

**2020**

**PROCUREMENT  
MANUAL**

**MONROE TRANSIT  
SYSTEM (MTS)**

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**APPROVED:**

# Monroe Transit System Procurement Manual

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## 1. INTRODUCTION

The Monroe Transit System's major responsibility is the operation of public transportation in Monroe, Louisiana. This includes planning, design and programming of transportation projects. To perform these activities, Monroe Transit System (MTS) must obtain revenues and subsidies in order to procure services, vehicles, buildings, and materials and supplies.

MTS receives funding from both the federal government and the state. Therefore, MTS adopts procurement policies and procedures that are consistent with federal regulations and the laws of the state of Louisiana. Additional guidance on specific contractual actions is provided by OMB Circular A-102, Attachment O, and Federal Transit Administration (FTA) Circular 4220.1F as amended in effect and Best Practices Guidelines.

### 1.1 Roles & Responsibilities

**General Manager:** Responsible oversight of the overall procurement function, for providing advice on all matters relating to procurement as well as those procurement actions necessary to ensure that the awarding of contracts is carried out in a manner consistent with the City and FTA's policies and procedures. Additionally, the General Manager is in charge of ensuring that procurement personnel are trained and sufficiently updated on FTA procurement guidelines, regulations and changes. Both the Maintenance Manager and the Purchasing Agent report directly to the General Manager.

**Maintenance Manager:** Reports directly to the General Manager. This role is the key contact for all matters related to procurement and is in charge of all procurement decisions in the maintenance department not explicitly designated as the responsibility of the General Manager.

**Finance Coordinator:** A clerical role that reports directly to the General Manager. This role is in charge of the administration process for procurement, purchase order administration, and any documentation or filing duties. If there are any issues or perceived issues that the Finance Coordinator becomes aware of that pertain to activity conducted in purchasing, these must be reported directly to the General Manager.

## 1.2 Purpose of Policies and Procedures

The purpose of these policies and procedures is to set forth the procurement methods and establish standards for obtaining goods and services, including construction, professional, and architect/engineering services necessary for the operation of MTS's mass transit service. These procedures include guidelines for the solicitation, award and administration of formally advertised contracts, as well as the consultant selection, negotiation, award and administration of competitively negotiated and architect/engineering contracts.

The procurement procedures are designed to:

- Instill public confidence in the procurement process of MTS.
- Ensure fair and equitable treatment for all vendors who seek to deal with MTS, with particular emphasis toward Disadvantaged Business Enterprise (DBE).
- Ensure maximum open and free competition in the expenditure of public funds.
- Provide the safeguards to maintain a procurement system of quality and integrity.

The methods by which the foregoing are implemented are described in detail in the remainder of this document and the attachments hereto. Definitions of some of the key terms used throughout this document are included in Appendix A.

## 1.2 Files and Record Retention

Additionally, the purpose of this policy is to require the establishment of procurement files that contain all relevant records for all procurements processed by the Contracts Administration and Procurement Department. This policy applies to all procurements. MTS shall retain the originals of all documents associated with procurement actions including the requisition, solicitation documents (Invitation to Bids, Request for Proposals, Request for Quotes, etc.), bids or proposals, procurement evaluation reports, any negotiation or meeting notes, insurance certifications, correspondence relevant to the specific procurement action, notices, purchase orders and contract agreements. This requirement extends to all goods and services procured using micro and small dollar procurement procedures, Invitation for Bids, Request for Proposals, and Lowest Priced Technically Acceptable procedures as well as any sole source or non-competitive procurements.

A separate procurement file for each procurement action shall be maintained regardless of the dollar value. The procurement file containing the original documentation shall remain with Procurement through closeout of the contract or purchase order.

The Purchasing Agent shall file all original documents in a consistent manner in an active working file during the solicitation phase of the procurement and ensure that all necessary documentation is included in the procurement file.

These files shall be retained in accordance with MTS's most current Records Retention Policy, which is a minimum of 5 years after contract completion.

## **2. CONTRACT ADMINISTRATION**

*Reference FTA C 4220.1F, Ch.III, 3: Grantee's shall maintain a contract administration system that ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders and applicable Federal, State and Local requirements.*

The Monroe Transit System (MTS) ensures the that contract administration is carried out onsite by assigning responsibility for and ensuring that the following is performed on each procurement:

- Suppliers perform the work that the contract calls for
- Satisfactory quality
- Timeliness of performance
- Performance within available funds
- Ensuring that MTS has a documented history of contracting activity
- Ensuring receipt, inspection, acceptance and certification for payment

## **3. PROCUREMENT POLICIES**

*Reference FTA C 4220.1F, Ch.III, 3.a: Grantee's must have written procurement policies as a condition of self-certification. Note: training must be conducted on the policies and procedures. It also helps to conduct self-assessments to ensure staff are in compliance.*

The Monroe Transit System (MTS) is governed by the City of Monroe.

### **3.1 Disadvantaged Business Enterprise Program**

The Federal Transit Administration (FTA) requires that recipients of FTA grant assistance take necessary and reasonable steps to ensure that Disadvantaged Business Enterprises (DBE's) are afforded the maximum opportunity to participate in the performance of contracts which are financed in whole or in part with federal funds. As evidence of compliance, MTS must set goals for DBE participation in such contracts which are expected to be awarded during the following fiscal year and describe efforts from the previous fiscal year. MTS's DBE goals must be filed every three years with FTA by August 1st.

For the purpose of this program, a DBE is defined as: a small business concern which is both owned and controlled by socially and economically disadvantaged persons. Included in the classification of disadvantaged individuals are United States citizens who are: African Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans, women or members of other groups or individuals who the Small Business Administration (SBA) has determined are economically and socially disadvantaged under Section 8(a) of the Small Business Act.

### 3.3 System for Ensuring the Most Efficient and Economic Purchase

*Reference FTA C 4220.1F, Ch.III, 1b,c,e: Grantees are required to establish procedures to avoid the purchase of unnecessary property and services they do not need.*

The FTA requires procedures are established to avoid the purchase of unnecessary property and services that are not needed. This manual is intended to ensure that measures are implemented so that no duplicative or unnecessary purchases are made, including duplicative items and quantities or options whose use is unlikely. Additionally, the Maintenance Manager will determine whether to consolidate or break out procurements to obtain a more economical purchase. These processes are included as part of the requisition approval process and the procurement approval process implemented at MTS.

### 3.4 Written Record of Procurement History

*Reference FTA C 4220.1F, Ch.III, 3.d: Grantee's are required to maintain and make available records detailing the history of each procurement*

The agency shall ensure a written record of procurement history for all procurement actions, regardless of dollar value. *At a minimum*, records are to include the rationale for the method of procurement, the reason for the selection of the contract type, the reason for contractor selection or rejection, and the basis for the contract price.

Sample documents for procurement method selection to be included in this file can be found in Appendix A and B of this manual.

### 3.5 Independent Cost Estimate

*Reference FTA C 4220.1F, Ch.VI, 6: In connection with **every** procurement action, grantees must make independent estimates **before** receiving bids or proposals.*

An independent estimate is required for all procurements over \$10,000 and for all contract change orders and amendments. Independent does not mean independent of MTS, it means independent and **prior to** bids and proposals being received. The Purchasing Agent **must** document the date and the source of the independent cost estimate (ICE) in each procurement file, but it is the responsibility of the Finance Coordinator to prepare the actual estimate. A budget number is not acceptable as an ICE. Additionally, the ICE is the foundation for the later price analysis that is to be completed.

### 3.6 Brand Name or Equal

*Reference FTA C 4220.1F, Ch.III, 3a: When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient characteristics of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated.*

Chapter VI, Section 2(a)(3) and (a)(4)(f) of FTA C 4220.1F indicates that specifying only a "brand name" product instead of allowing "an equal" product to be offered without listing its salient characteristics is considered to be restrictive of competition.

MTS shall work with requestors to see if brand names can be removed from the specification by substituting design or performance specifications. Whenever brand names are used, the solicitation must include a phrase such as "or equal," "or approved equal," or "similar in design, construction and performance" with the brand name. Many standard equipment and construction documents also contain a clause in the general provisions that states that even if the phrase "or approved equal" is inadvertently omitted, it is implied after any brand name. If "or equal" is specified, the minimum essential characteristics and standards to which the material, product or service must conform if it is to satisfy its intended use must be included.

### 3.7 Geographic Preference

Except when procuring A&E services, MTS prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals unless Federal statutes expressly mandate or encourage geographic preference.

## **4. CODE OF CONDUCT**

*Reference FTA C 4220.1F, Ch.III, 1: Requires each grantee to maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts*

### 4.1 Purpose & Applicability

As a governmental institution MTS must be vigilant in its protection of the public trust. Toward this end employees, officers, and agents of MTS must conduct themselves in a manner which will foster public confidence in the integrity of the City procurement system.

This section is intended to prescribe standards of conduct designed to ensure honesty and integrity in MTS procurements. The standards established herein shall apply to all activities associated with the procurement of goods and services, and shall extend to all employees, officers, directors, and agents of MTS.

### 4.2 Conflict of Interest

*Reference FTA C 4220.1F, Ch. VI, 2a: An organizational conflict of interest is considered to be restrictive of competition. Note: ensure there is an OCI clause in the contract terms.*

No employee, officer, director, or agent of MTS shall participate in the selection, award, or administration of a contract or purchase order if a conflict of interest, whether real or apparent, would be involved. Such conflict would arise when any of the following has a financial or other interest in the firm(s) considered or selected for award:

- (a) A MTS employee, officer, director, or agent;
- (b) Any member of his/her immediate family;
- (c) His/her business associate; or
- (d) An organization which employs or is about to employ any of the above.

Employees, officers, directors, and agents of MTS shall be subject to the laws of the State of Louisiana concerning conflicts of interest for public officials. Anyone found to violate standards established by such laws may be subject to the penalties, sanctions, or other disciplinary actions provided for therein.

In cases where an employee, officer, director, or agent of MTS may have a conflict or potential conflict of interest, it is the policy of MTS that such individual(s) must promptly report the conflict in writing to the MTS General Manager. Failure to adhere to this requirement shall constitute a violation of MTS policy and may subject the violator to disciplinary action.

Organizational conflicts of interest are considered to be restrictive and are therefore prohibited on all MTS procurements. An organizational conflict of interest exists when:

- A contractor is unable or potentially unable to provide impartial and objective assistance or advice due to other activities, relationships, contracts or circumstances
- A contractor has an unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier contract
- During the conduct of an earlier procurement, a contractor has established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents

#### 4.3 Gifts, Gratuities and Lobbying

No employee, officer, director, or agent of MTS may solicit or accept, either directly or indirectly, any gift, gratuity, loan, or other item or service of value if:

- (a) The discharge of his/her official duties would be influenced;
- (b) He/she has been, is presently, or may in the near future be involved in any official act or action affecting the donor or lender;

Invitations for business lunches, parties, or similar functions shall be declined if received from bidders or other parties involved in a pending procurement. This policy is intended to avoid any situation which may give an appearance of improper influence in MTS procurement activities.

Notwithstanding the above, this section shall not apply to the following:

- (a) An occasional non-pecuniary gift of nominal value accepted in the ordinary course of a business meeting;
- (b) Unsolicited advertising or promotional material of nominal intrinsic value;
- (c) A gift, gratuity, favor, loan, or other items of value when circumstances make it clear that an obvious long-standing social or family relationship, rather than a business relationship, is the motivating factor.

Failure to adhere to the provisions of this section shall constitute a violation of MTS policy and may subject the violator to disciplinary action to the extent permitted by state or local law or regulations.

Additionally, 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, an 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 USC 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 USC 1352. Such disclosures are forwarded from tier to tier up to the recipient.

#### 4.4 Contacts with Vendors, Bidders and Proposers

Prior to the issuance of a procurement solicitation, informational and research contacts with prospective vendors may be made for the purpose of gathering needed data. However, in making such contacts, MTS employees, officers, directors, and agents shall avoid any commitment, or implication thereof, of a possible future contract.

Accordingly, requests for substantial complimentary services or supplies which may imply an obligation on the part of MTS shall be avoided.

Whenever a procurement is in process (e.g., during the solicitation, evaluation, negotiation, and award phases) all contacts with potential contractors or vendors shall be made through the General Manager.

#### 4.5 Release and use of Information

With the exception of formally advertised sealed bid procurements, i.e., Invitation to Bids, all cost and pricing information received by MTS in negotiated procurements is to be treated as confidential. Similar treatment shall be afforded to all technical data received in response to Requests for Proposals, with the exception of data contained in any contracts awarded by MTS.

No employee, officer, director, or agent of MTS shall use such confidential information for the actual or anticipated benefit of themselves, their relatives, or persons with whom they have a common financial interest.

## **5. GENERAL GUIDELINES**

The method which is used to procure an item, or a service depends on two factors: First, the item being procured; and second, the cost. The following define the procedures which must be followed for each type of procurement.

### **5.1 Supplies, Equipment and Materials**

#### **5.1.1 Purchases up to \$249.99**

For items small in quantity where there would be no apparent savings had such purchases been consolidated and the items are not stocked in the central warehouse, purchases can be made up to \$249.99 total value. Submit the invoice to the City of Monroe Accounting Division stamped with the proper account number to be used, signed and dated. No purchase order is created. This is for a one-time purchase and shall not be used repeatedly to avoid the purchasing process. The Accounting Division will be authorized to review invoices and return the invoices to the department director if like items continually recur.

#### **5.1.2 Purchases \$250.00 to \$999,00**

Two (2) phone or faxed quotes are required. A purchase order must be created through the New World System; also, all vendor responses must be entered in the New World System. The department must request the full name of the person talked to, price per unit and estimated date of delivery. The proper documentation must accompany the phone or faxed quote and becomes part of the Department purchasing/bid file. All vendor responses must be entered in the New World System. The Purchasing Division will release Purchase orders only after all documentation is attached to the file.

#### **5.1.3 Purchases \$1,000.00 to \$4,999.99**

Three (3) written or faxed quotes are required. A purchase order must be created through the New World System; also, all vendor responses must be entered in the New World System. The department must request the full name of the person talked to, price per unit and estimated date of delivery. The proper documentation must accompany the phone or faxed quote and becomes part of the Department purchasing/bid file. All vendor responses must be entered in the New World System. The Purchasing Division will release Purchase orders only after all documentation is attached to the file.

#### **Purchases \$5,000.00 to \$29,999.99**

Three (3) written or faxed quotes are required. A purchase order must be created through the New World System; also, all vendor responses must be entered in the New World System. The department must request the full name of the person talked to, price per unit and estimated date of delivery. The proper documentation must accompany the phone or faxed quote and becomes part of the Department purchasing/bid file. All vendor responses must be entered in the New World System. The proper documentation, purchase order request form and copies of all quotes received must be forwarded to the Purchasing Division via fax (329-3282) or inter-office mail before the purchase order will be released. Please indicate the Requisition Number created in the New World

System for this information to be attached to the purchasing/bid file. The Purchasing Division will release Purchase Orders only after all documentation is received. **Note: If over \$10,000.00, please ensure applicable Federal third-part clauses are utilized. Please refer to 11.2.5 Required Contract Clauses-Applicability of Third-Party Contract Provisions chart on page 55.**

### **Purchase \$30,000.00 or over**

Purchases for materials and supplies \$30,000.00 and above must be by advertised bid according to LA R.S. 38.2212.1. The request to advertise must be approved by the City Council before the advertisement is run. To request permission to advertise, submit a memorandum explaining in detail the need for the requested item(s), estimated said cost, and a fiscal note explaining the source of funds to be used is required. If the funds are taken from an existing budget account, the unencumbered balance of said account must be indicated. Your Director must approve this before submitting to the Purchasing Division. Once the City Council grants permission to advertise, the complete specifications must be submitted to the Purchasing Division within sixty (60) days. The advertisement shall be published once a week for two weeks, with the first advertisement appearing at least fifteen (15) days before the opening of bids. This type of bid must also be submitted to the City Council for approval of the award, before an award is made. **Note: Please ensure applicable Federal third-part clauses are utilized. Please refer to 11.2.5 Required Contract Clauses-Applicability of Third-Party Contract Provisions chart on page 55.**

#### **5.1.4**

### 5.2 Construction Projects

### 5.3 Services - Approval Levels for Public Works and Labor/Materials Jobs

All projects including labor require certificates of insurance, in the amount of \$1,000,000.00, on file with the City of Monroe.

#### **5.3.1 Public Works Projects and Labor Jobs under \$5,000.00**

Three (3) written or faxed quotes are required. A purchase order must be created through the New World System; also, all vendor responses must be entered in the new World System. The department shall request the full name of the person talked to, price per unit and estimated date of delivery. The proper documentation must accompany any phone or faxed quote and becomes part of the department purchasing/bid file. All vendor responses must be entered in the new World System. The Purchasing Division will release Purchase Orders only after all documentation is attached to the file.

#### **5.3.2 Public Works and Labor Jobs \$5,000.00 to \$24,999.99**

Three written or faxed quotes are required. The proper documentation must be forwarded to the Purchasing Division via fax (329-3282) or interoffice mail for this information to be attached to

the purchasing/contract file. Any project over \$5,000.00 must be reduced to a formal contract and have it signed by the parties. Formal contracts require performance bonds and must be recorded with the recorder of Mortgages in Ouachita Parish. Once the contract has been recorded, a copy of the contract must be forwarded to the Purchasing Division for documentation into the contract file. **Note: If over \$10,000.00, please ensure applicable Federal third-part clauses are utilized. Please refer to 11.2.5 Required Contract Clauses-Applicability of Third-Party Contract Provisions chart on page 55.**

### **5.3.3 Public Works and Labor Jobs \$25,000.00 to \$29,999.99**

Three written or faxed quotes are required. The proper documentation must be forwarded to the Purchasing Division via fax (329-3282) or interoffice mail for this information to be attached to the purchasing/contract file. Any project over \$5,000.00 must be reduced to a formal contract and have it signed by the parties. Formal contracts require performance bonds and must be recorded with the recorder of Mortgages in Ouachita Parish. For each contract in excess of \$25,000.00 per project, a bond with good, solvent, and sufficient surety in the sum of not less than 50% of the contract price for the payment by the contractor or subcontractor to claimants is required as defined in R.S. 33:2242. Once the contract has been recorded, a copy of the contract must be forwarded to the Purchasing Division for documentation into the contract file. **Note: Please ensure applicable Federal third-part clauses are utilized. Please refer to 11.2.5 Required Contract Clauses-Applicability of Third-Party Contract Provisions chart on page 55.**

### **5.3.3 Public Works and Labor Jobs \$30,000.00 and over**

All public works projects and labor jobs estimated at \$30,000.00 or above must be approved by the City Council for permission to bid. To request permission to advertise, a memorandum explaining in detail the need for the requested item(s), estimated cost, and a fiscal note explaining the source of funds to be used is required. The Purchasing Division shall be copied on all requests to City Council for permission to advertise projects. Once the City Council grants permission to advertise, the complete specifications and plans must be submitted to the Purchasing Division within sixty (60) days. The advertisement shall be published once per week for three different weeks, with the first advertisement appearing at least twenty-five (25) days before the opening of bids. When mandatory attendance by bidders at pre-bid conferences are a prerequisite for bid, the date, place and time of the pre-bid conference shall be stated in the advertisement. After bids are evaluated, award must be approved by City Council. The Purchasing Division shall be copied on all requests to award bids received and, on all requests, to reject bids received. Once approved by City Council, the project must be reduced to a formal contract. Formal contracts require performance bonds and must be recorded with the Records of Mortgages in Ouachita Parish. **Note: Please ensure applicable Federal third-part clauses are utilized. Please refer to 11.2.5 Required Contract Clauses-Applicability of Third-Party Contract Provisions chart on page 55.**

### **5.4 Dividing Procurements Prohibited**

The requirements outlined in this section apply to the total purchase amount of supplies, equipment, materials, construction or services. Related parts of a procurement are not to be divided for the express purpose of avoiding bidding requirements.

