdens that may be placed on MCTS as it pertains to the servicing of the account.

- (2) Resumes for all key personnel who will be involved in providing the services contemplated by this RFP. The following information must be included in the resumes:

- a. Full name
- b. Education
- c. Years of experience and employment history, particularly as it relates to the scope of services specified herein.

- (3) References from three (3) previous clients knowledgeable of the

vendors performance in providing services similar to the services described in this RFP and a contact person and telephone number for each reference.

1.3 Subcontracts

- a. Services that are to be subcontracted must be clearly defined in the Proposal. The Contractor retains responsibility for all acts and omissions of the subcontractor. The Contractor must obtain the prior approval from MCTS for all subcontracts.

2. Scope of Services

2.1 Pre-Inspection/Production Line Inspection

- a. The Contractor will review the specifications and addendum in detail, including approved equals, noting each item which varies from manufacturer's standard, and advise MCTS of any required changes. The Contractor will survey factory fabrication plans, assuring that recent improvements in production of previous orders are incorporated and that provisions of the MCTS specifications will be met.
- b. During manufacture and assembly, the Contractor will provide qualified personnel to observe and test bolting, welding and riveting techniques, as well as cut and trim of metal, plywood, insulation and sealing, lubrication, priming and painting, installation of wiring, hoses, cables and standard components such as power plants, axles, batteries, seats, etc., from start of framing to road testing the complete bus. The observation points will be
 1. Chassis framing
 2. Power train installing
 3. Body framing
 4. Priming and sealing of metal surfaces
 5. Floor installing
 6. Priming and painting
 7. Seat installing
 8. Water testing
- c. Emphasis will be placed on priming and sealing all metal surfaces to prevent corrosion in service. The Contractor will also provide periodic observation of the bus manufacturers own factory inspectors to assure that all items noted by the Contractor are corrected.
- d. To assure that all components on the bus are operating properly, the Contractor will:
 1. Observe run-in of engine after installation
 2. Water testing of body

- e. Complete road testing of each bus completed including measurements of sound levels. After completion of these tests, the Contractor will ensure that factory personnel correct any defects found, with re-inspection following, including additional road test, if necessary. The Contractor will not release any bus for delivery until each and every correction is verified.
- f. During the period of manufacture, the Contractor will maintain telephone and e-mail communication with MCTS:

Ric Talatzko
Manager of Shop Operations
1525 W. Vine Street
Milwaukee, WI 53205
(414) 937-3283 work (414) 881-7650 cell
rtalatzko@mcts.org

Also, the contractor will provide weekly status reports. The Contractor's record of defect or shortage will be kept on a "Q/A Production Defects" form, which is to remain with the bus unit from start to road test. This form will contain space for indication of corrections to be verified on the production line.

- g. A "Final Inspection" form will be initiated on each bus after the factory inspector's survey and road test are completed. This form will provide on it any items needing correction as a result of "walk-around" visual inspection of underside, outside and inside. The bus will then be road tested, during which a "Check List/Road Test" form is completed. Any defects or omissions during the road test are to be listed on the "Final Inspection" form. Upon satisfactory completion of all corrections, the Contractor will furnish MCTS with a "release" form, completed and signed by an inspector and turned over to the factory representative.
Upon completion of all work, the Contractor will provide MCTS with a summary report relating to the overall inspection performed on the entire fleet of vehicles. This summary will be in addition to the individual inspection report forms referenced herein.

2.2 Post-Delivery Audits

- a. MCTS has conducted an FTA-required Pre-Award Audit concerning Buy America domestic content and final assembly as well as confirmed that its final solicitation/specification requirements will be used in the manufacture of buses by Gillig, LLC. Pursuant to Section 319 of STURRA and 49 CFR part 663, the Contractor, on behalf of MCTS, will conduct Post-Delivery audits to assure the coach manufacturer has complied with MCTS's final solicitation/specification requirements, and confirm whether or not components and subsystems as identified in the Pre-Award Buy America Audit were included in the coach manufacture.
- b. Post-delivery audit documentation shall reflect actual components delivered and installed in the buses ordered.

