

**90th Meeting of the
Metro Area Transit Coordinating Board
July 13, 2022 – 8:00 am
*Virtual Meeting***

Meeting Agenda

1. Call to Order and Introductions
 - a. Ari Del Rosario, Assistant Transportation Planner, FM Metro COG

2. Action Items:
 - a. October 20, 2021, Meeting Minutes
 - b. February 16, 2022 Meeting Minutes
 - c. MATBUS Procurement Manual Update – Lori Van Beek
 - d. Proposed Moorhead College U-Pass Rates for 2022-23 – Lori Van Beek

3. Informational Items:
 - a. Public Transportation Agency Safety Plan (PTASP) Update – Jordan Smith
 - b. Status of Vehicles Ordered and the Need for Future Flexibility – Jordan Smith
 - c. Update on First Transit Contract Amendment #1 for 2023 – Julie Bommelman and Lori Van Beek
 - d. Moorhead 2023 Budget / MnDOT Grant Application – Lori Van Beek
 - e. Results from Request for Proposals – Cole Swingen
 - i. Shelter Window Cleaning
 - ii. Shelter Snow Removal
 - iii. Custodial Services at GTC & MTG
 - f. 2022 March-June Operations Report – Cole Swingen & Lori Van Beek
 - g. Interesting Transit Articles

4. Other Business



MAT Board
Action Items
July 13, 2022

(701) 232-7500

matbus.com

650 23rd St N. Fargo, ND 58102



MATBUS Procurement Manual Update

- Updated Federal Clauses:
 - Americans with Disabilities Act Access: Rolling Stock, Transportation Services, Facility Design and Construction
 - Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment
 - Veterans Hiring Preference on Capital Construction Projects
 - Solid Waste Disposal
- Updated Purchase Thresholds for Compliance with Federal and State Requirements
- Bid Protest Procedures: Removed references to appealing a bid protest to FTA

Recommended Action: The requested motion is to recommend approval of the updated MATBUS Procurement Manual to the Fargo City Commission and Moorhead City Council.



Proposed 2022-23 Moorhead U-Pass Rates

	2020-21		2019-20					
<u>Enrollment</u>	<u>Enrollment</u>	<u>% of Total</u>	<u>Enrollment</u>	<u>Difference</u>	<u>% Difference</u>			
MSUM	4,866	54.94%	4,894	(28)	-0.57%			
Concordia College	1,912	21.59%	2,224	(312)	-14.03%			
M State	2,079	23.47%	2,540	(461)	-18.15%			
TOTAL	8,857	100.00%	10,435	(801)	-7.68%			

	<u>Enrollment</u>	<u>2022-23</u>	<u>2021-22</u>		<u>2020-21*</u>	<u>2020-21</u>	<u>2019-20**</u>	<u>2019-20</u>
<u>Fee Distribution</u>	<u>% of Total</u>	<u>U-Pass Revenue</u>	<u>U-Pass Revenue</u>	<u>Difference</u>	<u>Revised</u>	<u>Original</u>	<u>Revised</u>	<u>Original</u>
MSUM	54.94%	\$ 43,993	\$ 56,747	\$ (12,754)	\$ 32,244	\$ 55,276	\$ 52,441	\$ 54,043
Concordia College	21.59%	\$ 17,286	\$ 24,146	\$ (6,860)	\$ 14,653	\$ 25,119	\$ 20,577	\$ 21,613
M State	23.47%	\$ 18,796	\$ 24,146	\$ (5,350)	\$ 16,735	\$ 28,689	\$ 25,985	\$ 28,468
TOTAL	100.00%	\$ 80,075	\$ 105,039	\$ (24,964)	\$ 63,632	\$ 109,084	\$ 99,003	\$ 104,124

*2020-21 U-Pass Revenue was reduced to reflect fare-free during COVID-19 from April-December 2020.

**2019-20 U-Pass Revenue was reduced to reflect a decrease in local-share match by the State of Minnesota.

Recommended Action: The requested motion is to recommend approval of the 2022-23 Moorhead U-Pass Rates totalling \$80,075 to the Moorhead City Council.

MAT Board Informational Items

July 13, 2022



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Annual Safety Plan Update

MATBUS Public Transportation Agency Safety Plan was adopted by the cities of Fargo and Moorhead in 2020. The plan must be updated annually no later than July 31th.

The Safety Committee reviewed and approved the plan on June 29th at their bi-monthly committee meeting.

Major changes incorporated into the update include:

- Updated Safety Targets for 2022
- Added an Infectious Disease Mitigation component
- Added Safety Committee approval date
- Removed Safety Culture target
- Removed workdays lost target
- Moved the audit log to be an exhibit to the plan



Annual Safety Plan Update - Targets

Mode of Service	Fatalities (Total)	Fatalities (per 100k VRM)	Work-related employee fatalities
Fixed Route Bus	0	0	0
On Demand/ADA Paratransit	0	0	0

Mean distance between major mechanical failures (Fixed Route)	Mean distance between major mechanical failures (On Demand)	Percentage of PM completed within 10% of scheduled mileage
9000	12000	90

Mode of Service	Safety Event (Total)		Safety Event (per 100k VRM)	
	Fargo	Moorhead	Fargo	Moorhead
Fixed Route Bus	1.8	1.2	.19	.25
On Demand/ADA Paratransit	.2		.06	
Valley Senior Services	0		0	

Mode of Service	Injuries (Total)		Injuries (per 100k VRM)	
	Fargo	Moorhead	Fargo	Moorhead
Fixed Route Bus	1	.4	.11	.08
On Demand/ADA Paratransit	0		0	
Valley Senior Services	0		0	



Status of Vehicles Ordered

- Large Bus Order under the Duluth Transit Authority Consortium
- MAT Paratransit Bus Order from North Central Bus



First Transit Contract Amendment #1 for 2023

Year 3 (Option year 1)

Management Fees:

The 2023 management fees will increase by 6.23%, shared by Moorhead and Fargo based on revenue hours. Management fees provide eight full-time equivalent employees. When driver wages were increased on January 24, 2022, senior management wages and company overhead and profit were not adjusted.

Wages & Benefits:

Driver wages are proposed to increase by 3% in 2023 to reflect a cost of living adjustment. Total driver costs would increase by 5.13% for step increases and improved health insurance benefits. The starting driver wage for 2023 is \$21.90.

Access to Software and Equipment:

The contract terms will be amended to insure that the City has access to technology or surveillance equipment provided by the Contractor installed on a City-owned asset. First Transit has installed DriveCam video used for driver safety training and GeoTab for vehicle performance data.



2023 Budget / MnDOT Grant Applications

- Currently, MATBUS is operating under a temporary suspension of evening service hours from 9:45 p.m. to 11:15 p.m. due to driver shortages. *A resumption of full service is projected in the 2023 budget.*
- The five-year Transit Development Plan for 2021-2025 recommends service increases; however, due to continuing labor shortages and the current economic situation, new service increases are not proposed at this time.
- The overall operating budget change from 2022 to 2023 is \$745,828 (19.37%). The 2022 budget shown on the following slide is based on the grant application and does not reflect the 2022 contract wages increase of \$116,000 to First Transit and City of Fargo approved by City Council in February. LinkFM service reflects fewer events requiring the downtown shuttle.
- CARES Act funds will be utilized as the local share match to the MnDOT grant for both Moorhead and Dilworth services. The remaining local share consists of farebox revenue (including the college U-Pass fees), advertising, concession revenue, and interest earned.



2023 Budget / MnDOT Grant Applications

(Continued)

Budget	Fixed Route	LinkFM & Bluestem Events	Total Fixed Route	Paratransit	Senior Ride	Mobility Management	Total Special Service	TOTAL
2022	\$3,253,291	\$9,026	\$3,262,317	\$394,357	\$153,164	\$41,397	\$588,918	\$3,851,235
2023	\$3,878,394	\$5,743	\$3,884,137	\$503,393	\$166,233	\$43,300	\$712,926	\$4,597,063
Difference	\$625,103	(\$3,284)	\$621,820	\$109,036	\$13,069	\$1,903	\$124,008	\$745,828
% Change	19.21%	-36.38%	19.06%	27.65%	8.53%	4.60%	21.06%	19.37%

- MnDOT asked that budgets not exceed 10% over the previous years. Any increases over 10% require justification.
- Grand funding is competitive and MnDOT may not fully fund the grant. Also, the City Manager or City Council may adjust services levels during budget deliberations as needed for future sustainability as CARES and ARPA grants are consumed.



2023 Budget / MnDOT Grant Applications

(Continued)

JUSTIFICATION FOR EXCEEDING 10%:

- Contracts with First Transit for driver and management services overall increased 13%. The 2023 hourly cost for driver services increased by 16% (10% for amended 2022 wages and 3% for COLA and 3% for wage steps in 2023) and the management fees increased by 8% (2% for amended 2022 and 6% in 2023).
- Metro Senior Ride service provided through a Joint Powers Agreement with the Fargo Park Board overall budget increased by 10%. The largest changes were fuel at 60% and labor costs for drivers and dispatchers.
- Metro Transit Garage operating costs, which consists of fuel, vehicle maintenance labor, parts, repair and vendor outsourcing, and building maintenance increased by 38%. The largest changes were again fuel at 48%, parts at 35% and labor.
- Ground Transportation Center (the main transit center and hub), reflects an increase of 22%. Costs include four additional hours of private security daily, additional custodial service mid-day at a new contract rate (up 60%), and labor for Dispatchers and the Operations Supervisor.
- Moorhead Transit staff wages increased 3% for cost of living plus step increases. The full-time accountant position in the Finance Department that assists transit, based on actual hours worked in transit, decreased transit time to 42% Fixed Route and 18% to Paratransit (from 60% and 40% respectively).



MATBUS requested bids for the following services in 2022. All bids were received through the request for proposals process.

- **Shelter Cleaning** – 5-year contract to clean all MATBUS bus shelters and empty trash receptacles on a weekly/biweekly basis totaled approximately \$245,000 and was awarded to Valley Green & Associates.
- **Snow Clearing and Removal** – 5-year contract to clear and remove snow from all MATBUS bus shelters, as well as the Metro Transit Garage and Ground Transportation Center totaled approximately \$110,000 and was awarded to Valley Green & Associates.
- **MTG & GTC Custodial Services** – 5-year contract to provide daily custodial services for the Metro Transit Garage and Ground Transportation Center facilities has not been awarded yet. A tentative bidder has been selected, but they must be registered through sam.gov before the contract can be awarded.



Ridership

January 1 – June 30 Fargo Ridership by Route

Period	Route 11	Route 13	Route 13U	Route 14	Route 15	Route 16	Route 17
2021	25,857	31,022	5,827	55,140	139,145	11,501	15,707
2022	21,003	30,762	9,755	43,179	107,805	13,396	15,172
Change	-18.77%	-0.84%	67.41%	-21.69%	-22.52%	16.48%	-3.41%

Period	Route 18	Route 20	Route 24	LinkFM	Ind. Park TapRide	Paratransit
2021	14,676	14,714	8,769	0	2,323	24,641
2022	17,376	12,681	8,607	63	3,245	28,171
Change	18.40%	-13.82%	-1.85%	-	39.69%	14.33%

Period	Route 31	Route 32E & Route 32W	Route 33	Route 34	NDSU TapRide
2021	2,296	18,618	17,908	5,084	1,081
2022	6,918	39,258	59,225	10,550	3,020
Change	201.31%	110.86%	230.72%	107.51%	179.37%



Ridership

January 1 – June 30 Moorhead Ridership by Route

Period	Route 1	Route 2	Route 3	Route 4	Route 5	Route 6	Route 9
2021	29,140	39,468	31,249	66,603	24,633	6,083	2,132
2022	30,215	38,144	23,558	49,856	21,806	4,678	1,746
Change	3.69%	-3.35%	-24.61%	-25.14	-11.48%	-23.10	-18.11



Ridership

January 1 – June 30 College Ridership

Period	NDSU	MSUM	Concordia	M State	NDSCS
2021	50,121	4,252	2,106	1,253	129
2022	140,915	8,908	5,025	3,080	199
Change	90,794	4,656	2,919	1,827	70
% Change	181%	110%	139%	146%	54%



Ridership

2022 YTD through February Metro Senior Ride (Moorhead/Dilworth)

METRO SENIOR RIDE 2022									
MOORHEAD & DILWORTH, MINNESOTA									
Month	MOORHEAD SENIORS			DILWORTH SENIORS			TOTAL PASSENGERS		
	2022	2021	% Change	2022	2021	% Change	2022	2021	% Change
January	560	466	20.17%	65	12	441.67%	625	478	30.75%
February	460	485	-5.15%	28	38	-26.32%	488	523	-6.69%
March	723	548	31.93%	54	50	8.00%	777	598	29.93%
April	583	458	27.29%	67	36	86.11%	650	494	31.58%
May	616	450	36.89%	56	39	43.59%	672	489	37.42%
June	626	532	17.67%	76	63	20.63%	702	595	17.98%
July									
August									
September									
October									
November									
December									
TOTAL	3,568	2,939	21.40%	346	238	45.38%	3,914	3,177	23.20%



PUBLIC TRANSPORTATION
AGENCY SAFETY PLAN (PTASP)
FOR THE CITIES OF
FARGO, ND
MOORHEAD, MN

Prepared by: Jordan Smith

METRO TRANSIT GARAGE, 650 23rd St. N. Fargo, ND 58102



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TRANSIT AGENCY INFORMATION

Transit Agency Name	City of Fargo / City of Moorhead (jointly operating as MATBUS)
Transit Agency Address	Metro Transit Garage, 650 23 rd St N Fargo, ND 58102
Name and Title of Accountable Executive	Julie Bommelman, Fargo Transit Director / Dan Mahli, Moorhead City Manager
Name of Chief Safety Officer(s) or SMS Executives	Jordan Smith, Fargo Assistant Transit Director - Fleet and Facilities / Lori Van Beek, Moorhead Transit Manager
Mode(s) of Service Covered by This Plan	Fixed Route; Paratransit
List of All FTA Funding Types	5307, 5310, 5339
Mode(s) of Service Provided by the Transit Agency (Directly operated or contracted service)	Modes: Fixed Route and Paratransit. The Cities of Fargo, ND and Moorhead, MN use contracted labor to operate the revenue vehicles for both modes.
Does the agency provide transit service on behalf of another transit agency?	The City of Fargo and City of Moorhead have a Joint Powers Agreement (JPA) for the operation of public transit in the metropolitan area. Under that agreement, the City of Fargo provides staff for building maintenance, vehicle maintenance, Fixed Route dispatch, mobility management, and Paratransit Reservationists, with the City of Moorhead paying a portion based on cost-sharing formulas in the JPA. The City of Fargo and the City of Moorhead jointly own the Metro Transit Garage where vehicles are stored, fueled and maintained and where administrative offices are located for City and contract staff. Fargo and Moorhead together select a contracted operator, but have separate contracts with the operator. Fixed Route vehicles are owned by the individual cities. Paratransit vehicles are owned by the individual cities; however, Moorhead leases their vehicles to Fargo for operation of the metro Paratransit system. The City of Fargo owns and operates the Ground Transportation Center (GTC) which acts as the main transfer facility for several routes from Fargo and Moorhead; there are also staff members located at the GTC. Moorhead cost shares in the GTC Operations.

ORGANIZATION STRUCTURE AND SYSTEM SAFETY RESPONSIBILITIES

<p>CITY OF FARGO Accountable Executive Julie Bommelman</p> <p>CITY OF MOORHEAD Accountable Executive Dan Mahli</p>	<p>The Transit Director serves as the City of Fargo Transit Accountable Executive and the City Manager serves as the City of Moorhead Accountable Executive with the following authorities, accountabilities, and responsibilities under this plan:</p> <ul style="list-style-type: none"> Controls and directs human and capital resources needed to develop and maintain the PTASP and SMS.
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	<ul style="list-style-type: none"> • Designates an adequately trained Chief Safety Officer who is a direct report. • Ensures that City of Fargo SMS is effectively implemented. • Ensures action is taken to address substandard performance in SMS. • Assumes ultimate responsibility for carrying out City of Fargo and City of Moorhead PTASP and SMS. • Maintains responsibility for carrying out the agency's Transit Asset Management Plan.
<p>CITY OF FARGO Chief Safety Officer Jordan Smith</p> <p>CITY OF MOORHEAD Chief Safety Officer Lori Van Beek</p>	<p>The Fargo Accountable Executive designates the Assistant Transit Director - Fleet and Facilities as the Chief Safety Officer. The Moorhead Accountable Executive designates the Moorhead Transit Manager as the Chief Safety Officer. The Chief Safety Officer has the following authorities, accountabilities, and responsibilities under this plan:</p> <ul style="list-style-type: none"> • Develops the PTASP and SMS policies and procedures • Ensures and oversees day-to-day implementation and operation of the SMS. • Chairs the Safety Committee. <ul style="list-style-type: none"> - Coordinates the activities of the committee - Establishes and maintains the Safety Event Log to monitor and analyze trends in hazards, occurrences, incidents, and accidents - Maintains and distributes minutes of committee meetings • Advises the Accountable Executive on SMS progress and status. • Identifies substandard performance in the SMS and develops action plans for approval by the Accountable Executive. • Ensures policies are consistent with safety objectives • Provides Safety Risk Management expertise and supports other personnel who conduct and oversee Safety Assurance activities.
<p>Agency Leadership and Management</p>	<p>Agency Leadership and Management also have authorities and responsibilities for day-to-day SMS implementation and operation of the SMS under this plan. Agency Leadership and Management include:</p> <ul style="list-style-type: none"> • Fargo Assistant Transit Director • Moorhead Transit Manager • Driver Services General Manager (Contracted) • Driver Services Operations Manager (Contracted) • Driver Services Safety Manager (Contracted) • Operations managers and supervisors <p>Leadership and Management personnel have the following authorities, accountabilities, and responsibilities:</p> <ul style="list-style-type: none"> • Participate as members of the Safety Committee (operations managers and supervisors will be rotated through the Safety Committee on a two-year term and other positions are permanent members) • Complete training on SMS and PTASP elements. • Oversee day-to-day operations of the SMS in their departments. • Modify policies in their departments consistent with implementation of the SMS, as necessary • Provide subject matter expertise to support implementation of the SMS as requested by the Accountable Executive or the Chief Safety Officer, including SRM activities, investigation of safety events, development of safety risk mitigation, and monitoring of mitigation effectiveness.

Key Staff and Activities	<p>City of Fargo and City of Moorhead Transit use the Safety Committee, as well as the monthly Drivers' Meeting and weekly Team Meeting, to support its SMS and safety programs:</p> <ul style="list-style-type: none"> - Safety Committee: Any safety hazard reported will be jointly evaluated by the Safety Committee and the Chief Safety Officer during the Safety Committee Meeting. The Safety Committee is made up of the following members: <ul style="list-style-type: none"> - Fargo and Moorhead Chief Safety Officers (Permanent Members) - City of Fargo Assistant Transit Director - Operations - City of Fargo Operations Supervisor (Permanent Member) - Driver Services Safety Manager (Permanent Member) - Valley Senior Services Transportation Manager (Permanent Member) - City of Fargo Dispatcher (Two-Year Term) - Maintenance Shop Supervisor (Two-Year Term) - Maintenance Shop Building Supervisor (Two-Year Term) - Bus Operator (Two-Year Term) <p>Safety Committee will meet bimonthly to review issues and make recommendations to improve safety.</p> <ul style="list-style-type: none"> - Drivers' Meetings: A permanent agenda item in all monthly Drivers' Meetings is dedicated to safety. Safety issues are discussed and documented. - All Staff Team Meetings: Hazard reports and mitigations will be shared, safety topics will be brought up for open discussion, further feedback solicited, and hazard self-reporting further encouraged. Information discussed in these meetings will be documented.
Contracted Agencies Covered under this Plan	<p>Valley Senior Services (Metro Senior Ride)</p> <ul style="list-style-type: none"> • Valley Senior Services operates a transportation service call Metro Senior Ride. These services are designed for people age 60 and older. The City of Moorhead leases vehicles to Valley Senior Services to assist them in providing rides for the elderly.

PLAN DEVELOPMENT, APPROVAL AND UPDATES

Name of Person Who Drafted This Plan	Jordan Smith, Assistant Transit Director - Fleet and Facilities		
CITY OF FARGO Signature by the Accountable Executive	Signature	Title	Date
		Transit Director	
CITY OF FARGO Approval by Proper Authority	Signature	Title	Date
		Mayor	
Relevant Documentation (title and location)			

CITY OF MOORHEAD Signature by the Accountable Executive	Signature	Title	Date
		City Manager	
CITY OF MOORHEAD Approval by Proper Authority	Signature	Title	Date
		Mayor	
	Relevant Documentation (title and location)		

Safety Committee Approval Date	6/29/2022
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SAFETY POLICIES AND PROCEDURES

1.1 COMMITMENT TO SAFETY

We are committed to Safety Management as a systematic and comprehensive approach to identify safety hazards and risks associated with transit system operations and related maintenance activities. We have adopted a Safety Management System (SMS) framework as an explicit element of the agency's responsibility by establishing safety policy; identifying hazards and controlling risks; goal setting, planning and measuring performance. We have adopted SMS as means by which to foster agency-wide support for transit safety by establishing a culture where management is held accountable for safety and everyone in the organization takes an active role in securing transit safety.

To ensure transit safety and in order to comply with Federal Transit Administration (FTA) requirements, we have developed and adopted this Public Transit Agency Safety Plan (PTASP) to comply with FTA regulations established by section 5329(d) of the Moving Ahead for Progress in the 21st Century (MAP-21) Act.

The Fargo Transit Director, Moorhead City Manager, Metropolitan Council of Governments and City of Fargo Commission/City of Moorhead Council, in cooperation with the North Dakota Department of Transportation and Minnesota Department of Transportation, have reviewed the PTASP and assures that the content has met the requirements of Section 5329 (d) of MAP-21 through the establishment of a comprehensive Safety Management System (SMS) framework. Fundamental safety beliefs guiding our approach include:

- Safety is a core business value
- Safety excellence is a key component of our mission
- Safety is a source of our competitive advantage; our business will be strengthened by making safety excellence an integral part of all our public transportation activities; and
- Accidents and serious incidents are preventable; they are often preceded by precursors (events, behavior, and conditions) that can be identified, assessed and mitigated.