### 5.5 Capital Purchases

For financial purposes, items over \$5000.00 with a useful life of over one (1) year, are defined as capital purchases. Such expenditures must be charged against capital accounts, rather than operating accounts. In addition to all other procurement requirements listed in Section 4 or 5, requisitions for capital purchases must be approved by the General Manager, who is also responsible for assigning a capital account number after the appropriate approvals have been made.

### 5.6 Rolling Stock

The entire process for procuring rolling stock can be broken into 3 phases: 1) Select the method of procurement, 2) Manage the solicitation process, and 3) Make award and take delivery.

There are 3 methods that can be used when buying rolling stock: 1) Invitation to Bid (ITB) and 2) Piggybacking (see Piggybacking requirements in Section 8.1.4).

#### Step 1; Selecting the Method of Procurement

The decision to piggyback or manage a new solicitation is made once funding has been received and the purchase request has been developed.

#### Step 2: Managing the Solicitation

- Piggybacking: Verify assignability clause, verify inclusion of FTA clauses and Buy America certifications (include Buy America waivers, if applicable), conduct price analysis, and determine any desired changes to the specification and ensure they are in-scope changes.
- ITB: Contract must be awarded to the lowest price responsive/responsible bidder, bidders must have the opportunity to submit requests for approved equals (RFA) and RFA responses must be provided to all bidders, and Buy America pre-award review must be conducted for procurements above \$100K or a waiver must be obtained

#### Step 3: Making the Award and Taking the Delivery

- A Buy America post-award audit must be conducted for all procurements above \$100k during manufacturing
- After the initial order quantity has been fulfilled, options may need to be released as needed

### **5.6.1 Buy America**

Pre-award and post-delivery audits **must** be conducted for all rolling stock procurements. Maintenance Manager must verify 70% domestic product, review and verify proposed final assembly, and contractor may request a Buy America waiver. All information must be documented in the relevant procurement files.

- Pre-Award requirements:
  - Review and verify 70% domestic content AND U.S. final assembly location, operations and total cost OR request and receive a Buy America waiver

- Check bid specification compliance with solicitation specifications AND complete a manufacturer capability study
- Post-Award requirements:
  - Review and verify 70% domestic content AND U.S. final assembly location, operations and total cost OR Request and receive Buy America waiver
  - Complete resident inspector's report AND complete visual inspections and performance tests OR Complete visual inspection and road tests for procurements of 10 or more buses
  - Verified FMVSS (Federal motor Vehicle Safety Standards) sticker affixed to each bus

## **6. PROCEDURES FOR INFORMAL PURCHASES (\$0-\$29,999)**

The guidelines contained in Section 3 describe those circumstances under which informal purchase procedures are permitted. This section of MTS's Procurement Policies and Procedures describes the process in detail.

### 6.1 The Purchase Requisition

Informal purchases begin with a purchase requisition. The requisitioning department shall prepare and submit to the Purchasing Agent a Purchase Requisition, completing all sections including unit cost and total cost. For procurements totaling \$1,000.00 or less, the requisitioning department may utilize phone quotes or other appropriate means to ensure that a fair and reasonable price is paid.

For procurements over \$1,000.00, written quotations from vendors are required and the department that requires the goods or services is in charge of soliciting quotations from vendors. The documentation of these quotations, as well as a list of the vendors contacted, and the quotes received must be attached to the purchase requisition and included in the information given to the Purchasing Agent.

A Purchase Requisition, with the approval of the requisitioning department's manager (or designee, as appropriate), must be completed before a Purchase Order can be prepared. The manager approving the Purchase Requisition is responsible for its completeness and accuracy. The manager is also responsible for ensuring the availability of funds in the proper account. To ensure a need exists for the item to be requisitioned, before purchase is made, a complete and accurate description of the item must be provided, along with all other information necessary to make the procurement decision. Note that all department managers have a uniform level of spending authority.

A properly completed Purchase Requisition includes:

- a description of the item to be procured,
- the quantity needed,
- unit cost, and
- total cost.

The description section shall provide detailed specifications regarding the item to be purchased and, when applicable, when and where the service will be performed or when and where the items will be delivered. For the purchase of services, the requisitioning department must include any relevant documentation (i.e., a contract or letter of agreement) with the Purchase Requisition.

The account name and number must be provided by the department manager to determine which account will be expensed when the requisition is invoiced. If the procurement is to be expensed against more than one account code, all accounts should be listed.

### 6.2 Micro-Purchases

Purchase Requisitions between \$250.00 and \$29,999.00, requires the signature of the requisitioner and the General Manager for a purchase order.

After all the required information and signatures are on the Purchase Requisition, the requisitioning department shall make and keep a copy and insert the originals to the New World Software system for the approval process in the City of Monroe's Accounting Division.

The City of Monroe's Accounting Division is in part responsible for the accuracy, integrity and proper authorizations before a purchase order is issued. If the Purchasing Agent becomes aware of any inconsistency or irregularity with any procurement, it must be reported to the General Manager or Assistant General Manager.

### 6.3 The Purchase Order

Purchase Order numbers may only be assigned by the Purchasing Agent or his or her designee and only following receipt of a complete and appropriately approved Purchase Requisition.

Following the above reviews, the Purchasing Agent will assign the next consecutive Purchase Order number.

Upon receipt of an approved Purchase Requisition and after the Purchase Order number has been assigned, the Purchasing Agent or designee will contact the Financial Coordinator of transit with the Purchase Order number. Purchase Orders are to be dated and should be processed after they are received by the Purchasing Agent.

The Purchasing Agent will review the Purchase Requisition and all documentation to ensure its completeness and accuracy.

### 6.4 Purchase Order Approval

Upon completion, the Purchase Order shall be signed by the Purchasing Agent.

Purchases are generally handled by orally notifying the vendor of the approved Purchase Order number. Written confirmation shall be sent to the vendor. The method of purchase shall be specified on the Purchase Requisition.

Vendors shall be told to include their Purchase Order number on all correspondence, including packages, invoices, credit memos, etc.

## 6.5 Receiving/Approval to Pay

### **6.5.1 Receipt of Goods**

Each department manager (or designee) is responsible for receipt of physical merchandise ordered. Upon receipt, the packing slip shall be compared to the goods received. If correct, the packing slip shall be signed and dated by the department manager (or designee) and then sent to the Finance Coordinator who verifies it against the Purchase Order.

After receipt and verification of the packing slip, the necessary information (items received, date received, packing slip number, and back order quantities) shall be entered into the Ron Turley Maintenance system.

It is the responsibility of the requisitioner to ensure that Material Safety Data Sheets (MSDS) if applicable are obtained prior to delivery to the MTS facility of any applicable product. MSDS's shall be forwarded to the Safety Coordinator for review and appropriate action.

### **6.5.2 Receipt of Services**

The department manager (or designee) is responsible for the receipt of services. Upon completion, the manager shall sign all documents that confirm the proper completion of services performed.

After receipt and verification, the necessary information (items received, date received, packing slip number, and back order quantities) shall be entered into the accounting system and a receiving form sent to the Finance Department.

## 6.6 Check Request policy

When a check is required in advance of receipt of goods or services, the requesting department's needs shall be noted on a Check Request Form (sample in Appendix), filling in the company name, items needed, exact costs (including all taxes, freight charges and any other fees), person contacted, date of delivery, department name, and account number. The check request must be signed by the requisitioner and the appropriate department head and forwarded to the City of Monroe's Accounting Division.

## 6.7 Petty Cash

Monroe Transit System currently do not utilize Petty Cash.

## 6.8 Emergency Procurements

For internal control purposes, deviations from the process outlined in this section are permitted only in emergency situations, as determined by the General Manager or his/her designee. Emergency procurements are those which, due to unusual circumstances beyond the control of the requisitioner, cannot be foreseen or otherwise provided for in the routine manner, but which must be accomplished without delay. Emergencies usually involve urgent repair of revenue vehicles, significant mechanical facilities or utilities, correction of unsafe conditions, and adverse health and safety circumstances.

The responsibility for following through with a Purchase Requisition is not relieved when the purchase is accomplished through emergency channels. A properly executed and approved Purchase Requisition must be provided in order to complete the requisition.

When an emergency arises, the requester may inform the Maintenance Manager of the requirements, including the vendor's name and the approximate amount of the procurement. It is then the responsibility of the requisitioner to coordinate completion of the confirming Purchase Requisition. If the requester does not know which vendor will be used, the Maintenance Manager shall be notified as soon as a vendor is located.

In instances where a valid emergency exists and material must be obtained after normal working hours, the requester may follow one of several routes:

- a) Make the purchase from a firm willing to accept an oral Purchase Order. The requisitioner must document the need for the emergency purchase, the negotiations with the vendor (if applicable), and justification for the price of the purchase. The purchase order must be documented in writing the next day, and the Maintenance Manager should be notified immediately and presented with the supporting documentation.
- b) Charge the purchase via credit card and present the sales slip the following day to begin the Purchase Requisition processed.

#### 6.9 Supply, Equipment, Service Contracts and Maintenance Agreements

Supply Contracts, Service Contracts and Maintenance Agreements are legal binding documents stating that a particular vendor will perform the specified services, maintenance or deliver supplies agreed upon and described. Bids should be solicited in the same manner as for other informal purchases.

Repairs of equipment not covered by service contracts or maintenance agreements must have a Purchase Order number issued before the equipment can be sent or taken in for repair. If the equipment is to be shipped or hand carried for repair, a Purchase Requisition should be prepared (including estimates) for proper record keeping prior to shipment.

For all repairs, the following information is required:

- 1) Make, model and serial number of equipment.
- 2) Inventory tag number.
- 3) Department where equipment is located.
- 4) Hourly or flat rate to be charged.
- 5) If the item being repaired is an accessory to a major piece of equipment, provide the above information from the equipment to which it is an accessory.

(NOTE: If a Purchase Order number was orally given because of an on-site emergency repair, the Purchase Requisition must have that number affixed, must include all the information shown above, and shall have a written service report attached before sending to the Purchasing Agent.)

#### 6.10 Volume Contracts and Blanket Purchase Orders

Where there exists large volumes and frequent purchases of services, supplies and materials and other procurements, MTS encourages the use of contracts and blanket purchase orders.

Contracts and Blanket Purchase Orders should be over one but less than five years in duration, so long as the price is fixed or not to exceed a reasonable percentage increase and competitively obtained.

## **7. FORMAL PROCUREMENT PROCEDURES**

Formal procurement procedures must be followed when the dollar value of the procurement exceeds \$29,999, except for services and fuel. For procurement of services, these procedures must be applied to all contracts greater than \$29,999.

There are three basic methods of conducting formal procurements:

- competitive bidding,
- competitive proposal, and
- non-competitive negotiation (This is for procurements over \$2,000) - this is touched on in section 7)

The following describes when each should be used.

### 7.1 When to Use Competitive Bidding

Competitive Bidding is the preferred method for procurement when:

- a. A fair and reasonable price can be established (a fair and reasonable price may be assumed when two or more firms submit independent, competing bids).
- b. Reasonably definite, design or performance specifications can be written.

- c. Adequate competition can be anticipated.
- d. Reasonable estimate of costs can be made.

Procedures for competitive bidding are described in Section 5.3.

### 7.2 When to Use Competitive Proposal

Competitive Proposal is to be used when:

- a. The items desired cannot be precisely defined, described or standardized.
- b. The contract is for research and development with an end product that may be conceptual in nature.
- c. The technical aspects and price will be negotiated.
- d. Offerors will have the opportunity to revise the price or technical aspects of their proposals.
- e. Quantity and contractual factors must be considered along with price.
- f. Artistic and aesthetic value are more important considerations in evaluating the proposal than the price.

Procedures for competitive proposal are described in Section 6.4.

### 7.3 Procedures for Competitive Bidding

The following steps are taken in the competitive bidding process.

#### **7.3.1 Prepare Invitation for Bids (ITBs)**

Invitations to Bids (ITB's) consist of a number of provisions, and in general, project-specific provisions of an ITB are prepared by the department initiating the procurement and the general provisions are prepared by the *MTS General Manager*. The *MTS General Manager* is ultimately responsible for assembly of the ITB and ensuring that it meets all procurement policies and is consistent with all applicable federal, state and local procurement rules and regulations.

Examples of some of the project specific provisions of an ITB include:

- a. Contract specifications, which describe requirements for the supplies, equipment, construction or services to be delivered under the terms of the contract. It indicates to prospective contractors precisely what the City requires. The specifications also establish the procedures by which it will be determined that all requirements of the contract have been met.
- b. Design specifications, which describe in detail the data necessary to produce an item such as the size and dimensions, physical characteristics, and quality tests
- c. Performance specifications, which express the desired performance characteristics in terms of output, function or operation of items and equipment.

*NOTE: Combinations of the above are also used to meet the requirements of a purchase transaction. The exact combination of specifications is fashioned to meet the needs of each purchase.*

- d. A statement of work, which defines the work required of a contractor, either to develop the equipment being delivered to satisfy the prime mission of the City, or to compliment the procured items being delivered, or to provide services being procured without a portion of the total procurement being delivered.

ITBs shall be worded as precisely as possible. Ambiguous, or incomplete specifications can result in unnecessary delays and costly errors. Special care must be taken to ensure that the specifications are not exclusionary or overly restrictive. The specification may include a statement of the qualitative nature of the material, product or service to be procured and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. When it is impractical or uneconomical to make a precise description of the technical requirements, a "brand name or approved equal" description may be used, subject to the provisions of Section 3.6 of this manual.

### **7.3.2 Develop Bidders List**

A list of prospective bidders shall be developed by the department initiating the procurement. In addition, the Purchasing Agent shall maintain a file of bidders interested in particular types of contracts. Prospective contractors shall possess the ability to perform successfully, a good record of past performance, integrity, adequate financial and technical resources, and any other factors relevant to the specific item being contracted for.

The bidder's list shall be developed with consideration of the City DBE/WBE program.

### **7.3.3 Methods and Timing of Soliciting Bids**

As a goal, the City will attempt to provide at least 14 days for standard procurements and not less than 30 calendar days when procuring non-standard items.

Invitations To Bids shall be made open to the public (note that this has to be full and open competition, it cannot be sent out to vendors) and financially and technically qualified prospective bidders, if possible.

Notices inviting bids shall be published at least once in a newspaper of general circulation at least 10 days prior to bid opening and may be published in trade journals and magazines as deemed necessary or appropriate. A notice shall also be published on MTS's website.

### **7.3.4 Pre-Bid Conference**

A pre-bid conference may be used as a means of briefing prospective bidders and explaining complicated specifications and requirements to them as early as possible after the invitation has been issued and before the bids are opened. The pre-bid conference will not be used as a substitute

for amending a defective or ambiguous invitation. Attendance by potential bidders or proposers may either be voluntary or mandatory.

### **7.3.5 Amendments of Invitations for Bids**

If after issuance of invitations for bids, but before the time set for opening of bids, it becomes necessary to make changes in quantities, specifications, delivery schedules, opening dates, etc. or to correct or clarify a defective or ambiguous invitation; such changes shall be accomplished by issuance, in writing, of an amendment to the invitation for bids. The amendment shall be sent to each prospective bidder to whom the invitation for bids has been furnished and upon request. Amendments should also be publicized on the MTS's website.

Each amendment issued to an invitation for bid shall:

- a. Be serially numbered and dated.
- b. Include the number, date and a description of the original invitation for bids concerned.
- c. Clearly state the changes made in the invitation for bids and the extension of the opening date, if any.
- d. Include instructions to bidders for acknowledging receipt of the amendment and information concerning the effect of failure to acknowledge and return the amendment.
- e. Before issuing an amendment to an invitation for bids, the period of time remaining until the time set for opening and the need for extending the time set for opening must be considered. Where only a short time remains before the time set for opening, consideration shall be given to notifying bidders of an extension of time by telegraph or telephone. Such notification should be confirmed in the amendment.
- f. Any information given to a prospective bidder concerning an invitation for bids shall be furnished promptly to all other prospective bidders as an amendment to the invitation, if such information is necessary to bidders in submitting bids on the invitation or if the lack of such information would be prejudicial to uninformed bidders. No award shall be made on the invitation unless such amendment has been issued in sufficient time to permit all prospective bidders to consider such information in submitting or modifying their bids.

### **7.3.6 Cancellation of ITB's**

Invitations to bids shall not be canceled unless cancellation is clearly in MTS's interest (i.e., where there is no longer a requirement for the material or service, or where amendments to the invitation would be of such magnitude that a new invitation is desirable). When an invitation is canceled, bids which have been received shall be returned unopened to the bidders and a notice of cancellation shall be sent to all prospective bidders to whom invitations for bids were issued.

The notice of cancellation shall identify the invitation for bids; briefly explain the reason the invitation is being canceled; and, where appropriate, assure prospective bidders that they will be given an opportunity to bid on any re-solicitation of bids or any further requirements for the type of material or service involved.

If the invitation for bids is canceled before the time for bid opening, this fact shall be recorded in the file, together with a statement of the number of concerns invited to bid and the number of bids received, if available.

### **7.3.7 Receipt of Bids**

Bids shall be submitted so as to be received in the office designated in the invitation for bids not later than the exact time set for the receipt of bids. The only acceptable evidence to establish the time of receipt at the City offices is the time/date stamp which shall be placed on the bid wrapper immediately upon receipt. The staff person receiving the bid shall sign the exterior of the bid package to verify the date and time received and person receiving the bid. The timeliness of bids is the sole responsibility of the bidder.

### **7.3.8 Withdrawal of Bids**

Any Bidder may withdraw their bid, either personally or by telegraphic or written request, received by the City, at any time prior to the time fixed for the receipt of the bids. Negligence on the part of Bidders in preparing their bid confers no right of withdrawal of their bid after such bid has been opened. No bid may be withdrawn for a period of 60 days following bid opening.

### **7.3.9 Bid Opening**

All bids received prior to the time set for opening shall be recorded and kept unopened, except as stated below, and secure in the City safe or a locked cabinet.