- c. The post-delivery audit report must be successfully completed prior to final release to MCTS of buses and equipment supplied under this procurement.
- d. The report shall include:
 - 1. Post-delivery, purchaser's requirements certification
 - 2. Post-delivery Buy America certification as included in 49 CFR Part 663 Pre-Award and Post-Delivery Audits of Rolling Stock Purchases.
 - 3. Federal Motor Vehicle Safety Standard self-certification information as described in CFR 49 Part 663.41 or 663.43.

3. Changes to Specification

No verbal responses from any agent of MTS shall be acted upon. For clarifications, submit questions in writing via email prior to the established deadline for questions to:

Telice Gillom, Purchasing Agent
Milwaukee Transport Services, Inc.
1942 North 17th Street
Milwaukee, WI 53205
(414) 937-3290 | (414) 344-7080 FAX
Email: tgillom@mcts.org

PROPOSAL PRICE SHEET RFP #MM-05-18

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

ITEM 1

In Plant Bus Inspections for Twenty-eight (28) each 40' Low Floor Buses at the Gillig plant in Livermore, California. (to include Post-Delivery Buy America Audit)

Production to begin March 2019, tentatively ending June 2019.

Price in words: _____/per bus

Price in figures: \$ _____/per bus

No additional expenses will be allowed. Labor and travel for the contract awardee will be added to the per bus price and will be broken out on an Excel spreadsheet prior to invoicing MCTS.

Final payment will be withheld until satisfactory completion of Post-Delivery Audit.

Name of Vendor: _____

Company DUNS Number: _____

NAICS code(s): _____

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 RFP.

BY SIGNING THIS PROPOSAL, YOU ARE AGREEING WITH FOLLOWING STATEMENTS:

1. This proposal has been made without any connection with any other bidder and is in all respects fair and without collusion or fraud.
2. This proposal 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 proposal have been read and understood.
4. Your company has never defaulted on any contract with Milwaukee Transport Services, Inc., or Milwaukee County.

In signing and submitting this proposal, the bidder assures Milwaukee Transport Services, Inc. (MTS), 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 included this RFP and all of its documents. If the offeror's performance, in the event he/she is successful is contingent upon the act of another party, the offeror 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 #: _____

**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 ____ \$100,000 - \$250,000 ____ \$250,001 - \$500,000 ____

\$500,000 - \$1M ____ \$1M - \$5M ____ Greater than \$5M ____

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

Signature

Print Name

Date

**TABLE OF CONTENTS
FOR
RFP REQUIREMENTS
REQUIREMENTS/CERTIFICATIONS
PACKAGE**

A. Certifications

THE FOLLOWING MUST BE SIGNED AND RETURNED WITH ALL RFPs:

1. Equal Employment Opportunity Certificate
2. Designation of Confidential and Proprietary Information
3. Buy America Certificate
4. Certification of Restrictions on Lobbying
5. Independent Contractor Information
6. Conflict of Interest Statement
7. Certification Regarding Debarment & Other Responsibility Matters
8. False Claims Act

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

1. Substance Abuse Certification

B. General Directions/Terms and Conditions for Submitting Proposals

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

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

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

Non-Discrimination

VENDOR certifies that it will not discriminate against any employee or applicant for employment because of race, color, national origin, age, sex or disability, which includes, but is not limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship.

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

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

Affirmative Action Program

VENDOR certifies that it will strive to implement the principles of equal employment opportunity through an effective affirmative action program, which shall have as its objective to increase the utilization of women, minorities, and persons with disabilities and other protected groups, at all levels of employment in all divisions of the seller, successful respondent or contractor's work force, where these groups may have been previously under-utilized and 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, 9th 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 Area (Counties of Milwaukee, Waukesha, Ozaukee and Washington, Wisconsin) and # _____ employees in total.