Basic elements of our safety approach include:

- Top Management Commitment to Safe Operations
- Responsibility and Accountability of all Employees

- Clearly Communicate Safety Goals
- Safety Assurance and Performance Measurement for Improvement

1.2 ANNUAL PTASP REVIEW AND UPDATE

Our Fargo-Moorhead management will review the PTASP annually, update the document as necessary and implement the changes within a timeframe that will allow the agency to timely submit the annual self-certification of compliance to the Federal Transit Administration (FTA). Annual self-certification will consist of the Fargo Transit Director and Moorhead City Manager signing and dating this document and submitting to FTA for review and approval. The annual review of the PTASP will be conducted by the agency as part of the PTASP review to be conducted no later than **June 30th** of each calendar year. Necessary updates outside the annual update window will be handled as PTASP addendums which will be incorporated in the body of the PTASP. Reviews of the PTASP by the local agency, any subsequent updates and addendums, adoption and distribution activities will be documented in the PTASP Document Activity Log.

1.3 SAFETY PROMOTION, CULTURE AND TRAINING

We believe safety promotion is critical to the success of SMS by ensuring that the entire organization fully understands and trusts the SMS policies, procedures and structure. It involves establishing a culture that recognizes safety as a core value, training employees in safety principles and allowing open communications of safety issues.

1.4 SAFETY CULTURE

Positive safety culture must be generated from the top-down. The actions, attitudes and decisions at the policy-making level must demonstrate a genuine commitment to safety. Safety must be recognized as the responsibility each employee with the ultimate responsibility for safety resting with the Fargo Transit Director and Moorhead City Manager. Employees must trust that they will have management support for decisions made in the interest of safety while recognizing that intentional breaches of safety will not be tolerated.

The primary goal of safety promotion is to develop a positive safety culture that allows SMS to succeed. A positive safety culture is defined as one which is:

- **An Informed Culture**
 - Employees understand the hazards and risks involved in their areas of operation
 - Employees are provided with the necessary knowledge, training, and resources
 - Employees work continuously to identify and overcome threats to safety
- **A Just Culture**
 - Employees know and agree on what is acceptable and unacceptable behavior
 - Human errors must be understood but negligence and willful violations cannot be tolerated
- **A Reporting Culture**
 - Employees are encouraged to voice safety concerns and to share critical safety information without the threat of punitive action
 - When safety concerns are reported they are analyzed, and appropriate action is taken
- **A Learning Culture**
 - Learning is valued as a lifetime process beyond basic skills training
 - Employees are encouraged to develop and apply their own skills and knowledge to enhance safety
 - Employees are updated on safety issues by management and safety reports are fed back to staff so that everyone learns the pertinent lessons

1.5 TRAINING

During the initial implementation of the SMS, specific training will be required for all employees, including contract staff, to explain the agency's safety culture and describe how SMS works. The Safety Officer is the resource person for providing a corporate perspective on our approach to safety management. Once the SMS is implemented, safety training needs will depend on the safety responsibilities of the individual staff members and the nature of tasks performed.

- **Level One Training**
 - **Initial Safety Training for All Staff**
 - Basic Principles of safety management including the integrated nature of SMS, risk management, safety culture, etc.
 - Corporate safety philosophy, safety goals and objectives, safety policy and safety standards
 - Importance of complying with the safety policy and SMS procedures, and the approach to disciplinary actions for different safety issues
 - Organizational structure, roles, and responsibilities of staff in relation to safety
 - Current safety record, including areas of weakness
 - Reporting accidents, incidents, and perceived hazards
 - Feedback and communication methods for the dissemination of safety information
 - Safety promotion and information dissemination
- **Level Two Training**
 - **Safety Training for Operations Personnel – In Addition to Level One Training**
 - Unique hazards facing operational personnel
 - Seasonal safety hazards and procedures
 - Procedures for hazard reporting
 - Procedures for reporting accidents and incidents
 - Emergency procedures
- **Level Three Training**
 - **Safety training program for all employees and contractors directly responsible for safety.**
 - Bus vehicle operators (Driver Training Performed by Driver Services Contractor)
 - Dispatchers
 - Maintenance technicians
 - Managers and supervisors
 - Leadership and Executive Management
 - Chief Safety Officers

Resources will be dedicated to conduct a comprehensive safety training program, as well as training on SMS roles and responsibilities. The scope of the safety training, including annual refresher training, is appropriate to each employee's individual safety-related job responsibilities and their role in the SMS.

Operations safety-related skill training may include the following:

The following training is performed by the Driver Services Contractor. Reference Exhibit A

- New-hire bus vehicle operator classroom and hands-on skill training
- Bus operator refresher training
- Bus operator retraining (recertification or return to work)

- Classroom and on-the-job training for operations supervisors and managers
- Accident investigation training for operations supervisors and managers

Vehicle maintenance safety-related skill training includes the following:

The following training is performed by the City of Fargo

- Ongoing vehicle maintenance technician skill training
- Ongoing skill training for vehicle maintenance supervisors
- Accident investigation training for vehicle maintenance supervisors
- Ongoing hazardous material training for vehicle maintenance technicians and supervisors
- Training provided by vendors.

1.6 INFECTIOUS DISEASE MITIGATION

Minimizing the spread of an infectious disease is a priority of the Safety Plan. To minimize the spread of infectious diseases, we will rely on physical barriers, air and surface purification systems, hand sanitizing stations and routine cleanings. All vehicles operated in revenue service will be equipped with an air and surface purification system and have a minimum of one hand sanitation station on board. Vehicles operated on the fixed-route system will be equipped with physical operator barriers that create a separation between the operators and the riding public. Deep cleanings will be performed on all revenue vehicles on a routine basis. We will follow any Federal, State or local guidance on mitigating an infectious disease.

SAFETY RISK MANAGEMENT

2.1 HAZARD IDENTIFICATION

Establishing effective hazard identification programs is fundamental to safety management. Hazard identification can be reactive or proactive in nature. Occurrence reporting, incident investigation and trend monitoring are essentially reactive. Other hazard identification methods actively seek feedback by observing and analyzing day-to-day operations. Common hazard identification activities include:

- Safety assessments
- Trend monitoring
- Hazard and incident reporting
- Safety surveys
- Safety audits
- Evaluation of customer suggestions and complaints

The number of near-miss incidents, known as precursors, is significantly greater than the number of accidents for comparable types of events. The practice of reporting and learning from accident precursors is a valuable complement to other hazard identification practices. To be successful, hazard identification must take place within a non-punitive and just safety culture. We will employ systematic safety improvements by discovering and learning of potential weaknesses in the system's safety. We will utilize the FTA's Resource Library to help identify potential sources of hazard information.

The Chief Safety Officer(s) or their designee is responsible for the risk assessment. The Chief Safety Officers may conduct further analyses of hazards and consequences to collect information and identify additional consequences and to inform which hazards should be prioritized for safety risk assessment.

Safety risks are recorded and tracked in SharePoint. This will allow for any recorded safety risks to be searched and reports to be generated when necessary.

2.1 NON-PUNITIVE REPORTING POLICY

We are committed to the safest transit operating standards possible. To achieve this, it is imperative that we have uninhibited reporting of all incidents and occurrences which may compromise the safe conduct of our operations. To this end, every employee is responsible for the communication of any information that may affect the integrity of transit safety. Such communication must be completely free of any form of reprisal.

We will not take disciplinary action against any employee who discloses an incident or occurrence involving transit safety. This policy shall not apply to information we receive from a source other than the employee, or which involves an illegal act, or deliberate or willful disregard of safety regulations or procedures.

The primary responsibility for transit safety rests with the Transit Operator and Safety Officers, however transit safety is everyone's concern.

Our method of collection, recording and disseminating information from transit safety reports, has been developed to protect the identity of any employee who provides transit safety information. We urge all staff to practice the SMS transit safety procedures outlined in the PTASP to help us become a leader in providing transit riders and employees with the highest level of transit safety.

2.2 RISK ASSESSMENT

Once hazards have been identified, we will conduct an assessment to determine their potential consequences. Factors to be considered are the likelihood of the occurrence, the severity of the consequences should there be an occurrence and the level of exposure to the hazard. We will assess risks subjectively by experiences personnel using a Risk Assessment Matrix (RAM). We will use the RAM to measure the level of safety risk in terms of severity and likelihood. This will allow us to combine the assessment of severity and likelihood to determine the overall risk rating of the potential consequence of the hazard.

Results of the risk assessment process will help determine whether the risk is being appropriately managed or controlled. If the risks are acceptable, the hazard will simply need monitoring. If the risks are unacceptable, steps will be taken to lower the risk to an acceptable or tolerable level, or to remove or avoid the hazard.

2.3 RISK MITIGATION

The assessment process may indicate that certain hazards have an acceptable level of risk, while others require mitigation to an acceptable or tolerable level. The level of risk can be lowered by reducing the severity of the potential consequences, by reducing the likelihood of occurrence and/or by reducing the exposure to that risk. In general, we will take the following safety actions to mitigate risk. These actions can be categorized into three broad categories, including:

- **Physical Defense**
 - These include objects and technologies that are engineered to discourage, or warn against, or prevent inappropriate action or mitigate the consequences of events. (e.g. traffic control devices, fences, safety restraining systems)
- **Administrative Defenses**

- These include procedures and practices that mitigate the likelihood of an accident or incident. (e.g. safety regulations, standard operating procedures, supervision inspection, training)
- **Behavioral Defenses**
 - These include behavioral interventions through education and public awareness campaigns aimed at reducing risky and reckless behavior of motorists, passengers and pedestrians; factors outside the control of our agency.

2.4 PRIORITIZE SAFETY RISKS

Once hazards have been identified and risk levels assessed, we will prioritize safety risks. A Prioritized Safety Risk Log will be used to organize the system safety risks. The Prioritized Safety Risk Log will identify the priority level for safety risks, a description of the risk, planned mitigation strategies to address the risk, the outcome of the planned mitigation strategies, responsible staff, timeline of the planned mitigation strategies and the status of the prioritized safety risk. We will update the Prioritized Safety Risk Log to ensure continual progress towards risk reduction.

2.5 SAFETY ASSURANCE

Safety Assurance provides the necessary feedback to ensure that the SMS is functioning, and we are meeting or exceeding its safety objectives. Safety assurance requires a clear understanding of how safety performance will be evaluated and what metrics will be used to assess system safety and determine if the safety management system is working properly. Having decided on the metrics by which success will be measured; safety management requires embedding these metrics in the organizational culture and encouraging their use for ongoing performance improvement.

SAFETY PERFORMANCE MONITORING AND MEASUREMENT

3.1 MONITORING THE SYSTEM FOR COMPLIANCE WITH PROCEDURES FOR OPERATIONS AND MAINTENANCE

We have many processes in place to monitor our entire transit system for compliance with operations and maintenance procedures including:

- Safety audits,
- Informal inspections,
- Regular review of onboard camera footage to assess drivers and specific incidents,
- Investigation of safety occurrences,
- Safety review prior to the launch or modification of any facet of service,
- Daily data gathering and monitoring of data related to the delivery of service, and
- Regular vehicle inspections and preventative maintenance.

Results from the above processes are compared against recent performance trends periodically by the Chief Safety Officers to determine where action needs to be taken. The Chief Safety Officers enter any identified non-compliant or ineffective activities, including mitigations, into the tracking system in SharePoint for reevaluation by the Safety Committee.

3.2 MONITORING OPERATIONS TO IDENTIFY ANY SAFETY RISK MITIGATIONS THAT MAY BE INEFFECTIVE, INAPPROPRIATE, OR WERE NOT IMPLEMENTED AS INTENDED

We monitor safety risk mitigations to determine if they have been implemented and are effective, appropriate, and working as intended. The Chief Safety Officers maintain a list of safety risk mitigations. The mechanism for monitoring safety risk mitigations varies depending on the mitigation

The Chief Safety Officers establish one or more mechanisms for monitoring safety risk mitigations as part of the mitigation implementation process and assigns monitoring activities to the appropriate director, manager, or supervisor. These monitoring mechanisms may include tracking a specific metric on daily, weekly, or monthly logs or reports; conducting job performance observations; or other activities. The Chief Safety Officer will endeavor to make use of existing processes and activities before assigning new information collection activities.

The Chief Safety Officers and Safety Committee review the performance of individual safety risk mitigations during periodic Safety Committee meetings, based on the reporting schedule determined for each mitigation, and determine if a specific safety risk mitigation is not implemented or performing as intended. If the mitigation is not implemented or performing as intended, the Safety Committee will propose a course of action to modify the mitigation or take other action to manage the safety risk. The Chief Safety Officers will approve or modify this proposed course of action and oversee its execution.

The Chief Safety Officers and Safety Committee also monitor operations on a large scale to identify mitigations that may be ineffective, inappropriate, or not implemented as intended by:

- Reviewing results from accident, incident, and occurrence investigations;
- Monitoring employee safety reporting;
- Reviewing results of internal safety audits and inspections; and
- Analyzing operational and safety data to identify emerging safety concerns. The Chief Safety Officers work with the Safety Committee and Accountable Executive to carry out and document all monitoring activities.

3.3 INVESTIGATIONS OF SAFETY EVENTS TO IDENTIFY CAUSAL FACTORS

We maintain documented procedures for conducting safety investigations of events (accidents, incidents, and occurrences, as defined by FTA) to find causal and contributing factors and review the existing mitigations in place at the time of the event. These procedures also reflect all traffic safety reporting and investigation requirements established by the state of North Dakota and Minnesota Department of Motor Vehicles.

The Chief Safety Officers maintain all documentation of investigation policies, processes, forms, checklists, activities, and results. An investigation report is prepared and sent to the Safety Committee for integration into their analysis of the event.

- The accident was preventable or non-preventable;
- Personnel require discipline or retraining;

- The causal factor(s) indicate(s) that a safety hazard contributed to or was present during the event; and
- The accident appears to involve underlying organizational causal factors beyond just individual employee behavior.

3.4 MONITORING INFORMATION REPORTED THROUGH THE INTERNAL SAFETY REPORTING PROGRAM

The Chief Safety Officers and Safety Committee routinely review safety data captured in employee safety reports, safety meeting minutes, customer complaints, and other safety communication channels. When necessary, the Chief Safety Officers and Safety Committee ensure that the concerns are investigated or analyzed through the Safety Risk Mitigation (SRM) process.

The Chief Safety Officers and Safety Committee also review internal and external reviews, including audits and assessments, with findings concerning safety performance, compliance with operations and maintenance procedures, or the effectiveness of safety risk mitigations.

3.5 SAFETY COMMUNICATION

The Chief Safety Officers coordinate the safety communication activities for the SMS. Activities focus on the three categories of communication activity established in 49 CFR Part 673 (Part 673):

- Communicating safety and safety performance information throughout the agency: Communicates information on safety and safety performance monthly during all regular Team Meetings and contractor Driver Safety Meetings. A permanent agenda item in all monthly Driver Safety Meetings dedicated to safety. Information typically conveyed during these meetings includes safety performance statistics, lessons learned from recent occurrences, upcoming events that may impact service or safety performance, and updates regarding SMS implementation. Information is requested from drivers during these meetings, which is recorded in meeting minutes. Finally, the Safety Officer posts safety bulletins and flyers on the bulletin boards located in all bus operator and maintenance technician break rooms, advertising safety messages and promoting awareness of safety issues.
- Communicating information on hazards and safety risks relevant to employees' roles and responsibilities throughout the agency: As part of new-hire training, safety policies and procedures are distributed to all employees. Training on these policies and procedures and discusses them during safety talks between supervisors and bus operators and vehicle technicians. For newly emerging issues or safety events at the agency, the Chief Safety Officers issue bulletins or messages to employees that are reinforced by supervisors in one-on-one or group discussions with employees.
- Informing employees of safety actions taken in response to reports submitted through the ESRP: Provides targeted communications to inform employees of safety actions taken in response to reports submitted through the ESRP, including handouts and flyers, safety talks, updates to bulletin boards, and one-on-one discussions between employees and supervisors, including contract operator employees and supervisors.

DEFINING SAFETY GOALS AND OBJECTIVES/OUTCOMES

Setting safety goals and objectives is part of strategic planning and establishing safety policy. Clearly defining safety goals is the first part in creating a safety performance measurement system. Safety goals are general descriptions of a desirable long-term impact. Whereas safety objectives or outcomes are more specific statements that define measurable results.

The safety objectives and outcomes will be measured by defining specific performance metrics, including baseline and targets that we will determine as reasonable.

4.1 DEFINING SAFETY PERFORMANCE MEASURES

We will utilize these basic principles of performance measurement:

- Stakeholder involvement and acceptance
- Focus on agency goals and activities
- Clarity and precision
- Credibility
- Forward-looking measures
- Integration into agency decision-making
- Timely reporting
- Realism of goals and targets

4.2 METRICS

Defining safety performance measures includes the use of safety related metrics. There are some general safety related metrics that can be used to measure transit safety performance. The following is a list of performance target areas and metrics that we will use.

Injuries	<ul style="list-style-type: none">• Number of Injuries (Fixed Route)• Number of Injuries (On Demand)• Number of Injuries per 100,000 vehicle revenue miles (Fixed Route)• Number of Injuries per 100,000 vehicle revenue miles (On Demand)
Fatalities	<ul style="list-style-type: none">• Number of Fatalities (Fixed Route)• Number of Fatalities (On Demand)• Number of Fatalities per 100,000 vehicle revenue miles (Fixed Route)• Number of Fatalities per 100,000 vehicle revenue miles (On Demand)• Work-related fatalities per specific time period
Safety Events	<ul style="list-style-type: none">• Total Number of Safety Events (Fixed Route)• Total Number of Safety Events (On Demand)• Number of Safety Events per 100,000 vehicle revenue miles (Fixed Route)• Number of Safety Events per 100,000 Vehicle revenue miles (On Demand)
System Reliability	<ul style="list-style-type: none">• Mean distance between major mechanical failure (Fixed Route)• Mean distance between major mechanical failure (On Demand)• Percent of preventative maintenance inspections completed within 10% of scheduled mileage

4.3 TARGETS

Measuring safety performance metrics includes targets or goal we strive to accomplish. The following lists are the targets we will set for our agency. The Cities of Fargo, ND and Moorhead, MN will officially transmit its targets to the States of North Dakota and Minnesota by July 31 of each year. The following targets are based on a five year rolling average of NTD reportable safety events.

Mode of Service	Injuries (Total)		Injuries (per 100k VRM)	
	Fargo	Moorhead	Fargo	Moorhead
Fixed Route Bus	1	.4	.11	.08
On Demand/ADA Paratransit	0		0	
Valley Senior Services	0		0	

Mode of Service	Fatalities (Total)	Fatalities (per 100k VRM)	Work-related employee fatalities
Fixed Route Bus	0	0	0
On Demand/ADA Paratransit	0	0	0

Mode of Service	Safety Event (Total)		Safety Event (per 100k VRM)	
	Fargo	Moorhead	Fargo	Moorhead
Fixed Route Bus	1.8	1.2	.19	.25
On Demand/ADA Paratransit	.2		.06	
Valley Senior Services	0		0	

Mean distance between major mechanical failures (Fixed Route)	Mean distance between major mechanical failures (On Demand)	Percentage of PM completed within 10% of scheduled mileage
9000	12000	90

Safety Performance Target Coordination		
The Accountable Executive shares our PTASP, including safety performance targets, with the ND DOT and MN DOT in our service area each year after its formal adoption by the City of Fargo Commission and the City of Moorhead City Council. Personnel are available to coordinate with ND DOT and MN DOT and the MPO in the selection of ND DOT and MN DOT and MPO safety performance targets upon request.		
Targets Transmitted to the State	ND DOT	Date Targets Transmitted
Targets Transmitted to the State	MN DOT	Date Targets Transmitted

4.4 INTEGRATING RESULTS INTO AGENCY DECISION-MAKING PROCESS

We are committed to using the data collected and information learned to inform decision making and instill positive change. The main objective is the continuous improvement of transit system safety. When performance goals are not met, we will identify why such goals were not met and what actions can be taken to minimize the gap in achieving defined goals. However, when goals are easily achieved, action will be taken to exceed expectations and re-establish a reasonable baseline.

Uses of Performance Results include:

- Focus attention on performance gaps and trigger in-depth investigations of what performance problems exist
- Help make informed resource allocation decisions
- Identify needs for staff training or technical assistance
- Help motivate employees to continue making program improvements
- Support strategic planning efforts by providing baseline information for tracking purposes
- Identify best practices through benchmarking
- Respond to elected officials and the public's demand for accountability

4.5 SUSTAINING A SAFETY MANAGEMENT SYSTEM

In order to sustain a safety management system, we will ensure that particular processes are employed to instill an organizational foundation. Examples of actions taken to sustain SMS include:

- **Create measurement-friendly culture**
 - All staff, including management, should be actively engaged in creating measurement-friendly culture by promoting performance measurement as a means of continuous improvement. Management will also lead by example and utilize performance metrics in decision making processes
- **Build organization capacity**
 - Investment in developing skilled human resources capacity is essential to sustaining an SMS. Both technical and managerial skills will be needed for data collection and analysis, and goal setting. We are committed to providing the financial resources required for organizational capacity and maintaining an SMS on a continuous basis.
- **Reliability and transparency of performance results**
 - The SMS will be able to produce and report results, both good and bad. Performance information should be transparent and made available to all stakeholders. Messengers should be protected to preserve the integrity of the measurement system. The focus should be on opportunities for improvement rather than allocating blame.
- **Demonstrate continuous commitment to measurement**
 - Visible commitment to using metrics is a long-term initiative. We will demonstrate a commitment to performance measurement by establishing a formal process of reporting performance results, such as including Transit Safety and Performance measurement as a standing agenda item at Transit Board, City Commission and City Council meetings.

SUPPORTING DOCUMENTATION

We will maintain documentation related to the implementation of its SMS; the programs, policies, and procedures used to carry out this PTASP; and the results from its SMS processes and activities for three

years after creation. Documentation will be maintained in SharePoint and will be available to the FTA or other Federal or oversight entity upon request.

5.1 DEFINITIONS OF TERMS USED IN THE SAFETY PLAN

We incorporate all of FTA's definitions that are in 49 CFR § 673.5 of the Public Transportation Agency Safety Plan regulation.