Prior to bid opening, information concerning the identity and number of bids received shall be made available only to City employees who have a proper need for such information.

When bid samples are submitted, they shall be handled with sufficient care to prevent disclosure of characteristics before bid opening.

Unidentified bids may be opened solely for the purpose of identification and then only by an authorized official of MTS. If a sealed bid is opened by mistake or for purposes of identification, the official shall immediately write on the envelope an explanation of the opening, the date and time opened, the invitation for bid number, and their signature. Bids opened by mistake or for identification purposes shall be resealed in the envelope and no information contained therein shall be disclosed prior to the public bid opening.

The staff person in charge of the solicitation shall decide when the time set for bid opening has arrived and shall so declare to those present.

All bids received prior to the time set for receipt shall then be publicly opened and when practical, read aloud by the staff person to the persons present. The bids received shall be recorded. If it is impractical to read the entire bid, as where many items are involved, the total amount of the bid shall be read if feasible.

A second employee shall be present to witness the opening and reading of the bids and shall sign an abstract to verify its accuracy.

The original of each bid shall be carefully safeguarded, particularly until the abstract of bids has been made and its accuracy verified.

Performance of the bid opening procedure may be delegated to an assistant, but the Purchasing Manager remains fully responsible for the actions of such assistant.

Examination and evaluation of original bids by other interested individuals may be made only under the immediate supervision of the Purchasing Manager in charge of the solicitation (or his designee) and under conditions which preclude the possibility of a substitution, addition, deletion, or alteration in the bids. Copies may be distributed to interested officials for evaluation.

The original bid form shall not be allowed to pass out of the hands of the Purchasing Manager or his/her designee. A copy of each bid must be maintained in procurement files in lieu of such originals for the interim period.

All bids, including attachments and envelopes, shall be retained for the official files.

### **7.3.10 Recording of Bids**

The invitation for bid number, bid opening date and time, general description of the procurement item, names of bidders, prices bid, and any other information required for bid evaluation, shall be entered on the official City record or abstract form and shall be available for public inspection. When the items are too numerous to warrant the recording of all bids completely, an entry shall be made of the invitation number, opening date and time, general description of the procurement items, and the total price bid where definite quantities are involved.

The official record or abstract shall be completed as soon as practical after bids have been opened and read aloud. The Purchasing Manager in charge of the solicitation (and a second employee, if required by Section 5.3.9 above) shall certify the accuracy of the record or abstract. The Purchasing Manager shall be responsible for maintaining files of these records and abstracts.

The file of the invitation for bids shall show the distribution which was made and the date thereof. The names and addresses of prospective bidders requesting the invitation for bids who were not included on the original solicitation list shall be added and made a part of the record.

### **7.3.11 Tabulation of Bids**

Bids shall be evaluated on the basis of responsiveness and responsibility indicated in the Invitation to Bid. Award shall be made to the bidder submitting the lowest bid, unless the City determines that the bid is not responsive, and/or the bidder is found to be not responsible. Note that technical evaluation criteria must be listed in order of importance, in accordance with the City's method for conducting technical evaluations of proposals received and for selecting awardees.

### **7.3.12 Analysis of Limited Bid Response**

If less than three bids have been received, the Purchasing Manager in charge of the solicitation may examine the reasons for the small number of bids received. The purpose of this examination is to ascertain whether the small number of responses is attributable to an absence of any of the prerequisites of formal advertising. A price or cost analysis may be performed to establish the reasonableness of the bid price before an award is made. If this is a single bid scenario, refer to the procedure for single source procurement, which necessitates documented evidence of a market analysis, an appraisal of competition and written justification for why additional bids were not received. This is the responsibility of the Purchasing Manager.

### **7.3.13 Reasonableness of Price (Price/Cost Analysis)**

In the event a single bid is received, a price/cost analysis shall be used to determine the reasonableness of the bid price. Note that price/cost analysis has to be done regardless of how many bids were received.

The Purchasing Manager in charge of the solicitation may conduct a price analysis in evaluating a bid price. If a valid price analysis cannot be completed, audit personnel may be requested to conduct a cost analysis of the bid price.

Price analysis is the process of examining and evaluating a bid price without evaluation of the separate cost elements and proposed profit of the individual prospective supplier whose price is being evaluated. Normally, price analysis may be accomplished through one or more of the following activities:

- a. The comparison of prior quotations and contract prices with current quotations for the same or similar end items (to provide a suitable basis for comparison, appropriate allowances must be made for differences in such factors as specifications, quantities ordered, time for delivery, etc.).
- b. The use of "yardsticks" (such as dollars per pound, per horsepower, or other units) to point up apparent gross inconsistencies which should be subjected to greater pricing inquiry.
- c. The comparison of prices set forth in published price lists issued on a competitive basis, published market prices of commodities, and similar indicators, together with discount or rebate arrangements.
- d. The comparison of proposed prices with estimates of cost independently developed by personnel within the City.

- e. The comparison of prices paid by other users (government or commercial) of the same or similar items to the proposed prices.

If only one bid is received, the sole bidder must cooperate with the City as necessary in order for its bid to be considered for award. A new solicitation of bids may be made if the single bid price appears unreasonable or if no determination is made as to the reasonableness of the single bid.

If only one bid is received for a contract that exceeds **\$100,000**, approval of FTA may be required (refer to ***FTA Circular in effect***).

### **7.3.14 Responsible Bidder Evaluation**

Before awarding the contract, MTS shall determine that a prospective contractor is responsible. A responsible prospective contractor is one who meets the standards set forth below:

- a. Has adequate financial resources, or the ability to obtain such resources as required during performance of the contract.
- b. Is able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing business commitments, commercial as well as governmental.
- c. Has a satisfactory record of performance. Contractors who are or have been seriously deficient in current or recent contract performance, when the number of contracts and the extent of deficiency of each are considered. Documented past unsatisfactory performance will ordinarily be sufficient to justify a finding of non-responsibility.
- d. Has a satisfactory record of integrity and business ethics.
- e. Is otherwise qualified and eligible to receive an award under applicable laws and regulations. The Monroe Transit System (MTS) shall not preclude potential bidders from qualifying during the solicitation period, which is from issuance of the solicitation to its closing date, however the proposed award of the project will not be extended in order to afford a vendor the opportunity to demonstrate that its product meets the standards in the specification.
- f. Has the necessary organization, experience, operational controls, and technical skills, or the ability to obtain them.
- g. Has the necessary production, construction, and technical equipment and facilities, or the ability to obtain them. Evaluation of the responsibility of prospective contractors may be made based upon the following sources:
- h. A list of debarred, suspended or ineligible firms or individuals.

Chapter VI, Section 8(b) of FTA C 4220.1F requires that Grantees make awards only to responsible contractors possessing the ability to perform successfully under

the terms and conditions of a proposed procurement. Sources of data for the responsibility review include:

- The appropriate financial, material, equipment, facility and personnel resources and expertise (or the ability to obtain them) necessary to indicate its capability to meet all contractual requirements;
- The capability to comply with the required delivery schedule considering all their existing business commitments;
- A satisfactory record of performance;
- A satisfactory record of integrity;
- Legal qualification to contract with Grantee; and supplied all necessary information in connection with the inquiry concerning responsibility.

From the prospective contractor's bids and proposals, replies to questionnaires, financial data such as balance sheets, profits and loss statements, cash forecasts, and financial histories of the contractor and affiliated concerns; current and past production records, list of tools, equipment, and facilities, written statements or commitments concerning financial assistance and subcontracting arrangements.

- a. Publications, including credit ratings, trade and financial journals, and business directories and registers may also be used.
- b. References such as suppliers, subcontractors, customers of the prospective contractor, banks and financial institutions, commercial credit agencies, other government agencies, purchasing and trade associations, and better business bureaus and chamber of commerce.
- c. Documented past performance on contracts with the City and other customers.

### **7.3.15 Rejection of All Bids**

Preservation of the integrity of the competitive bid system dictates that after bids have been opened, award must be made to that responsible bidder who submitted the lowest responsive bid, unless there is compelling reason to reject all bids and cancel the invitation.

Every effort shall be made to anticipate changes in a requirement prior to the date of bid opening and to notify all prospective bidders of any resulting modification or cancellation, thereby permitting bidders to change their bids and preventing unnecessary exposure of bid prices.

As a general rule, after opening, an invitation to bid should not be canceled and re-advertised due solely to increased requirements for the items being procured. Award should be made on the invitation to bid and the additional quantity should be treated as a new procurement.

Invitations to bids may be canceled after opening but prior to award, and all bids rejected, where it is consistent with Federal, State, and local procurement regulations. A written determination must be included in the invitation for bid file stating that cancellation is in the best interest of the City for reasons such as the following:

- a. Inadequate, ambiguous, or otherwise deficient specifications were cited in the invitation for bids.

- b. The supplies or services are no longer required.
- c. The invitation for bids did not provide for consideration of all factors of cost to the City.
- d. Bids received indicate that the needs of the City can be satisfied by a less expensive item differing from that on which bids were received.
- e. All otherwise acceptable bids received are at unreasonable prices.
- f. The bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith. Such situation must be substantiated and reported to the City Council.
- g. The bids received did not provide competition which was adequate to ensure reasonable prices. A price or cost analysis may be used to establish the reasonableness of prices.

The City may reject bids received and proceed to purchase supplies, equipment or materials in the open market without further observance of the provisions regarding contracts, bids or notice if it is determined that the supplies, equipment or materials may be purchased at a lower price in the open market. Such an action must be approved by a majority vote of all members of the City Council.

If administrative difficulties are encountered after bid opening which may delay award beyond bidders' 60-day acceptance periods, the several lowest bidders shall be requested, before expiration of their bids, to extend the bid acceptance period (with consent of sureties, if necessary) in order to avoid the need for re-advertisement.

When it is determined to reject all bids, the City shall notify each bidder that all bids have been rejected and stating the reason for such action.

### **7.3.16 Rejection of Individual Bids**

Normally, any bid which fails to conform to the essential requirements of the invitation for bids, such as specifications, delivery schedule, warranty, or the required bid documents, shall be rejected as non-responsive.

A bid shall be rejected where the bidder imposes conditions which modify requirements of the invitation for bids. For example, bids may be rejected in which the bidder:

- a. Attempts to protect himself against future changes in conditions such as increased costs, if a total price to the City cannot be determined for bid evaluation.
- b. Fails to state a price and in lieu thereof states that price shall be "price in effect at time of delivery".
- c. States a price but qualifies such price as being subject to "price in effect at time of delivery".

- d. Where not authorized by the invitation for bid, conditions or qualifies his bid by stipulating that the bid is to be considered only if, prior to date of award, bidder received (or does not receive) award under a separate procurement.
- e. Limits rights of the City under any contract clause.
- f. Fails to comply with all of the requirements of the ITB.

Bids received from any person or firm debarred or ineligible shall be rejected if the period of debarment or ineligibility has not expired.

Low bids received from firms determined to be not responsible pursuant to Federal, State or local procurement regulations shall be rejected in accordance with the procedures set forth in Section 5.3.17.

A bid may be rejected if a bid guarantee is required and a bidder fails to furnish it in accordance with the requirement of the invitation for bids.

The originals of all rejected bids, and any written findings with respect to such rejections, shall be preserved in the file relating to the procurement.

After submitting a bid, if a bidder transfers all of his assets or that part of his assets related to the bid during the period between the bid opening and the award, the transferee may not take over the bid, thus the City may reject the bid.

### **7.3.17 Award of the Contract**

Unless all bids are rejected, award shall be made by the City by written notice, within the time for acceptance specified in the bid or extension thereof, to that responsible and responsive bidder whose bid, conforming to the invitation for bids, will be most advantageous to the City, price and other factors considered.

When award is made to other than the lowest bidder, the lowest bidder will be notified in writing by the City of any evidence reflecting upon the responsibility of the bidder and affording the bidder the opportunity to rebut such evidence and present evidence of qualifications to perform work outlined in the contract.

Award shall be made by mail or personal delivery to the successful bidder of a notice of award and the proper contract documents. The successful bidder shall complete and execute the contract documents and return them to the City within the time specified. The City will finalize the execution of the contract and send a copy to the successful bidder.

### **7.4 Procedures for Competitive Proposal**

The following steps are taken in competitive proposal procurements.

#### **7.4.1 Prepare Request for Proposals (RFP's)**

A Request for Proposal consists of a number of provisions, both project specific and general. Project specific provisions of the RFP should be prepared by the department initiating the procurement. The General Manager is responsible for general provisions and for assembly of the RFP and ensuring that it meets all procurement policies and is consistent with all applicable federal, state and local procurement rules and regulations.

The project specific sections of the RFP shall specifically describe the actual minimum materials and/or services needed; the time for providing same; the procedure by which a prospective offeror may examine plans and specifications, if any; the criteria by which proposals will be evaluated and the relative importance of each factor; and the closing date for submission of proposals which must give sufficient time to permit a proper response.

#### **7.4.2 Develop Bidders List**

A list of prospective bidders shall be developed by the department initiating the procurement. In addition, the Purchasing Manager shall maintain a file of bidders interested in particular types of contracts. Prospective contractors should possess the potential ability to perform successfully, a good record of past performance, integrity, adequate financial and technical resources, and any other relevant factors.

The bidder's list shall be developed with consideration of the City DBE/WBE program.

#### **7.4.3 Methods and Timing of Soliciting Proposals**

As a goal, the City will attempt to provide not less than 30 calendar days for preparation of proposals in competitive proposals procurements.

Requests for Proposals must be opened to the public and displayed to promote full and open competition. (This has to be full and open competition)

Notices inviting proposals shall be displayed at the City office, on MTS's website, or at other appropriate public places and shall be published no less than one time at least 10 days prior to bid opening in a newspaper of general circulation and may be published in trade journals and magazines as deemed necessary or appropriate.

#### **7.4.4 Pre-Bid Conference**

A pre-bid conference may be used as a means of briefing prospective bidders and explaining complicated specifications and requirements to them as early as possible after the RFP has been issued and before the proposals are opened. The pre-bid conference shall never be used as a substitute for amending a defective or ambiguous request. Attendance by potential bidders or proposers may either be voluntary or mandatory.

#### **7.4.5 Amendments of Requests for Proposals**

If after issuance of requests for proposals, but before the time set for opening of proposals, it becomes necessary to make changes in quantities, specifications, delivery schedules, opening dates, etc. or to correct or clarify a defective or ambiguous RFP, such changes shall be accomplished by issuance, in writing, of an amendment to the RFP. Before issuing an amendment to an RFP, the period of time remaining until the time set for proposal submittal and the need for extending this time must be considered. Where only a short time remains, consideration should be given to notifying bidders of an extension of time by telegraph or telephone. Such notification should be confirmed in the amendment.

Any information given to a prospective bidder concerning an RFP shall be furnished promptly to all other prospective proposers as an amendment to the RFP if such information is necessary to proposers in submitting proposals on the request or if the lack of such information would be prejudicial to uninformed proposers. No award shall be made on the request unless such amendment has been issued in sufficient time to permit all prospective proposers to consider such information in submitting or modifying their proposals. The amendment shall be sent to each concern to whom the RFP has been furnished.

Each amendment issued to a request for proposals shall:

- a. Be serially numbered and dated.
- b. Include the number, date and a description of the original RFP concerned.
- c. Clearly state the changes made in the RFP and the extension of the due date, if any.
- d. Include instructions to bidders for acknowledging receipt of the amendment and information concerning the effect of failure to acknowledge or return the amendment.

#### **7.4.6 Cancellation of RFP's**

Requests for Proposals should not be canceled unless cancellation is clearly in the City's interest (such as where there is no longer a requirement for the material or service or where amendments to the request would be of such magnitude that a new request is desirable). Where a request is canceled, proposals which have been received shall be returned unopened to the proposers and a notice of cancellation shall be sent to all prospective proposers to whom RFP's were issued.

The notice of cancellation shall identify the request for proposals; briefly explain the reason the request is being canceled; and where appropriate, assure prospective proposers that they will be given an opportunity to compete on any re-solicitation of proposals or any further requirements for the type of material or service involved.

If the request for proposals is canceled before the time set for proposal submittal, this fact shall be recorded in the file, together with a statement of the number of concerns invited to submit proposals and the number of proposals received.

#### **7.4.7 Receipt of Proposals**

Proposals shall be submitted so as to be received in the office designated in the request for proposals not later than the exact time set in the request for proposals. The only acceptable evidence to establish the time of receipt at the City offices is the time/date stamp which shall be placed on the proposal wrapper immediately upon receipt. The staff person receiving the bid shall sign the exterior of the bid package to verify the date and time received and who received the bid. The timeliness of proposals is the sole responsibility of the proposer.

#### **7.4.8 Modification or Withdrawal of Proposals**

Any Bidder may withdraw their bid, either personally or by telegraphic or written request, received by the City, at any time prior to the time fixed for the receipt of the bids. Negligence on the part of Bidders in preparing their bid confers no right of withdrawal of their bid after such bid has been opened. No bid may be withdrawn for a period of 60 days following bid opening.

#### **7.4.9 When to Conduct Negotiations**

Subject to the exceptions below, after receipt of initial proposals, written or oral discussions may be conducted with all responsible and responsive offerors who submit proposals within a competitive price range and other factors considered. If discussions are conducted with one offeror, discussions must be conducted with all offerors within the competitive range.

Discussion after receipt of initial proposals is not required in the following cases:

1. Procurement is for supplies for which prices or rates are fixed by law or regulation.
2. The procurement is for a product and, due to the existence of adequate competition or accurate prior cost experience, it can be clearly demonstrated that acceptance of an initial proposal would result in a fair and reasonable price.

#### **7.4.10 Subject Matter of Negotiations**

Restrictions on the information that may be revealed to the offerors by City personnel during the course of negotiations:

1. Contracting personnel shall not furnish information to a potential supplier which may afford an advantage over other suppliers.
2. After receipt of initial proposals, no information contained in any proposal or information regarding the number or identity of offerors shall be made available.
3. When it is necessary to rectify ambiguities, mistakes or omissions, an appropriate amendment shall be furnished all offerors in a timely manner.
4. "Auction techniques", such as advising offerors of their price relationship with others, are prohibited.

Whenever negotiations are conducted with several offerors, while such negotiations may be conducted successively, all offerors selected to participate in such negotiations shall be offered an equitable opportunity to submit such price, technical, or other data necessary as a result of the

negotiations. All such offerors shall be informed of the specified date (and time if desired) of the closing of negotiations. Revisions to proposals must be submitted by such date.

Where the Request for Proposals sets forth one requirement and after receipt of proposals, either due to change or innovation by an offeror, it becomes apparent that the project needs may be better fulfilled in another manner, all offerors shall be appropriately advised in writing by an amendment and further discussions or negotiation shall follow. This can be done as long as the changes do not constitute a cardinal change to requirements.