Compliance

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

Executed this _____ day of _____ 20____ by:

Firm Name: _____

Address: _____

City/State/Zip _____

Telephone: _____

(Title)

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

By _____

(Signature)

**DESIGNATION OF
CONFIDENTIAL AND PROPRIETARY
INFORMATION**

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

We request that the following pages not be released:

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

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

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

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

Name-Authorized Representative

Company Name

Signature-Authorized Representative

Date

BUY AMERICA REQUIREMENTS (Non-Rolling)

49 U.S.C. 5323(j)

49 CFR Part 661

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR 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 CFR 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 5323(j)(2)(C) and 49 CFR 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 non-responsive. This requirement does not apply to lower tier subcontractors.

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

Certificate of Compliance with Buy America Requirements

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j) and the applicable regulations in 49 CFR Part 661.

Date _____

Signature _____

Company _____

Name _____

Title _____

Certification requirement for procurement of service contracts.

Certificate of Non-Compliance with Buy America Requirements

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2), as amended, and the applicable regulations in 49 CFR Part 661.7.

Date _____

Signature _____

Company _____

Name _____

Title _____

LOBBYING

31 U.S.C. 1352; 49 CFR Part 19; 49 CFR Part 20

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

Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

APPENDIX A, 49 CFR PART 20 – CERTIFICATION REGARDING LOBBYING

Certificate Regarding Lobbying

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

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form—LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. 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 sub recipients shall certify and disclose accordingly.

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

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

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

_____ Signature of Contractor's Authorized Official

_____ Name of Contractor's Authorized Official

_____ Title of Contractor's Authorized Official

_____ Date

INDEPENDENT CONTRACTOR INFORMATION
(For Professional Services Contracts Only)

As per 1995 Wisconsin Act 118 amending Wis. Stat. 108.02(12)b, comprehensive revisions to the Wisconsin Unemployment Compensation Act includes a new definition for "Independent Contractor" which became effective January 4, 1996.

1. Are you a Corporation? If so, in what state?

YES _____ NO _____ STATE _____

IF NO:

2. Federal Employer Identification Number _____

If no number issued, date of application _____ or
Social Security number: _____

3. Date of last business or self-employment tax return: _____

Firm Name (print or type)

Name of Company Principal

Signature of Company Principal

Title of Company Principal

Date

Substance Abuse Certifications

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

A. Drug-Free Workplace Agreement

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

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

- (7) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (1), (2), (3), (4), (5), and (6) of this agreement. The Applicant agrees to maintain a list identifying its headquarters location and each workplace it maintains in which project activities supported by FTA are conducted, and make that list readily accessible to FTA

B. Prevention of Alcohol Misuse and Prohibited Drug Use Certification

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

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

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

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

Executed this _____ day of _____, 20__

(Company)

By _____
(Authorized Signature) (Print/type Name)

(Title)

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

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

1. Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a ten-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (A)(2) of this certification; and
4. Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default.

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

Contractor Name: _____

Date: _____

By: _____

DUNS #: _____

Name and Title of Authorized Representative: _____

Signature of Authorized Representative: _____

Conflict of Interest Statement

_____ hereby certifies that our Firm's officers and personnel that will be assigned to the contract resulting from this solicitation, and/or their immediate family members do not have a Conflict of Interest performing the duties outlined in this solicitation document. To the best of our knowledge, no officer and personnel assigned or their immediate family members have a material financial interest in any commercial entity which may provide products or services as a part of a conflicting contract with MTS, or to Milwaukee County, Milwaukee County Transit System (MCTS), or Milwaukee Transport Services, Inc. (MTS). If our Firm's officers and personnel that are assigned to this contract becomes aware of any development that may create a conflict of interest and compromise the integrity of this contract, they shall notify MTS 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 MTS or MCTS on this contract 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 (1%) of the stock in a commercial entity.