- Accident means an Event that involves any of the following: A loss of life; a report of a serious injury to a person; a collision of public transportation vehicles; an evacuation for life safety reasons.
- Accountable Executive means a single, identifiable person who has ultimate responsibility for carrying out the Public Transportation Agency Safety Plan of a public transportation agency; responsibility for carrying out the agency's Transit Asset Management Plan; and control or direction over the human and capital resources needed to develop and maintain both the agency's Public Transportation Agency Safety Plan, in accordance with 49 U.S.C. 5329(d), and the agency's Transit Asset Management Plan, in accordance with 49 U.S.C. 5326.
- Equivalent Authority means an entity that carries out duties similar to that of a Board of Directors for a recipient or subrecipient of FTA funds under 49 U.S.C. Chapter 53, including sufficient authority to review and approve a recipient or subrecipient's Public Transportation Agency Safety Plan.
- Event means any Accident, Incident, or Occurrence.
- Hazard means any real or potential condition that can cause injury, illness, or death; damage to or loss of the facilities, equipment, rolling stock, or infrastructure of a public transportation system; or damage to the environment.
- Incident means an event that involves any of the following: a personal injury that is not a serious injury; one or more injuries requiring medical transport; or damage to facilities, equipment, rolling stock, or infrastructure that disrupts the operations of a transit agency.
- Investigation means the process of determining the causal and contributing factors of an accident, incident, or hazard, for the purpose of preventing recurrence and mitigating risk.
- National Public Transportation Safety Plan means the plan to improve the safety of all public transportation systems that receive Federal financial assistance under 49 U.S.C. Chapter 53.
- Occurrence means an Event without any personal injury in which any damage to facilities, equipment, rolling stock, or infrastructure does not disrupt the operations of a transit agency.
- Operator of a public transportation system means a provider of public transportation as defined under 49 U.S.C. 5302.
- Performance measure means an expression based on a quantifiable indicator of performance or condition that is used to establish targets and to assess progress toward meeting the established targets.

- Performance target means a quantifiable level of performance or condition, expressed as a value for the measure, to be achieved within a time period required by the FTA.
- Public Transportation Agency Safety Plan (PTASP or Agency Safety Plan) means the documented comprehensive Agency Safety Plan for a transit agency that is required by 49 U.S.C. 5329 and Part 673.
- Risk means the composite of predicted severity and likelihood of the potential effect of a hazard.
- Risk mitigation means a method or methods to eliminate or reduce the effects of hazards.
- Safety Assurance means processes within a transit agency's Safety Management System that function to ensure the implementation and effectiveness of safety risk mitigation, and to ensure that the transit agency meets or exceeds its safety objectives through the collection, analysis, and assessment of information.
- Safety Management Policy means a transit agency's documented commitment to safety, which defines the transit agency's safety objectives and the accountabilities and responsibilities of its employees in regard to safety.
- Safety Management System (SMS) means the formal, top-down, organization-wide approach to managing safety risk and assuring the effectiveness of a transit agency's safety risk mitigation. SMS includes systematic procedures, practices, and policies for managing risks and hazards.
- Safety performance target means a performance target related to safety management activities.
- Safety Promotion means a combination of training and communication of safety information to support SMS as applied to the transit agency's public transportation system.
- Safety risk Assessment means the formal activity whereby a transit agency determines Safety Risk Management priorities by establishing the significance or value of its safety risks.
- Safety Risk Management (SRM) means a process within a transit agency's Agency Safety Plan for identifying hazards and analyzing, assessing, and mitigating safety risk.
- Serious injury means any injury which: (1) Requires hospitalization for more than 48 hours, commencing within 7 days from the date when the injury was received; (2) Results in a fracture of any bone (except simple fractures of fingers, toes, or noses); (3) Causes severe hemorrhages, nerve, muscle, or tendon damage; (4) Involves any internal organ; or (5) Involves second- or third-degree burns, or any burns affecting more than 5 percent of the body surface.
- Transit agency means an operator of a public transportation system.
- Transit Asset Management Plan (TAMP) means the strategic and systematic practice of procuring, operating, inspecting, maintaining, rehabilitating, and replacing transit capital assets to manage their performance, risks, and costs over their life cycles, for the purpose of providing safe, cost effective, and reliable public transportation, as required by 49 U.S.C. 5326 and 49 CFR Part 625

5.2 COMMONLY USED ACRONYMS

Acronym	Word or Phrase
ADA	American's with Disabilities Act of 1990
ASP	Agency Safety Plan (also referred to as a PTASP in part 673)
CFR	Code of Federal Regulations
ESRP	Employee Safety Reporting Program
FTA	Federal Transit Administration
MATBUS	Fargo-Moorhead Metropolitan Area Transit Public Bus System
MNDOT	Minnesota Department of Transportation
MPO	Metropolitan Planning Organization
NDDOT	North Dakota Department of Transportation
Part 673	49 CFR Part 673 (Public Transportation Agency Safety Plan)
PTASP	Public Transportation Agency Safety Plan
RAM	Risk Assessment Matrix
SMS	Safety Management System
SRM	Safety Risk Management
TAMP	Transit Asset Management Plan
U.S.C.	United States Code
VRM	Vehicle Revenue Miles

5.3 EXHIBIT A – ACTIVITY LOG

City of Fargo and City of Moorhead Transit Safety Plan

Date	Activity (Review/Update/Addendum/ Adoption/Distribution)	Person Making Changes	Remarks
11/18/2020	MAT Coordinating Board – Review and Recommend Adoption of Safety Plan to Fargo City Commission and Moorhead City Council		
11/30/2020	Fargo City Commission - Adoption of Plan		
12/10/2020	Metropolitan Council of Governments (MPO) Transportation Technical Committee - Review and Recommend Approval of Safety Plan to Policy Board		
12/14/2020	Moorhead City Council - Adoption of Plan		Resolution #2020-1214-P
12/17/2020	Metropolitan Council of Government (MPO) Policy Board - Approval of Plan		
3/01/2021	Revision	Jordan Smith	<p>Removed Assistant Transit Director, Contractor GM and Road Supervisor from Safety Committee. Added Valley Senior Services Transportation Manager.</p> <p>Add Valley Senior Services as Contracted Agencies Covered Under this Plan</p>

2/8/22	Revision	Jordan Smith	Added City of Fargo Assistant Transit Director to safety committee.
6/8/2022	Revision	Jordan Smith	<p>Add Infectious Disease Mitigation</p> <p>Add Safety Committee Approval Date</p> <p>Remove Safety Culture targets as they are not a required element of the plan</p> <p>Removed work days lost target as it is not a required element of the plan</p> <p>Updated Safety Targets</p> <p>Move audit log to be an Exhibit to the plan</p>

5.4 EXHIBIT B – RISK ASSESSMENT MATRIX

Risk Assessment Matrix

Identified Risk: _____

Severity	Cost (Thousands)	Impact of Risk					Probability of Risk				
		People	Asset	Environment	Quality	< 1% Very Low (1)	1% - 10% Low (2)	10% - 50% Medium (3)	50% - 90% High (4)	> 90% Very High (5)	
Very High 5	>50	Multiple Fatalities	Major Damage, multiple units	Massive Effect	Complete discontinuation of service	5	10	15	20	25	
High 4	25-50	Permanent total disability or one fatality	Major Damage, unit level	Major Effect	Substantial disruption of service	4	8	12	16	20	
Medium 3	10-25	Serious injury, hospitalization	Moderate Damage	Moderate Effect	Slight disruption of service	3	6	9	12	15	
Low 2	1-10	Slight injury, medical treatment	Minor Damage	Minor Effect	Minimal disruption of service	2	4	6	8	10	
Very Low 1	<1	First aid or no injury	No/Slight Damage	No/Slight Effect	No disruption of service	1	2	3	4	5	
Risk Value											

Assessed Risk Value: _____

Instructions

1. Estimate potential consequences and severity (thought of as what could happen if hazard actually occurred)
2. Estimate likelihood of such consequences occurring (using historical evidence, data and experiences)
3. Multiply the severity for each consequence by the likelihood of that consequence occurring. This is the risk value.
4. Sum the risk values for a total assessed risk. (out of 125)

5.5 EXHIBIT C – PRIORITIZED SAFETY RISK LOG

Prioritized Safety Risk Log

This Prioritized Safety Risk Log is used to organize identified safety risks facing the MATBUS system. The log should be updated frequently to demonstrate continual progress towards risk reduction through mitigation strategies. A timeline is used to highlight projected completion dates.

Completed by:	Last Updated:
---------------	---------------

Priority	Risk Description	Planned Mitigation Strategies	Outcomes of Planned Mitigation Strategies	Responsible Staff	Timeline	Status
1						
2						
3						
4						
5						
6						
7						



Safety Event Reporting Form

Name (optional) _____

Date of Event _____

Event Time _____

Event Information

Location _____

City _____ State _____

Specific Area of Location (if applicable) _____

Event Description

Name/Contact of Witnesses

1. _____

2. _____

3. _____

Cities of Fargo and Moorhead Transit (MATBUS) PROCUREMENT POLICIES



MATBUS

Procurement Policies

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(Revised 2021)

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B	Federal Transit Administration Best Practices Procurement Manual (link to current manual) https://www.transit.dot.gov/funding/procurement/procurement	
C	City of Fargo Procurement Policies -Transit Grant Funds Procurement Procedure Manual - Purchasing Policy (Revised Dec 2018) - Accounting Procedures for Grant Programs - Purchasing Policy Procedures	
D	City of Moorhead Procurement Policies -Mass Transit Grant Funds-Community Development Block Grant Funds Procurement Procedure Manual (Revised Jan 2018) -Official Purchasing Policy (Revised 11.28.2018) -Federal Grant Policies and Procedures Manual (Revised 11.30.18)	
E	Minnesota Department of Transportation Procurement Policy and Procedures Updated 1/1/2021 http://www.dot.state.mn.us/transit/grants/procurement.html	

SECTION I. INTRODUCTION

The Cities of Fargo and Moorhead have responsibilities for the operation of a public transportation system and the planning of transit related projects. The Cities of Fargo and Moorhead award all transit related contracts and are responsible for establishing procedures to avoid the purchase of unnecessary property and services and the proper use of funds.

MATBUS is governed by the MAT Coordinating Board and the Cities of Fargo and Moorhead governing bodies.

The Cities of Fargo and Moorhead jointly operate public transit services under the name of MATBUS. The terms "City of Fargo, City of Moorhead, Cities, Metro Area Transit, MAT, MATBUS, Fargo Transit, Moorhead Transit, Grantee, Transit Office", are synonymous and mean the Cities of Fargo and/or Moorhead.

MATBUS receives funding from the Federal, State, and Local government. Therefore, procurement policies and procedures are consistent with federal regulations and the laws of the States of North Dakota and Minnesota as applicable, and the policies of the Cities of Fargo and Moorhead as applicable. Additional guidance and reference is provided by the latest *FTA Circular 4220, FTA's Best Practices and Procurement Manual*, MNDOT Procurement Policy and Procedures, and the Cities of Fargo and Moorhead purchasing policies (Appendix A, B, C, D, and E).

The Transit Director (City of Fargo) and the Transit Manager (City of Moorhead) are responsible for providing procurement advice on all matters relating to transit procurement as well as those procurement actions necessary to ensure that the award of contracts is carried out in a manner consistent with the policies and procedures herein.

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, Architectural, and Engineering services necessary for the operation of MATBUS's public transportation service. These policies include procedures for the solicitation, award and administration of formally advertised contracts, as well as the consultant selection, negotiation, award and administration of competitively negotiated Architectural and Engineering contracts.

The procurement procedures are designed to:

- A. To create the maximum feasible free and open competition in all procurements.
- B. To prevent potential waste, fraud, abuse, and conflicts of interest in the procurement process.
- C. To prevent the issuance of exclusionary or discriminatory specifications.
- D. To ensure fair and equal treatment of all vendors.

- E. To establish standard procedures to be followed in making purchases.
- F. To achieve the optimum price for the item(s) being purchased. Optimum price may or may not mean the lowest price.
- G. To comply with all applicable Federal, State, and local laws, regulations, policies, and procedures in making all procurements.

SECTION II. WRITTEN STANDARDS OF CONDUCT

Employees, officers, and agents of MATBUS must adhere to the standards of conduct set forth in 49 CFR 18.36 in the award and administration of contracts supported by Federal funds.

No employee, officer or agent of MATBUS shall participate in the selection, award or administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when any of the following has a financial or other interest in the firm selected for award:

- a. The employee, officer, agent, or Commission/Council 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.

SECTION III. DISADVANTAGED AND SMALL BUSINESS ENTERPRISES

MATBUS is supported by revenues from Federal and State grants, joint powers agreements, local funds, advertising fees, and passenger fares.

Disadvantaged Business Enterprise (DBE)

In accordance with Federal Regulation 49 CFR Part 26, Participation by Disadvantaged Business Enterprises in DOT Transportation Programs, recipients of federal funds are required to take necessary and reasonable steps all necessary affirmative steps to assure that minority, disadvantaged, and women-owned business enterprises along with labor surplus area firms are used when possible. To certify a minority, disadvantaged, or women-owned business enterprise (which is a business owned and controlled 51% or more by an individual or groups of individuals who are female or minorities (49 CFR 26) with the City, contact the appropriate state office.

For North Dakota based firms contact:

North Dakota Department of Transportation

Office of Civil Rights
608 East Boulevard Avenue
Bismarck, ND 58505-0700
(701) 328-2563
DBE Liaison Officer

<http://www.dot.nd.gov/divisions/civilrights/civilrights.htm>

For Minnesota based firms contact:

Minnesota Department of Transportation

Office of Civil Rights
Transportation Building
395 John Ireland Boulevard
St. Paul, MN 55155-1899
(651) 366-3073 (Voice)
(651) 296-9930 (TDD)
(651) 366-3129 (FAX)
www.dot.state.mn.us/civilrights/dbe.html

MATBUS has developed a DBE Policy and must submit semi-annual DBE activity reports on or before June 1 and December 1 describing procurement activities and DBE participation.

Fostering Small Business Participation

The City of Fargo and City of Moorhead Transit have established a small business element to their DBE programs, pursuant to 49 CFR 26.39. These programs aim to provide opportunities and foster small business enterprises (SBE)/participation in contracting with the City of Fargo and City of Moorhead Transit. These programs are race- and gender- neutral.

SECTION IV. GENERAL PROCUREMENT STANDARDS

The following standards apply to all procurements of MATBUS with Federal Transit grant funds:

MATBUS shall maintain records detailing the history of procurements. Procurement files will include:

- a. the rationale for the method of procurement;
- b. selection of contract type;
- c. reasons for contractor selection or rejection; and
- d. the basis for the contract price.

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

- A. Contract Administration System. Cities will maintain a contract administration system that ensures contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. No payments to contractors may be made until this provision is satisfied. The individual administering the contract (the Moorhead Transit Manager or Fargo Transit Director) are tasked with reviewing contractor and grantee expectations and tasks on a regular basis. Given the small size of the office staff, collaboration between the staff from Moorhead and Fargo ensures adherence. Leadership team meetings are held once per week to review responsibilities and follow-up on previously-assigned tasks. Leadership team meetings include Moorhead and Fargo administrators, the Fleet and Facilities Manager and the First Transit General Manager). Monthly Operations Reports are submitted by First Transit and reviewed by MATBUS staff. Sharepoint (previously ManageMAT) also contains various complaints, incidents, missed trips, maintenance logs and other data reviewed by MATBUS staff. Administration has access to the fleet management reporting software and reviews monthly data. The Fleet and Facilities Manager reviews maintenance conducted by Valley Senior Services and inspections are done regularly. The Mobility Manager conducts on-site reviews of the Valley Senior Services and completes a periodic checklist. Any inconsistencies are brought to the attention of the contractor for resolution. Contract changes or amendments must follow procurement policies. In addition, contract language is reviewed by the City Attorney. Contract changes/amendment are brought to the City Council/Commission for approval. The grantee's staff members are very cognoscente to avoid creep of scope. If the contract change/amendments are not directly related to the base intent of the project, a separate project will be created and procured to avoid any sense of impropriety. Due to the small staff size, the same individual(s) who drafted the original procurement are involved with any changes/amendments. This helps ensure that the original scope is known and understood by those seeking potential modifications/changes to it.
- B. Review of Proposed Procurements. The Cities will provide for a review of proposed

procurements to avoid purchase of unnecessary or duplicate items. The Cities will follow federal, state, and local guidelines outlined in their applicable procurement policies as outlined in applicable exhibits.

Lines of responsibility for City of Moorhead purchases for MATBUS: The Moorhead Transit Manager is responsible for making preparations for seeking quotations and/or open market purchasing initiating formal bidding processes in compliance with this policy; and the Planning and Neighborhood Services Director is responsible for approving all purchases within the department. The Finance Director reviews and approves City purchases as the designee for the City Manager.

Lines of responsibility for City of Fargo purchases for MATBUS: The Fargo Transit Director is responsible for making preparations for seeking quotations and/or open market purchasing initiating formal bidding processes in compliance with this policy; and the City Administrator/Assistant City Administrator is responsible for approving all purchases within the department. The Finance Director reviews and approves City purchases over \$25,000.

- C. Value Engineering Clauses. The Cities will use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. (Value engineering is a systematic and creative analysis of each contract item or task to insure that its essential function is provided at the overall lowest cost.)
- D. Contractor Awards. The Cities will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. Documentation regarding the determination of the contractors' responsibility level will be placed in the procurement file.
- E. Record Maintenance. The Cities will maintain records sufficient to detail the history of procurements. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, contractors' responsibility level, and the basis for the contract price. Retention of all required records will be for three years (six years under State guidelines) after grantees or subgrantees make final payments and all other pending matters are closed. Records pertaining to capital procurements and/or projects shall be retained until the item is disposed of.
- F. Settlement of Contractual/Administrative Issues. The Cities alone will be responsible in accordance with good administrative practice and sound business judgment for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to the following: source evaluation, protests, disputes, and claims. Refer to Protest Procedures of this document.
- G. Open Competition. All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards set forth in this policy. Some of the situations considered to be restrictive of competition include, but are not limited to:

1. Placing unreasonable requirements on firms in order for them to qualify to do business;
2. Requiring unnecessary experience and excessive bonding;
3. Noncompetitive pricing practices between firms or between affiliated companies;
4. Noncompetitive awards to consultants that are on retainer contracts;
5. Organizational conflicts of interest;
6. Specifying only a "brand name" product instead of allowing "an equal" to be offered and describing the performance of other salient characteristics of the brand name product; and
7. Any arbitrary action in the procurement process.

- H. Geographical Preferences. The Cities will conduct procurements involving federal funds in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference. This does not preempt State of North Dakota or Minnesota licensing laws. Geographic location may be a criteria when using the qualifications-based method for contracting for architectural and engineering services, provided such application leaves an appropriate number of qualified firms from which to choose. No Federal funds shall be used to support procurements utilizing exclusionary or discriminatory specifications.
- I. Written Specifications. The Cities will issue written specifications for all procurements as applicable per federal, state, and local guidelines, including all applicable 3rd Party Contracting Clauses. All solicitations will incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description will not, in competitive procurements, contain features that unduly restrict competition. The specification will identify all requirements that the offerors must fulfill and all other factors to be used in evaluating bids or proposals. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 200, while this offer is valid and throughout the period of any contract that may arise from this offer.
- J. Prequalified Lists. The Cities will ensure that all prequalified lists of persons, firms, or products that are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. The Cities will not preclude potential bidders from qualifying during the solicitation period.
- K. Independent Cost Estimate and Cost/Price Analysis. The Cities shall perform an independent cost estimate prior to procurement, as well as a cost or price analysis in connection with every procurement action, including contract modifications. A price analysis is used to determine the reasonableness of the proposed contract price. Cost or price analysis will provide a comparative process of evaluating total price without regard to

the individual elements that make up the total price. An example of cost and price analysis is attached to this document.

Cost Analysis must be obtained when a price analysis does not provide sufficient information to determine the reasonableness of the contract cost, when price competition is inadequate or when using a sole source is available, contract modifications, or in the event of a change order. Elements in a cost analysis include labor hours, overhead materials, and other pertinent information.

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. In order of preference the accepted forms of price analysis are:

- (1) Adequate price competition
- (2) Prices set by law or regulation
- (3) Established catalog prices and market prices
- (4) Comparison to previous purchases
- (5) Comparison to a valid Grantee independent estimate
- (6) Value analysis

If only one bid is received, the sole bidder must cooperate with the Cities of Fargo/Moorhead as necessary in order for its bid to be considered for award. For federally funded procurements, if the competition was deemed adequate, the single bid is considered as valid sole source procurement and is subject to the requirements for sole source procurements. However, a new solicitation of bids may be necessary if the single bid price appears unreasonable.

- L. Profit Negotiation. The Cities will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to such things as the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work. Negotiated procurements are subject to approval of the Cities.
- M. Estimated Costs. Costs or prices based on estimated costs for contracts under federal grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with federal cost principles (49 CFR § 18.22).
- N. Restricted or Prohibited Types of Contracts. The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used. Cost plus fixed

fee and time and materials methods of contracting shall be used when restricted conditions for these types of contracts are met.

- O. Bonds. For construction or facility improvement contracts or subcontracts exceeding \$100,000, MATBUS will require bonds as outlined in the attached federal, state, and local guidelines.
- P. Tag-ons. Tag-ons are 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 as generally interpreted in Federal practice by the various Boards of Contract Appeals. "In scope" changes are not tag-ons. Tag-ons are actually sole source additions that have not been justified and approved by the grantee's management official having authority to approve of sole source contract awards. Tag-ons are not permitted for any type of procurement. The agency may go through the process to define the purchase as sole source if the appropriate requirements are met.
- Q. Architectural and Engineering Services. FTA's enabling legislation at 49 U.S.C. § 5325(b)(1) requires the use of the qualifications-based procurement procedures contained in the Brooks Act, 40 U.S.C. §§ 1101-1104, to acquire program management, architectural engineering, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, or related services for an FTA-funded project. The nature of the services to be performed and its relationship to construction, not the nature of the prospective contractor, determines whether qualifications-based procurement procedures may be used, as described below:
- Qualifications-Based Procurement Procedures Required. The recipient must use qualifications-based procurement procedures not only when contracting for A&E services, but also for other services listed in 49 U.S.C. Section 5325(b)(1) that are directly in support of, directly connected to, directly related to, or lead to construction, alteration, or repair of real property.
 - Qualifications-Based Procurement Procedures Prohibited. Unless FTA determines otherwise in writing, a recipient may not use qualifications-based procurement procedures to acquire other types of services if those services are not directly in support of, directly connected to, directly related to, or do not lead to construction, alteration, or repair of real property.
- R. Design-Bid-Build. The design-bid-build procurement method requires separate contracts for design services and for construction.
- Design Services. For design services, the recipient must use qualifications-based procurement procedures, in compliance with applicable Federal, State and local law and regulations.
 - Construction. Because the recipient may not use qualifications-based procurement procedures for the actual construction, alteration or repair of real property, the recipient generally must use competitive procedures for the construction. These

may include sealed bidding or competitive negotiation procurement methods, as appropriate.