#### **7.4.11 Conduct of Negotiations**

Evaluation of offerors or contractors' proposals, including price revision proposals, by all personnel concerned with the procurement, as well as subsequent negotiations with the offeror or contractor, shall be completed expeditiously.

Complete agreement of the parties on all basic issues shall be the objective of the contract negotiations.

Oral discussions or written communications shall be conducted with offerors to the extent necessary to resolve uncertainties relating to the purchase or to the price to be paid. Basic questions should not be left for later agreement during price revision or other supplemental proceedings.

Cost or profit figures of one offeror or contractor shall not be revealed to other offerors or contractors.

Some form of price or cost analysis should be made in connection with every negotiated procurement action including contract modifications.

#### **7.4.12 Notice Closing Negotiations**

Such notice shall advise offerors:

1. That negotiations are being concluded;
2. That offerors are being asked for their "best and final" offer, not merely to confirm or reconfirm prior offers; and
3. That any revision or modification of proposals must be submitted by the date specified.

#### **7.4.13 Determining Reasonableness of Price: Cost Analysis**

Price analysis is the process of examining and evaluating a prospective price without evaluation of the separate cost elements or proposed profit of the prospective supplier.

Cost analysis is the review and analysis of a contractor's cost or pricing data and of the factors applied in projection from the data to the estimated costs, in order to form an opinion on the degree to which the contractor's proposed costs represent what performance of the contract should cost, assuming reasonable economy and efficiency.

As compared to price analysis, cost analysis involves a more detailed review of the offeror's proposal and is used where the City has less assurance of a fair and reasonable price. ***Cost plus percentage of cost and percentage of construction cost methods of contracting are prohibited.***

***Note that in conducting both a cost and price analysis, the comparison should be against the original Independent Cost Estimate that was prepared before the solicitation of bids.***

The following procedure is to be followed:

- a. Verify contractor's cost data.
- b. Evaluate specific elements of costs and project these data to determine the effect on prices of such factors as:
  - (i) The necessity for certain costs;
  - (ii) The reasonableness of amounts estimated for the necessary costs;
  - (iii) Allowances for contingencies; and
  - (iv) The basis used for allocations of particular overhead costs to the proposed contract.
- c. When the necessary data is available, compare the contractor's estimated cost with:
  - (i) Actual costs previously incurred by the contractor;
  - (ii) The contractor's last prior cost estimate for the same or similar estimates;
  - (iii) Current cost estimates from other possible sources; and
  - (iv) Prior estimates or historical costs of other contractors manufacturing the same or similar items.
- d. Forecasting future trends in costs from historical experience:
  - (i) In periods of either rising or declining costs, an adequate cost analysis must include some evaluation of the trends.
  - (ii) In cases involving recently developed, complex equipment, even in periods of relative price stability, trend analysis of basic labor and materials costs should be undertaken.

In performing a cost analysis, there are three questions that should be asked in the examination of costs, particularly those in the overhead area: *(1) Is the cost allowable in accordance with **Federal cost principles**? (2) Is the cost allocable to the particular project? ;(3) Is the cost reasonable? See the Appendix D and E of this manual for forms related to cost and price analysis.*

#### **7.4.14 Basis of Award**

*FTA C 4220.1F. Ch.VI.8b. Grantees shall make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Responsibility is a procurement issue that is determined after receiving bids or proposals and before making contract award.*

After evaluation of proposals in accordance with the criteria set forth in the RFP, the contract shall be awarded to the offeror of the proposal most advantageous to the City, price and other factors considered.

Contracts shall be made only with responsible and responsive contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. As is the case with procurements made by competitive bid, consideration shall be given to such matters as contractor integrity and ethics, debarment and suspension, affirmative action and DBE, record of past performance, financial and technical capacity, or accessibility to other technical resources.

Negotiated procurement records or files should provide at least the following pertinent information: justification for the use of negotiation in lieu of competitive bidding by an ITB; independent cost estimate; contractor selection; justification for contract type; determination and findings; record of negotiations; and cost or price analysis. Additionally, the procurement records *must* include a screenshot or printout of the EPLS/SAM search conducted to ensure that the contractor selected is not on the debarment and suspension list, and that this is documented in the procurement file.

#### **7.4.15 Written Procurement Selection Procedures**

*FTA C 4220.1F, Ch.3.d. A grantee must state its reasons for contractor selection*

During the award process, the Purchasing Manager must provide a written rationale for contractor selection. All solicitations must incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured and identify all requirements that offerors must fulfill and all other factors to be used in evaluating bids or proposals.

#### **7.4.16 Special Procedures for Architect/Engineering Services**

*Geographic Preference: FTA C 4220.1F, Ch.VI,2a. For A&E procurements, geographic location may be a selection criterion if an appropriate number of qualified firms are eligible to compete for the contract in view of the nature and size of the project*

*Qualifications Exclude Price: FTA C 4220.1F, Ch.VI,3f. Qualifications-based competitive proposal procedures require that: an offerors qualification be evaluated for contract award and price be excluded as an evaluation factor*

*Serial Price Negotiations: FTA C 4220.1F, Ch.VI,3f. Negotiations are conducted with only the most qualified offeror, failing agreement on price, negotiations with the next most qualified offeror be conducted until a contract award can be made to the most qualified offeror whose price is fair and reasonable to the grantee. Show results of negotiation.*

Federal Circular in effect, requires that the City use competitive negotiation procedures for qualifications-based procurement of architectural and engineering ("A/E" hereafter) services and related services pertaining to a construction project such as program management, construction management, feasibility studies, preliminary engineering, design, surveying, mapping, or related services. Following this method, competitors' qualifications are evaluated, and the most qualified competitor is selected subject to negotiation of fair and reasonable compensation. Under this method, the City may not consider price as an evaluation factor in determining the most qualified offeror. Negotiation is conducted with only the most qualified offeror. This method, where price

cannot be used as an evaluation factor and negotiations are conducted with only the most qualified offeror, can only be used in procurement of the above services. This method of procurement cannot be used to obtain other types of services even through a firm that provides the above types of services are also potential sources to perform other services.

The steps to be used for proposal evaluation and contract negotiation for A/E contracts are as follows:

1. Evaluation team is assigned by the Purchasing Manager to review eligible firms and all responses to RFP.
2. Team evaluates the firms based on the stated evaluation criteria published in the RFP such as:
  - a. Professional qualifications for performance of the required services.
  - b. Specialized experience and technical competence in the type work required.
  - c. Capacity to accomplish the work in the required time.
  - c. Past performance in terms of cost control, quality of work and compliance with performance schedules.
3. Evaluation team holds discussions with the most highly qualified firms ("short list").
4. Evaluation team prepares a report for the *General Manager* recommending, in order of preference, those firms that are considered to be the most highly qualified to perform the required services. The report should include a description of the discussions and evaluations by the team to allow the *General Manager* to review the basis upon which the recommendations were made. The *General Manager* shall not add firms to the selection report. If recommended firms are deemed to be unqualified or the report is inadequate, the *General Manager* shall document the reasons therefore and return the report to the evaluation team for appropriate revision.
5. If the final selection isn't final yet, it shall be made by the *City Council* from a list of the most highly qualified firms prepared by the Purchasing Manager or evaluation team.
6. After the final selection not final yet has taken place, the City may release information identifying only the A/E firm with which an attempt will be made to negotiate a contract. If negotiations are terminated without awarding a contract to the highest rated firm, the City may release information that negotiations will take place with the next highest rated firm.
7. The final selection not final yet authorizes negotiations to begin with the most qualified firm, which will be requested to submit a proposal that includes fees and cost estimates.
8. The negotiation of compensation to the contractor should represent a fair and equitable payment for the services performed. At this stage, negotiations must take place not only on the amount of compensation, but also the method of payment.
9. In determining the amount of compensation and the method of payment, consideration shall be given to:

- a. Scope and complexity of designs, surveys and other work and the skills necessary for these services.
  - b. Quality and quantity of data provided to the A/E by the City.
  - c. Location of, and conditions under which, the services will be performed.
  - d. Date services to begin and time allowed for performance.
10. Costs should be negotiated taking into consideration:
- a. Direct Labor.
  - b. Overhead.
  - c. General and administrative expenses.
  - d. Materials.
  - e. Other direct costs.
  - f. Profit, which is further influenced by:
    - 1) Degree of A/E's risk,
    - 2) Level of effort,
    - 3) Level of talent or expertise the A/E must furnish,
    - 4) Amount of subcontracting,
    - 5) Amount of top level A/E management involved,
    - 6) Subcontracts, and
    - 7) Contractors investment.
11. When the contract is negotiated and signed, the negotiations are documented and placed in the file.
12. The contract shall be monitored to ensure that expenditures and payments therefore are commensurate with performance and that both have met all the terms of the contract.
13. The contractor is responsible for the professional quality, technical accuracy and coordination of all services under the contract. The contractor may be liable to the City for costs resulting from errors or deficiencies in design furnished under the terms of the A/E contract.

#### **7.4.17 Construction Bonding Requirements**

*FTA C 4220.1F. Ch.VI, 2h.*

Bonds are required on all construction contracts. The following bonds are required for all construction contracts:

- Each bidder must provide a bid guarantee equivalent to 5% of its bid price
- Third party contractors must obtain a performance bond for 100% of the contract price
- Third party contractors must obtain a payment bond based on the following:
  - Less than \$1M: 50% of the contract price if the contract price is not more than \$1M
  - More than \$1M but less than \$5M: 40% of the contract price if the contract price is more than \$1M but not more than \$5M
  - More than \$5M: \$2.5M if the contract price is more than \$5M

## **8. NON-COMPETITIVE NEGOTIATIONS**

### **8.1 When to Use Non-Competitive Negotiation**

*Chapter VI, Section 3(i)(1)(b) of FTA C 4220.1F allows for procurements by non-competitive proposal only when the contract award is inadequate under other procurement methods and at least one of the conditions outlined below exists:*

In case of great public calamity, such as extraordinary fire, flood, storm, epidemic, or other disaster, the City Council may, by resolution passed by a majority vote of all its members declare and determine that the public interest and necessity demand the immediate expenditure of public money to safeguard life, health or property, and thereupon proceed to expend or enter into a contract involving the expenditure of any sum needed in such emergency without observance of the provisions requiring contracts, bids or notice.

Additionally, federal regulations require that one or more of the following conditions be met:

- a. There is a public exigency or emergency that does not allow time for competitive negotiation.
- b. The Federal Transit Administration (FTA) authorizes a non-competitive negotiation.
- c. The item(s) is available only from a single source, as a matter of fact and not as a matter of preference or convenience.
- d. After solicitation of a number of sources, competition is determined to be inadequate.
- e. The item to be procured is an associated capital maintenance item as defined in **49 U.S.C. Section 5307 (A)(1)** that is procured directly from the original manufacturer or supplier of the item to be replaced after written certification to FTA that:
  1. The manufacturer or supplier is the only source for the item, and
  2. The price of the item is no higher than the price paid by other similar customers.
- f. A contract amendment or change order is needed that is not within the scope of the original contract.

Procedures for non-competitive negotiation are described in Section 7.2 (below).

### **8.2 Procedures for Non-competitive Negotiation**

Non-competitive negotiation is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. Previously described procedures for competitive bidding and competitive proposal describe the procedures to be used for non-competitive negotiations. Circumstances under which a contract may be awarded by non-competitive negotiation are limited to those listed in Section 5.2.

### **8.2.1 Single Source Procurement**

Upon receiving a single bid or proposal in response to a solicitation, the Purchasing Manager must determine if competition was adequate. This must be documented and include a review of the specifications for undue restrictiveness and might include a survey of potential sources that chose not to submit a bid or proposal.

An analysis *must* be conducted and documented in the procurement file, including the solicitation information, the solicitation due date, the number of solicitations requested, the number of bids received, the reasons for the lack of competition based on communication with suppliers, the basis for contract award (if applicable), and the new solicitation release date, if applicable.

## **9. OUT-OF-SCOPE CHANGES**

*Reference FTA C 4220.1F CH.VI,3.i.*

When a contractor is required to make a change that is outside the original scope of the contract, it will be considered an out of scope change and MTS must justify and treat as a sole source procurement. This can include additional work that was not envisioned by the parties at the outset of the contract. Any out-of-scope changes must be treated as sole source procurements and must be documented and justified in accordance with MTS's sole source procurement policies and include the necessary documentation, including cost analysis. Any amount that is an out-of-scope change to an existing contract must be treated as sole source procurement. If the new procurement (contract addition) is under \$10,000, it may be treated as a Micro purchase, but in that case it will not be classified as an addition to the existing contract, it must be classified and treated as a while new procurement.

Sole source justification for out-of-scope changes requires the following documentation:

- Proper review of competition
- Statement of work or specification
- Cost/Price Analysis and profit negotiation
- Justify why an amendment was the only course of action
- Written history of the change and procurement action

## **10. BID PROTEST PROCEDURES**

*Reference FTA C 4220.1F, Ch.VII, 1: Grantee's are to have written protest procedures as part of their requirement to maintain or acquire adequate technical capacity. Grantees must notify the FTA when they receive a protest and keep the FTA informed about its status. When a grantee denies a bid protest, they are to inform the FTA.*

The Monroe Transit System (MTS) shall make every effort to award contracts in compliance with state, federal and local regulation. Bidders who feel that a contract has been, or may be, awarded improperly shall have the right to protest the specifications and/or contract award in compliance with applicable local, state and federal regulations.

### 10.1 Filing Protest

1. Protests dealing with restrictive specifications or alleged improprieties in the solicitation must be filed no later than eight (8) working days prior to bid opening or closing date for receipt of proposals. Any other protest must be filed no later than eight (8) working days after award of contract.
2. Protests shall be in writing and addressed to the **General Manager**.
3. The protest shall contain a statement describing the reasons for the protest and any supporting documentation. Additional materials in support of the initial protest will only be considered if filed within the time limit specified in paragraph 1. The protest shall also indicate the ruling or relief desired from MTS.

### 10.2 Confidentiality

Materials submitted by a protester will not be withheld from any interested party, except to the extent that the withholding of information is permitted or required by law or regulation. If the protest contains proprietary material, a statement advising of this fact may be affixed to the front page of the protest document and the alleged proprietary information must be so identified wherever it appears.

### 10.3 Withholding of Award

When a protest is filed before opening of bids, the bids will not be opened prior to resolution of the protest, and when the protest is filed before award, the award will not be made prior to resolution of the protest, unless MTS determines that:

1. Items to be procured are urgently needed, or delivery or performance will be unduly delayed by failure to make award promptly; or
2. Failure to make award will cause undue harm to MTS.

In the event an award is to be made while a protest is pending, the Federal Transit Administration shall be notified if federal funding is involved.

### 10.4 Processing the Protest

1. MTS shall respond to the contractor within five (5) working days of receiving the protest. A conference on the merits of the protest may be held with the protester.
2. Any additional information required by MTS from the protester shall be submitted as expeditiously as possible, but no later than three (3) days after the receipt of said request.

### 10.5 Notification

MTS shall notify the protester of its decision no later than ten (10) days following receipt of all relevant information.

## 10.6 Appeal

If a protester is not satisfied with the decision made by MTS, and Federal funds are involved, the protester may file a protest with the Federal Transit Administration. Review by FTA will be limited to:

1. Violation of Federal Law or regulations.
2. Violation of MTS's protest procedures described herein, or failure by MTS to review a protest.

Protests must be filed with FTA (with a concurrent copy to the City) within five (5) days after the City renders a final decision, or five (5) days after the protester knows, or has reason to know, that the City failed to render a final decision. After five (5) days, the City will confirm with FTA that FTA has not received a protest on the contract in question.

*The FTA Circular 4220. 1 in effect* is available for review at the City offices. A copy may be obtained from FTA at the following address:

Federal Transit Administration  
Region IX  
**201 Mission Street, Suite 2210**  
San Francisco, CA 94105

The City shall not be responsible for any protests not filed in a timely manner with FTA.

## **11. CONTRACTS**

### 11.1 Compensation Arrangements

Contracts are divided into specific types of compensation arrangements reflecting the City varying responsibility, as the buyer, to pay the allowable cost incurred by the contractor, as the seller. The following list includes the most commonly used compensation arrangements. It is up to the City to decide which compensation arrangement is most appropriate for a specific procurement.

The City adopted procurement policy prohibits use of a cost-plus-a-percentage-of-cost contract. The following are definitions of allowable compensation arrangements:

1. Firm Fixed-Price  
This arrangement is characterized by a lump-sum price not subject to adjustment. The adjustment referred to in these discussions does not include contract

modifications or change orders. The risk of performance falls on the contractor. This type of arrangement should be used where competition is present and detailed specifications are available.

2. Fixed-Price with Escalation

This arrangement is characterized by a lump-sum price subject to upward or downward adjustment depending on contingencies specified in the contract. These contingencies are matters beyond the parties' control (such as labor rates or market indices).

3. Fixed-Price with Price Redetermination

This is essentially a lump-sum arrangement with adjustments within specified limits negotiated as actual costs become known. As in fixed-price escalation arrangements, the City assumes the risk of contingencies which may occur. The price re-determination may be made either at specified times during performance or after completion of performance. This type of arrangement should be used in limited instances only.

4. Cost-Plus a Fixed Fee

The contractor is reimbursed for costs and receives a fixed fee. This type of contract is used for procurements such as facilities contracts, and research and development contracts

5. Time-and-Materials/Labor-Hour

These are contracts provided for supplies or services on the basis of direct-labor hours at specified fixed hourly rates and materials at cost. This type of contract should be used with caution. ***After determination that no other type of contract is suitable; and if the contract specifies a ceiling price that the contractor shall not exceed except at its own risk.***

## 11.2 Contract Provisions

*FTA C 4220.1F Ch.IV, 2.b. Grantees may not use FTA assistance to make payments to a third party contractor before the contractor has incurred the costs for which the payments would be attributable.*

The main purpose of a written contract is to capture all the essential information regarding an agreement between two parties so that both sides are clear about their roles and responsibilities. The contract should also describe procedures to be followed in case of a disagreement between the parties or in case one or other of them fails to perform as agreed.

The basic elements of a contract are as follows:

- Scope of work/goods to be delivered

- Contract amount/method of payment
- Term of contract/schedule
- Provisions for amendment/termination
- Legal and administrative obligation
- Terms & Conditions

The elements of the contract describing the service or goods to be delivered, the contract amount and schedule will normally be unique to the particular circumstances and can be tailored by the City to suit particular needs. The other elements of the contract may be governed by Federal, state or City regulations. For example, FTA grantees are regulated in the type of payments they can make since FTA does not allow grantees to make advance payments and requires them to follow specific standards in the use of progress payments (see *FTA Circular in effect*). Exceptions to making advance payments are permitted for sound business reasons, but the FTA must provide written concurrence before the advance payment is made. Additionally, adequate security must be obtained when using progress payments. Consult allowable advance payments in FTA Circular 4220.1D.

To find out which provisions should be included in the contract, refer to the applicable Federal, state and local legislation and policies. At the end of this section and in the appendices is a summary of the contract clauses required by FTA.