(Name of Company)

(Authorized Name, Print)

(Title)

(Authorized Name, Signature)

(Date)

False Claims Act Form

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

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

Date: _____

Submitted by: _____

Name of firm: _____

Address of firm: _____

Signed per: (manual signature required): _____

Print name: _____

Title: _____ Email: _____

Telephone: _____ Fax: _____

**MILWAUKEE COUNTY TRANSIT SYSTEM
IS OPERATED AND MANAGED BY
MILWAUKEE TRANSPORT SERVICES, INC.**

REV. 11/01/2014

GENERAL DIRECTIONS FOR SUBMITTING PROPOSALS

- 1. How to respond to Request for Proposals (RFPs):**
All proposals shall be submitted and identified with the firm name and manually signed. Unsigned proposals shall not be considered.
- 2. How to amend a proposal before due date and time:**
After a proposal has been filed and the offeror desires to amend the response, the offeror may do so before the due date and time by filing an amendment fully identified with the original proposal submitted by number, commodity and submission date. All of the conditions and provisions of the request for proposal (RFP) shall be in effect. This must be submitted before the date and time for receipt of proposals as set forth in the RFP.
- 3. Facsimile Response Not Allowed**
Proposals will not be accepted in response to this RFP, by facsimile, modem, telephone or other electronic means. Furthermore, no proposal will be accepted that is not legible and clear.

TERMS AND CONDITIONS OF REQUEST FOR PROPOSAL

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

- 1. Negotiations**
This is a negotiated procurement. Negotiations is a procedure that includes the receipt of proposals from offerors, permits bargaining and usually affords an opportunity to revise offers before award of contract. Bargaining - in the sense of discussion, persuasion, alteration of initial assumption and positions and give and take may apply to price, schedule, technical requirements, type of contract, or other terms of a proposed contract.
- 2. Binding Contract**
A proposal received in response to a Request for Proposal (RFP) is an offer that can be accepted by Milwaukee Transport Services (MTS) to create a binding contract. Such binding contract includes all Terms and Conditions in this Request for Proposals.
- 3. Right to Award Without Negotiations**
MTS reserves the right to make an award on the basis of the original proposal, without negotiations with an offeror.
- 4. Waiver of Irregularities**
MTS may waive informalities and minor irregularities in proposals received.
- 5. Award**
In awarding a contract, price is but one factor to be considered, and award is not required to be made to the lowest responsive, responsible offeror. Award shall be made to the responsive, responsible firm whose proposal overall is the most advantageous to MTS as determined by MTS, Materials Management.

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

6. Trade Secrets

In the event sections of the response qualify as “trade secrets” as defined in Section 134.90(1) (C) of the Wisconsin State Statutes a written request for a pledge of confidentiality must be submitted with the response. Should MTS disagree with the respondents request for a pledge of confidentiality, the material so submitted will be returned to the respondent without evaluation. Therefore, MTS suggests that only those items that truly qualify as “trade secrets” be designated confidential.

7. RFP Content

All materials submitted with regard to this RFP shall become the property of MTS and may be returned only at MTS’ option.

8. Oral Presentations

MTS reserves the right to schedule oral presentations for any respondents as it sees fit. If a respondent is invited to make an oral presentation, MTS will provide guidelines for the presentation at the time the invitation is extended, and any invitee(s) will be given adequate notice of the scheduled presentation date.

9. Defaulting Respondents Excluded

No proposals will be accepted from any person, firm or corporation that has failed to perform faithfully any previous contract with MTS unless said person, firm or corporation has been reinstated on the eligible list of respondents by the Director of Materials Management.

10. Delays in Delivery

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

11. Delivery Terms

Proposals shall include delivery costs to the specified delivery point, all transportation charges prepaid and borne by you. (Proposals stating "F.O.B., shipping point with transportation charges prepaid" or any other deviations will not be considered.)