- S. Design-Build. The design-build procurement method consists of contracting for design and construction simultaneously with contract award to a single contractor, consortium, joint venture, team, or partnership that will be responsible for both the project's design and construction.
- Procurement Method Determined by Value. First, the recipient must separate the various contract activities to be undertaken and classify them as design or construction, and then calculate the estimated total value of each. Because both design and construction are included in a single procurement, the FTA expects the recipient to use the procurement method appropriate for the services having the greatest cost, even though other necessary services would not typically be procured by that method.
 - Construction Predominant. The construction costs of a design-build project are usually predominant so that the recipient would be expected to use competitive negotiations or sealed bids for the entire procurement rather than the qualification-based "Brooks Act" procurement procedures. Specifically, when construction costs will be predominant, unless FTA determines otherwise in writing, an FTA recipient may not use qualifications-based procurement procedures to acquire architectural engineering, program management, construction management, feasibility studies, preliminary engineering, design, architectural and engineering, surveying, mapping, or related A&E services unless required by State law adopted before August 10, 2005.
 - (b) Design Services Predominant. In the less usual circumstance in which the cost of most work to be performed will consist of costs for architectural and engineering, program management, construction management, feasibility studies, preliminary engineering, design, architectural engineering, surveying, mapping, or related A&E services, FTA expects the recipient to use qualifications-based procurement procedures based on the "Brooks Act," 40 U.S.C. Sections 1101 through 1104, as described in subsection 3.e of this Chapter.
 - Selection Processes. The Agency may structure its design-build procurement using one or more steps as described below:
 - One-Step Method. The Agency may undertake its design-build procurement in a single step.
 - Two-Step Method.
 - Review of Technical Qualifications and Approach.
 - Review of Complete Proposals.
- T. Advance Payments. The recipient 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.

- Exceptions for Sound Business Reasons
 - i. Adequate security for the advance payment
 - ii. Customary Advance Payments. FTA recognizes that advance payments are typically required for, but are not limited to, public utility connections and services, rent, tuition, insurance premiums, subscriptions to publications, software licenses, construction mobilization costs, transportation, hotel reservations, and conference and convention registrations. Accordingly, the recipient may use FTA assistance to support or reimburse the costs of such acquisitions. FTA concurrence is required only when such advance payment or payments customarily required in the marketplace exceed \$100,000.

- U. Progress Payments. The Agency may use FTA assistance to support progress payments provided the recipient obtains adequate security for those payments and has sufficient written documentation to substantiate the work for which payment is requested. The following will be required for all progress payments:
 - Adequate Security for Progress Payments
 - Adequate Documentation
 - Any progress payments for construction contracts be made on a percentage of completion method. The recipient, however, may not make progress payments for other than construction contracts based on this percentage method.

- V. Revenue Contracts. A revenue contract is a contract in which the recipient or subrecipient provides access to public transportation assets for the primary purpose of either producing revenues in connection with an activity related to public transportation, or creating business opportunities with the use of FTA assisted property. To ensure fair and equal access to FTA assisted property and to maximize revenue derived from such property, the Agency will conduct its revenue contracting as follows:
 - Limited Contract Opportunities. If there are several potential competitors for a limited opportunity (such as advertising space on the side of a bus), then the Agency will use a competitive process to permit interested parties an equal chance to obtain that limited opportunity.
 - Open Contract Opportunities. If, however, one party seeks access to a public transportation asset (such as a utility that might seek cable access in a subway system), and the Agency is willing and able to provide contracts or licenses to other parties similarly situated (since there is room for a substantial number of such cables without interfering with transit operations), then competition would not be necessary because the opportunity to obtain contracts or licenses is open to all similar parties.

SECTION V. METHODS OF PROCUREMENT

Methods of procurement include micro-purchase, small purchase, and three basic methods of formal procurements (sealed bid, competitive proposal, and sole-source). The following describes when each should be used. ***The Cities of Fargo and Moorhead separately adopted varying dollar thresholds which are defined in Appendix C (City of Fargo Procurement Policies), Appendix D (City of Moorhead Procurement Policies) and Appendix E MNDOT Policy and are part of this document.*** If there is a conflict between City of Fargo, City of Moorhead, MNDOT Policy, or Federal Transit policy, the most restrictive policy is to be used.

Documentation must be obtained and retained on file for the method of procurement and any required specifications, competitive proposals or quotations, and information as listed in this procurement manual.

When to Use a Micro-Purchase

FTA indicates that micro-purchases may be used to acquire property and services valued at \$10,000 or less without obtaining competitive quotations. These purchases are exempt from FTA's Buy America requirements. Davis-Bacon prevailing wage requirements, however, will apply to construction contracts exceeding \$2,000, even though the recipient uses micro-purchase procurement procedures.

When to Use a Small Purchase

FTA indicates that small purchase procedures may be used to acquire services, supplies, or other property valued at more than \$10,000 but less than \$250,000. Small purchase procurement forms are contained in Appendix C and D.

- Competition. MATBUS must obtain price or rate quotations from an adequate number of qualified sources.
- Prohibited Divisions. MATBUS may not divide or reduce the size of its procurement to avoid the additional procurement requirements applicable to larger acquisitions.

When to Use Sealed Bids

Sealed bids is the preferred method for procurement when:

- A complete, adequate, precise, and realistic specification or purchase description is available;
- Two or more responsible bidders are willing and able to compete effectively for the business;
- The procurement generally lends itself to a firm fixed price contract;
- The successful bidder can be selected on the basis of price and those price-related factors listed in the solicitation including, but not limited to, transportation costs, life cycle costs, and discounts expected to be taken; and
- Discussions with one or more bidders after bids have been submitted are expected to be unnecessary as award of the contract will be made based on price and price-related factors

alone. Pre-bid conferences, however, with prospective bidders are permitted and oftentimes are very useful to both recipients and bidders.

When to Use Competitive Proposals

Competitive proposals should be used when any of the following circumstances are present:

- Type of Specifications. The property or services to be acquired are described in a performance or functional specification; or if described in detailed technical specifications, other circumstances such as the need for discussions or the importance of basing the contract award on factors other than price alone are present.
- Uncertain Number of Sources. Uncertainty about whether more than one bid will be submitted in response to an invitation for bids and the recipient lacks the authority or flexibility under State or local law to negotiate the contract price if it receives only a single bid.
- Price Alone Not Determinative. Due to the nature of the procurement, contract award need not be based exclusively on price or price-related factors. In different types of negotiated acquisitions, the relative importance of cost or price may vary. When the recipient's material requirements are clearly definable and the risk of unsuccessful contract performance is minimal, cost or price may play a dominant role in source selection. The less definitive the requirements, the more development work required, or the greater the performance risk, the more technical or past performance considerations may play a dominant role in source selection and supersede low price.
- Discussions Expected. Separate discussions with individual offeror(s) are expected to be necessary after they have submitted their proposals. This contrasts with Sealed Bids (Formal Advertising) procedures in which discussions with individual bidders are not likely to be necessary, as award of the contract will be made based on price and price-related factors alone.
- Best and Final Offer. At the conclusion of discussions with offerors in the competitive range the procuring official may ask all offerors to submit their best and final offers (BAFO) in writing. See FTA Best Practices Procurement Manual for further guidance.

When to Use Sole Source

Procurement by noncompetitive negotiation may be used only when the award of a contract is infeasible under small purchase procedures, competitive sealed bid procedures, or by negotiated purchase and at least one of the following circumstances.

- The item is available only from a single source.
- The public exigency or emergency of the requirement will not permit a delay resulting from competitive solicitation.
- The Federal Transit Administration (FTA) authorizes noncompetitive negotiations.
- After solicitation of a number of sources, competition is determined to be inadequate after determining that specifications are not unduly restrictive and changes cannot be made to encourage greater competition.

SECTION VI. BID PROTEST PROCEDURES

Protests related to this solicitation must be submitted in writing and will only be accepted from prospective Bidder or Offerors whose direct economic interest would be affected by the award of a Contract or failure to award a Contract.

Copies of MATBUS's detailed protest procedure are available upon request and are part of the individual City policies contained in Appendices C and D. Contact Julie Bommelman or Lori Van Beek, 650 23rd Street N, Fargo, ND 58102, for a copy, if desired.

As this procurement is Federally funded, the provisions of FTA Circular 4220.1F apply. An appeal to FTA must be received by the cognizant FTA Regional or Headquarters Office with five (5) working days of the date the protestor knew or should have known of the violation. FTA will review bid protests only in the following circumstances:

- a. A protestor has exhausted all administrative remedies with MATBUS.
- b. FTA will only review protests regarding the alleged failure of the grantee to have or follow its written protest procedures or its failure to review a complaint or protest.

Alleged violations on other grounds are under the jurisdiction of the appropriate State or local authorities. Alleged violations of Federal law or regulation that provide an applicable complaint procedure shall be submitted and processed in accordance with the Federal law or regulation.

Contractors who have exhausted all administrative remedies with MATBUS and FTA can pursue the matter further in the ND/MN state courts as applicable.

Appendix A

Federal Transit Administration Circular 4220.1, as amended: Third Party Contracting Guidance:

<https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/third-party-contracting-guidance>

Federally Required Clauses

Federally Required Clauses Checklist

Federally Required Information Checklist

By entering into a sale with the City of Fargo, ND, and/or the City of Moorhead, MN, doing business as MATBUS, the supplier is agreeing to be bound by the following federal clauses and certifications as applicable:

1. **No Government Obligation to Third Parties:** *Applies to all third-party contracts that are federally funded.*

- a. The Agency and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Agency, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- b. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

2. **Access to Records and Reports:** *Applies to all contracts funded in whole or in part with FTA funds.*

- a. **Record Retention.** The Contractor will retain and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third-party agreements of any type, and supporting materials related to those records.
- b. **Retention Period.** The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- c. **Access to Records.** The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.

- d. Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.



3. **Federal Changes:** *Applies to all contracts.*

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



4. **Civil Rights and Equal Opportunity:** *Applies to all contracts.*

The Agency is an Equal Opportunity Employer. As such, the Agency agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the Agency agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications. Under this Agreement, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

- a. Nondiscrimination. In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- b. Race, Color, Religion, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In

addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

- c. Age. In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- d. Disabilities. In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

5. **Incorporation of FTA Terms:** *Applies to all contracts.*

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

6. **Energy Conservation:** *Applies to all contracts. The Recipient agrees to, and assures that its subrecipients, if any, will comply with the mandatory energy standards and policies of its state energy conservation plans under the Energy Policy and Conservation Act, as amended, 42 U.S.C. § 6201 et seq., and perform an energy assessment for any building constructed, reconstructed, or modified with federal assistance as required under FTA regulations, 'Requirements/or Energy Assessments,' 49 C.F.R. part 622, subpart C.*

The Contractor shall recognize mandatory standards and policies relating to energy efficiency, which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC Section 6321 et seq).

7. **Veterans Employment:** *Applies to capital projects, to the extent practicable*

As provided by 49 U.S.C. § 5325(k): a. To the extent practicable, the Contractor agrees that it:

- a. Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third-party contract in connection with a capital project supported with funds made available or appropriated for 49 U.S.C. chapter 53, and
- b. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee, and

The Contractor also assures that its sub-recipients will:

- a. Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third-party contract in connection with a capital project supported with funds made available or appropriated for 49 U.S.C. chapter 53, to the extent practicable, and
- b. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

8. **Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment:** *Applies to all contracts.*

The Contractor is prohibited from obligating or expending federal funds to:

- a. Procure or obtain
- b. Extend or renew a contract to procure or obtain; or
- c. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, "covered telecommunications equipment or services" is:

- i. Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities)
 - ii. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 - iii. Telecommunications or video surveillance services provided by such entities or using such equipment.
- d. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

The Contractor shall not provide covered telecommunications equipment or services in the performance of this contract.



9. **Termination Provisions:** *Applies to all contracts over \$10,000.*

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

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

If it is later determined by the Agency that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the Agency, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.5

Opportunity to Cure (General Provision): The Agency in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to the Agency's satisfaction the breach or default or any of the terms, covenants, or conditions of this contract within ten [10] days after receipt by Contractor or written notice from the Agency setting forth the nature of said breach or default, the Agency shall have the right to terminate the contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude the Agency from also pursuing all available remedies against Contractor and its sureties for said breach or default.

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

This termination clause extends to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

10. **Debarment, Suspension, Ineligibility and Voluntary Exclusion:** *Applies to contracts in an amount expected to equal or exceed \$25,000 or a contract award at any tier for a federally required audit (irrespective of the contract amount) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. part 180. Recipients, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) with which they propose to contract or subcontract is not excluded or disqualified. This is done by: (a) checking the SAM exclusions; (b) collecting a certification from that person; or (c) adding a clause or condition to the contract or subcontract.*

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a. Debarred from participation in any federally assisted Award;

- b. Suspended from participation in any federally assisted Award;
- c. Proposed for debarment from participation in any federally assisted Award;
- d. Declared ineligible to participate in any federally assisted Award;
- e. Voluntarily excluded from participation in any federally assisted Award; or
- f. Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the Bidder or Proposer certifies as follows: The certification in this clause is a material representation of fact relied upon by the Agency. If it is later determined by the Agency that the Bidder or Proposer knowingly rendered an erroneous certification, in addition to remedies available to the Agency, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Bidder or Proposer agrees to comply with the requirements of 2 C.F.R. part I 80, subpart C, as supplemented by 2 C.F.R. part I 200, while this offer is valid and throughout the period of any contract that may arise from this offer. The Bidder or Proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

11. **Notice to FTA and U.S. DOT Inspector General of Information Related to Fraud, Waste, Abuse, or Other Legal Matters** : *Applies to all contracts exceeding \$25,000.*

If a current or prospective legal matter that may affect the Federal Government emerges, the Contractor must promptly notify City Utilities, which will promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which City Utilities is located. The Contractor must include an equivalent provision in its subagreements at every tier, for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.

The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.

Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the accompanying Underlying Agreement between the FTA and City Utilities, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.

Additional Notice to U.S. DOT Inspector General. The Contractor must promptly notify the Agency, which will promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Agency is located, if the Contractor has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the project is subject to this agreement or another agreement with the Agency involving a principal, officer, employee, agent, or Third-Party Participant of the Contractor. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Contractor. In this paragraph, "promptly" means to refer information without delay and without change. This notification provision applies to all divisions of the Contractor, including divisions tasked with law enforcement or investigatory functions.

12. **Lobbying Restrictions:** *Applies to all contracts and subcontracts of \$100,000 or more at any tier under a Federal grant. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this agreement, the payor must complete and submit the Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.*

49 C.F.R. part 20, Appendices A and B provide specific language for inclusion in FTA funded third party contracts as follows:

The undersigned certifies (Note: A separate certification will be required to be signed if the contract meets this criteria), to the best of his or her knowledge and belief, that:

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

any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

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

13. **Buy America:** *Applies to projects that involve the purchase of more than \$150,000 of iron, steel, manufactured goods, or rolling stock to be delivered to the recipient to be used in an FTA assisted project.*

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11.

14. **Clean Air Act and the Federal Water Pollution Control Act:** *Applies to all contracts exceeding \$150,000.*

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq and the Federal Water Pollution Control Act as amended, 33 U.S.C. § 1251-1388. The Contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq . The Contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

The Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

15. **Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate:** *Applies to all contracts in excess of the Simplified Acquisition Threshold (currently set at \$250,000) and those contracts shall contain administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms and provide for such sanctions and penalties as appropriate.*

- a. Disputes will be presented in writing to the appropriate Agency personnel - in Fargo, the Fargo Transit Director, in Moorhead, the Moorhead Transit Manager. Agency personnel and the Contractor will attempt to resolve any dispute arising in the performance of the contract.

Fargo: If the Transit Director and Contractor cannot resolve the dispute, the issue will be presented in writing to the Fargo City Administrator within ten [10] working days of dispute. If the dispute cannot be resolved by the City Administrator, it will be submitted in writing within ten [10] working days of the Fargo City Administrator's decision to the Fargo City Commission - it is the sole responsibility of the Contractor to schedule a hearing with the Fargo City Commission. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position at the hearing.

Moorhead: If the Transit Manager and Contractor cannot resolve the dispute, the issue will be presented in writing to the Moorhead City Manager within ten [10] working days of the dispute. If the dispute cannot be resolved by the City Manager, it will be submitted in writing within ten [10] working days of the Moorhead City Manager's decision to the Moorhead City Council - it is the sole responsibility of the Contractor to schedule a hearing with the Moorhead City Council. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position at the hearing.

The decision of the Fargo City Commission or Moorhead City Council shall be binding upon the Contractor and the Contractor shall abide by the decision.

- b. Unless otherwise directed by the Cities of Fargo/Moorhead, the Contractor shall continue performance under this contract while matters in dispute are being resolved.

- c. Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.
- d. Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Cities of Fargo and/or Moorhead and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the applicable state.



16. **Cargo Preference:** *Applies to all contracts involving equipment, materials, or commodities that may be transported by ocean vessels.*

The Contractor agrees:

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



17. **Fly America:** *Applies 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.*

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.

- a. 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.
- b. 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.
- c. 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]:

(End of statement)

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.

18. **Davis-Bacon Act and Copeland Act – Prevailing Wage and Anti-Kickback:**

Applies to all FTA funded contracts for all prime construction, alteration or repair contracts in excess of \$2,000. The recipient will ensure that each third-party contractor complies with all federal laws, regulations, and requirements, including:

- a. *Prevailing Wage Requirements*
 - i. *Federal transit laws, specifically 49 U.S.C. § 5333(a), (FTA 's 'Davis-Bacon Related Act");*
 - ii. *The Davis-Bacon Act, 40 USC §§ 3141-3144, 3146, and 3147; and*
 - iii. *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.*
- b. *"Anti-Kickback" Prohibitions*
 - i. *Section 1 of the Copeland "Anti-Kickback" Act, as amended, 18 U.S.C. § 874;*
 - ii. *Section 2 of the Copeland "Anti-Kickback" Act, as amended, 40 USC § 3145; and*
 - iii. *US. 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.*

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.

19. **Contract Work Hours & Safety Standards Act:** *Applies to all FTA funded contracts in excess of \$100,000 that involve the employment of mechanics or laborers. 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:*

a. *Contract Work Hours and Safety Standards*

- i. *Contract Work Hours and Safety Standards Act, as amended, 40 USC §§ 3701- 3708; and supplemented by Department of Labor (DOL) regulations, 29 C.F.R. part 5; and A-38*
- ii. *U.S. DOL regulations, "Safety and Health Regulations for Construction," 29 C.F.R. part 1926.*

b. **For Construction Contracts:**

- i. 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.
- ii. 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.
- iii. 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.

- iv. 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.

c. **For Awards Not Involving Construction:**

- i. 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.
- ii. 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.
- iii. 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.



20. **Bonding:** *The Common Grant Rules require bonds for all construction contracts exceeding the simplified acquisition threshold (exceeding \$175,000. Minnesota State Statute 574.26 limit is \$100,000) unless FTA determines that other arrangements adequately protect the Federal interest. FTA's bonding policies are as follows:*

- a. A bid guarantee from each bidder equivalent to five [5] percent of the bid price. The "bid guarantees" shall consist of a firm commitment such as a bid bond,

certifies check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

- b. A performance bond on the part to the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts required from Contractors are as follows:
 - i. 50% of the contract price if the contract price is not more than \$1 million;
 - ii. 40% of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
 - iii. \$2.5 million if the contract price is more than \$5 million.
- d. A cash deposit, certified check or other negotiable instrument may be accepted by a grantee in lieu of performance and payment bonds, provided the grantee has established a procedure to assure that the interest of FTA is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond. Bid Bond Requirements (Construction)

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

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

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

It is further understood and agreed that to the extent the defaulting Bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by the Agency as provided in [Item x "Bid Security" of the Instructions to Bidders]) shall prove inadequate to fully recompense the Agency for the damages occasioned by default, then the

undersigned bidder agrees to indemnify the Agency and pay over to the Agency the difference between the bid security and the Agency's total damages, so as to make the Agency whole.

The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested, will render the bid unresponsive. Performance and Payment Bonding Requirements (Construction)

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

Performance bonds

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

Payment bonds

- a. The penal amount of the payment bonds shall equal:
 - i. Fifty percent of the contract price if the contract price is not more than \$1 million.
 - ii. Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million;
 - iii. Two and one half million if the contract price is more than \$5 million.
- b. If the original contract price is \$5 million or less, the Agency may require additional protection as required by subparagraph 1 if the contract price is increased.

Performance and Payment Bonding Requirements (Non-Construction)

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

The following situations may warrant a performance bond:

- a. The Agency's property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).
- b. A contractor sells assets to or merges with another concern, and the Agency, after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.

- c. Substantial progress payments are made before delivery of end items starts.
- d. Contracts are for dismantling, demolition, or removal of improvements.

When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:

- a. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the Agency determines that a lesser amount would be adequate for the protection of the Agency.
- b. The Agency may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price.
The Agency may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.
- c. A payment bond is required only when a performance bond is required, and if the use of payment bond is in the Agency's interest.
- d. When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:

The penal amount of payment bonds shall equal:

- I. Fifty percent of the contract price if the contract price is not more than \$1 million;
- II. Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
- III. Two and one half million if the contract price is increased.

Advance Payment Bonding Requirements

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

Patent Infringement Bonding Requirements (Patent Indemnity)

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

Warranty of the Work and Maintenance Bonds

The Contractor warrants to the Agency, the architect and/or engineer that all materials and equipment furnished under this contract will be of highest quality and new unless otherwise specified by the Agency, free from faults and defects and in conformance with the contract documents. All work not so conforming to these standards shall be

considered defective. If required by the project manager, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

The work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the work against defective materials or faulty workmanship for a minimum period of one [1] year after final payment by the Agency and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to the Agency. As additional security for these guarantees, the Contractor shall, prior to the release of final payment, furnish separate maintenance (or guarantee) bonds in form acceptable to the Agency written by the same corporate surety that provides the performance bond and labor and material payment bond for this contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one [1] year after final payment and shall be written in an amount equal to ONE HUNDRED PERCENT [100%] of the CONTRACT SUM, as adjusted (if at all).

21. **EEO:** *Applies to all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3*

All Firms will be required to follow Federal Equal Employment Opportunity (EEO) policies. The Agency will affirmatively assure that on any project constructed pursuant to this advertisement, equal employment opportunity will be offered to all persons without regard to race, color, creed, religion, national origin, sex, and marital status, status with regard to public assistance, membership or activity in a local commission, disability, sexual orientation, or age.

22. **Seismic Safety:** *Applies only to contracts for the construction of new buildings or additions to existing buildings.*

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.