### **11.2.1 Basic Contract Provisions**

The following provisions are typical examples found in most types of contracts:

- **Scope of Work/Specifications**

The scope of work included in the contract shall be the same as the scope of work included in the Request for Proposals or Invitation for Bids documents and it should reflect any changes that have been made as a result of negotiation. It is often convenient to attach the scope of work or specifications to the contract as an exhibit and incorporate it into the contract by reference.

- **Contract Amount**

For fixed price and cost-plus fixed fee agreements, the contract shall identify the lump sum and the maximum amount that will be paid (if different) and describe any allowable costs that will be reimbursed. For a fixed unit cost contract, the agreement shall include the amount that will be paid per unit of service and how the units will be measured. Note that cost plus a percentage of cost and cost-plus percentage of construction cost methods of contracting are prohibited by the FTA, per FTA Circular 4220.1F. Specific areas to watch for are automatic add-ons above costs, fixed incentive rates, and no upper limits on costs.

- **Payment Schedule/Method of Payment**

*Payment is commonly made after all aspects of the contract are complete, (usually receipt of merchandise, services and construction), lump sum payment.*

Payment may be related to progress made under the contract and tied to certain milestones or the submission of deliverables. In these cases, a schedule of payments may be attached to the contract and incorporated by reference.

The contract shall indicate when the contractor is to submit invoices and what information the invoices shall include. This provision shall also describe any supporting documentation that must be submitted with the invoice, for example, progress reports and invoices.

This provision shall also describe any provisions for retaining a portion of the invoice and the procedures for making the last payment under the contract. A small percentage of each progress payment shall be retained where the contractor has to deliver a product, such as a report, to the City. Payment of the retained amount shall be made only after the City has reviewed and accepted the final product.

- **Contract Term**

The contract shall include the effective date of the contract, which is usually the date of execution. If contract execution is delayed beyond the required project start date, a written notice to proceed may be issued and incorporated in the contract. The contract shall also indicate when its term expires. The term of the contract may be expressed in years, calendar months or days.

Contract term limitation for rolling stock and replacement parts shall not exceed the recipient's needs for rolling stock and replacement parts within five (5) years inclusive of options without prior written FTA approval when FTA funds are involved.

- **Independent Contractor Provision**

An independent contractor provision is often included in service contracts. Its purpose is to make it clear that the contractor is an independent contractor and that all the individuals working for or under the direction of the contractor are employees of the contractor and not employees of the City. Additional language is sometimes included to indicate that the contractor is responsible for its own acts and those of its subordinates, employees and subcontractors and that the contractor is responsible for all matters relating to the payment of its employees, including social security and unemployment compensation.

- **Insurance**

Minimum insurance requirements are often set by State, City and local government policies. In most cases, contractors are required to obtain general and automobile liability insurance and workers compensation. Consultants providing professional services are usually required to obtain professional liability insurance. At a minimum, the insurance section of the contract shall specify the following:

1. The types of insurance required (general/automobile liability, workers compensation, professional liability)
2. The amount of insurance required (for example, \$1,000,000 of professional liability insurance)
3. The minimum acceptable rating of the insurance carrier
4. Whether the contractor is required to name the City as an additional insured on the policy
5. That the insurance must remain in effect for the duration of the contract
6. Whether insurance certificates must be submitted to the City before the contract is executed or before work proceeds and, if so, to whom the insurance certificates should be sent.

- **Indemnification**

This is a common clause under which the contractor agrees to hold the City and its governing body, officers and employees harmless from any liability or claims resulting from the contractor's negligence under the contract.

- **Non-Assignability/Approval of Subcontractors**

This clause states that the Contractor is not permitted to assign or transfer its interests in the contract or to subcontract any part of the work to any other party without prior written approval of the City and then only as permitted by law.

- **Amendment**

This provision describes how the contract can be amended and often specifies whom, in the City, must approve any changes. As a practical matter, some minor changes not involving compensation may be made upon written permission of the City. More significant scope of work changes and all changes involving a change in compensation shall be made by a formal contract amendment.

- **Termination Provisions**

There are two major types of termination provisions: termination for cause and termination for convenience.

Termination for cause means that the City can cancel the contract if the contractor fails to perform, if there is evidence of financial mismanagement or if there is continual substandard performance. The termination for cause provision shall make it clear who is responsible for making the final determination of the

contractor's default, how much notice will be given to the contractor, whether there is a remedy period and how any final payments will be made.

Termination for convenience means the City may terminate the contract if it is in its best interest to do so. While there are some good reasons why the City may need to cancel a contract for convenience (for example, because of budget cuts), this clause is often written in such a way that the City may cancel for any reason. The termination for convenience clause shall also include agreement as to how much notice should be given and how any final payment can be made. From the contractor's perspective, the termination for convenience clause can be mitigated by requiring the City to pay certain closeout costs.

- **Governing Law**

This provision makes it clear that the agreement is to be interpreted or enforced under the laws of the state of Louisiana, Ouachita Parish.

- **Authorized Signatures**

The contract should include signature blocks for officials of both the City and the contractor authorized to execute the agreement.

- **Liquidated Damages**

*FTA C.4220.1F Ch.IV, 2b. A grantee may use liquidated damages if it may reasonably expect to suffer damages due to: delayed contract completion, weight requirements exceeded and the extent or amount of such damages are uncertain and would be difficult or impossible to determine.*

Liquidated damages must be at a specific rate per day for each day of time delay and must be specified in the contract. Any damages recovered must be credited to the project involved unless the FTA permits otherwise.

- **Other Common Contract Provisions**

The following are additional provisions commonly included in contracts for goods and services:

1. The contractor shall keep all business records relevant to the contract for a period of three years and permit the City to inspect or audit their records.
2. The contractor is required to comply with all federal, state and municipal laws and to obtain any necessary permits or licenses.
3. The contractor shall comply with the City policy on the participation of disadvantaged businesses in contracts.
4. The contractor must not have used anyone other than a bona fide employee to obtain the contract.
5. The contractor must not have any conflict of interest in providing the service.

6. The contractor must represent and warrant that neither the General Manager, nor any manager, officer, director or employee of the City, is in any manner interested, directly or indirectly, in any contract which may be awarded, or any profits expected to arise therefrom in violation of the provisions of the Political Reform Act of 1974, as amended (commencing with Government Code 81,000).
7. No member, officer or employee of the City or of any local public body during his tenure or for one year thereafter shall have any interest, direct or indirect, in any contract or the proceeds thereof.
8. No member of Congress will benefit from the contract (if contract involves Federal assistance).

### **11.2.2 Contract Provisions for FTA Grantees**

A number of general contract provisions are required by the Federal Transit Administration (FTA) for FTA funded contracts. These provisions are intended to establish minimum guidelines to which grantees must adhere when purchasing supplies, equipment and construction and professional services. The provisions and the types of contracts to which they apply are summarized on the next page, followed by a brief description of each provision.

Much of this material is taken from *FTA Circulars in effect and FTA Best Practices Guidelines*. These requirements change from time to time. When drafting a contract, therefore, check the latest materials from FTA.

### **Appendix II to part 200 – Contract Provisions for Non-Federal Entity Contracts Under Federal Awards**

“In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

- A. Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- B. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
- C. Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60- 1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR

12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

- D. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- E. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

- F. Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- G. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401- 7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- H. Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- I. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. 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 must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- J. See §200.322 Procurement of recovered materials. – A non-Federal entity that a state agency or agency of a political sub-division of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000: procuring solid waste management services in a manner that

maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

**FTA Master Agreement (24), section 16.d.**

Required Clauses in Third Party Contracts. In addition to other applicable provisions of federal law, regulations, requirements, and guidance, all third-party contracts made by the Recipient under the Federal award must contain provisions covering the following, as applicable:

- (1) Simplified Acquisition Threshold. Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. § 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- (2) Termination. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-federal entity including the manner by which it will be effected and the basis for settlement.
- (3) Equal Employment Opportunity. Except as otherwise provided under 41 C.F.R. part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 C.F.R. part 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60-1.4(b), in accordance with Executive Order No. 11246, “Equal Employment Opportunity,” 42 U.S.C. § 2000e note (30 Fed. Reg. 12319, 12935, 3 C.F.R. 1964–1965 Comp., p. 339), as amended by Executive Order No. 11375, “Amending Executive Order No. 11246 Relating to Equal Employment Opportunity,” (32 Fed. Reg. 14,303) and implementing regulations at 41 C.F.R. part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
- (4) Davis-Bacon Act, as amended (40 U.S.C. §§ 3141 – 3148). When required by federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141 - 3144, and 3146 – 3148) as supplemented by Department of Labor regulations (29 C.F.R. part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage

determination. The non-federal entity must report all suspected or reported violations to the federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations (29 C.F.R. part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of a public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-federal entity must report all suspected or reported violations to the federal awarding agency.

- (5) Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701 – 3708). Where applicable, all contracts awarded by the non-federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. part 5). Under 40 U.S.C. § 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer based on a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- (6) Rights to Inventions Made Under a Contract or Agreement. If the federal award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 C.F.R. part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- (7) Clean Air Act (42 U.S.C. §§ 7401 – 7671q.) and the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 – 1388), as amended. Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401 – 7671q) and

the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251 – 1388). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

- (8) Debarment and Suspension (Executive Orders 12549 and 12689). A contract award (see 2 C.F.R. § 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. 180 that implement Executive Orders 12549 (31 U.S.C. § 6101 note, 51 Fed. Reg. 6370,) and 12689 (31 U.S.C. § 6101 note, 54 Fed. Reg. 34131), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- (9) Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352). Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. 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 must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-federal award.
- (10) Solid Wastes. A Recipient that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

### **11.2.3 Use of State and Local Purchasing Schedules**

The use of state or local government purchasing schedules are acceptable. However, the use of intergovernmental purchasing schedules is prohibited. Joint purchase agreements and contracts that are only “intergovernmental” agreement approved for use are permitted.

#### **11.2.4 Piggybacking**

*FTA C. 4220.1F Ch.V, 7a. An assignment of existing contract rights to purchase supplies, equipment or services. Special considerations include an assignability clause, and minimum and maximum quantities.*

Piggyback procurements are permissible when the solicitation contract contains an assignability clause that provides for the assignment of all or a portion of the specified deliverables as originally advertised, competed, evaluated, and awarded. The solicitation must contain a minimum and maximum quantity that represents the reasonably foreseeable needs of the parties.

Before entering into any piggyback procurement, it is the policy of the FTA and of MTS that the following are executed and documented:

- Price is determined to be fair and reasonable
- Contract complies with all federal requirements, including Buy America, and all applicable FTA clauses
- The quantities used by others, coupled with the quantities you will use, do not exceed the amounts available under the original contract

## 11.2.5 Required Contract Clauses-Applicability of Third-Party Contract Provisions

(excluding micro-purchases, except Davis-Bacon requirements apply to contracts exceeding \$10,000)

PROVISION	Rolling				
	Professional Services/A&E	Operations/ Management	Stock Purchases	Construction	Materials & Supplies
No Federal Government Obligations to Third Parties (by Use of a Disclaimer)	All	All	All	All	All
False Statements or Claims Civil and Criminal Fraud	All	All	All	All	All
Access to Third Party Contract Records	All	All	All	All	All
Changes to Federal Requirements	All	All	All	All	All
Termination	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.
Civil Rights (Title VI, EEO, ADA)	>\$10,000	>\$10,000	>\$10,000	>\$10,000	>\$10,000
Disadvantaged Business Enterprises (DBEs)	All	All	All	All	All
Incorporation of FTA Terms	All	All	All	All	All
Debarment and Suspension	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000
Buy America			>\$150,000	>\$150,000	>\$150,000
Resolution of Disputes, Breaches, or Other Litigation	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Lobbying	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Air	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Water	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Cargo Preference			For property transported by ocean vessel.	For property transported by ocean vessel.	For property transported by ocean vessel.
Fly America	For foreign air transport or travel.	For foreign air transport or travel.	For foreign air transport or travel.	For foreign air transport or travel.	For foreign air transport or travel.
Davis-Bacon Act				>\$2,000 (including ferry vessels)	

Contract Work Hours and Safety Standards Act		>\$100,000 (except transportation services)	>\$100,000	>\$100,000 (including ferry vessels)	
<b>PROVISION</b>	<b>Professional Services/A&amp;E</b>	<b>Operations/ Management</b>	<b>Rolling Stock Purchases</b>	<b>Construction</b>	<b>Materials &amp; Supplies</b>
Copeland Anti-Kickback Act Section 1 Section 2				All All exceeding \$2,000 (including ferry vessels)	
Bonding				\$100,000	
Seismic Safety	A&E for New Buildings & Additions			New Buildings	
Transit Employee Protective Arrangements		Transit Operations			
Charter Service Operations		All			
School Bus Operations		All			
Drug Use and Testing		Transit Operations			
Alcohol Misuse and Testing		Transit Operations			
Patent Rights	Research & Development				
Rights in Data and Copyright Requirements	Research & Development				
Energy Conservation	All	All	All	All	All
Recycled Products		Contracts for items designated by EPA, when procuring \$10,000 or more per year		Contracts for items designated by EPA, when procuring \$10,000 or more per year	Contracts for items designated by EPA, when procuring \$10,000 or more per year
Conformance with ITS National Architecture	ITS Projects	ITS Projects	ITS Projects	ITS Projects	ITS Projects
ADA Access	A&E	All	All	All	All

Notification of Federal Participation for States	Limited to States				
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## 11.2.5 Required Contract Clauses

### **CARGO PREFERENCE REQUIREMENTS**

46 U.S.C. § 55305

46 C.F.R. part 381

#### **Applicability to Contracts**

The Cargo Preference Act of 1954 requirements applies to all contracts involving equipment, materials, or commodities that may be transported by ocean vessels.

#### **Flow Down**

The Cargo Preference requirements apply to all contracts involved with the transport of equipment, material, or commodities by ocean vessel.

#### **Model Clause/Language**

The Maritime Administration (MARAD) regulations at 46 C.F.R. § 381.7 contain suggested contract clauses. Recipients can draw on the following language for inclusion in their federally funded procurements.

#### **Cargo Preference - Use of United States-Flag Vessels**

The contractor agrees:

- to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
- to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the

preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.); and to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

## **FLY AMERICA**

49 U.S.C. § 40118

C.F.R. part 301-  
10 48 C.F.R. part  
47.4

### **Applicability to Contracts**

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

### **Flow Down Requirements**

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

### **Model Clause/Language**

The relevant statutes and regulations do not require any specific clause or language that recipients use in their third party contracts. A sample clause is provided for Federal contracts at 48 C.F.R. 52.247-63. Recipients can draw on the following language for inclusion in their federally funded procurements.

FTA proposes the following language, modified from the Federal clause.

## **Fly America Requirements**

a) *Definitions.* As used in this clause--

“International air transportation” means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States. “United States” means the 50 States, the District of Columbia, and outlying areas. “U.S.-flag air carrier” means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, recipients, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.

In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

### **Statement of Unavailability of U.S.-Flag Air Carriers**

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. [*State reasons*]:

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

### **PROMPT PAYMENT**

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from the Recipient.

The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors' work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Recipient. This clause applies to both DBE and non-DBE subcontracts.

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

Construction contracts and subcontracts, including actual construction, alteration and/or repair, including decorating and painting, over \$2,000 (1) Minimum wages - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. (ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met: (1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and (2) The classification is utilized in the area by the construction industry; and (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and (4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed. (B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards

Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or Page 14 of 39 an hourly cash equivalent thereof. (iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met: (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and (2) The classification is utilized in the area by the construction industry; and (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination. (B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the

contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification. (2) Withholding - The recipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the grantee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. (3) Payrolls and basic records - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the recipient for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock

Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or Page 15 of 39 subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following: (1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete; (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3; (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract. (C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section. (D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code. (iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12. (4) Apprentices and trainees - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on

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

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval Page 16 of 39 of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

(5) Compliance with Copeland Act requirements - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the

subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5. (7) Contract termination: debarment - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12. (8) Compliance with Davis-Bacon and Related Act requirements - All rulings and interpretations of the Davis- Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract. (9) Disputes concerning labor standards - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives. (10) Certification of Eligibility - (i) By entering into this contract, contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1). (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1). (iii) The penalty for making false statements is prescribed in 18 USC 1001.

## **BONDING REQUIREMENTS**

2 C.F.R. § 200.325

31 C.F.R. part 223

### **Applicability to Contracts**

Bonds are required for all construction or facility improvement contracts and subcontracts exceeding the simplified acquisition threshold. FTA may accept the bonding policy and requirements of the recipient if FTA has determined that the Federal interest is adequately protected. If such a determination has *not* been made, the following minimum requirements apply:

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

A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

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

### **Flow Down**

These requirements extend to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier that exceed the simplified acquisition threshold.

### **Model Clauses/Language**

There is no required language for bonding requirements. Recipients can draw on the following language for inclusion in their federally funded procurements.

### **Bid Guarantee**

Bidders shall furnish a bid guaranty in the form of a bid bond, or certified treasurer's or cashier's check issued by a responsible bank or trust company, made payable to the RECIPIENT. The amount of such guaranty shall be equal to \$\$\$\$ or X% of the total bid price.

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

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

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

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

### **Performance Guarantee**

A Performance Guarantee in the amount of 100% of the Contract value is required by the Recipient to ensure faithful performance of the Contract. Either a Performance Bond or an Irrevocable Stand-By Letter of Credit shall be provided by the Contractor and shall remain in full force for the term of the Agreement. The successful Bidder shall certify that it will provide the requisite Performance Guarantee to the RECIPIENT within ten (10) business days from Contract execution. The

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

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

A bank in good standing issues it. The RECIPIENT will not accept a Letter of Credit from an entity other than a bank.  
It is in writing and signed by the issuing bank.

It conspicuously states that it is an irrevocable, non-transferable, “standby” Letter of Credit.  
The RECIPIENT is identified as the Beneficiary.

It is in an amount equal to **100%** of the Contract value. This amount must be in U.S. dollars.  
The effective date of the Letter of Credit is the same as the effective date of the Contract  
The expiration date of the Letter of Credit coincides with the term of this Agreement.

It indicates that it is being issued in order to support the obligation of the Contractor to perform under the Contract. It must specifically reference the Contract between the RECIPIENT and the Contractor the work stipulated herein.

The issuing bank’s obligation to pay will arise upon the presentation of the original Letter of Credit and a certificate and draft (similar to the attached forms contained in Sections X and Y) to the issuing bank’s representative at a location and time to be determined by the parties. This documentation will indicate that the Contractor is in default under the Contract.

### **Payment Bonds**

A Labor and Materials Payment Bond equal to the full value of the contract must be furnished by the contractor to Recipient as security for payment by the Contractor and subcontractors for labor, materials, and rental of equipment. The bond may be issued by a fully

qualified surety company acceptable to (Recipient) and listed as a company currently authorized under 31 C.F.R. part 223 as possessing a Certificate of Authority as described thereunder.