12. Taxes

MTS is exempt from Federal Excise Taxes and Wisconsin State Sales Tax. Proposals shall be submitted without such taxes.

13. 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 and acceptance by an elected official would conflict with this section. The language in Section 9.05(2)(1) shall be included in all Request for Proposals (RFP) and bid documents.

14. Funding - MTS Operating Contract

If funds are not appropriated for payment of this contract, the 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.

14. Insurance

The successful respondent agrees to evidence and maintain proof of financial responsibility to cover costs as may arise from claims of torts, statutes and benefits under Workers' Compensation claims as required by the State of Wisconsin, including Employers' Liability and insurance covering General and Automobile Liability coverages in the following minimum amounts.

Type of Coverage	Minimum Limits
Wisconsin Workers' Compensation	Statutory or Proof of all States Coverage
Employers' Liability United States Longshoreman and Harbor Workers Compensation Act Coverage	\$100,000/\$500,000/\$100,000 If required by law
Commercial General Liability Bodily Injury & Property Damage	\$1,000,000 Per Occurrence
(Incl. Personal, Injury, Fire, Legal Contractual & Products/Completed Operations)	\$1,000,000 General Aggregate
Automobile Liability Bodily Injury & Property Damage All autos-owned, non-owned and/or hired Uninsured Motorists	\$1,000,000 Per Occurrence Per Wisconsin Statutes

MILWAUKEE TRANSPORT SERVICES, INC AND MILWAUKEE COUNTY, AS ITS INTEREST MAY APPEAR, SHALL BE NAMED AS AN ADDITIONAL INSURED FOR GENERAL & AUTOMOBILE LIABILITY, AND BE AFFORDED A THIRTY DAY (30) WRITTEN NOTICE OF CANCELLATION OR NON-RENEWAL. DISCLOSURE MUST BE MADE OF ANY NON STANDARD OR RESTRICTIVE ADDITIONAL INSURED ENDORSEMENT, AND ANY USE OF THE NON STANDARD OR RESTRICTIVE ADDITIONAL INSURED ENDORSEMENT WILL NOT BE ACCEPTABLE. A CERTIFICATE INDICATING THE ABOVE COVERAGES SHALL BE SUBMITTED TO 1942 N. 17TH STREET, MILWAUKEE, WI 53205, FOR REVIEW AND APPROVAL BY MTS INC. FOR THE DURATION OF THIS AGREEMENT.

Coverages shall be placed with an insurance company approved by the State of Wisconsin and rated "A" or better per Best's Key Rating Guide. Additional Information as to policy form, retroactive date, discovery provisions and applicable retentions, shall be submitted to MTS Inc., if requested, to obtain approval of insurance requirements. Any deviations, including the use of purchasing groups, risk retention groups, etc., or requests for waiver from the above requirements shall be submitted in writing to MTS Inc. for approval prior to the commencement of activities under this agreement.

15. Intellectual Property Indemnification

The successful respondent shall defend, at its expense, any action brought against MTS or Milwaukee County or their employees to the extent that it is based on a claim that the goods, services, or products provided in connection with this purchase order infringes any patent, trade secret, trademark, copyright, or other proprietary right. Successful respondent shall indemnify MTS and Milwaukee County for any costs, damages, and fees, including any costs, damages, and fees finally awarded against MTS and Milwaukee

County, which are attributable to such claim, provided that MTS and Milwaukee County notifies successful respondent of the claim. MTS and Milwaukee County shall permit successful respondent, at successful respondent's sole discretion, to defend, compromise or settle the claim. MTS and Milwaukee County shall provide all available information, assistance and authority to enable Vendor to do so, provided successful respondent reimburses MTS and Milwaukee County for such activity.