23. **Transit Employee Protective Arrangements:** *Applies to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator.*

The Contractor agrees to comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):

- a. U.S. DOL Certification. Under this contract or any amendments thereto that involve public transportation operations that are supported with federal assistance, a certification issued by U.S. DOL is a condition of the contract.
- b. Special Warranty. When the contract involves public transportation operations and is supported with federal assistance appropriated or made available for 49 U.S.C. § 5311, U.S. DOL will provide a special warranty for its award, including its award of federal assistance under the Tribal Transit Program. The U.S. DOL special warranty is a condition of the contract.
- c. Special Arrangements. The conditions of 49 U.S.C. § 5333(b) do not apply to Contractors providing public transportation operations pursuant to 49 U.S.C. § 5310. FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate, and, in those instances, any special arrangements required by FTA will be incorporated herein as required.

24. Charter Service Operations: *Applies to contracts for operating public transportation 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:

- a. Federal transit laws, specifically 49 U.S.C. § 5323(d);
- b. FTA regulations, "Charter Service," 49 C.F.R. part 604;
- c. Any other federal Charter Service regulations; or
- d. 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:

- a. Barring it or any subcontractor operating public transportation under its award that has provided prohibited charter service from receiving federal assistance from FTA;

- b. Withholding an amount of federal assistance as provided by Appendix D to part 604 of FTA 's Charter Service regulations; or
- c. 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.



25. School Bus Service Operations: *Applies to contracts for operating public transportation service.*

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:

- a. Federal transit laws, specifically 49 U.S.C. § 5323(f);
- b. FTA regulations, "School Bus Operations," 49 C.F.R. part 605;
- c. Any other Federal School Bus regulations; or
- d. Federal guidance, except as FTA determines otherwise in writing.

If the Contractor violates this school bus agreement, FTA may:

- a. Bar the Contractor from receiving Federal assistance for public transportation; or
- b. 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.



26. Substance Abuse Requirements: Drug & Alcohol Testing: *Applies to third party contractors who perform safety-sensitive functions. Contractors 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:*

- a. *Operating a revenue service vehicle, including when not in revenue service;*

- b. *Operating a non-revenue service vehicle, when required to be operated by a holder of a Commercial Driver's License;*
- c. *Controlling dispatch or movement of a revenue service vehicle;*
- d. *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 or such services; or an employer who receives funding under 49 USC § 5311 and contracts out such services.*
- e. *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."

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 North Dakota and/or Minnesota, or the Cities of Fargo/Moorhead, 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 part 655 before February 1 and to submit the Management Information System (MIS) reports before February 1 to the City of Moorhead Transit Manager and City of Fargo Transit Director. 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.

27. Rights to Inventions Made Under a Contract or Agreement: *Applies when entering 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:*

- a. *Obtain, reproduce, publish, or otherwise use the data produced under a Federal award; and*
- b. *Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.*

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.

- a. 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.
 - i. Any subject data developed under the contract, whether or not a copyright has been obtained; and
 - ii. Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part by the FTA.
- b. 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.

- c. 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.
- d. 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.
- e. 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.
- f. 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.

28. Disadvantaged and Small Business Enterprise (DBEs): *Applies to FTA recipients receiving planning, capital and/or operating assistance that will award prime contracts (excluding transit vehicle purchases) exceeding \$250,000 in FTA funds in a Federal fiscal year.*

For all DOT-assisted contracts, each FTA recipient must include assurances that third party contractors will comply with the DBE program requirements of 49 C.F.R. part 26, when applicable. The following contract clause is required in all DOT-assisted prime and subcontracts:

The Contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- a. Withholding monthly progress payments;
- b. Assessing sanctions;
- c. Liquidated damages; and/or
- d. Disqualifying the Contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

In connection with the performance of this service, the Contractor will cooperate with the Agency in the utilization of disadvantaged business enterprises including women-owned business enterprises for the duration of the contract and will use its best efforts to ensure that disadvantaged business enterprises have the maximum practicable opportunity to compete for subcontract work. In order to ensure that a fair proportion of the purchases of supplies and services is placed with disadvantaged business enterprises, the Contractor agrees to take affirmative action to identify disadvantaged business firms, solicit bids or quotations from them for supplies and services related to this proposal.

The Contractor agrees to meet any goals established by Agency for purchases pertaining to this contract to the best of the Contractor's ability and will provide the Agency with the necessary certification and records for reporting purposes. When the majority of the contract is labor, which is not a contracting opportunity, DBE goals will not be set but Contractors are encouraged to use DBE businesses.

The Contractor will be required to report its DBE participation obtained through race neutral means throughout the period of performance.

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

Fostering Small Business Participation

The Agency has established a small business element to its DBE program, pursuant to 49 CFR 26.39. This program aims to provide opportunities and foster small business enterprises (SBE)/participation in contracting with the Agency. This program is race and gender-neutral, however SBEs can also count towards DBE goals.

29. Prompt Payment and Return of Retainage: *Applies to all contracts.*

Recipients must establish a contract clause to require prime Contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days (payment required within 10 days or paying interest at 1 ½ percent per Minnesota State Statute 471.425 subd. 4a) from receipt of each payment the recipient makes to the prime contractor. 49 C.F.R. § 26.29(a). Finally, for contracts with defined DBE contract goals, each FTA recipient must include in each prime contract a provision stating that the Contractor shall utilize the specific DBEs listed unless the Contractor obtains the recipient's written consent; and that, unless the recipient's consent is provided, the Contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

30. 6002 of the Solid Waste Disposal Act: *Applies to all contracts for items designated by the EPA, when the purchaser or contractor procures \$10,000 or more of one of these items during the fiscal year or has procured \$10,000 or more of such items in the previous fiscal year, using Federal funds. These regulations apply to all procurement actions involving items designated by the EPA, where the procuring agency purchases \$10,000 or more of one of these items in a fiscal year, or when the cost of such items purchased during the previous fiscal year was \$10,000.*

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

31. Americans with Disabilities Act Access (ADA): *Applies to all contracts.*

Introduction: 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. Sections 12101 *et seq.*, prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private public and private entities. Third party contractors must comply with their responsibilities under Titles I thru V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issues by other Federal agencies.

- a) **Rolling Stock Accessibility:** Rolling stock must comply with the accessibility requirements of DOT regulations, "Transportation Services for Individuals with Disabilities (ADA), "49 CFR Part 37, and Joint ATBCB/DOT regulations, "Americans with Disabilities (ADA Accessibility Specifications for Transportation Vehicles," 36

CFR Part 1192 and 49 CFR Part 38. Vehicles acquired (with limited exceptions) should be accessible to and usable by individuals with disabilities, including individuals using wheelchairs;

b) **Purchased Transportation Services Accessibility:** A third party contractor providing public transportation services must operate its services in compliance with 42 U.S.C. Sections 12101 *et seq.* and DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," using facilities and equipment that comply with 49 CFR Part 37; and Joint ATBCB/DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38. Private entities must comply with the requirements of 49 CFR Part 37 applicable to public entities with which they contract to provide public transportation services. MART advises its third party contractors operating public transportation services to review the requirements for public entities in this context which include but are not limited to:

- a. **Complementary Paratransit Service:** Requirements that public entities providing fixed-route service provide complementary paratransit service to individuals with disabilities who cannot use the fixed-route system.
- b. **Equal Opportunity:** Requirements for service with service requirements intended to ensure that individuals with disabilities are afforded equal opportunity to use transportation systems and services.

c) **Design and Construction Accessibility:** Facilities to be used in public transportation systems and service must comply with 42 U.S.C. Sections 12101 *et seq.* and DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37; and Joint ATBCB/DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38. Notably, DOT incorporated by reference the ATBCB's Americans with Disabilities Act Accessibility Guidelines" (ADAAG), revised July 2004, which include accessibility guidelines for buildings and facilities, and are incorporated into Appendix A to 49 CFR Part 37. DOT also added specific provisions to Appendix A modifying the ADAAG, with the result that buildings and facilities must comply with both the ADAAG and amendments thereto in Appendix A to 49 CFR Part 37.

32. Assignability Clause: *Applies to all contracts.*

Procurements through assignments: Neither the Agency nor the Contractor shall assign or transfer any of its rights or obligations hereunder without the prior written consent of the other.

33. Program Fraud & False or Fraudulent Statements & Related Acts: *Applies to all third-party contracts that are federally funded.*

- a. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. 3801 *et seq.* and U.S. DOT

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

- b. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(1) on the Contractor, to the extent the Federal Government deems appropriate.
- c. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

34. Bus Testing: *Applies only to the purchase or lease of any new bus model, or any bus model with a major change in configuration or components to be acquired or leased with funds obligated by FTA. Recipients are responsible for determining whether a vehicle to be acquired requires full or partial testing or has already satisfied the bus testing requirements by achieving a passing test score in accordance with 49 C.F.R. part 665. Recipients must certify compliance with FTA 's bus testing requirements in all grant applications for FTA funding for bus procurements.*

The Contractor [Manufacturer] agrees to comply with the Bus Testing requirements under 49 U.S.C. 5318(e) and FT A's implementing regulation at 49 C.F.R. part 665 to ensure that the requisite testing is performed for all new bus models or any bus model with a major change in configuration or components, and that the bus model has achieved a passing score. Upon completion of the testing, the contractor shall obtain a copy of the bus testing reports from the operator of the testing facility and make that report(s) publicly available prior to final acceptance of the first vehicle by the recipient.

35. Pre-Award and Post-Delivery Audits of Rolling Stock Purchases: *Applies to the purchase of revenue service rolling stock with FTA funds and must comply with the*

pre-award and post-delivery audit requirements set forth in 49 U.S.C. 5323(111) and supplemented by 49 C.F.R. part 663.

The Contractor agrees to comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 C.F.R. part 663. The Contractor shall comply with the Buy America certification(s) submitted with its proposal/bid. The Contractor agrees to participate and cooperate in any pre-award and post-delivery audits performed pursuant to 49 C.F.R. part 663 and related FTA guidance

36. Safe Operation of Motor Vehicles: *Applies to all federally funded third party contracts.*

Seat Belt Use

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the Contractor or Agency.

Distracted Driving

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

37. Recycled Products: *Applies to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier where the value of an EPA designated item exceeds \$10,000. Applies to States and local governmental authorities to provide a competitive preference to products and services that conserve natural resources, protect the environment, and are energy efficient. Recipients are required to procure 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.*

The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource

Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247.

REQUIRED THIRD-PARTY CONTRACT CLAUSES

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

Name of Procurement:

Date:

Procurer:

ALL FTA-ASSISTED THIRD PARTY CONTRACTS AND SUBCONTRACTS

No Federal government obligations to third-parties

Program fraud and false or fraudulent statements and related acts

Access to Records and Reports

Federal Changes

Civil Rights and Equal Opportunity

Incorporation of FTA Terms

Energy Conservation

Safe Operation of Motor Vehicles

Applicable?	
Yes	No

AWARDS EXCEEDING \$10,000

Termination provisions

Recycled Products (contracts for items designated by EPA, when procuring \$10,000 or more per year)

Applicable?	
Yes	No

AWARDS EXCEEDING \$25,000

Debarment, Suspension, Ineligibility and Voluntary Exclusion

Disadvantaged and Small Business Enterprise

Applicable?	
Yes	No

AWARDS EXCEEDING \$100,000 BY STATUTE

Lobbying Restrictions

Contract Work Hours & Safety Standards Act (involving employment of mechanics or laborers)

Applicable?	
Yes	No

AWARDS EXCEEDING THE SIMPLIFIED ACQUISITION THRESHOLD (\$150,000)

Buy America (when tangible property or construction will be acquired)

Breach of Contract and Dispute Resolution

Clean Air and Federal Water Pollution Control Act

Applicable?	
Yes	No

TRANSPORT OF PROPERTY OR PERSONS

Cargo Preference (when acquiring property suitable for shipment by ocean vessel)

Fly America (when property or persons transported by air between US and foreign destinations, or between foreign locations)

Applicable?	
Yes	No

CONSTRUCTION ACTIVITIES

Davis-Bacon Act and Copeland Act – Prevailing Wage and Anti-Kickback

(Applies to all FTA funded contracts for all prime construction, alteration or repair contracts in excess of \$2,000)

Applicable?	
Yes	No

Construction—Special Requirements (Applies to FTA assisted construction projects)
 Seismic Safety (contracts for construction of new buildings or additions to existing buildings)

TRANSIT OPERATIONS

Transit Employee Protective Arrangements
 Charter Service
 School Bus Service Operations
 Substance Abuse Requirements: Drug and Alcohol Testing (safety sensitive functions applies to Section 5307, 5309, and 5311 projects)

Applicable?	
Yes	No

PLANNING, RESEARCH, DEVELOPMENT AND DOCUMENTATION PROJECTS

Patent Rights and Rights in Data

Applicable?	
Yes	No

ROLLING STOCK REQUIREMENTS

Bus Testing (Applies only to the purchase or lease or major change of any bus)
 Pre-Award and Post-Delivery Audits of Rolling Stock Purchases

Applicable?	
Yes	No

REQUIRED INFORMATION CHECKLIST

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

Name of Procurement:

Date:

Procurer:

CERTIFICATIONS

- Bus Testing Certification and Report (procurements of buses & modified mass produced vans)
- TVM Certifications (procurements of buses & modified mass produced vans)
- Buy America Certification (procurements of steel, iron or manufactured products >\$150,000)
- Pre-Award Audit (rolling stock procurements)
- Pre-Award Buy America Certification (rolling stock procurements > \$150,000)
- Pre-Award Purchaser's Requirement Certification (rolling stock procurements)
- Post-Delivery Audit (rolling stock procurements)
- Post-Delivery Buy America Certification (rolling stock procurements > \$150,000)
- Post-Delivery Purchaser's Requirement Certification (rolling stock procurement)
- Federal Motor Vehicles Safety Standards Pre-Award and Post Delivery Certification (rolling stock procurements)
- Debarment, Suspension, Ineligibility and Voluntary Exclusion Certification (> \$25,000)
- Lobbying Certification (Procurements > \$100,000)

FORMS/DOCUMENTATION

- Lobbying Standard Form LLL and Quarterly Updates (as required) (procure > \$100,000 where contractor engages in lobbying activities)
- Record of Procurement History
- Independent Cost Estimate
- Cost/Price Analysis
- Justification for Noncompetitive Awards (if applicable)
- Evaluation of Options (if applicable)
- Exercise of Options

REPORTS

- On-Site Inspectors Report (rolling stock procure more than 10 vehicles for areas >200,000 and 20 for areas < 200,000 in population)
- Excluded Parties Listing System search (website: www.sam.gov for procurements over \$25,000)

RFP REMINDERS - see thresholds

- Protest Procedures
- Selection Criteria
- Responsible Bidder Criteria
- Responsible Bidder Determination
- No excessive bonding requirements
- No exclusionary specifications
- No geographic preferences (except for A&E services)

Applicable?	
Yes	No

Note: For each item checked 'yes' above, documentation must be placed in procurement file.

Appendix B

Federal Transit Administration Best Practices Procurement Manual:

<https://www.transit.dot.gov/funding/procurement/procurement>

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and local law as well as with Federal requirements. Federal restrictions vary with the type of procurement method used. The following guidance is based on the requirements of the Common Grant Rule for governmental recipients, supplemented by FTA policies that address the needs of FTA recipients.

- a. Micro-Purchases. Consistent with the Federal Acquisition Regulation (FAR), FTA considers micro-purchases to be those purchases of \$3,000 or less.
 - (1) When Appropriate. If permitted by State and local law, the recipient may acquire property and services valued at \$3,000 or less without obtaining competitive quotations. These purchases are exempt from FTA's Buy America requirements Davis-Bacon prevailing wage requirements, however, will apply to construction contracts exceeding \$2,000, even though the recipient uses micro-purchase procurement procedures. FTA does not intend to imply that the recipient must treat any purchase of \$3,000 or less as a micro-purchase. The recipient may set lower thresholds for micro-purchases in compliance with State and local law, or otherwise as it considers appropriate.
 - (2) Procedures. The following procedures apply to micro-purchases:
 - (a) Competition. The recipient should distribute micro-purchases equitably among qualified suppliers.
 - (b) Prohibited Divisions. The recipient may not divide or reduce the size of its procurement merely to come within the micro-purchase limit.
 - (c) Documentation. FTA's only documentation requirement for micro-purchases is a determination that the price is fair and reasonable and a description of how the recipient made its determination. FTA does not require the recipient to provide its rationale for the procurement method used, selection of contract type, or reasons for contractor selection or rejection.
- b. Small Purchases. The Common Grant Rule for governmental recipients authorizes governmental recipients to use relatively simple and informal small purchase procedures as follows:
 - (1) When Appropriate. Small purchase procedures may be used to acquire services, supplies, or other property valued at more than the micro-purchase threshold (currently, \$3,000) but less than the Federal simplified acquisition threshold at 41 U.S.C. Section 403(11), currently \$100,000. (FTA recognizes the small purchase threshold to be the same as the simplified acquisition threshold.) *Also*

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see, Chapter II, Subsection 3.b. These purchases are also exempt from FTA's Buy America requirements. FTA does not intend to imply that any purchase of \$100,000 or less must be treated as a small purchase. The recipient may set lower thresholds for small purchases in compliance with State and local law, or otherwise as it considers appropriate.

(2) Procedures. When using small purchase procedures:

- (a) Competition. The recipient must obtain price or rate quotations from an adequate number of qualified sources.
- (b) Prohibited Divisions. The recipient may not divide or reduce the size of its procurement to avoid the additional procurement requirements applicable to larger acquisitions.

c. Sealed Bids (Formal Advertising). The Common Grant Rule for governmental recipients acknowledges sealed bidding to be a generally accepted procurement method in which bids are publicly solicited, and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is lowest in price.

(1) When Appropriate. The Common Grant Rule for government recipients states a preference for the sealed bids procurement method for acquiring property, construction, and other services. Sealed bid procurements should be used when the following circumstances are present:

- (a) Precise Specifications. A complete, adequate, precise, and realistic specification or purchase description is available.
- (b) Adequate Sources. Two or more responsible bidders are willing and able to compete effectively for the business.
- (c) Fixed Price Contract. The procurement generally lends itself to a firm fixed price contract.
- (d) Price Determinative. The successful bidder can be selected on the basis of price and those price-related factors listed in the solicitation including, but not limited to, transportation costs, life cycle costs, and discounts expected to be taken. Apart from responsibility determinations discussed in later sections of this Chapter, contractor selection may not be determined on the basis of other factors whose costs cannot be measured at the time of award.



Office of Transit and Active Transportation (OTAT)

Vehicle procurement requirements for Greater Minnesota urban transit systems

Last revised August 27, 2018

The following requirements apply to urban transit systems of Greater Minnesota, effective for all Office of Transit and Active Transportation (OTAT) grant contracts.

	Vehicles purchased with State funds through an OTAT grant contract	Vehicles purchased with Section 5339 funds or other Federal source through an OTAT grant contract	For vehicles purchased outside of an OTAT grant contract
Bid / award process	Urban transit systems may, at local discretion, procure vehicles through the State Cooperative Purchasing Venture (CPV), or independently, or through another procurement partnership or consortium.		
Federal compliance	Local recipient conducts procurement according to Federal procurement guidelines, regardless of funding source.		OTAT does not oversee procurements conducted outside of an OTAT grant contract.
Bid / award documentation	<p>Local recipient maintains the following on file and submits to OTAT <u>only if OTAT requests</u>:</p> <ul style="list-style-type: none"> ▪ Independent cost estimate ▪ RFP or IFB ▪ Price analysis ▪ Signed vendor contract ▪ Signed certifications and assurances ▪ Resolution from governing body authorizing the purchase ▪ Order form, specifications, vehicle floor plan ▪ Purchase order 	<p>Local recipient maintains the following on file and submits to OTAT <u>prior to placing the order</u>:</p> <ul style="list-style-type: none"> ▪ Independent cost estimate ▪ RFP or IFB ▪ Price analysis ▪ Signed vendor contract ▪ Signed certifications and assurances ▪ Resolution from governing body authorizing the purchase ▪ Order form, specs, floor plan ▪ Purchase Order ▪ TVM/DBE Certification from FTA ▪ Excluded Parties Listing/Sam.gov ▪ Pre-Award Buy America 	
Order	Local recipient places the order directly with the vendor, including for vehicles purchased through the CPV.		
Inspections	Local recipient conducts all vehicle inspections before and after delivery.		
Request for funds (RFF) and acceptance documentation	<p>Local recipient submits an RFF to OTAT accompanied by the following support documentation:</p> <ul style="list-style-type: none"> ▪ Vendor invoice(s) ▪ New Vehicle Inventory form(s) ▪ Vehicle Acceptance form(s) ▪ Purchase Order 	<p>Local recipient submits an RFF to OTAT accompanied by the following support documentation:</p> <ul style="list-style-type: none"> ▪ Vendor invoice(s) ▪ New Vehicle Inventory form(s) ▪ Vehicle acceptance form(s) ▪ Post-Delivery Buy America form(s) 	Local recipient completes a New Vehicle Inventory form for each vehicle delivered and submits to Vehicle Procurement Coordinator for update to the OTAT fleet inventory.
Disposal	Local recipient follows OTAT vehicle disposition / transfer procedure. State must release vested interest prior to disposal or transfer.		Local recipient notifies OTAT of disposal for fleet inventory update.

Appendix C

City of Fargo Procurement Policies



CITY OF FARGO

Purchasing Policy Procedures

Procedure for Level 1 Purchases between \$0 - \$10,000

1. Verify that budgeted funds are available to be expended
2. Transaction must be appropriate to grant or account
3. Department staff research and make purchase with Department or Division head approval using best judgment in making vendor selection.
4. No bid or quote required
5. Does not require a written cost/price analysis, however, price must be reasonable
6. Purchasing quote form is not required.

Procedure for Level 2 Purchases between \$10,001 - \$25,000

1. Verify that budgeted funds are available to be expended
2. Transaction must be appropriate to grant or account
3. This level requires Division Head approval, with Department Head concurrence
4. Complete the Purchasing Quote Form.
 - a. Get at least 3 quotes from different vendors (verbal quotes are acceptable). If you do not receive three quotes, provide a written justification (e.g. "only two known vendors" or "contacted three vendors, only two responded").
 - b. Make your vendor selection. Lowest quote does not necessarily have to be the vendor selected but rationale for not choosing the lowest quote must be documented on the quote form. (i.e. Vendor with lowest quote cannot offer timely delivery.)
5. Please follow the instructions below when preparing to pay the vendor:
 - a. If paying by check, submit the purchasing quote form, invoice, and, if applicable, fixed asset addition form to your AP technician
 - b. If paying by credit card, submit the purchasing quote form, invoice, and, if applicable, fixed asset addition form with your departments credit card receipt documentation.
6. Note: If you have any purchases within this threshold that require paying multiple invoices, you can contact the Deputy City Auditor to receive an AD number (similar to the RFP and SSP numbers described in this document). The purchasing quote form must accompany the first invoice you pay but the AD number can be referenced on all subsequent invoices being paid.