### **Sample Bond Certifications**

#### **Performance Guarantee Certification**

The undersigned hereby certifies that the Bidder shall provide a Performance Guarantee in accordance with the Specifications.

Designate below which form of Performance Guarantee shall be provided:

\_\_\_\_\_ Performance Bond

\_\_\_\_\_ Irrevocable Stand-By-Letter of  
Credit

BIDDER'S NAME: \_\_\_\_\_

AUTHORIZED SIGNATURE: \_\_\_\_\_

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

DATE: \_\_\_\_\_

**Performance Bond**

KNOW ALL MEN BY THESE PRESENTS: that \_\_\_\_\_  
\_\_\_\_\_

*(Insert full name and address and legal title of Contractor)* as Principal, hereinafter called Contractor, and

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
*(Insert full name and address or legal title of Surety)* as Surety, hereinafter called Surety, are held and firmly bound unto RECIPIENT as Obligee, hereinafter called Authority, in the amount of Dollars (\$) for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Contractor has by written agreement dated , 20\_\_\_\_, entered into a contract with

the RECIPIENT for Contract No. \_\_\_\_\_, which contract is by reference made a part

hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly and faithfully perform said Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the RECIPIENT.

Whenever Contractor shall be, and is declared by the RECIPIENT to be in default under the Contract, the RECIPIENT having performed RECIPIENT'S obligations thereunder, the Surety may promptly remedy the default, or shall promptly

Complete the Contract in accordance with its terms and conditions, or Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or, if the RECIPIENT elects, upon determination by the RECIPIENT and the Surety jointly of the lowest responsible bidder, arrange for a contract between such bidder and the Authority, and make available as Work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, the amount set forth in the first paragraph hereof. The term "balance of the contract price," as used in this paragraph, shall mean the total amount payable by the RECIPIENT to Contractor under the Contract and any amendments thereto, less the amount properly paid by the RECIPIENT to Contractor.

Any suit under this bond must be instituted before the expiration of two (2) years from the date on which final payment under the Contract falls due.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the RECIPIENT or the heirs, executors, administrators or successors of the RECIPIENT.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

WITNESS

PRINCIPAL

\_\_\_\_\_  
[Redacted] (SEAL)

\_\_\_\_\_  
[Redacted] (Title)

WITNESS

SURETY

\_\_\_\_\_

\_\_\_\_\_  
[Redacted] (Title)

(SEAL)

**Attach hereto proof of authority of officers or agents to sign bond.**

## **SEISMIC SAFETY**

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

49 C.F.R. part 41

Executive Order (E.O.) 12699

### **Applicability to Contracts**

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

### **Flow Down**

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

### **Model Clauses/Language**

The regulations do not provide suggested language for third party contract clauses. Recipients can draw on the following language for inclusion in their federally funded procurements.

### **Seismic Safety**

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

## **EMPLOYEE PROTECTIONS**

49 U.S.C. § 5333(a)

40 U.S.C. §§ 3141 – 3148

29 C.F.R. part 5

18 U.S.C. § 874

29 C.F.R. part 3

U.S.C. §§3701-  
3708 29 C.F.R.  
part 1926

### **Applicability to Contracts**

Certain employee protections apply to all FTA funded contracts with particular emphasis on construction related projects. The recipient will ensure that each third-party contractor complies with all federal laws, regulations, and requirements, including:

#### **Prevailing Wage Requirements**

Federal transit laws, specifically 49 U.S.C. § 5333(a), (FTA’s “Davis-Bacon Related Act”);

The Davis-Bacon Act, 40 U.S.C. §§ 3141 – 3144, 3146, and 3147; and

U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. part 5.

#### **“Anti-Kickback” Prohibitions**

Section 1 of the Copeland “Anti-Kickback” Act, as amended, 18 U.S.C. § 874;

Section 2 of the Copeland “Anti-Kickback” Act, as amended, 40 U.S.C. § 3145;  
and

U.S. DOL regulations, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States,” 29 C.F.R. part 3.

### Contract Work Hours and Safety Standards

Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701-3708; and supplemented by Department of Labor (DOL) regulations, 29 C.F.R. part 5; and

b. U.S. DOL regulations, “Safety and Health Regulations for Construction,” 29 C.F.R. part 1926.

### Flow Down

These requirements extend to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier. The Davis-Bacon Act and the Copeland “Anti-Kickback” Act apply to all prime construction, alteration or repair contracts in excess of \$2,000. The Contract Work Hours and Safety Standards Act apply to all FTA funded contracts in excess of \$100,000 that involve the employment of mechanics or laborers.

### Model Clause/Language

The recipient must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. In addition, recipients can draw on the following language for inclusion in their federally funded procurements.

### Prevailing Wage and Anti-Kickback

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

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

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

For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, the Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the DOL regulations at 29 C.F.R. part 5. Under 40 U.S.C. § 3702 of the Act, the Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.

In the event of any violation of the clause set forth herein, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by this clause.

The FTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in this section.

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this agreement.

### **Contract Work Hours and Safety Standards for Awards Not Involving Construction**

The Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 *et seq.*, and U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. part 5.

The Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

Such records maintained under this paragraph shall be made available by the Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and the Contractor will permit such representatives to interview employees during working hours on the job.

The contractor shall require the inclusion of the language of this clause within subcontracts of all tiers.

## **CHARTER SERVICE**

49 U.S.C. 5323(d) and (r)

49 C.F.R. part 604

### **Applicability to Contracts**

The Charter Bus requirements apply to contracts for operating public transportation service.

### **Flow Down Requirements**

The Charter Bus requirements flow down from FTA recipients and subrecipients to first tier service contractors.

### **Model Clause/Language**

The relevant statutes and regulations do not mandate any specific clause or language.

Recipients can draw on the following language for inclusion in their federally funded procurements.

### **Charter Service**

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

Federal transit laws, specifically 49 U.S.C. § 5323(d); FTA regulations, “Charter Service,” 49 C.F.R. part 604; Any other federal Charter Service regulations; or Federal guidance, except as FTA determines otherwise in writing. The contractor agrees that if it engages in a pattern of

violations of FTA’s Charter Service regulations, FTA may require corrective measures or impose remedies on it. These corrective measures and remedies may include:

Barring it or any subcontractor operating public transportation under its Award that has provided prohibited charter service from receiving federal assistance from FTA; Withholding an amount of federal assistance as provided by Appendix D to part 604 of FTA’s Charter Service regulations; or Any other appropriate remedy that may apply. The contractor should also include the substance of this clause in each subcontract that may involve operating public transit services.

### **SCHOOL BUS OPERATIONS**

49 U.S.C. 5323(f)

49 C.F.R. part 605

#### **Applicability to Contracts**

The School Bus requirements apply to contracts for operating public transportation service.

#### **Flow Down Requirements**

The School Bus requirements flow down from FTA recipients and subrecipients to first tier service contractors.

#### **Model Clause/Language**

The relevant statutes and regulations do not mandate any specific clause or language. Recipients can draw on the following language for inclusion in their federally funded procurements.

#### **School Bus Operations**

The contractor agrees to comply with 49 U.S.C. 5323(f), and 49 C.F.R. part 604, and not engage in school bus operations using federally funded equipment or facilities in competition with private operators of school buses, except as permitted under:

Federal transit laws, specifically 49 U.S.C. § 5323(f);

FTA regulations, “School Bus Operations,” 49 C.F.R. part 605;

Any other Federal School Bus regulations; or Federal guidance, except as FTA determines otherwise in writing. If Contractor violates this School Bus Agreement, FTA may:

Bar the Contractor from receiving Federal assistance for public transportation; or

Require the contractor to take such remedial measures as FTA considers appropriate. When operating exclusive school bus service under an allowable exemption, the contractor may not use federally funded equipment, vehicles, or facilities.

The Contractor should include the substance of this clause in each subcontract or purchase under this contract that may operate public transportation services.

### **PATENT RIGHTS AND RIGHTS IN DATA**

2 C.F.R. part 200, Appendix II (F)

37 C.F.R. part 401

#### **Applicability to Contracts**

If the recipient or subrecipient wishes to enter into a contract (or subcontract) with a small business firm or nonprofit organization for the performance of experimental, developmental, or research work under the FTA award, the recipient or subrecipient must comply with the requirements of 37 C.F.R. part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency. Except in the case of an “other agreement” in which the Federal Government has agreed to take more limited rights, the Federal Government is entitled to a non-exclusive, royalty free license to use the resulting invention, or patent the invention for Federal Government purposes. The FTA has the right to:

Obtain, reproduce, publish, or otherwise use the data produced under a Federal award; and

Authorize others to receive, reproduce, publish, or otherwise use such data for Federal

purposes.

#### **Flow Down**

The Patent Rights and Rights in Data requirements flow down to all third-party contractors and their contracts at every tier that meet the definition of a research-type project under 37 U.S.C. § 401.2.

#### **Model Clause/Language**

Recipients can draw on language provided in 37 C.F.R. § 401.3 for appropriate Patent Rights and Data Rights Clauses for use in their federally funded research, development, demonstration, or special studies projects. Recipients should consult legal counsel for guidance in developing an appropriate Intellectual Property Agreement. At a minimum, recipients can include the following language in their standard boilerplates.

### **Intellectual Property Rights**

This Project is funded through a Federal award with FTA for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this Contract. The Contractor shall grant the AGENCY intellectual property access and licenses deemed necessary for the work performed under this Agreement and in accordance with the requirements of 37 C.F.R. part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by FTA or U.S. DOT. The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Agreement and shall, at a minimum, include the following restrictions: Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of FTA, until such time as FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution. For purposes of this agreement, the term “subject data” means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of “subject data” include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.

The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for “Federal Government Purposes,” any subject data or copyright described below. For “Federal Government Purposes,” means use only for the direct purposes of the Federal Government. Without the copyright owner’s consent, the Federal Government may not extend its Federal license to any other party.

Any subject data developed under the Contract, whether or not a copyright has been obtained; and

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

Unless FTA determines otherwise, the Contractor performing experimental, developmental, or research work required as part of this Contract agrees to permit FTA to make available to the public, either FTA’s license in the copyright to any subject data developed in the

course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.

Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. The Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

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

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

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

### **CONFORMANCE WITH ITS NATIONAL ARCHITECTURE**

Contractor shall conform, to the extent applicable, to the National Intelligent Transportation Standards architecture as required by SAFETEA-LU Section 5307(c), 23 U.S.C. Section 512 and as amended by MAP-21 23 U.S.C. §517(d), note and follow the provisions of FTA Notice, “FTA National Architecture Policy on Transit Projects,” 66 Fed. Reg.1455 etseq., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

### **ACCESS REQUIREMENTS FOR PERSON'S WITH DISABILITIES**

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

**NOTIFICATION OF FEDERAL PARTICIPATION**

To the extent required by law, in the announcement of any third party contract award for goods and services (including construction services) having an aggregate value of \$500,000 or more, contractor shall specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express that amount of Federal assistance as a percentage of the total cost of the third party contract.

## **SUBSTANCE ABUSE REQUIREMENTS**

49 U.S.C. § 5331

49 C.F.R. part 655

49 C.F.R. part 40

### **Applicability to Contracts**

Third party contractors who perform *safety-sensitive functions* must comply with FTA’s substance abuse management program under 49 C.F.R. part 655, “Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations.” Under 49 C.F.R. § 655.4, *Safety-sensitive function* means any of the following duties, when performed by employees of recipients, subrecipients, operators, or contractors:

- Operating a revenue service vehicle, including when not in revenue service;
- Operating a nonrevenue service vehicle, when required to be operated by a holder of a Commercial Driver's License;
- Controlling dispatch or movement of a revenue service vehicle;
- Maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service. This section does not apply to the following: an employer who receives funding under 49 U.S.C. § 5307 or § 5309, is in an area less than 200,000 in population, and contracts out such services; or an employer who receives funding under 49 U.S.C. § 5311 and contracts out such services;
- Carrying a firearm for security purposes.

Additionally, third party contractors providing testing services involving the performance of safety sensitive activities must also comply with 49 C.F.R. part 40, “Procedures for Transportation Workplace Drug and Alcohol Testing Programs.”

### **Flow Down Requirements**

The Substance Abuse requirements flow down to all third-party contractors at every tier who perform a safety-sensitive function for the recipient or subrecipient.

### **Model Clause/Language**

FTA's drug and alcohol rules, 49 C.F.R. part 655, are unique among the regulations issued by FTA. First, they require recipients to ensure that any entity performing a safety-sensitive function on the recipient's behalf (usually subrecipients and/or contractors) implement a complex drug and alcohol testing program that complies with part 655. Second, the rules condition the receipt of certain kinds of FTA funding on the recipient's compliance with the rules; thus, the recipient is not in compliance with the rules unless every entity that performs a safety-sensitive function on the recipient's behalf is in compliance with the rules. Third, the rules do not specify how a recipient ensures that its subrecipients and/or contractors comply with them.

How a recipient does so depends on several factors, including whether the contractor is covered independently by the drug and alcohol rules of another Department of Transportation operating administration, the nature of the relationship that the recipient has with the contractor, and the financial resources available to the recipient to oversee the contractor's drug and alcohol testing program. In short, there are a variety of ways a recipient can ensure that its subrecipients and contractors comply with the rules.

FTA has developed three model contract provisions for recipients to use "as is" or to modify to fit their particular situations.

### **Explanation of Model Contract Clauses**

#### **Option 1**

The recipient ensures the contractor's compliance with the rules by requiring the contractor to participate in a drug and alcohol program administered by the recipient. The advantages of doing this are obvious: the recipient maintains total control over its compliance with 49 C.F.R. part 655. The disadvantage is that the recipient, which may not directly employ any safety-sensitive employees, has to implement a complex testing program. Therefore, this may be a practical option for only those recipients that have a testing program for their employees and can add the contractor's safety-sensitive employees to that program.



## **Option 2**

The recipient relies on the contractor to implement a drug and alcohol testing program that complies with 49 C.F.R. part 655 but retains the ability to monitor the contractor's testing program; thus, the recipient has less control over its compliance with the drug and alcohol testing rules than it does under Option 1. The advantage of this approach is that it places the responsibility for complying with the rules on the entity that is actually performing the safety-sensitive function. Moreover, it reserves to the recipient the power to ensure that the contractor complies with the program. The disadvantage of Option 2 is that, without adequate monitoring of the contractor's program, the recipient may find itself out of compliance with the rules.

## **Option 3**

The recipient specifies some or all of the specific features of a contractor's drug and alcohol compliance program. Thus, it requires the recipient to decide what it wants to do and how it wants to do it. The advantage of this option is that the recipient has more control over the contractor's drug and alcohol testing program, yet it is not actually administering the testing program. The disadvantage is that the recipient has to specify and understand clearly what it wants to do and why.

## **SUBSTANCE ABUSE TESTING**

### **Option 1**

The Contractor agrees to participate in AGENCY's drug and alcohol program established in compliance with 49 C.F.R. part 655.

## **SUBSTANCE ABUSE TESTING**

### **Option 2**

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. parts 655, produce any documentation necessary to establish its compliance with part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of [name of State], or

AGENCY, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. part 655 and review the testing process. The Contractor agrees further to certify annually its compliance with parts 655 before [insert date] and to submit the Management Information System (MIS) reports before [insert date before March 15] to [insert title and address of person responsible for

receiving information]. To certify compliance, the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the *Federal Register*.

### **SUBSTANCE ABUSE TESTING**

#### **Option 3**

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. part 655, produce any documentation necessary to establish its compliance with part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of [name of State], or AGENCY, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. part 655 and review the testing process. The Contractor agrees further to certify annually its compliance with parts 655 before [insert date] and to submit the Management Information System (MIS) reports before [insert date before March 15] to [insert title and address of person responsible for receiving information]. To certify compliance the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register. The Contractor agrees further to [Select a, b, or c] (a) submit before [insert date or upon request] a copy of the Policy Statement developed to implement its drug and alcohol testing program; OR (b) adopt [insert title of the Policy Statement the recipient wishes the contractor to use] as its policy statement as required under 49 C.F.R. part 655; OR (c) submit for review and approval before [insert date or upon request] a copy of its Policy Statement developed to implement its drug and alcohol testing program. In addition, the Contractor agrees to: [to be determined by the recipient but may address areas such as: the selection of the certified laboratory, substance abuse professional, or Medical Review Officer, or the use of a consortium].

## APPENDIX A: METHOD OF PROCUREMENT DECISION MATRIX

### Method of Procurement

<b>Micro-purchase</b>	<input type="checkbox"/>
Amount < \$3,000	<input type="checkbox"/>
Multiple Sources	<input type="checkbox"/>

<b>Competitive Procurement</b>	<input type="checkbox"/>
Amount > \$3,000	<input type="checkbox"/>
Multiple Sources	<input type="checkbox"/>
Not an Emergency	<input type="checkbox"/>

<b>Small Purchase</b>	<input type="checkbox"/>
Amount < \$100,000	<input type="checkbox"/>
Complete and Adequate Specification or Description	<input type="checkbox"/>
Two or more quotes available	<input type="checkbox"/>

<b>Sealed Bid (IFBs) &gt; \$100,000</b>	<input type="checkbox"/>
Complete and Adequate Specification or Description	<input type="checkbox"/>
Two or more responsible bidders willing to compete	<input type="checkbox"/>
Selection can be made on the basis of price alone	<input type="checkbox"/>
Firm Fixed Price Contract is used	<input type="checkbox"/>
No discussion with bidders required after receipt of bids	<input type="checkbox"/>

<b>Sole Source</b>	<input type="checkbox"/>
Approved by FTA	<input type="checkbox"/>
OEM, Custom Item <b>OR</b>	<input type="checkbox"/>
Only One Source <b>OR</b>	<input type="checkbox"/>
Competition Inadequate after Solicitation <b>OR</b>	<input type="checkbox"/>
Emergency/Public Exigency	<input type="checkbox"/>

<b>Competitive Proposals (RFPs) &gt; \$100,000</b>	<input type="checkbox"/>
Complete Specifications Not Feasible	<input type="checkbox"/>
Bidder Input Needed	<input type="checkbox"/>
Two or more responsible bidders willing to compete	<input type="checkbox"/>
Discussion needed with bidders after proposals	<input type="checkbox"/>
Fixed price can be set after discussions -- <b>OR</b> --	<input type="checkbox"/>
a cost reimbursement contract is determined	<input type="checkbox"/>

### Selection of Contract Type

<b>Type of Contract</b>	<input type="checkbox"/>
Fixed price	<input type="checkbox"/>
Firm fixed unit prices	<input type="checkbox"/>
Cost plus fixed fee	<input type="checkbox"/>
Time and materials (T&M)	<input type="checkbox"/>
Blanket purchase order	<input type="checkbox"/>
Indefinite Delivery Indefinite Quantity (IDIQ)	<input type="checkbox"/>

<b>Justification for T&amp;M Type Contract (if selected)</b>

## **APPENDIX B: SYSTEM-WIDE ELEMENTS CHECKLIST**

No.	Element	Basic Requirement 4220.1F	ND	D	NA	Comments
1	<p><b>Written Standards of Conduct</b> - The grantee has a written code of standards of conduct which provides that no employee, officer, agent, immediate family member, or Board member of the grantee shall participate in the selection, award, or administration of a contract supported by FTA funds if a conflict of interest, real or apparent, would be involved. The grantee defines such a conflict to be when any of the following has a financial or other interest in the firm selected for award:</p> <p>(a.) The employee, officer, agent, or Board member, (b.) Any member of his/her immediate family, (c.) His or her partner, or (d.) An organization that employs, or is about to employ, any of the above.</p> <p>The grantee's code of conduct also provides that its officers, employees, agents, or Board members will neither solicit nor accept gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub agreements and contains penalties, sanctions, or other disciplinary action for violation of such standards by the grantee's officers, employees, or agents, or by contractors or their agents.</p>	III, 1.a.b.c.				
2	<p><b>Contract Administration System</b> - The grantee has a contract administration system that ensures that it and its third-party contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.</p>	III, 3.				
3	<p><b>Written Protest Procedures</b> - The grantee has written protest procedures to handle and resolve disputes relating to their procurements. These procedures require the following:</p> <p>(a.) In all instances involving FTA funds the grantee must disclose information regarding the protest to FTA, and keep FTA informed about the status of the protest,</p> <p>(b.) All protest decisions must be in writing, and</p> <p>(c.) A protester must exhaust all administrative remedies with the grantee before pursuing a protest with FTA.</p>	VII, 1. a. b.				
4	<p><b>Prequalification System</b> - The grantee has a system of prequalification which ensures that all lists of prequalified persons, firms, or products that are used in acquiring goods and services are current and include enough qualified sources to ensure maximum full and open competition. The system also provides that potential bidders may not be precluded from qualifying during the solicitation period, which is from issuance of the solicitation to its closing date. If the grantee does not prequalify bidders and offerors, so state in the comments column and mark NA in the Not Deficient column.</p>	VI, 1.c.				