16. Indemnification Agreement

The successful respondent shall indemnify and hold harmless Milwaukee Transport Services, Milwaukee County, their employees, agents and assigns, from any and all liability for damages on account of injury, including death, to persons, including employees of Milwaukee Transport Services or Milwaukee County, or for damage to property which actually or allegedly results from or actually or allegedly arises in connection with the performance of services or the furnishing of goods or products provided in connection with this bid. In addition, the successful respondent shall reimburse Milwaukee Transport Services, Inc. and Milwaukee County for all costs, expenses, including all costs of defense attorneys' fees, and all other losses incurred by Milwaukee Transport Services, Inc. or Milwaukee County in connection with any claims, demands and causes of action, whether meritorious or not, which may be brought against Milwaukee Transport Services, Inc., Milwaukee County or their employees, agents or assigns, arising in whole or in part from goods, services or products provided or furnished for this bid.

17. 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.

18. 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.

19. Audit of Records

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

20. 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.

21. Disadvantaged Business Enterprise

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 9 CFR part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

Milwaukee County has assigned an overall annual goal of **10%** participation of certified disadvantaged business enterprises (DBE) contracts. All bidders/proposers are hereby directed to consider certified DBE subcontractors when carrying out the requirements of this contract.

The directory of firms can be obtained by contacting Community Business Development Partners (CBDP) at (414) 278-4747 or by visiting the following Internet site:
<https://app.mylem.com/wisdot/Reprts/WisDotUCPDirectory.aspx>

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

22. Termination for Convenience

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

23. Termination for Default

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, MTS may terminate this contract for default. Termination shall be effected by serving a notice of termination on the Contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by MTS that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, MTS after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

24. Opportunity to Cure

MTS in its sole discretion may, in the case of a termination for default, allow the Contractor thirty (30) days to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If Contractor fails to remedy to MTS' satisfaction the default or any other terms covenants, or conditions of this Contract within the thirty (30) days after receipt by the Contractor of written notice from MTS setting forth the nature of said default, MTS shall have the right to terminated the Contract without any further obligation to the Contractor. Any such termination for default shall not in any way operate to preclude MTS from also pursuing all available remedies against the Contractor and its sureties for said default.

25. Employee's Right to Know

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

26. Brand Names

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

27. Price and Cost Analysis

In the event a single bid is received, MTS will conduct a price and/or cost analysis of the bid based on data which shall be provided by the respondent. A cost analysis is the process of examining the bid and

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

28. Written Change Orders

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

29. Protests and Appeals

Protest Policy for RFP's

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

A. Protest to Award

1. All unsuccessful offers for a request for proposal shall be notified in writing by certified mail, return receipt requested or by fax machine transmission of the pending contract award. Protests to award must be delivered to the Director of Materials Management within seventy-two (72) hours after receipt of notice. A copy of the fax transmission cover sheet, or the department's fax log, shall be conclusive proof of the time and date of receipt by the offeror.
2. A protest must be in writing and clearly state the reason for it. The Director of Materials Management shall review the protest and notify the protestor of a decision by certified mail, return receipt requested or by fax machine transmission within five (5) days. No contract shall be awarded while a protest is pending. A copy of the fax transmission cover sheet, or the department's fax log, shall be conclusive proof of the time and date of receipt by the offeror.
3. A protest that is untimely or fails to clearly state the reason for the protest is invalid. The decision of the Director of Materials Management disqualifying the protest for these reasons is final and cannot be appealed.

B. Appeals to Purchasing Appeals Committee

1. Except as provided in (A. 3.) Above, 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 final disposition of the protest.

4. The Chairperson of the Purchasing Appeals Committee shall notify all interested persons of the time and place of the hearing.
5. The Purchasing Appeals Committee shall affirm, reverse or modify the decision of the Director of Materials Management and its decision shall be final. Milwaukee Transport Services (MTS) reserves the right to immediately act on the decision of the Purchasing Appeals Committee regardless of a potential appeal to the FTA.