Procedure for Level 3 Purchases between \$25,001 - \$50,000

1. Verify that budgeted funds are available to be expended
2. Transaction must be appropriate to grant or account
3. This level requires Department Head approval
4. Complete the Purchasing Quote Form
 - a. Get at least 3 quotes from different vendors (verbal quotes are acceptable). If you do not receive three quotes, provide a written justification (e.g. "only two known vendors" or "contacted three vendors, only two responded").

- b. Make your vendor selection. Lowest quote does not necessarily have to be the vendor selected but rationale for not choosing the lowest quote must be documented on the quote form. (i.e. Vendor with lowest quote cannot offer timely delivery.)
5. Please follow the instructions below when preparing to pay the vendor:
 - a. If paying by check, submit the purchasing quote form, invoice, and, if applicable, fixed asset addition form to your AP Technician
 - b. If paying by credit card, submit the purchasing quote form, invoice, and, if applicable, fixed asset addition form with your departments credit card receipt documentation.
6. Note: If you have any purchases within this threshold that require paying multiple invoices, you can contact the Deputy City Auditor to receive an AD number (similar to the RFP and SSP numbers described in this document). The purchasing quote form must accompany the first invoice you pay but the AD number can be referenced on all subsequent invoices being paid.

Procedure for Level 4 Purchases over \$50,000

1. Verify that budgeted funds are available to be expended
2. Formal process of publicized request for proposals which requires City Commission approval
3. One of the following ad types shall be used for publishing:
 - a. RFP – Request for Proposal: Proposal for products or services. Proposals will be collected on due date and are not opened publicly.
 - b. RFQ – Request for Qualifications: Proposal from companies that might pre-qualify to do services under specific criteria. Proposals will be collected on due date and are not opened publicly.
 - c. RFV – Request for Vendor: Proposal for vendors to do services. Proposals will be collected on due date and are not opened publicly.
 - d. AFB – Advertise Bids: Bids from companies for product or services. Bids will be opened and read publicly on a bid opening date.
4. Sample RFP, RFQ, RFV and AFB templates can be found on the intranet, if needed:
<http://intranet.cityoffargo.com/Departments/Auditor/Forms/>
5. Submit completed Ad to the Deputy City Auditor to publish in the City's designated official newspaper.
6. Most Ad's will be published two consecutive Monday's in the legal section of the City's designated official newspaper.
7. Ad's are due to the Deputy City Auditor no later than the Tuesday (by 4:00pm) before the first Monday of publication.
8. When the Deputy City Auditor receives the Affidavit back from the City's designated official newspaper, they will send a copy for review to the departmental contact. An AD number (i.e. RFP17001) is assigned at this time and is emailed to the department contact and office personnel.

9. The cover letter submitted to City Commission for placement on the City Commission agenda must reference in the "Recommended Motion" section of the letter; Request for Proposal, Request for Qualifications, Request for Vendor or Advertise Bids (see example below).

Recommended Motion: I/we hereby move based on the request for proposal (RFP17001) to contract with Master Construction, Diesel Dogs Trucking and Industrial Builders for Snow Hauling Trucks for the 2016-2017 Winter.

10. Please follow the instructions below when preparing to pay the vendor.
 - a. Payments by check:
 1. The RFP, RFQ, RFV or AFB number should be included in the item description for line number 1 when creating a purchase requisition. The requisition is to be set up for the total awarded amount. See examples below:

```

PI610U02                                CITY OF FARGO
Number : 0000211943                      Purchase Requisition 1
-----
Purchase Requisition - Item Information
Type information, press Enter.
Line number . . . : 1
Item desc . . . . AUDIT FEE (RFP17001)
Search type . . . B=Begins with, C=Contains
Vendor part # . . . _____
Commodity (F4) . . . _____
Sub-com (F4) . . . _____
Item # (F4) . . . _____
Reference (F4) . . . _____
Ship to (F4) . . . AU CITY AUDITOR
-----
Quantity . . . . _____ 2 decimals
Order UOM (F4) . . . _____
Unit cost . . . . _____ 4 decimals
Account # (F4) . . . _____
Project (F4) . . . _____
F8=Extended desc  F12=Cancel

```

CITY OF FARGO

File Edit List Commands Help

SUNGARD PUBLIC SECTOR NavilLine

OK Exit Cancel Copy

Requisition: 0000211944 Type: PURCHASE REQUISITION

Reason: AUDIT FEE RFP17001

By: JENICA Date: 02/14/2017

Vendor number: 427 Name: EIDE BAILLY LLP

Ship to: AU CITY AUDITOR

Contract: Deliver by: 12/31/2017 Fiscal year code: Current

Line Item Entry/update

Item description: AUDIT FEE (RFP17001) Vendor part number:

Commodity:

Sub-commodity:

Item number: Item reference number:

Line number: 001

Extended d...

2. Write the Ad number on the invoice when submitting to the AP Technician for payment.

b. Payments by procurement card:

1. When reconciling the transaction include the RFP, RFQ, RFV or AFB number on one of the Misc. Info Line items. Key in the invoice number in the invoice number field. See examples below:

```

Transaction date . . : 10/30/18          Posting Date . . . : 10/31/18
Merchant . . . . . : STAPLS7207166299000001    City: 877-8267755    MI
GL vendor . . . . . : 18855 STAPLES ADVANTAGE
Invoice number . . . : 7207166299
Status . . . . . : AP      Approved ID: SCALKINS          Date: 11/15/18
GL account . . . . . : 101-1010-405-61.10
Project number . . . : OFF05
Misc. info line 1 . . : PBC17091
Misc. info line 2 . . : ADD'N MACH TAPE, BELL, STAND, TONERS, PAPER CLIP HOLDR
Misc. info line 3 . . : SHIPMENT 1

```


1. The SSP number should be included in the item description for line number 1 when creating a purchase requisition. The requisition is to be set up for the total awarded amount. See examples below:

```

PI610U02                                CITY OF FARGO                                1/31/17
Number : 0000211940                      Purchase Requisition                          08:41:40

Purchase Requisition - Item Information
Type information, press Enter.
Line number . . . : 1
Item desc . . . . 2016 AUDIT FEE (SSP17001)
Search type . . . _ B=Begins with, C=Contains
Vendor part # . . . _____
Commodity (F4) . . . _____
Sub-com (F4) . . . . _____
Item # (F4) . . . . _____
Reference (F4) . . . _____
Ship to (F4) . . . AU CITY AUDITOR
Quantity . . . . . _____ 2 decimals
Order UOM (F4) . . . _____
Unit cost . . . . . _____ 4 decimals
Account # (F4) . . . _____
Project (F4) . . . . _____

F8=Extended desc  F12=Cancel

```

The screenshot shows the SUNGARD PUBLIC SECTOR NavilLine interface. At the top, it displays 'CITY OF FARGO' and 'SUNGARD PUBLIC SECTOR NavilLine'. The main window contains several fields for requisition details:

- Requisition:** 0000211942, **Type:** PURCHASE REQUISITION
- Reason:** 2016 AUDIT FEE
- By:** JENICA, **Date:** 02/14/2017
- Vendor number:** 427, **Name:** EIDE BAILLY LLP
- Ship to:** AU CITY AUDITOR
- Deliver by:** 02/14/2017, **Fiscal year code:** Current

Below these fields is a section titled 'Line Item Entry/update' with the following information:

- Item description:** 2016 AUDIT FEE (SSP17001)
- Vendor part number:** (empty field)
- Commodity:** (empty field)
- Line number:** 001

Buttons for 'OK', 'Exit', 'Cancel', 'Copy', 'Quotes', 'Comments', and 'Continue' are visible at the top of the interface.

2. Write the SSP number on the invoice when submitting to the AP Technician for payment.

b. Payments by procurement card:

1. When reconciling the transaction include the SSP number on one of the Misc. info Line items. Key in the invoice number in the invoice number field. See examples below:

Transaction type/Ref	D DEBIT 12000202
Amount	101.05
Transaction date	10/06/16 Posting date : 10/07/16
Status	AP 10/26/16 Approved ID: BTARALSON
Merchant	A & B BUSINESS INC. City: 6053358520 SD
Invoice number	
Vendor number (F4)	19954 A & B BUSINESS EQUIPMENT
GL Account (F4)	10120404146110
Project (F4)	OFF05
Misc. info line 1	INV# 0050717-001
Misc. info line 2	SSP#17002
Misc. info line 3	3X5 NOTEBOOKS, PENS, PERMIT COVERS, RECEIPT BOOK,

Amount: 25.25
Transaction date: 10/14/16 **Posting date:** 10/14/16
Invoice number:
Status: HOLD **Approved ID:** **Date:** 0/00/00
Merchant: NORTHWEST TIRE #12 **City:** MANDAN ND
Vendor number: NORTHWEST TIRE INC (MAPLETON)
GL account:

Project:
Misc. Information line 1:
Misc. Information line 2:
Misc. Information line 3:

2. Write the SSP number on the invoice when submitting it with the department's pcard documentation.

Procedure for Sole Source Procurements greater than \$50,000

1. Verify that budgeted funds are available to be expended
2. The department must complete the Sole Source Procurement Justification Form.
3. The cover letter submitted to the City Commission for placement on the City Commission agenda must reference in the "Recommended Motion" section of the letter, Sole Source Procurement. See example below:

Recommended Motion: Using the sole source procurement process as provided for in the City of Fargo Purchasing Policy, I request a suggested motion to accept the Johnson Controls, Inc./Chiller Systems, Inc planned service proposal between the FARGODOME and Johnson Controls, Inc. as presented.

4. Forward the completed form and cover letter to the City Commission Executive Assistant to have the item placed on the City Commission agenda.
5. If approved by the City Commission, the Deputy City Auditor will assign an SSP (Sole Source Procurement) number to the item (i.e. SSP17001). The Deputy City Auditor will send an email with this number to the individual who requested the sole source procurement and the office personnel of that department.
6. Please follow the instructions below when preparing to pay the vendor.
 - a. Payments by check:
 1. The SSP number should be included in the item description for line number 1 when creating a purchase requisition. The requisition is to be set up for the total awarded amount. See example below:

PI610U02 Number : 0000211940	CITY OF FARGO Purchase Requisition	1/31/17 08:41:40
---------------------------------	---------------------------------------	---------------------

Purchase Requisition - Item Information		
Type information, press Enter.		
Line number . . . :	1	
Item desc	2016 AUDIT FEE (SSP17001)	
Search type	_ B=Begins with, C=Contains	
Vendor part # . . .	_____	
Commodity (F4) . . .	_____	
Sub-com (F4)	_____	
Item # (F4)	_____	
Reference (F4)	_____	
Ship to (F4)	AU CITY AUDITOR	
Quantity	_____	2 decimals
Order UOM (F4)	_____	
Unit cost	_____	4 decimals
Account # (F4)	_____	
Project (F4)	_____	
F8=Extended desc F12=Cancel		

The screenshot shows the SUNGARD NAVILINE software interface. At the top, it displays 'CITY OF FARGO' and 'SUNGARD PUBLIC SECTOR NavilLine'. Below this are menu options: File, Edit, List, Commands, Help. A toolbar contains buttons for OK, Exit, Cancel, and Copy. The main form area contains the following fields:

- Requisition: 0000211942 Type: PURCHASE REQUISITION
- Reason: 2016 AUDIT FEE
- By: JENICA Date: 02/14/2017
- Vendor number: 427 Name: EIDE BAILLY LLP
- Ship to: AU CITY AUDITOR
- Contract: _____
- Deliver by: 02/14/2017 Fiscal year code: Current

Below these fields is a section titled 'Line Item Entry/update' with the following details:

- Item description: 2016 AUDIT FEE (SSP17001)
- Commodity: _____
- Vendor part number: _____
- Line number: 001

2. Write the SSP number on the invoice when submitting to the AP Technician for payment.
- b. Payments by procurement card:
1. When reconciling the transaction include the SSP number on one of the Misc. info Line items. See example below:

```

Transaction type/Ref : D DEBIT 120909292
Amount . . . . . : 101.05
Transaction date . . : 10/06/16 Posting date . . : 10/07/16
Status . . . . . : AP 10/26/16 Approved ID: BTARALSON
Merchant . . . . . : A & B BUSINESS INC. City: 6053358520 SD
Invoice number . . . . . :
Vendor number (F4) . . : 19954 A & B BUSINESS EQUIPMENT
GL Account (F4) . . . . : 10120404146110
Project (F4) . . . . . : OFF05
Misc. info line 1 . . . : INV# 0050717-001
Misc. info line 2 . . . : SSP#17002
Misc. info line 3 . . . : 3X5 NOTEBOOKS, PENS, PERMIT COVERS, RECEIPT BOOK,

```

Amount: 25.25
Transaction date: 10/14/16 **Posting date:** 10/14/16
Invoice number:
Status: HOLD **Approved ID:** **Date:** 0/00/00
Merchant: NORTHWEST TIRE #12 **City:** MANDAN ND
Vendor number: 19667 NORTHWEST TIRE INC (MAPLETON)
GL account: 10150104116140
Project:
Misc. Information line 1: INV12345 TIRES
Misc. Information line 2: SSP17002
Misc. Information line 3:

2. Write the SSP number on the invoice when submitting it with the department's pcard documentation.

Piggyback Contract Purchases

1. Piggyback purchases can be made directly off existing competitively procured National or State governmental contracts, or widely recognized purchasing consortiums.
2. The following are websites available for piggyback contracting
 - a. <https://apps.nd.gov/csd/spo/services/bidder/listCurrentContracts.htm>
 - b. <http://www.naspoaluepoint.com/#/home/contracts>
 - c. <http://www.njpacoop.org/cooperative-purchasing/>
 - d. <http://www.mmd.admin.state.mn.us/cpv2.htm>
3. Complete the Sole Source and Piggyback Procurement Form and have it approved as required by the purchasing policy.

4. When paying the vendor, whether by check or procurement card, submit the invoice, sole source and piggyback procurement form, and a copy of the national or state contract (and fixed asset addition form, if applicable).

Weekly Check Run

1. The Finance office processes a weekly check run each Thursday.
2. To ensure an invoice will be paid on a particular Thursday please following these steps:
 - a. The purchase order has to be received on by end of day on Friday prior to the Thursday check run.
 - b. The invoice(s) have to be to the Finance office by end of day on Friday prior to the Thursday check run.

Policy and Procedure Documents

The City's documents related to financial policies and procedure can be found on the City's intranet using the following links:

<http://intranet.cityoffargo.com/Departments/Auditor/CityFinancialPolicies/>

<http://intranet.cityoffargo.com/Departments/Auditor/Procedures/>



Vendor Management

Incomplete information could result in a processing delay.

Requester

Department

Email Address

Phone Number

New Vendor Update Vendor



Purchasing Quote Form

This form is required for every purchase between \$3,001 and \$25,000 per item. It applies to purchases made by credit card and/or by purchase order.

Purchase Date: _____ Requisition No. or Pcard No. (last 4 digits only): _____

Purchaser Name or Purchasing Card Name: _____

What is being purchased?

Vendor #1 Name and Quote: _____

Vendor #2 Name and Quote: _____

Vendor #3 Name and Quote: _____

Vendor Selected: _____

Quantity Purchased: _____ Total Purchase Price \$: _____

If equipment over \$3,000 per unit was purchased, please complete the Fixed Asset Addition Form.

Comments:

Auditors Office:

Documentation complete _____ (Yes/ No) Verified by _____ Date: _____



Sole Source and Piggyback Procurement Form

Sole Source and Piggyback Justification for Procurement

The following information is offered for the sole source acquisition of goods or services described below. The purchase has been thoroughly researched and it has been determined that the vendor/brand is the only acceptable vendor/brand for the product or services that will fit the particular need.

Vendor Name:

Estimated Dollar Amount of Purchase:

Is this procurement funded by a federal grant?

If yes, you must attach a document from the grant agency approving this procurement as a sole source.

The project/service is required to:

Description of features or capabilities unique to the vendor/brand being requested as related to project requirements:

Provide a brief description of how your investigation was conducted. (Internet, publications, consultations) List all sources identified and investigated to determine that no other source exists for similar products capable of meeting requirements (Must be exhaustive of all sources for the commodity being purchased. **)

****If all sources are not investigated a competitive solicitation must be issued.**

Provide a side-by-side comparison of the features/service of all other vendors/brands considered. (List the features or capabilities required for your project and how each vendor investigated does or does not meet those requirements. A table format is recommended)

--

If the piggyback procurement method is being used, please provide a copy of the piggyback contract.

--

Signature: _____
(Requestor)

Printed Name: _____

Department: _____

Title: _____

Date: _____

I, hereby, certify that this justification for other than full and open competition is accurate and complete to the best of my knowledge and belief.

_____ (Requestor initials)



Fixed Asset Addition Form

ASSET DESCRIPTION:

Item Description: _____

Project Number: _____ PO Number: _____

Serial ID: _____

Department/Division: _____ Purchase Expense: _____ - _____ - _____ - _____ - _____

Asset Location: _____ Quantity: _____

Asset Cost: \$ _____ Acquisition Date: _____

Check Date: _____ Check Number: _____
(Please note pcard if paid on credit card.)

Vendor ID/Name: _____

Federal Grant Purchase: Yes No Federal Grant #: _____

Requestor: _____

Comments:

_____**Finance Office:**

Asset ID:		
Asset Class:		
Sub Account:		Asset Ownership:
Improved Asset ID:	Asset Tag Number:	

**CITY OF FARGO, ND
FIXED ASSETS MAINTENANCE FORM
TRANSFERS, UPDATES, AND DELETIONS**

ASSET ID: _____

ASSET DESCRIPTION: _____

DEPARTMENT # _____

ASSET GROUP: _____

EFFECTIVE DATE _____

TRANSACTION TYPE
(Check One)
Update _____
Delete _____
Transfer _____

TRANSFER TO DEPT _____

**TRANSFER TO GENERAL
LOCATION** _____
(Building)

TRANSFER TO SITE _____
(Room)

REASON FOR UPDATE, TRANSFER, OR DELETION:

PROCEEDS RECEIVED IF SOLD \$ _____

VALUE RECEIVED IF TRADED-IN \$ _____

CITY OF FARGO
TRANSIT GRANT FUNDS
PROCUREMENT PROCEDURE MANUAL

I. PURPOSE

The purpose of this policy is to provide uniform direction to Transit employees involved in the procurement of supplies, equipment, services, and property in utilizing federal funds.

II. REGULATIONS

The City of Fargo is in compliance with all Federal, State, and Local regulations as they are amended and changed. The following are cited within this document.

- Federal Regulation 24 CFR Part 85.36, Procurement
- Federal Regulation 49 CFR Part 661, Buy America
- Federal Regulation 49 CFR Part 663, Pre-award and Post-delivery Audits of Rolling Stock Purchases
- Fargo Purchasing Policy; <http://intranet/Departments/Auditor/Procedures/>
- Federal Regulation 49 CFR Part 20, New Restrictions on Lobbying
- Federal Regulation 49 CFR Part 26, DBE and Fostering Small Business
- Federal Regulation 2 CFR Part 180, OMB Guidelines To Agencies On Government-wide Debarment And Suspension
- Federal Circular 4220.1F – Third Party Contracting Guidance, including applicable federal clauses
- City of Fargo Purchasing Policy January, 2017
- City of Fargo Purchasing Policy Procedures
- City of Fargo Purchasing Requirements At-A-Glance
- City of Fargo Accounting Procedures for Grant Programs
- ND DOT Procurement Policy - <http://www.dot.nd.gov/divisions/localgov/transit-operator-portal.htm>

III. REFERENCE

- "Fargo Disadvantaged Business Enterprise Plan"
- DBE Directory, ND Department of Transportation
<https://www.dot.nd.gov/divisions/civilrights/dbeprogram.htm#>
- Minnesota Civil Rights Program, DBE Directory
<http://www.dot.state.mn.us/civilrights/dbedirectory.html>
- Cities of Fargo & Moorhead Transit (MATBUS) Procurement Manual

IV. ATTACHMENTS

- All City of Fargo Procurement Policies and Forms
- Procurement Form for Small Federally Funded Purchases

V. GOALS

- A. To create the maximum feasible free and open competition in all procurements.
- B. To prevent potential waste, fraud, abuse, and conflicts of interest in the procurement process.
- C. To prevent the issuance of exclusionary or discriminatory specifications.
- D. To ensure fair and equal treatment of all vendors.
- E. To establish standard procedures to be followed in making purchases.
- F. To achieve the optimum price for the item(s) being purchased. Optimum price may or may not mean the lowest price.
- G. To comply with all applicable Federal, State, and local laws, regulations, policies, and procedures in making all procurements.

VI. ETHICAL STANDARDS

- A. All procurements will comply with applicable Federal, State, and local laws, regulations, policies, and procedures.
- B. In general, employees are not to engage in any procurement related activity that would actually or potentially create a conflict of interest, or which might reasonably be expected to contribute to the appearance of such a conflict.
- C. No employee shall participate in the selection, award, or administration of a contract if a conflict of interest would be involved. Such a conflict would arise when the employee, any member of his immediate family, his business partner, or any organization that employs, or is about to employ, any of the above has a financial or other interest in the firm selected for award.
- D. No employee shall solicit nor accept favors, gratuities, or gifts of monetary value from actual or potential contractors or subcontractors.
- E. The structure, scope, and specific activities to be performed in contract will be carefully reviewed by procurement officials to prevent real and apparent organizational conflicts of interest. An organizational conflict of interest would exist when the nature of the work to be performed under a proposed contract may, without some restriction of future activities, result in an unfair competitive advantage to the contractor or impair the contractor's objectivity in performing the contract work.
- F. To promote free and open competition, technical specifications shall be prepared to meet the minimum legitimate needs of the City and, to the extent possible, shall not exclude or discriminate against any qualified contractors.
- G. Employees must maintain strict confidentiality in the procurement process and

shall not impart privileged information to any contractors that would give them an advantage over other potential contractors.

VII. GENERAL PROCUREMENT STANDARDS

The following standards apply to all procurements of the City of Fargo Transit Grant funds:

- A. Contract Administration System. City will maintain a contract administration system that ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. No payments to contractors may be made until this provision is satisfied.
- B. Review of Proposed Procurements. The Finance Director serves as the City's chief purchasing agent and is the ultimate responsible party for approval of all City purchases under this policy. The Finance Director may delegate responsibility to the his/her designee as he/she may deem fit but must retain the responsibility for oversight of the designee to insure that all City purchases comply with this policy. Fixed Assets valued at \$5,000 or more require an Inventory Form.

Lines of responsibility for City purchases in the Mass Transit Division: The Transit Director is responsible for making preparations for seeking quotations and/or open market purchasing initiating formal bidding processes in compliance with this policy; and the City Administrator or Assistant City Administrator are responsible for approving all purchases within the department. The Finance Director reviews and approves City purchases.