5	<p><b>System for Ensuring Most Efficient and Economic Purchase</b> - The grantee has a system for review of proposed procurements to avoid purchase of unnecessary or duplicative items. It provides for analysis of lease versus purchase alternatives and for considering consolidating or breaking out procurements to obtain a more economical purchase.</p>	IV, 1. b. c. e.				
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6	Procurement Policies & Procedures		YES	NO	Comments
	<p><b>Procurement Policies and Procedures</b> - The grantee's procurement policies and procedures contain the following FTA C 4220.1F, requirements: (After checking YES or NO for regulatory coverage of the following, mark Not Deficient or Deficient)</p>	III, 3.a.			
a.	<p><b>Make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement.</b> Consideration shall be given to contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. YES _____ NO _____</p>	VI, 8. b.			
b.	<p><b>Maintain records detailing the history of a procurement.</b> At a minimum, these records shall include: (1) The rationale for the method of procurement, (2) Selection of contract type, (3) Reasons for contractor selection or rejection, and (4) The basis for the contract price. YES _____ NO _____</p>	III, 3. d. (1)			
c.	<p><b>Requirement that "Time and Materials Type Contracts" may only be used:</b> (1) After a determination that no other type of contract is suitable, and (2) If the contract specifies a ceiling price that the contractor shall not exceed except at its own risk. YES _____ NO _____</p>	VI, VI, 2.(2)(b)			
d.	<p><b>Contract term limitation for rolling stock and replacement parts shall not exceed the recipient's needs for rolling stock and replacement parts within five (5) years inclusive of options without prior written FTA approval when FTA funds are involved.</b> For all other types of contracts, the contract file contains evidence that the contract term is based upon sound business judgment. YES _____ NO _____</p>	IV, 2.e.(10)			
e.	<p><b>Tag-ons.</b> The use of tag-ons is prohibited and applies to the original buyer as well as to others. Tag-on is defined as the addition of work (supplies, equipment or services) that is beyond the scope of the original contract that amounts to a cardinal change and is subject to non-competitive procurement procedures. YES _____ NO _____</p>	V, 7.b.(2).			
f.	<p><b>All procurement transactions will be conducted in a manner providing full and open competition.</b> YES _____ NO _____</p>	VI, 1. a.			

g.	<p><b>Prohibits unreasonable requirements from being placed on firms in order for them to qualify to do business (e.g. unnecessary experience and excessive bonding requirements).</b>          YES _____ NO _____</p>	VI, 2. a. (4) (b) (e)			
h.	<p><b>Coverage that defines Organizational Conflicts of Interest and provides means for eliminating or mitigating such conflicts.</b> For instance, a “Hardware Exclusion Clause” may be recommended for inclusion in hardware design or R&amp;D contracts.          YES _____ NO _____</p>	VI, 2. a. (4) (h)			
i.	<p><b>Prohibit any arbitrary action in the procurement process (e.g. in the competitive selection of contractors).</b>          YES _____ NO _____</p>	VI, 2. a. (4) (i)			
j.	<p><b>Except when procuring A&amp;E services, prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals unless Federal statutes expressly mandate or encourage geographic preference.</b>          YES _____ NO _____</p>	VI, 2. a. (4) (g)			
k.	<p><b>Contains contractor selection procedures.</b>          YES _____ NO _____</p>	III, 3. a.			
l.	<p><b>Require clear and accurate contract specifications (or statements of work) that do not unduly restrict competition and identify all requirements that offerors must fulfill and all factors to be used in evaluating bids or proposals.</b>          YES _____ NO _____</p>	VI, 2. e.; VI, 3. c. (1) (a)			
m.	<p><b>Requirements for using “Brand Name or Equal” purchase descriptions:</b>          (1) Only when an adequate specification cannot be provided without performing an inspection and analysis in time for the acquisition under consideration, and          (2) Minimum needs are carefully identified and those salient physical and functional characteristics of the brand name product are clearly set forth in the solicitation.          YES _____ NO _____</p>	VI, 2. a. (3)			
n.	<p><b>Requirements applicable to micro-purchases (\$10,000 or less) :</b>          (1) Competition not required,          (2) Must document determination that price is fair and reasonable and how the determination was derived,          (3) Prohibit splitting of procurements to avoid competition, and          (4) When competition is not obtained, require equitable distribution among qualified suppliers.          YES _____ NO _____</p>	VI, 3. a.			

<p><b>o.</b></p>	<p><b>Requirements applicable to the grantee's simplified small purchase threshold (for FTA funded purchases the threshold may range from \$10,000 to \$250,000) :</b></p> <p>(1) Must obtain price or rate quotations from an adequate number of qualified sources, and  (2) Document file that price is fair and reasonable.  YES _____ NO _____</p>	<p><b>VI, 3. b.</b></p>			
<p><b>p.</b></p>	<p><b>Requirements applicable to sealed bid method of procurement:</b></p> <p>(1) Defines conditions for sealed bid,  (2) Requires public advertising,  (3) Must allow sufficient time to prepare bids prior to bid opening,  (4) Award must be made to the lowest responsive and responsible bidder, and  (5) Must document sound business reason if any or all bids are rejected.  YES _____ NO _____</p>	<p><b>VI, 3. c.</b></p>			
<p><b>q.</b></p>	<p><b>Requirements applicable to competitive proposal (RFP) method of procurement:</b></p> <p>(1) Requests for proposals will be publicized. All evaluation factors will be identified along with their relative importance;  (2) Proposals will be solicited from an adequate number of qualified sources;  (3) Grantees will have a method in place for conducting technical evaluations of the proposals received and for selecting awardees;  (4) Awards will be made to the responsible firm whose proposal is most advantageous to the grantee's program with price and other factors considered; and  (5) In determining which proposal is most advantageous, grantees may award (if consistent with State law) to the proposer whose proposals offer the greatest business value to the Agency based upon an analysis of a tradeoff of qualitative technical factors and price/cost to derive which proposal represents the "best value" to the Procuring Agency as defined in 4220.1F, I, 5. b., Definitions. If the grantee elects to use the best value selection method as the basis for award, however, the solicitation must contain language that establishes that an award will be made on a "best value" basis.  YES _____ NO _____</p>	<p><b>VI, 3. d.</b></p>			
<p><b>r.</b></p>	<p><b>Unless State law provides procedures for procurement of A&amp;E services the Brooks Act procedures apply and may only be used when procuring A&amp;E services:</b></p> <p>(1) Evaluate qualifications excluding price as a factor,  (2) Negotiate only with the most qualified offeror, and  (3) Failing agreement on price, negotiate with the next most qualified offeror until agreement is reached on a price that is determined to be fair and reasonable.  YES _____ NO _____</p>	<p><b>VI,3.f.3.</b></p>			

s.	<p><b>Procurement of Design-Bid-Build.</b> Grantees may procure design-bid-build services through means of sealed bidding or competitive negotiations. These services must be procured in a manner that conforms to applicable state and local law, the requirements of this Circular relative to the method of procurement used and all other applicable federal requirements. YES _____ NO _____</p>	<p><b>9.f</b> VI, 3.g.</p>			
t.	<p><b>Procurement of Design-Build.</b> Grantee must procure design-build services through means of qualifications-based competitive proposal procedures based on the Brooks Act as set forth in 4220.1F, VI, 3. h. when the preponderance of the work to be performed is considered to be for architectural and engineering (A&amp;E) services as defined in 4220.1F, VI, 3. f. Qualifications-based competitive proposal procedures should not be used to procure design-build services when the preponderance of the work to be performed is not of an A&amp;E nature as defined in 4220.1F, VI, 3. f, unless required by State law adopted before August 10, 2005. YES _____ NO _____</p>	<p><b>VI, 3.h.</b></p>			
u.	<p><b>Sole source documentation requirements:</b>  (1) Infeasible to use small purchase, sealed bid, or competitive procedures, and  (a) Item is available only from one source,  (b) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation,  (c) FTA authorizes noncompetitive negotiations,  (d) After solicitation of a number of sources, competition is determined inadequate, or  (2) Cost and profit analysis are required.  YES _____ NO _____</p>	<p><b>VI, 3.i.</b></p>			
v.	<p><b>Requirements for use of options:</b>  (1) Option quantities must be evaluated to determine contract award, and  (2) When exercising options, ensure it is in accordance with the contract and that the price is better than prices available in the market or is more advantageous at the time the option is exercised.  YES _____ NO _____</p>	<p><b>V, 7. a.;</b> VI, <b>7. b.</b></p>			
w.	<p><b>Must perform cost or price analysis in connection with every procurement action, including contract modifications.</b>  YES _____ NO _____</p>	<p><b>VI, 6.</b></p>			
x.	<p><b>Must make independent cost or price estimates before receiving bids or proposals.</b>  YES _____ NO _____</p>	<p><b>VI, 6.</b></p>			
y.	<p><b>Must perform cost and profit analysis when adequate price competition is lacking.</b>  YES _____ NO _____</p>	<p><b>VI, 6. a.</b></p>			

z.	<p><b>Grantee's cost principles for evaluation of proposed costs are consistent with Federal cost principles.</b>  YES _____ NO _____</p>	VI, 4.			
a.a	<p><b>Cost plus percentage of cost type contract is prohibited.</b>  YES _____ NO _____</p>	VI, 2.c.(2)(a)			
b.b	<p><b>Bonding requirements for construction contracts above \$100,000 meet the following minimums:</b>  (1) 5% bid guarantee,  (2) 100% performance bond, and  (3) Payment bonds as follows:  - 50% on contracts under \$1 million  - 40% on contracts between \$1 million and \$5 million, or  - \$2.5 million on contracts over \$5 million.  If grantee bonding policy and requirements do not comply with this criteria, FTA approval must be obtaining.  YES _____ NO _____</p>	IV, 2.b.h.(1)			
c.c	<p><b>Advance payments utilizing FTA funds are prohibited unless prior written concurrence is obtained from FTA.</b>  YES _____ NO _____</p>	IV, 2.b.(5)(b)			
d.d	<p><b>Progress payments may only be made on the basis of costs incurred (or, in the case of construction contracts only, on the basis of percent of completion)and the grantee must obtain adequate security for which progress payments are made.</b> Adequate security may include taking title, letters of credit or equivalent means to protect the grantee's interest.  YES _____ NO _____</p>	IV, 2.b. (5) (c)			
e.e	<p><b>Liquidated damages assessment must be at a specific rate per day for each day of overrun and must be specified in the contract.</b> Any damages recovered must be credited to the project involved unless the FTA permits otherwise.  YES _____ NO _____</p>	IV, 2.(b).(6)(b)			
f.f	<p><b>Each State must include provisions in all its RFPs, solicitations, press releases or other publications involving FTA assistance, stating that FTA is or will be providing Federal assistance for the project, the amount of the assistance FTA has provided or expects to provide, and the Catalogue of Federal Domestic Assistance (CFDA) Number of the program that authorizes Federal assistance.</b>  Note: This notification requirement applies only to States and their subrecipients, lessees, and third party contractors. It does not apply to grantees that are not States (e.g., Transit Agencies). The current Master Agreement will define the notification requirements that are currently in effect, as they may change from year to year.  YES _____ NO _____</p>	III, 3. e.			

g.g	<b>Contracts above the small purchase threshold must contain remedies for breach of contract.</b> YES _____ NO _____	<b>IV, 2.(c)(6)(b) 2</b>			
h.h	<b>Contracts in excess of \$10,000 must have termination for cause and termination for convenience provisions.</b> YES _____ NO _____	<b>IV, 2.(c)(6)(b) 4</b>			
i.i	<b>Addresses Federal statutory and regulatory requirements for contracts funded under Federal grants.</b> YES _____ NO _____	<b>II, 3</b>			
j.j	<b>Revenue contracts are those third-party contracts whose primary purpose is to either generate revenues in connection with a transit related activity, or to create business opportunities utilizing an FTA funded asset.</b> FTA requires these contracts to be awarded utilizing competitive selection procedures and principles. The extent of and type of competition required is within the discretionary judgment of the grantee. YES _____ NO _____	<b>II, 2.b.(4)</b>			

## Independent Cost Estimate

---

Contract Type: \_\_\_\_\_ Date of Estimate: \_\_\_\_\_

Description of Goods / Service: \_\_\_\_\_

**Method of Obtaining the Estimate:**

- I have obtained the following estimate from....
- Published Price List / Past pricing (date) \_\_\_\_\_
- Engineering or technical estimate
- Independent Third Party estimate
- Other (specify) \_\_\_\_\_

**Cost Estimate Details:**

Through the method stated above it has been determined that the total cost of the goods/services is expected to be: \$\_\_\_\_\_. Details are shown below.

**A: Cost of Standard Items**

Product	Cost (\$/ea)		Notes / Data Source
	Delivered	No Freight	

**B: Cost of Services, Repairs, or Non-Standard Items**

Item / Task:							
Materials	Other Direct Costs	Labor (rate, hours)	Labor Class	Allocated overhead	SG&A	Profit	Total

The preceding cost estimate was prepared by:

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

*For complex items or tasks, attach detailed spreadsheet(s) explaining rationale.*

## APPENDIX D: PRICE ANALYSIS TEMPLATE

**PO / Contract:** \_\_\_\_\_

The evidence compiled by a price analysis includes:

- Developing and examining data from multiple sources whenever possible that prove or strongly suggest the proposed price is fair.
- Determining when multiple data consistently indicate that a given price represents a good value for the money.
- Documenting data sufficiently to convince a third party that the analyst's conclusions are valid.

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

**PREPARED BY:** \_\_\_\_\_

The pricing quoted on the attached sheet(s) is deemed to be fair and reasonable based on the following type of analysis:

- Comparison with competing suppliers' prices or catalog pricing for the same item. (Complete comparison matrix and attach supporting quotes or catalog pages.)
- Comparison of proposed pricing with in-house estimate for the same item. (Attach signed in-house estimate and explain factors influencing any differences found. Complete summary matrix.)
- Comparison of proposed pricing with historical pricing from previous purchases of the same item, coupled with market data such as Producer Price Index or Inflation Rate over the corresponding time period. (Attach data and historical price record).
- Analysis of price components against current published standards, such as labor rates, dollars per pound etc. to justify the price reasonableness of the whole. (Attach analysis to support conclusions drawn.)

### SUMMARY MATRIX

Item	Proposed Pricing	Average Market Price	Competitor A	Competitor B	In-House Estimate	Other

**Attachments:**

**APPENDIX E: COST ANALYSIS FORM**

PAGE      OF                      PGS

<b>COST ANALYSIS SUMMARY</b> (For New Contracts Including Letter Contracts) (See Instructions below)	
SOLICITATION #  <hr/> PREPARER'S NAME, DEPARTMENT, TITLE, PHONE	SUPPLIES AND/OR SERVICES TO BE FURNISHED
DIVISION(S) AND LOCATION(S) WHERE WORK IS TO BE PERFORMED	APPROVAL SIGNATURE

DETAIL DESCRIPTION OF COST ELEMENTS				
1. DIRECT MATERIAL	Vendor A Proposal	Vendor B Proposal	Independent Estimate	Analysis
A. PURCHASED PARTS				
B. SUBCONTRACTED ITEMS				
C. OTHER - (1) RAW MATERIAL				
(2) STANDARD COMMERCIAL ITEMS				
<i>TOTAL DIRECT MATERIAL</i>				
<b>2. MATERIAL OVERHEAD (RATE % x \$ BASE *)</b>				

3. DIRECT LABOR	ESTIMATED HOURS	RATE/HOUR	Vendor A (\$)	Vendor B (\$)	Independent Estimate	Variance
<i>TOTAL DIRECT LABOR</i>						

<b>4. LABOR OVERHEAD</b>			<b>Vendor A (\$)</b>	<b>Vendor B (\$)</b>	<b>Independent Estimate</b>	<b>Variance</b>
OH Rate						
X BASE (labor total above)						
<b>TOTAL LABOR OVERHEAD</b>						

<b>5. OTHER DIRECT COSTS</b>			<b>Vendor A (\$)</b>	<b>Vendor B (\$)</b>	<b>Independent Estimate</b>	<b>Variance</b>
A. SPECIAL TOOLING/EQUIPMENT						
<i>TOTAL SPECIAL TOOLING/EQUIPMENT</i>						
B. TRAVEL						
(1) TRANSPORTATION						
(2) PER DIEM OR SUBSISTENCE						
<i>TOTAL TRAVEL</i>						

<b>DETAIL DESCRIPTION OF COST ELEMENTS (continued)</b>			<b>Vendor A (\$)</b>	<b>Vendor B (\$)</b>	<b>Independent Estimate</b>	<b>Variance</b>
C. INDIVIDUAL CONSULTANT SERVICES						
<i>TOTAL INDIVIDUAL CONSULTANT SERVICES</i>						
D. OTHER						
<i>TOTAL OTHER</i>						
<i>E. SUBTOTAL DIRECT COST AND OVERHEAD</i>						
6. GENERAL AND ADMINISTRATIVE (G&A) RATE %						
X \$ BASE (Use 5.E above)						
7. ROYALTIES (if any)						
8. <i>SUBTOTAL ESTIMATED COST</i>						
9. CONTRACT FACILITIES CAPITAL AND COST OF MONEY						
10. <i>SUBTOTAL ESTIMATED COST</i>						
11. FEE OR PROFIT						
<b>12. TOTAL ESTIMATED COST AND FEE OR PROFIT</b>						
13. Discounts						
14. Option Costs (specify)						
15. ADJUSTED COST						

**ANALYSIS GUIDELINES**

1. **DIRECT MATERIAL**

- A. Analyze Purchased Parts: Provide a consolidated price analysis of material quantities included in the various tasks, orders, or contract line items being proposed and the basis for pricing (vendor quotes, invoice prices, etc.).
- B. Subcontracted Items: Analyze the total cost of subcontract effort and supporting written quotations from the prospective subcontractors
- C. Other:
  - (1) Raw Material: Review any materials in a form or state that requires further processing. Analyze priced quantities of items required for the proposal. Consider alternatives and total cost impact.