C. Appeals to FTA

A protest may be filed with FTA following an adverse decision by the Purchasing Appeals Committee. The protest must be filed in accordance with procedures set forth in FTA Circular 4220.IF.

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

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

Protest filed with FTA shall:

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

D. Contract Continuation Clause:

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

FTA Required Third-Party Contract Clauses

SPECIAL NOTIFICATION REQUIREMENTS FOR STATES

FTA Master Agreement

Federal grant monies fund this contract, in whole or in part (Section 53XX – CFDA 20.5XX). 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. The full text of these clauses is available at the National Rural Transit Assistance Program (RTAP) website under "ProcurementPro." The website address is: <http://www.nationalrtap.org/home.aspx>.

NO GOVERNMENT OBLIGATION TO THIRD PARTIES

(1) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

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

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

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

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

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 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.

FTA Required Third-Party Contract Clauses

PRIVACY ACT **5 U.S.C. 552**

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.

FEDERAL CHANGES **49 CFR Part 18**

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

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.**

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

FTA Required Third-Party Contract Clauses

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.

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

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

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

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

TERMINATION **49 U.S.C. Part 18** **FTA Circular 4220.1F**

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

b. Termination for Default [Breach or Cause] (General Provision) If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, Milwaukee County may terminate this contract for default. Termination shall be effected by serving a notice of

FTA Required Third-Party Contract Clauses

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 approximately thirty (30) days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If Contractor fails to remedy to Milwaukee County's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within thirty (30) days after receipt by Contractor of written notice from Milwaukee County setting forth the nature of said breach or default, Milwaukee County shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude Milwaukee County from also pursuing all available remedies against Contractor and its sureties for said breach or default.

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

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

f. Termination for Default (Supplies and Service) If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, Milwaukee County may terminate this contract for default. Milwaukee County shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

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

g. Termination for Default (Transportation Services) If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, Milwaukee County may terminate this contract for default. Milwaukee County shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

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

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

FTA Required Third-Party Contract Clauses

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 ten (**10**) days from the beginning of any delay, notifies Milwaukee County in writing of the causes of delay. If in the judgement of Milwaukee County, the delay is excusable, the time for completing the work shall be extended. The judgement of Milwaukee County shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Recipient.

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

FTA Required Third-Party Contract Clauses

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.

GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NON-PROCUREMENT)

49 CFR Part 29

Executive Order 12549

Executive Order 12689

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

This contract is a covered transaction for purposes of 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.

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

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

The certification in this clause is a material representation of fact relied upon by Milwaukee County and Milwaukee County Transit System. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to Milwaukee County and Milwaukee County Transit System, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

BREACHES AND DISPUTE RESOLUTION

49 CFR Part 18

FTA Circular 4220.1F

Disputes – Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative, Director of Materials Management, Milwaukee County Transit System (MCTS). This decision shall be final and conclusive unless within *ten (10)* days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Director of Materials Management, Milwaukee County Transit System (MCTS). In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Director of Materials Management, Milwaukee County Transit System (MCTS) shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute – Unless otherwise directed by Milwaukee County, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages – Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

FTA Required Third-Party Contract Clauses

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

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

CLEAN AIR

42 U.S.C. 7401 et seq

40 CFR 15.61

49 CFR Part 18

- (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

CLEAN WATER REQUIREMENTS

33 U.S.C. 1251

- (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

RECYCLED PRODUCTS

42 U.S.C. 6962

40 CFR Part 247

Executive Order 12873

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

FTA Required Third-Party Contract Clauses

DISADVANTAGED BUSINESS ENTERPRISE (DBE) **49 CFR Part 26**

- 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 **not** 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 Milwaukee County Business Development Partners (CBDP) 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 quote must present the information required above as a matter of responsiveness (see 49 CFR 26.53(3)). Because no separate contract goal has been established for this particular solicitation, the following applies:

The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

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

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.

ASSIGNABILITY

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