- C. Value Engineering Clauses. The City will use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. (Value engineering is a systematic and creative analysis of each contract item or task to insure that its essential function is provided at the overall lowest cost.)
- D. Contractor Awards. The City will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.
- E. Record Maintenance. The City will maintain records sufficient to detail the significant history of major procurements. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price. Retention of all required records will be for six years after grantees or subgrantees make final payments and all other pending matters are closed, and after audit. Records pertaining to capital procurements and/or projects shall be retained until the item is disposed of and after audit.
- F. Settlement of Contractual/Administrative Issues. The City alone will be

responsible in accordance with good administrative practice and sound business judgement for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to the following: source evaluation, protests, disputes, and claims. Refer to Section XII (Protest Procedures) of this document.

- G. Open Competition. All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards set forth in this policy. Some of the situations considered to be restrictive of competition include, but are not limited to:
8. Placing unreasonable requirements on firms in order for them to qualify to do business;
 9. Requiring unnecessary experience and excessive bonding;
 10. Noncompetitive pricing practices between firms or between affiliated companies;
 11. Organizational conflicts of interest;
 12. Specifying only a "brand name" product instead of allowing "an equal" to be offered and describing the performance of other salient characteristics of the brand name product; and
 13. Any arbitrary action in the procurement process.
- H. Geographical Preferences. The City will conduct procurements involving federal funds in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference. This does not preempt State of North Dakota licensing laws. Geographic location may be a criteria when using the qualifications-based method for contracting for architectural and engineering services, provided such application leaves an appropriate number of qualified firms from which to choose. No Federal funds shall be used to support procurements utilizing exclusionary or discriminatory specifications.
- I. Written Specifications. The City will issue written specifications for all procurements over \$25,000 per unit. All solicitations will incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description will not, in competitive procurements, contain features that unduly restrict competition. The specification will identify all requirements that the offerors must fulfill and all other factors to be used in evaluating bids or proposals. Offerors must also provide proof of certification regarding debarment, suspension, and other responsibility matters as included in the Integrity/Debarment Certificate pertaining to 31 U.S.C. Sections 3801 ET SEQ.
- J. Prequalified Lists. The City will ensure that all prequalified lists of persons, firms, or products that are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition.

The City will not preclude potential bidders from qualifying during the solicitation period.

- K. Independent Cost Estimate and Cost/Price Analysis. The City shall perform an independent cost estimate prior to procurement, as well as a cost or price analysis in connection with every procurement action, including contract modifications. A price analysis is used to determine the reasonableness of the proposed contract price. Cost or price analysis will provide a comparative process of evaluating total price without regard to the individual elements that make up the total price. An example of cost and price analyses is attached to this document.

Cost Analysis must be obtained when a price analysis does not provide sufficient information to determine the reasonableness of the contract cost, when price competition is inadequate or when using a sole source is available, or in the event of a change order. Cost analysis must also be performed for contract modification(s) or in the event of a change order. Elements in a cost analysis include labor hours, overhead materials, and other pertinent information.

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).
- b) The use of rough 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 indicia, together with discount or rebate arrangements.
- d) The comparison of proposed prices with estimates of cost independently developed by personnel within the department. This comparison must be performed prior to procurement.
- 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 of Fargo

as necessary in order for its bid to be considered for award. For federally funded procurements, if the competition was deemed adequate, the single bid is considered as valid sole source procurement and is subject to the requirements for sole source procurements. However, a new solicitation of bids may be necessary if the single bid price appears unreasonable.

- L. Profit Negotiation. The City will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to such things as the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates for similar work. Negotiated procurements are subject to approval of the City.
- M. Estimated Costs. Costs or prices based on estimated costs for contracts under federal grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with federal cost principles.
- N. Cost Plus a Percentage. The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.
- O. Bonds. For construction or facility improvement contracts or subcontracts exceeding one hundred thousand dollars ,(\$100,000), the City will require bonds as follows:
 - 1. Bid Guarantee. A bid guarantee from each bidder of \$1,000. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
 - 2. Performance Bond. For any procurement over one hundred thousand dollars (\$100,000), a performance bond on the part of the contractor will be required for one hundred percent (100%) 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.
 - 3. Payment Bond. For any procurement over one hundred thousand dollars (\$100,000) a payment bond on the part of the contractor will be required for one hundred percent (100%) 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.
- P. Federal clauses. As applicable, federal clauses and certifications must be attached to all contracts and purchase orders. Common suppliers may sign an acknowledgement that by entering into a sale with the City of Fargo, North Dakota doing business as MATBUS, the supplier is agreeing to be bound by the applicable federal clauses and certifications.

- Q. Wage Rates: As applicable, contractors will follow the Davis Bacon wage requirements for federally funded contracts.

VIII. PROCUREMENT METHOD

A. COMPETITIVE BID PROCUREMENTS

Competitive Bid Procurements are for contracts of \$2,500 or more (per the State of North Dakota guidelines). The following procedures will be used for making competitive bid procurements.

1. Written Quotes. At least two responsible written quotes must be received. When two responsible quotes are not obtainable, the reasons must be documented.
2. Advertisement for Bids. For purchases of items more than \$25,000 per unit, or in the aggregate, a formal Advertisement for Bids shall be issued and a written specification prepared. The Advertisement for Bids shall be sent to all offerors of record (Vendor list) and shall be advertised in any appropriate trade publications, when applicable. All bids must be sealed. The bids will be publicly opened at the time and place prescribed in the Advertisement for Bids.
3. A Fixed-Price Contract Award or Purchase Order. A fixed-price contract award or purchase order will be made in writing to the lowest responsive and responsible bidder. Where specified in the bidding documents, factors such as discounts, transportation costs, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of. The contract award must be approved by the City. Items that involve a contract must also be approved by the City.
4. Rejection of Bids. Any or all bids may be rejected by the City if there is a sound documented business reason.

B. NEGOTIATED PROCUREMENTS

Negotiated procurements are generally used when conditions are not appropriate for the use of sealed bids, such as when criteria in addition to price are considered for contract award. For example, the City would never hire a consultant solely on the basis of price. The qualifications of the consultant to perform the work would also have to be taken into consideration. If this method of procurement is used, the following requirements apply.

1. A Request for Proposal (RFP) must be issued and publicized. It must identify all evaluation factors and their relative importance.

Any response to publicized requests for proposals shall be honored to the maximum extent practical.

2. Proposals will be solicited from a minimum of two qualified sources.

3. The City will in each RFP have a written procedure for conducting the technical evaluation of the proposals received and for selecting a firm for the award. If so stated in the RFP, the selection may be made on the basis of original proposals without negotiation with any offeror. If the City conducts negotiations at all, it must negotiate with all offerors in the competitive range; i.e., all offerors that it determines have a reasonable chance of being selected for award based on cost or price and other factors that were stated in the specifications.
4. Awards will be made to the responsible firm whose proposal is most advantageous to the City's program with price and other factors considered. The award of a contract is subject to approval by the City. Contracts solicited by the City for the benefit of its employees (example: an employee assistance program contract) are not subject to this subparagraph after sentence #1.
5. Architectural, Engineering, and Related Services. The City shall use negotiated competitive proposal procedures for qualifications based procurement of architectural and engineering services. Competitor's 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. This method can be used in procurement of only the above listed services. This method of procurement cannot be used to obtain other types of services even though a firm that provides the above types of services are also potential sources to perform other services.
6. Rolling Stock. Negotiated competitive procurement may be used for the purchase of rolling stock. For FTA-funded bus procurement, pre-award and post-delivery certifications of compliance with purchaser's requirements and Federal Motor Vehicle Safety Standards (FMVSS) are required.

C. SOLE SOURCE PROCUREMENT

Sole source procurement is accomplished through solicitation or acceptance of a proposal from only one source, or after solicitation of a number of sources, competition is determined to be inadequate. A contract amendment or change order that is not within the scope of the original contract is a noncompetitive negotiation that must comply with this subparagraph.

Procurement by noncompetitive negotiation may be used only when the award of a contract is infeasible under small purchase procedures, competitive sealed bid procedures, or by negotiated purchase and at least one of the following circumstances.

1. The item is available only from a single source.
2. The public exigency or emergency of the requirement will not permit a delay resulting from competitive solicitation.
3. The Federal Transit Administration (FTA) authorizes noncompetitive negotiations.
4. After solicitation of a number of sources, competition is determined inadequate.
5. The item is an associated capital maintenance item as defined in Section 9(j) of the Federal Transit Act that is procured directly from the original manufacturer or supplier of the item to be replaced. The City must first certify in writing to the FTA: (1) that such manufacturer or supplier is the only source for such item; (2) that the price of such item is no higher than the price paid for such items by like customers.

A cost analysis i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required. Procurements under this subsection in excess of \$1,000,000 must be approved by the FTA. All procurements under this subsection are subjects to approval by the City.

IX. PURCHASE THRESHOLD

All purchases paid for with Community Development Block Grant funds or Mass Transit Grant funds must meet the following requirements.

A. MICRO PURCHASE \$0 – up to \$2,500

Micro-purchases with a dollar amount of less than two thousand five hundred dollars (\$2,500) will be purchased on the open market or negotiated (as required by the State of North Dakota).

B. SMALL PURCHASES \$2,500 – up to \$10,000

All small purchases paid for with Transit Grant funds must meet the following requirements.

A small purchase is defined as any purchase opportunity with a dollar value of more than \$2,500 but less than ten thousand dollars (\$10,000).

1. Purchases with a dollar amount of one thousand dollars (\$1000) or less will be purchased on the open market or negotiated and be considered a micro-purchase.
2. Capital Purchases. For capital purchases of more than five thousand dollars (\$5,000) an "Inventory Sheet" must be completed for attachment to the purchase order. Capital items "Inventory Sheet" must show the grant number, grant type, percent condition, location, expected life, and disposition. Records should be kept on file until the item is disposed of.

3. For all purchases in excess of one thousand dollars (\$1,000) and up to and including ten thousand dollars (\$10,000), written or oral quotes must be obtained from a minimum of two (2) qualified sources and kept on file for a minimum of three (3) years. If multiple quotes are not obtainable, the reasons must be documented.
4. Items purchased shall be low quote meeting specifications/needs. Quality as well as availability may be used in determining whether the item to be purchased meets specifications and should be explained on the procurement documentation.
5. The Transit Director must sign and approve all check requests, purchase orders, budget adjustments, timesheets, etc. which involve the use of grant funds.
6. The Transit Director must approve the final purchase, subject to the supervision of the City Administrator or Assistant City Administrator.

C. FOR CONTRACTS FROM \$10,000 - \$25,000:

1. If the amount of the contract is estimated to exceed \$10,000, but not to exceed \$25,000, the contract may be made upon sealed bids or direct negotiation, by obtaining three or more quotes for the purchase, and without advertising for bids or otherwise complying with the requirements of competitive bidding. In the event of negotiated procurements, if advertising for bids, the first publication must be at least ten days before the bids are publicly opened. All quotations obtained shall be kept on file for a period of at least six years in the office of the Transit Department.
2. The City Administrator will have the authority under section 6.05 of the Fargo City Charter to authorize acceptance of the lowest responsible bid meeting specifications. The City Administrator may delegate the responsibility for insuring that purchases comply with this policy, the Fargo City Charter, and applicable laws.

D. FOR CONTRACTS FROM \$25,000 - \$100,000:

1. If the amount of the contract is estimated to exceed \$25,000, but not to exceed \$100,000, sealed bids shall be solicited by public notice published once in the official newspaper at least ten days in advance of the closing date for submitting bids.
 - a) The City Commission will authorize advertisement for bids.
 - b) Specifications will be made available from the city clerk to all prospective bidders.
 - c) Bids will be opened at a public bid opening. The date of bid opening will be set in the advertisement for bids.
 - d) City Staff will review all bids and recommend to the City Commission the lowest responsible bid meeting specifications.

- e) The City Commission will award the bid and authorize the Mayor and City Administrator to enter into agreement with the lowest responsible bidder meeting specifications.

E. FOR LOCAL IMPROVEMENT CONTRACTS ESTIMATED TO EXCEED \$100,000:

1. If the estimated cost of a local improvement constructed under the Local Improvement Code exceeds \$100,000, publication must be made at least once in an official newspaper not later than three weeks before the last day for submitting bids.

F. FOR FEDERAL CONTRACTS ESTIMATED TO EXCEED \$100,000:

1. Federal Contracts estimated to exceed one hundred thousand dollars, (\$100,000), are subject to bonding requirements. The requirements of these bonds shall be as follows:
 - a) A bid guarantee from each bidder equivalent to five percent (5%) of the bid price.
 - a) A performance bond on the part of the contractor for one hundred percent (100%) of the contract price.
 - b) A payment bond on the part of the contractor for one hundred percent (100%) of the contract price.
2. For further details relating to bonds refer to section VII.15 of this document.

X. DISADVANTAGED AND SMALL BUSINESS ENTERPRISES

The City of Fargo Transit is supported by revenues from Federal and State grants, joint powers agreements, local funds, advertising fees, and passenger fares.

Disadvantaged Business Enterprise (DBE)

In accordance with Federal Regulation 49 CFR Part 23 and 26, Participation by Disadvantaged Business Enterprises in DOT Transportation Programs, recipients of federal funds are required to take necessary and reasonable steps all necessary affirmative steps to assure that minority, disadvantaged, and women-owned business enterprises along with labor surplus area firms are used when possible. To certify a minority, disadvantaged, or women-owned business enterprise (which is a business owned and controlled 51% or more by an individual or groups of individuals who are female or minorities (49 CFR 26) with the City, contact the appropriate state office.

For North Dakota based firms contact:

North Dakota Department of Transportation

Office of Civil Rights
608 East Boulevard Avenue
Bismarck, ND 58505-0700
(701) 328-2563
DBE Liaison Officer
www.dot.nd.gov

For Minnesota based firms contact:

Minnesota Department of Transportation

Office of Civil Rights
Transportation Building
395 John Ireland Boulevard
St. Paul, MN 55155-1899
(651) 366-3073 (Voice)
(651) 296-9930 (TDD)
(651) 366-3129 (FAX)

Fostering Small Business Participation

The City of Fargo Transit has established a small business element to its DBE program, pursuant to 49 CFR 26.39. This program aims to provide opportunities and foster small business enterprises (SBE)/participation in contracting with the City of Fargo Transit. This program is race- and gender- neutral, however SBEs can also count towards DBE goals.

XI. BUY AMERICA CERTIFICATION

The Fargo Transit Department shall insert Buy America clauses in all procurements of \$150,000 or more as applicable. A Buy America Certification shall be completed by each bidder and submitted with the bid package. This applies to all federally assisted procurements using funds authorized by the Urban Mass Transportation Act of 1964 as amended, and section 14 of the national Capital Transportation Act of 1969 as amended.

Price Differential Waiver: The City may request a waiver of the general requirements if the amount of the lowest responsive and responsible bid offering the item or material that is not produced in the United States multiplied by 1.25 is less than the amount of the lowest responsive and responsible bid offering the item or material produced in the United States (49 CFR, Part 661.7(d)).

General Waivers: General waivers are listed in 49 C.F.R. 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content for FY2017, 65 percent for FY2018 and FY2019, and 70 percent for fiscal year 2020 and each fiscal year thereafter.

There are two distinct classifications for Buy America certification:

- 1) 49 CFR 661 states that all procurements made with federal funds must be of one hundred percent (100%) made of U.S. origin. A component is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents. This does not apply to buses and other rolling stock (including train control, communication, traction power equipment, and rolling stock prototypes).
- 2) Per Section 661.11(g) of 49 CFR 661, the cost of components (buses and rolling stock, including train control, communication, and traction power equipment) produced in the

United States must be more than 60 percent for FY2017, 65 percent for FY2018 and FY2019, and 70 percent for fiscal year 2020 and each fiscal year thereafter of the cost of all components and final assembly must take place in the United States.

XII. PROTEST PROCEDURES

SUMMARY

Protests related to this solicitation must be submitted in writing and will only be accepted from prospective Bidder or Offerors whose direct economic interest would be affected by the award of a Contract or failure to award a Contract.

Copies of protest procedure are available on request. Contact Julie Bommelman, 650 23rd Street N, Fargo, ND 58102, for a copy, if desired.

As this procurement is Federally funded, the provisions of FTA Circular 4220.1F apply. An appeal to FTA must be received by the cognizant FTA Regional or Headquarters Office with five (5) working days of the date the protestor knew or should have known of the violation. FTA will review bid protests only in the following circumstances:

- a. A protestor has exhausted all administrative remedies with Metro Area Transit.
- b. FTA will only review protests regarding the alleged failure of the grantee to have or follow its written protest procedures or its failure to review a complaint or protest.

Alleged violations on other grounds are under the jurisdiction of the appropriate State or local authorities. Alleged violations of Federal law or regulation that provide an applicable complaint procedure shall be submitted and processed in accordance with the Federal law or regulation.

Contractors who have exhausted all administrative remedies with the City of Fargo Transit and FTA can pursue the matter further in the ND state courts.

DETAILED PROCEDURES

1.0 General: Protests will be accepted from prospective bidders or offerors whose direct economic interest would be affected by the award of a contract or by failure to award a contract. The City of Fargo Transit Director will consider all protests or objections filed in a timely manner regarding the award of a contract, whether submitted before or after award. All protests shall be in writing and shall be supported by sufficient information to enable the protest to be considered. A protest will not be considered if it is insufficiently supported or it is not received within the time limits specified herein. Protest submissions should be concise, logically arranged, and clearly state the ground for the protest. Protests must include at least the following information:

- Name, address, and telephone number of protestor.

- Identification of the solicitation or bid.
- A detailed statement of the legal and factual grounds of the protest, including copies of relevant documents.
- A statement as to what relief is requested.

Protests should be sent via certified mail to:

**City of Fargo
Transit Director
650 23rd Street N
Fargo, ND 58102**

Protests must be filed with the City of Fargo Transit in accordance with our procedures and time requirements. The protest to the City of Fargo Transit must be complete and contain all the issues that the protestor believes relevant. The City of Fargo Transit will respond to each substantive issue raised in the protest. Failure to include an issue in the protest to the City of Fargo Transit will preclude raising the issue to FTA, if the protest is appealed to that agency. Following an adverse decision by the City of Fargo Transit, protestor may file a protest with FTA under certain limited circumstances listed in paragraph 6.0.

On occasion, when considered appropriate by the City of Fargo Administrator, an informal conference on the merits of the protest with all interested parties may be held.

2.0 Protests Before Award

- 2.1 Solicitation Phase: Protests concerning the solicitation must be submitted in writing five (5) working days prior to bid opening date for receipt of proposals. If the written protest is not received by the time specified, award may be made in the normal manner unless the Fargo Transit Director, upon investigation, finds that remedial action is required. Oral protests not followed up by a written protest will be disregarded.

Notice of a protest and the basis therefore will be given to all potential bidders or offerors.

- 2.2 Pre-Award Phase: When a protest against the making of an award is received after receipt of bids or proposals but prior to award, the Fargo Transit Director may determine to withhold the award pending disposition of the protest. The City of Fargo Transit Director will provide a written response to each material issue raised in the written protest. Notice of a protest as well as the City of Fargo Transit's response will be provided to bidders/proposers who responded to the solicitation and are in line for the award of a contract.

Where a written protest against the making of an award is received in the time specified, award will not be made prior to five (5) working days after resolution of the protest or, if a protest has been filed with FTA during the pendency of that protest, unless the City of Fargo Transit determines that:

- The items to be procured are urgently required;
- Delivery or performance will be unduly delayed by failure to make award promptly; or,
- Failure to make award will otherwise cause undue harm to Metro Area Transit or the Federal Government.

If award is made, the City of Fargo Transit Director will document the file to explain the need for an award and will give written notice of the decision to proceed with the award to the protestor and, appropriate, to others concerned.

- 3.0 Protests After Award: A protest received not later than close of business (COB) ten (10) working days after award shall be reviewed by the City of Fargo Transit Director and the Legal Department. The contractor will, in any event, be furnished with the notice of protest and the basis therefore. When it appears likely that an award may be invalidated and a delay in receiving the supplies or services is not prejudicial to the City of Fargo Transit's interest, the Transit Director may consider a mutual agreement with the contractor to suspend performance on a no-cost basis.
- 4.0 Determination of Interested Party: An interested party is an actual prospective bidder or offeror whose direct economic interest would be affected by award of a contract or failure to award a contract. This definition specifically excludes subcontractors and suppliers.
- 4.1 The ability to qualify as an actual or prospective bidder/proposer ends when the bid/proposal period ends.
- 4.2 The offer received from the protestor must be technically responsive.
- 4.3 The protestor must be the next in line to receive the award if the protested issues prevail.
- 4.4 If not next in line, the protestor must successfully challenge all intervening offers to establish next in line status.
- 5.0 Appeals: Appeals must be sent in writing to the Fargo City Commission within five (5) working days after receipt of the determination by the Transit Director. The Fargo City Commission will schedule a hearing where the appellant may be heard. The Fargo City Commission will issue the City of Fargo Transit final written determination within ten (10) working days after receipt.

The decision of the Commission is **final** and **no further appeals** may be made.

- 6.0 Protests to FTA: Under certain limited circumstances, an interested party may protest to

FTA the award of a contract pursuant to an FTA grant. FTA's review of any protest will be limited to alleged failure of the City of Fargo Transit to have or follow its written protest procedures or alleged failure to review a complaint or protest.

6.1 Time for Filing

- 6.1.1 Protestors shall file a protest with FTA Region VIII office not later than five (5) working days of the date the protestor knew or should have known of the violation. Protests should be addressed to:

**U.S. Department of Transportation
Federal Transit Administration, Region VIII
1961 Stout Street
Suite 13-301
Denver, CO 80294**

- 6.1.2 Violations of Federal law or regulation will be handled by the compliant process stated within the law or regulation.

6.2 Submission of Protest to FTA

- 6.2.1 A protestor must exhaust all administrative remedies with Metro Area Transit before pursuing a protest to FTA.
- 6.2.2 Protests to FTA should be sent to the FTA Regional or Headquarters Office. A concurrent copy of the protest must be sent to Metro Area Transit.
- 6.2.3 The protest filed with FTA shall:
- Include the name and address of the protestor.
 - Identify the City of Fargo Transit and the number or name of the contract solicitation.

 - Contain a statement of the grounds for the protest and any supporting documentation. This should detail the alleged failure of the City of Fargo Transit to have or follow its protest procedures or the alleged failure to review a complaint or protest.
 - Include a copy of the local protest filed with the City of Fargo Transit and a copy of the City of Fargo Transit's decision, if any.