- (2) Standard Commercial Items: Analyze proposed items that the offeror will provide, in whole or in part, and review the basis for pricing. Consider whether these could be provided at lower cost from another source.
2. MATERIAL OVERHEAD  
Verify that this cost is not computed as part of labor overhead (item 4) or General and Administrative (G&A) (Item 6).
  3. DIRECT LABOR  
Analyze the hourly rate and the total hours for each individual (if known) and discipline of direct labor proposed. Determine whether actual rates or escalated rates are used . If escalation is included, analyze the degree (percent) and rationale used. Compare percentage of total that labor represents for each bid.
  4. LABOR OVERHEAD  
Analyze comparative rates and ensure these costs are not computed as part of G&A. Determine if Government Audited rates are available,
  5. OTHER DIRECT COSTS
    - A. Special Tooling/Equipment. Analyze price and necessity of specific equipment and unit prices.
    - B. Travel. Analyze each trip proposed and the persons (or disciplines) designated to make each trip. Compare and check costs.
    - C. Individual Consultant Services. Analyze the proposed contemplated consulting. Compare to independent estimate of the amount of services estimated to be required and match the consultants' quoted daily or hourly rate to known benchmarks.
    - D. Other Costs. Review all other direct charge costs not otherwise included in the categories described above (e.g., services of specialized trades, computer services, preservation, packaging and packing, leasing of equipment and provide bases for pricing. Scan for duplication or omissions.
  6. GENERAL AND ADMINISTRATIVE EXPENSE  
See notes on labor overhead above and check whether the base has been approved by a Government audit agency for use in proposals.
  7. ROYALTIES  
If more than \$250, analyze the following information for each separate royalty or license fee; name and address of licensor; date of license agreement; patent numbers, patent application serial numbers, or other basis on which the royalty is payable; brief description (including any part of model numbers or each contract item or component on which the royalty is payable); percentage or dollar rate of royalty per unit; unit price of contract item; number of units; and total dollar amount of royalties,
  8. SUBTOTAL ESTIMATED COST  
Compare the total of all direct and indirect costs excluding Cost of Money and Fee or Profit. Note reasons for differences.
  9. CONTRACT FACILITIES CAPITAL AND COST OF MONEY  
Analyze the offerors' supporting calculations and compare to known standards.
  10. SUBTOTAL ESTIMATED COST  
This is the total of all proposed costs excluding Fee or Profit. Determine the competitive range. Question outliers.
  11. FEE OR PROFIT  
Review the total of all proposed Fees or Profit. Remember that the FTA prohibits cost plus percentage of cost contracting.
  12. TOTAL ESTIMATED COST AND FEE OR PROFIT  
Analyze the range of total estimated costs including Fee or Profit and explain variance to independent estimate. Identify areas for negotiation or areas to be challenged. Explain your conclusions regarding fair and reasonable pricing.
  13. DISCOUNTS  
Review basis for Discounts and range between offers.

**ATTACH NARRATIVE COST ANALYSIS MEMO ADDRESSING ITEMS AS INSTRUCTED ABOVE.**

**APPENDIX F: PIGGYBACKING CHECKLIST**

<b>Grantee:</b>		<b>Contractor:</b>				
<b>Reviewer:</b>		<b>PO Number:</b>				
<b>Date Reviewed:</b>		<b>Description:</b>				
<b>Observations:</b>		<b>Award Amount:</b>				
<b>No.</b>	<b>Element</b>	<b>Basic Requirement 4220.1F</b>	<b>ND</b>	<b>D</b>	<b>NA</b>	<b>Comments</b>
50	<p><b>Piggybacking</b>            (1) This contract contains:            (a) Assignability provisions            (b) Required Federal clauses            (c) Minimum and maximum quantities (if IDIQ)            (2) The procurement file contains:            (a) Price reasonableness determination            If this is not a "Piggybacking" contract, check NA.</p>	<p><b>FTA C 4220.1F, V, 7. a. (2)</b></p>				

## APPENDIX G: RESPONSIBILITY DETERMINATION FORM

<b>Bid/RFP No:</b>		
<b>Supplier:</b>		
<b>Date:</b>		
For each of the areas described below, check that the appropriate research has been accomplished and provide a short description of the research and the results.		
	<b>Evaluated or Reviewed as part of Technical Evaluation</b>	<b>Comment/Documentation</b>
1. Appropriate financial, equipment, facility, and personnel	<input type="checkbox"/> Yes <input type="checkbox"/> No	Can review standard ratios on submitted financial reports or ask for D&B report
2. Ability to meet the delivery schedule	<input type="checkbox"/> Yes <input type="checkbox"/> No	Conduct an analysis of the offeror's technical approach
3. Satisfactory period of performance	<input type="checkbox"/> Yes <input type="checkbox"/> No	Tied to reference check; can also use D&B Past Performance Evaluation service/product
4. Satisfactory record of integrity, not on declined or suspended listings	<input type="checkbox"/> Yes <input type="checkbox"/> No	Attach the results from checking the Excluded Parties website at <a href="http://www.sam.gov">www.sam.gov</a>
5. Ability to get bonding and insurance	<input type="checkbox"/> Yes <input type="checkbox"/> No	Evaluate insurance certificate and assurances from Bonding company_____

1. no brand names, unless "equal" is specified
2. must allow adequate response time
3. must have received responses from at least two responsive and responsible vendors
4. *see 3*
5. must establish contract start and end dates; payment terms
6. out-of-scope must re-compete
7. include copy of original contract

## APPENDIX H: Documentation Requirements by Procurement Type

	Micropurchase	Small Purchase	ITB	RFP	Sole Source
<i>Standard Inclusions</i>					
Method of Procurement Decision Matrix		X	X	X	X
Fair and Reasonable Price Determination	X				
Independent Cost Estimate		X	X	X	X
Clear, Accurate, Complete Specifications (Copy of Solicitation) <sup>1</sup>		X	X	X	X
Price Quotations		X			
Cost/Price Analysis		X	X	X	X (Cost)
Written Selection Procedures (Included in Solicitation)			X	X	
Emails to Potential Vendors, Proof of Publication <sup>2</sup>			X	X	
Bid Opening Sheet/Record of Proposals Submitted			X	X	
Responsiveness Determination			X	X	
Bid/Proposal Rejection Explanation (if any)			X	X	
Responsibility Determination (Copy of EPLS search)			X	X	X
Bid Tabulation / Selection of Lowest Price (incl. options) <sup>3</sup>			X		
Evaluation Rating Sheets and Summary <sup>4</sup>				X	
Sole Source Justification					X

Sound and Complete Agreement (Signed Contract) <sup>5</sup>			X	X	X
Clauses (In Solicitation and Contract)			X	X	X
Written Record of Procurement History		X (2 sections)	X	X	X
Awarded Supplier's Proposal		X	X	X	X

	Micropurchase	Small Purchase	ITB	RFP	Sole Source
<i>Special Circumstances</i>					
Contract Mods (in scope) <sup>6</sup>			X	X	X
Progress Payments			X	X	X
Approval for Advance Payments From FTA	X	X	X	X	X
Documentation of Board Approval			X	X	X
Notice of Protests and Resolution		X	X	X	X
Notice of Contract Claims and Resolutions		X	X	X	X
Piggybacking <sup>7</sup>			X	X	X
Davis-Bacon (Construction)	X >\$2000	X	X	X	
Copies of Bonds (Construction)			X	X	X
Buy America (Bus and Rolling Stock)			X	X	X
Evidence of Negotiations with Highest Ranked Suppliers and Ranking Based on Technical Capability Only (A&E)				X	

# APPENDIX I: Sample Procurement File Checklist

<input type="checkbox"/>	<b>1. REQUEST TO PURCHASE</b>	<input type="checkbox"/>	<b>13. BOARD/COMMITTEE REPORTS</b>
	<input type="checkbox"/> > Procurement history memo (source, determination of contract type) <input type="checkbox"/> > Sole Source Justification <input type="checkbox"/> > Rationale for Method of Procurement <input type="checkbox"/> > Originating Requisition		<input type="checkbox"/> > Notice of Award (NOA) <input type="checkbox"/> > Notice to Proceed (NTP) <input type="checkbox"/> > Courtesy Notices <input type="checkbox"/> > Cancellation Notices <input type="checkbox"/> > Rejection Letters
<input type="checkbox"/>	<b>2. ORIGINAL IFB/RFP, ADDENDUMS, QUESTIONS &amp; CLARIFICATIONS</b>	<input type="checkbox"/>	<b>14. NOTICES</b>
	<input type="checkbox"/> > Original IFB/RFP <input type="checkbox"/> > Addendums <input type="checkbox"/> > Questions & Clarifications		<input type="checkbox"/> > All protest-related documentation, including protest resolution letter
<input type="checkbox"/>	<b>3. ADVERTISEMENT/NOTICES</b>	<input type="checkbox"/>	<b>15. PROTEST</b>
<input type="checkbox"/>	<b>4. PRE-BID/PROPOSAL CONFERENCE</b>	<input type="checkbox"/>	<b>16. AGREEMENT &amp; AMENDMENTS / CHANGE ORDERS</b>
	<input type="checkbox"/> > Agenda <input type="checkbox"/> > Attendance List		<input type="checkbox"/> > Agreement <input type="checkbox"/> > Amendments <input type="checkbox"/> > Change Orders
<input type="checkbox"/>	<b>5. PLANHOLDERS &amp; INTERNAL DISTRIBUTION LISTS</b>	<input type="checkbox"/>	<b>17. INSURANCE</b>
	<input type="checkbox"/> > Planholders Lists <input type="checkbox"/> > Internal Distribution Lists		<input type="checkbox"/> > Insurance Certificates <input type="checkbox"/> > Insurance-related Memos from Risk Management
<input type="checkbox"/>	<b>6. MAILING RECEIPTS</b>	<input type="checkbox"/>	<b>18. BONDS / PRELIMINARY &amp; STOP NOTICES</b>
<input type="checkbox"/>	<b>7. BIDS/PROPOSALS/NO BIDS</b>	<input type="checkbox"/>	<b>19. CTOs / JOB ORDERS / RELEASES / POs</b>
	<input type="checkbox"/> > Bids/Proposals Received <input type="checkbox"/> > List of Unsuccessful Offers <input type="checkbox"/> > Receipt Log		<input type="checkbox"/> > CTOs <input type="checkbox"/> > Job Orders <input type="checkbox"/> > Releases
<input type="checkbox"/>	<b>8. BAFO</b>	<input type="checkbox"/>	<b>20. LABOR COMPLIANCE</b>
	<input type="checkbox"/> A) BAFO <input type="checkbox"/> B) Evaluation		<input type="checkbox"/> > Debriefing notes, Kick-off meeting notes <input type="checkbox"/> > Subcontractor Substitution
<input type="checkbox"/>	<b>9. EVALUATION COMMITTEE / BID EVALUATION DOCUMENTATION</b>	<input type="checkbox"/>	<b>21. NOTES/MISCELLANEOUS</b>
	<input type="checkbox"/> > Evaluation Committee Package <input type="checkbox"/> > Scoring Sheets <input type="checkbox"/> > Memo of Negotiations <input type="checkbox"/> > Evaluation Summary <input type="checkbox"/> > Bid Review Form		<input type="checkbox"/> > Claims/Liquidated Damages
<input type="checkbox"/>	<b>10. EVALUATION REFERENCE CHECKS</b>	<input type="checkbox"/>	<b>22. CLAIMS/LIQUIDATED DAMAGES</b>
	<input type="checkbox"/> > Cost & Price Analysis/Information <input type="checkbox"/> > Dunn & Bradstreet Reports <input type="checkbox"/> > Reference Checks		<input type="checkbox"/> A) Technical <input type="checkbox"/> B) Contractual
<input type="checkbox"/>	<b>11. EVALUATION INTERVIEWS, DEMONSTRATIONS, AND/OR SITE VISITS</b>	<input type="checkbox"/>	<b>23. CORRESPONDENCE</b>
	<input type="checkbox"/> > Evaluation Interviews <input type="checkbox"/> > Demonstrations <input type="checkbox"/> > Site Visits		<input type="checkbox"/> A) Notice of Completion (NOC) <input type="checkbox"/> B) Completed Close-out Forms
<input type="checkbox"/>	<b>12. DBE INFORMATION</b>	<input type="checkbox"/>	<b>24. CORRESPONDENCE</b>
	<input type="checkbox"/> > Request for Goal Setting <input type="checkbox"/> > DBE Goal evaluation memos <input type="checkbox"/> > DBE Form 103 Reports <input type="checkbox"/> > DBE Commitment Form		<input type="checkbox"/> A) Pre-award <input type="checkbox"/> B) Annual <input type="checkbox"/> C) Interim <input type="checkbox"/> D) CTO/JO/Releases <input type="checkbox"/> E) Close-out
			<b>25. AUDITS</b>

**APPENDIX J: Sample Procurement Check Sheet**

Contract No. \_\_\_\_\_

ACTION	DONE		
Identification of Procurement & Need Date	<input type="checkbox"/>		
Receive Requisition	<input type="checkbox"/>		
Project Codes	<input type="checkbox"/>		
Receive Draft Scope of Work	<input type="checkbox"/>		
Funding Source - Local-State-Federal	<input type="checkbox"/>		
Estimated Contract Amount	<input type="checkbox"/>		
Estimated Duration of Contract	<input type="checkbox"/>		
Identify Affected Departments	<input checked="" type="checkbox"/>		
Reserve Contract Number	<input type="checkbox"/>		
Procurement Type	<input type="checkbox"/> IFB <input type="checkbox"/> 130238	<input type="checkbox"/> RFP <input type="checkbox"/> RFQ	<input type="checkbox"/> Quals Base <input type="checkbox"/> Sole Source
Contract Type	<input type="checkbox"/> Cost Reimbursable	<input type="checkbox"/> Time & Materials	<input type="checkbox"/> FFP / Unit Price <input type="checkbox"/> Other
Interview Decision	<input type="checkbox"/>		
Develop Evaluation Criteria	<input type="checkbox"/>		
Acquisition & Evaluation Schedule	<input type="checkbox"/>		
Develop Potential Bidders List	<input type="checkbox"/>		
Request DBE Goal	<input type="checkbox"/>		
Request Insurance Amounts	<input type="checkbox"/>		
Receive Insurance Amounts	<input type="checkbox"/>		
Comte Agenda Item	<input type="checkbox"/>		
Board Agenda Item	<input type="checkbox"/>		
Advertising	<input type="checkbox"/>		
Identify Newspapers/Magazines	<input type="checkbox"/>		
Requisition for Advertising	<input type="checkbox"/>		
Distribution List (internal)	<input type="checkbox"/>		
Draft Documents - Complete	<input type="checkbox"/>		
Legal Review (if required)	<input type="checkbox"/>		
Evaluation Team Members	<input type="checkbox"/>		
Schedule Evaluation Meeting(s) / Room	<input type="checkbox"/>		
Evaluation Plan	<input type="checkbox"/>		
Final Documents - Complete	<input type="checkbox"/>		
Final Document to Website	<input type="checkbox"/>		
Final Document to Admin for Printing	<input type="checkbox"/>		
Information/Clarification Letter(s)	<input type="checkbox"/>		
Information/Clarification Letter(s)	<input type="checkbox"/>		
Information/Clarification Letter(s)	<input type="checkbox"/>		
Pre-bid/Proposal Meeting Preparation	<input type="checkbox"/>		
Pre-bid/Proposal Meeting Minutes	<input type="checkbox"/>		
Final Addenda	<input type="checkbox"/>		
Bids Opened / Proposals Received	<input type="checkbox"/>		
Evaluation Team 'Kick-off' Meeting	<input type="checkbox"/>		

Contract No. \_\_\_\_\_

ACTION	DONE		
Declarations of Confidentiality / Conflict of Interest Statements Received	<input type="checkbox"/>		
Technical Evaluation Complete	<input type="checkbox"/>		
Cost / Price Proposal Evaluation Complete	<input type="checkbox"/>		
Independent Cost / Price Analysis (if required)	<input type="checkbox"/>		
Request Best & Final Offer	<input type="checkbox"/>		
Receive BAFO	<input type="checkbox"/>		
Complete BAFO Evaluation	<input type="checkbox"/>		
Evaluation Complete	<input type="checkbox"/>		
Recommendation Memo	<input type="checkbox"/>		
Agenda Item (Committee/Board)	<input type="checkbox"/>		
Unopened Price Proposals Returned	<input type="checkbox"/>		
Courtesy Notices	<input type="checkbox"/>		
Contract Award Approved	<input type="checkbox"/>		
Dear John' Letters Sent	<input type="checkbox"/>		
Protest Received	<input type="checkbox"/>		
Protest Resolved	<input type="checkbox"/>		
Notice(s) of Award Sent	<input type="checkbox"/>		
Letter of Award	<input type="checkbox"/>		
Bond Received (If required)	<input type="checkbox"/>		
Manager	<input type="checkbox"/>		
Insurance Approval Received from Risk Manager	<input type="checkbox"/>		
Notice to Proceed (if required)	<input type="checkbox"/>		
Conformed Contract	<input type="checkbox"/>		
Conformed Contract Signed	<input type="checkbox"/>		
Contract Entered in FIS	<input type="checkbox"/>		
Purchase Order Sent to Vendor	<input type="checkbox"/>		

**POST AWARD ANNUAL AUDIT ACTIVITY**

Request Audit	<input type="checkbox"/>		Memo to Finance & Project Manager
Kick-off Meeting	<input type="checkbox"/>		Include vendor(s), auditor, CA, PM, Project Manager from Finance
Receive Draft Audit	<input type="checkbox"/>		
Draft Audit to Vendor for Comment	<input type="checkbox"/>		
Vendor Accepts Audit	<input type="checkbox"/>		In writing, email is okay
CA Request Final Audit	<input type="checkbox"/>		Copy request memo to Project Manager from Finance