- 6.3 Other Remedies: Contractors may seek remedy in the North Dakota state courts if they desire to do so.

Appendix D

City of Moorhead Procurement Policies

**CITY OF MOORHEAD
MASS TRANSIT GRANT FUNDS
COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS
PROCUREMENT PROCEDURE MANUAL**

I. PURPOSE

The purpose of this policy is to provide uniform direction to Mass Transit and Community Development Division employees involved in the procurement of supplies, equipment, services, and property in utilizing federal funds.

II. REGULATIONS

The City of Moorhead is in compliance with all Federal, State, and Local regulations as they are amended and changed. The following are cited within this document.

- Federal Regulation 2 CFR Part 200, Grants and Agreements
- Federal Regulation 24 CFR Part 85.36, Procurement
- Federal Regulation 49 CFR Part 661, Buy America
- Federal Regulation 49 CFR Part 663, Pre-award and Post-delivery Audits of Rolling Stock Purchases
- Federal Regulation 49 CFR Part 20, New Restrictions on Lobbying
- Federal Regulation 49 CFR Part 26, DBE & Fostering Small Business
- Federal Regulation 2 CFR Part 180, OMB Guidelines To Agencies On Government-wide Debarment And Suspension
- Federal Circular 4220.1F – Third Party Contracting Guidance, including applicable federal clauses
- Minnesota Statute 471.345, Uniform Municipal Contracting Law
- Minnesota Statute 471.895, Certain Gifts by Interested Persons Prohibited
- Minnesota Statute 177.43 Contracts for State Projects
- "City of Moorhead Official Purchasing Policy", dated 11/28/2018
- City Resolution Number 90-652-C, Statement of Ethics Section 1.40, dated 1/1/03

III. REFERENCE

- "Moorhead DBE Plan"
- DBE Directory, ND Department of Transportation
<https://www.dot.nd.gov/divisions/civilrights/dbeprogram.htm#>
- Minnesota Civil Rights Program, DBE Directory
<http://www.dot.state.mn.us/civilrights/dbedirectory.html>
- Cities of Fargo & Moorhead Transit (MATBUS) Procurement Manual
- "Single-Family Rehabilitation Guidelines"

IV. ATTACHMENTS

- Procurement Form for Small Federally-Funded Purchases
- Purchase order form (for purchases in excess of \$500)
- Inventory form (for capital purchases of \$5,000 or more)

V. GOALS

- A. To create the maximum feasible free and open competition in all procurements.
- B. To prevent potential waste, fraud, abuse, and conflicts of interest in the procurement process.
- C. To prevent the issuance of exclusionary or discriminatory specifications.
- D. To insure fair and equal treatment of all vendors.
- E. To establish standard procedures to be followed in making purchases.
- F. To achieve the optimum price for the item(s) being purchased. Optimum price may or may not mean the lowest price.
- G. To comply with all applicable Federal, State, and local laws, regulations, policies, and procedures in making all procurements.

VI. ETHICAL STANDARDS

- A. All procurements will comply with applicable Federal, State, and local laws, regulations, policies, and procedures.
- B. In general, employees are not to engage in any procurement related activity that would actually or potentially create a conflict of interest, or which might reasonably be expected to contribute to the appearance of such a conflict.
- C. No employee shall participate in the selection, award, or administration of a contract if a conflict of interest would be involved. Such a conflict would arise when the employee, any member of his/her immediate family, his/her business partner, or any organization that employs, or is about to employ, any of the above has a financial or other interest in the firm selected for award.
- D. No employee shall solicit nor accept favors, gratuities, or gifts of monetary value from actual or potential contractors or subcontractors.
- E. The structure, scope, and specific activities to be performed under contract will be carefully reviewed by procurement officials to prevent real and apparent organizational conflicts of interest. An organizational conflict of interest would exist when the nature of the work to be performed under a proposed contract may, without some restriction of future activities, result in an unfair competitive advantage to the contractor or impair the contractor's objectivity in performing the contract work.
- F. To promote free and open competition, technical specifications shall be prepared to meet the minimum legitimate needs of the City and, to the extent possible, shall not exclude or discriminate against any qualified contractors.
- G. Employees must maintain strict confidentiality in the procurement process and shall not impart privileged information to any contractors that would give them an advantage over other potential contractors.

VII. GENERAL PROCUREMENT STANDARDS

The following standards apply to all procurements of the City of Moorhead Mass Transit Grant funds and Community Development Block Grant funds:

- A. Contract Administration System. City will maintain a contract administration system that ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. No payments to contractors may be made until this provision is satisfied.
- B. Review of Proposed Procurements. The City Manager, in accordance with Chapter 6.05 of the Moorhead City Charter, serves as the City's chief purchasing agent and is the ultimate responsible party for approval of all City purchases under this policy. The City Manager may delegate responsibility to the City Manager's designee as he/she may deem fit but must retain the responsibility for oversight of the designee to insure that all City purchases comply with this policy. For purchases over \$500, a Purchase Order Form is used. For purchases under \$500, a Check Request Form is used. Fixed Assets valued at \$5,000 or more require an Inventory Form.

Lines of responsibility for City purchases in the Mass Transit Division: The Transit Manager is responsible for making preparations for seeking quotations and/or open market purchasing initiating formal bidding processes in compliance with this policy; and the Planning and Neighborhood Services Director is responsible for approving all purchases within the department. The Finance Director reviews and approves City purchases as the designee for the City Manager.

Lines of responsibility for City purchases in the Community Development Block Grant Program: The Community Development Program Administrator is responsible for making preparations for seeking quotations and/or open market purchasing initiating formal bidding processes. The Community Development Division Manager is responsible for authorizing City purchases in compliance with this policy. The Planning & Neighborhood Services Department Director is responsible for approving all purchases within the department. The Finance Director reviews and approves City purchases as the designee for the City Manager.

- C. Value Engineering Clauses. The City will use value-engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. (Value engineering is a systematic and creative analysis of each contract item or task to insure that its essential function is provided at the overall lowest cost.)
- D. Contractor Awards. The City will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.
- E. Record Maintenance. The City will maintain records sufficient to detail the significant history of major procurements. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price. Retention of all required records will be for ten years (per Minnesota regulation) after grantees or subgrantees make final payments and all other pending matters are closed, and after audit. Records pertaining to capital procurements and/or projects shall be retained until the item is disposed of and after audit.

- F. Settlement of Contractual/Administrative Issues. The City alone will be responsible in accordance with good administrative practice and sound business judgment for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to the following: source evaluation, protests, disputes, and claims. Refer to Section XII (Protest Procedures) of this document.
- G. Open Competition. All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards set forth in this policy. Some of the situations considered to be restrictive of competition include, but are not limited to:
1. Placing unreasonable requirements on firms in order for them to qualify to do business;
 2. Requiring unnecessary experience and excessive bonding;
 3. Noncompetitive pricing practices between firms or between affiliated companies;
 4. Organizational conflicts of interest;
 5. Specifying only a "brand name" product instead of allowing "an equal" to be offered and describing the performance of other salient characteristics of the brand name product; and
 6. Any arbitrary action in the procurement process.
- H. Geographical Preferences. The City will conduct procurements involving federal funds in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference. This does not preempt State of Minnesota licensing laws. Geographic location may be a criteria when using the qualifications-based method for contracting for architectural and engineering services, provided such application leaves an appropriate number of qualified firms from which to choose. No Federal funds shall be used to support procurements utilizing exclusionary or discriminatory specifications.
- I. Written Specifications. The City will issue written specifications for all procurements over \$100,000 per unit. All solicitations will incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description will not, in competitive procurements, contain features that unduly restrict competition. The specification will identify all requirements that the offerors must fulfill and all other factors to be used in evaluating bids or proposals. Offerors must also provide proof of certification regarding debarment, suspension, and other responsibility matters as included in the Integrity/Debarment Certificate pertaining to 31 U.S.C. Sections 3801 ET SEQ.
- J. Prequalified Lists. The City will ensure that all prequalified lists of persons, firms, or products that are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. The City will not preclude potential bidders from qualifying during the solicitation period.
- K. Cost/Price Analysis. The City shall perform an independent cost or price analysis in connection with every procurement action, including contract modifications. A price analysis is used to determine the reasonableness of the proposed contract price.

- L. Profit Negotiation. The City will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to such things as the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates for similar work. Negotiated procurements are subject to approval of the City.
- M. Estimated Costs. Costs or prices based on estimated costs for contracts under federal grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with federal cost principles.
- N. Cost Plus a Percentage. The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.
- O. Bonds. For construction or facility improvement contracts or subcontracts exceeding one hundred thousand dollars, (\$100,000), the City will require bonds as follows:
 - 1. Bid Guarantee. A bid guarantee from each bidder equivalent to ten percent (10%) of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
 - 2. Performance Bond. For any procurement over one hundred thousand dollars (\$100,000), a performance bond on the part of the contractor will be required for one hundred percent (100%) 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.
 - 3. Payment Bond. For any procurement over one hundred thousand dollars (\$100,000) a payment bond on the part of the contractor will be required for one hundred percent (100%) 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.
- P. Federal Clauses. As applicable, federal clauses and certifications must be attached to all contracts and purchase orders. Common suppliers may sign an acknowledgement that by entering into a sale with the City of Moorhead or MATBUS, they agree to be bound by the applicable federal clauses and certifications.
- Q. Wage Rates: As applicable, contractors will follow the Davis Bacon wage requirements for federally funded contracts, or Minnesota State Statute 177.43 for State funded contracts.

VIII. PROCUREMENT METHOD

A. COMPETITIVE BID PROCUREMENTS

Competitive Bid Procurements are for contracts of \$25,000 or more. The following

procedures will be used for making competitive bid procurements.

1. Written Quotes. At least two responsible written quotes must be received. When two responsible quotes are not obtainable, the reasons must be documented.
2. Advertisement for Bids. For purchases of items more than \$100,000 per unit, or in the aggregate, a formal Advertisement for Bids shall be issued and a written specification prepared. The Advertisement for Bids shall be sent to all offerors of record (Vendor list) and shall be advertised in any appropriate trade publications, when applicable. All bids must be sealed. The bids will be publicly opened at the time and place prescribed in the Advertisement for Bids.
3. A Fixed-Price Contract Award or Purchase Order. A fixed-price contract award or purchase order will be made in writing to the lowest responsive and responsible bidder. Where specified in the bidding documents, factors such as discounts, transportation costs, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of. The contract award must be approved by the City. Items that involve a contract must also be approved by the City.
4. Rejection of Bids. Any or all bids may be rejected by the City if there is a sound documented business reason.

B. NEGOTIATED PROCUREMENTS

Negotiated procurements are generally used when conditions are not appropriate for the use of sealed bids, such as when criteria in addition to price are considered for contract award. For example, the City would never hire a consultant solely on the basis of price. The qualifications of the consultant to perform the work would also have to be taken into consideration. If this method of procurement is used, the following requirements apply.

1. A Request for Proposal (RFP) must be issued and publicized. It must identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical.
2. Proposals will be solicited from a minimum of two qualified sources.
3. The City will in each RFP have a written procedure for conducting the technical evaluation of the proposals received and for selecting a firm for the award. If so stated in the RFP, the selection may be made on the basis of original proposals without negotiation with any offeror. If the City conducts negotiations at all, it must negotiate with all offerors in the competitive range; i.e., all offerors that it determines have a reasonable chance of being selected for award based on cost or price and other factors that were stated in the specifications.
4. Awards will be made to the responsible firm whose proposal is most

advantageous to the City's program with price and other factors considered. The award of a contract is subject to approval by the City. Contracts solicited by the City for the benefit of its employees (example: an employee assistance program contract) are not subject to this subparagraph after sentence #1.

5. Architectural, Engineering, and Related Services. The City shall use negotiated competitive proposal procedures for qualifications based procurement of architectural and engineering services. Competitor's 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. This method can be used in procurement of only the above listed services. This method of procurement cannot be used to obtain other types of services even though a firm that provides the above types of services are also potential sources to perform other services.
6. Rolling Stock. Negotiated competitive procurement may be used for the purchase of rolling stock. For FTA-funded bus procurement, pre-award and post-delivery certifications of compliance with purchaser's requirements and Federal Motor Vehicle Safety Standards (FMVSS) are required.

C. SOLE SOURCE PROCUREMENT

Sole source procurement is accomplished through solicitation or acceptance of a proposal from only one source, or after solicitation of a number of sources, competition is determined to be inadequate. A contract amendment or change order that is not within the scope of the original contract is a noncompetitive negotiation that must comply with this subparagraph.

Procurement by noncompetitive negotiation may be used only when the award of a contract is infeasible under small purchase procedures, competitive sealed bid procedures, or by negotiated purchase and at least one of the following circumstances.

1. The item is available only from a single source.
2. The public exigency or emergency of the requirement will not permit a delay resulting from competitive solicitation.
3. The Federal Transit Administration (FTA) authorizes noncompetitive negotiations.
4. After solicitation of a number of sources, competition is determined inadequate.
5. The item is an associated capital maintenance item as defined in Section 9(j) of the Federal Transit Act that is procured directly from the original manufacturer or supplier of the item to be replaced. The City must first certify in writing to the FTA: (1) that such manufacturer or supplier is the only source for such item; (2) that the

price of such item is no higher than the price paid for such items by like customers.

A cost analysis i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required. Procurements under this subsection in excess of \$1,000,000 must be approved by the FTA. All procurements under this subsection are subjects to approval by the City.

IX. PURCHASE THRESHOLD

All purchases paid for with Community Development Block Grant funds or Mass Transit Grant funds must meet the following requirements.

A. MICRO PURCHASE \$0 – up to \$3,500

Micro-purchases with a dollar amount of less than three thousand five hundred dollars (\$3,500) will be purchased on the open market or negotiated.

B. SMALL PURCHASES \$3,500 – up to \$100,000

A small purchase is defined as any purchase opportunity with a dollar value of more than three thousand five hundred dollars (\$3,500) and less than one hundred thousand dollars (\$100,000).

1. Capital Purchases. For capital purchases of more than five thousand dollars (\$5,000) an "Inventory Sheet" must be completed in addition to the "Procurement Form" for attachment to the Purchase Order. Capital items "Inventory Sheet" must show the grant number, grant type, percent of grant funding, condition, location, and disposition. Records should be kept on file until the item is disposed of.
2. All purchases in excess of five hundred dollars (\$500) and up to and including twenty-five thousand dollars (\$25,000) must be made pursuant to a purchase order. Written or oral quotes must be obtained from a minimum of two (2) qualified sources and kept on file for a minimum of ten (10) years (per Minnesota regulation). If multiple quotes are not obtainable, the reasons must be documented.
3. Items purchased shall be low quote meeting specifications/needs. Quality as well as availability may be used in determining whether the item to be purchased meets specifications and should be explained under the comment section of the "Purchase Explanation Form".
4. The Director of Planning and Neighborhood Services, Community Development Division Director, or Transit Manager must sign and approve all pay requests, purchase orders, budget adjustments, timesheets, etc. which involve the use of CDBG and MT Grant funds.
5. The Department Director must approve the final purchase, subject to the supervision of the City Manager.

C. FOR CONTRACTS FROM \$25,000 – up to \$100,000:

1. If the amount of the contract is estimated to exceed \$25,000, but not to exceed \$100,000, the contract may be made upon sealed bids or direct negotiation, by obtaining two or more quotes for the purchase, and without advertising for bids or otherwise complying with the requirements of competitive bidding. In the event of negotiated procurements or if advertising for bids, the first publication must be at least ten days before the bids are publicly opened. (Minnesota Statute 429.041, Subd. 2) All quotations obtained shall be kept on file for a period of at least six years for quotes that are not accepted and 10 years after completion of the project for accepted quotes.
2. The City Manager will have the authority under section 6.05 of the Moorhead City Charter to authorize acceptance of the lowest responsible bid meeting specifications. The City Manager may delegate the responsibility for ensuring that purchases comply with this policy, the Moorhead City Charter, and applicable laws.

D. FOR CONTRACTS OVER \$100,000:

1. If the amount of the contract is estimated to exceed \$100,000, sealed bids shall be solicited by public notice published once in the official newspaper at least ten days in advance of the closing date for submitting bids. (Minnesota Statute 412.311)
 - a) The City Council will authorize advertisement for bids.
 - b) Specifications will be made available from the city clerk to all prospective bidders.
 - c) Bids will be opened at a public bid opening. The date of bid opening will be set in the advertisement for bids.
 - d) City Staff will review all bids and recommend to the City Council the lowest responsible bid meeting specifications.
 - e) The City Council will award the bid and authorize the Mayor and City Manager to enter into agreement with the lowest responsible bidder meeting specifications.

E. FOR LOCAL IMPROVEMENT CONTRACTS ESTIMATED TO EXCEED \$100,000:

1. If the estimated cost of a local improvement constructed under the Local Improvement Code exceeds \$100,000, publication must be made at least once in an official newspaper not later than three weeks before the last day for submitting bids. (Minnesota Statute 429.041, Subd. 1)

F. FOR FEDERAL CONTRACTS ESTIMATED TO EXCEED \$100,000:

1. Federal Contracts estimated to exceed one hundred thousand dollars, (\$100,000), are subject to bonding requirements. The requirements of these bonds shall be as follows:

- a) A bid guarantee from each bidder equivalent to five percent (5%) of the bid price.
- b) A performance bond on the part of the contractor for one hundred percent (100%) of the contract price.
- c) A payment bond on the part of the contractor for one hundred percent (100%) of the contract price.

2. For further details relating to bonds refer to section VII. O., of this document.

X. DISADVANTAGED/WOMEN BUSINESS ENTERPRISES

The Moorhead Mass Transit and Community Development Division will take all necessary affirmative steps to assure that minority, disadvantaged, and women-owned business enterprises along with labor surplus area firms are used when possible. To certify a minority, disadvantaged, or women-owned business enterprise (which is a business owned and controlled 51% or more by an individual or groups of individuals who are female or minorities) with the City, contact the appropriate state office.

For North Dakota based firms contact:

North Dakota Department of Transportation

Office of Civil Rights
 608 East Boulevard Avenue
 Bismarck, ND 58505-0700
 (701) 328-2563
 DBE Liaison Officer
 www.dot.nd.gov

For Minnesota based firms contact:

Minnesota Department of Transportation

Office of Civil Rights
 Transportation Building
 395 John Ireland Boulevard
 St. Paul, MN 55155-1899
 (651) 366-3073 (Voice)
 (651) 296-9930 (TDD)
 (651) 366-3129 (FAX)

Fostering Small Business Participation

The City of Moorhead Transit has established a small business element to its DBE program, pursuant to 49 CFR 26.39. This program aims to provide opportunities and foster small business enterprises (SBE)/participation in contracting with the City of Moorhead Transit. This program is race- and gender- neutral, however SBEs can also count towards DBE goals.

XI. BUY AMERICA CERTIFICATION *(Applies to Transit grants only)*

The Moorhead Mass Transit Department shall insert Buy America clauses in all procurements valued at more than \$150,000 for construction contracts and acquisition of

goods or rolling stock. A Buy America Certification shall be completed by each bidder and submitted with the bid package. This applies to all federally assisted procurements using funds authorized by the Urban Mass Transportation Act of 1964 as amended, and section 14 of the national Capital Transportation Act of 1969 as amended.

Price Differential Waiver: The City may request a waiver of the general requirements if the amount of the lowest responsive and responsible bid offering the item or material that is not produced in the United States multiplied by 1.25 is less than the amount of the lowest responsive and responsible bid offering the item or material produced in the United States (49 CFR, Part 661.7(d)).

General Waivers: General waivers are listed in 49 C.F.R. 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content for FY2017, 65 percent for FY2018 and FY2019, and 70 percent for fiscal year 2020 and each fiscal year thereafter.

There are two distinct classifications for Buy America certification:

1) 49 CFR 661 states that all procurements made with federal funds must be of one hundred percent (100%) made of U.S. origin. A component is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents. This does not apply to buses and other rolling stock (including train control, communication, traction power equipment, and rolling stock prototypes).

2) Per Section 661.11(g) of 49 CFR 661, the cost of components (buses and rolling stock, including train control, communication, and traction power equipment) produced in the United States must be more than 60 percent for FY2017, 65 percent for FY2018 and FY2019, and 70 percent for fiscal year 2020 and each fiscal year thereafter of the cost of all components and final assembly must take place in the United States.

XII. PROTEST PROCEDURES

A, General: Protests will be accepted from prospective bidders or offerors whose direct economic interest would be affected by the award of a contract or by failure to award a contract. The City of Moorhead will consider all protests or objections filed in a timely manner regarding the award of a contract, whether submitted before or after award. All protests shall be in writing and shall be supported by sufficient information to enable the protest to be considered. A protest will not be considered if it is insufficiently supported or it is not received within the time limits specified herein. Protest submissions should be concise, logically arranged, and clearly state the ground for the protest. Protests must include at least the following information:

- Name, address, and telephone number of protestor.
- Identification of the solicitation or bid.
- A detailed statement of the legal and factual grounds of the protest, including copies of relevant documents.
- A statement as to what relief is requested.

Transit Related protests should be sent via certified mail to:

City of Moorhead

**Transit Manager
650 23rd Street N
Fargo, ND 58102**

CDBG-related protests should be sent via certified mail to:

**City of Moorhead
Community Development Block Grant
500 Center Ave Main
PO Box 779
Moorhead, MN 56560**

Protests must be filed in accordance with City of Moorhead procedures and time requirements. Protests must be complete and contain all the issues that the protestor believes relevant. The City of Moorhead will respond to each substantive issue raised in the protest. Failure to include an issue in the protest to City of Moorhead will preclude raising the issue to FTA or HUD, if the protest is appealed to that agency. Following an adverse decision by City of Moorhead, protestor may file a protest with FTA or HUD under certain limited circumstances listed in paragraph F.

On occasion, when considered appropriate by the City of Moorhead City Manager, an informal conference on the merits of the protest with all interested parties may be held.

B. Protests Before Award

1. Solicitation Phase: Protests concerning the solicitation must be submitted in writing five (5) working days prior to bid opening date for receipt of proposals. If the written protest is not received by the time specified, award may be made in the normal manner unless the City of Moorhead, upon investigation, finds that remedial action is required. Oral protests not followed up by a written protest will be disregarded.

Notice of a protest and the basis therefore will be given to all potential bidders or offerors.

2. Pre-Award Phase: When a protest against the making of an award is received after receipt of bids or proposals but prior to award, the City of Moorhead may determine to withhold the award pending disposition of the protest. The City of Moorhead will provide a written response to each material issue raised in the written protest. Notice of a protest as well as the City of Moorhead's response will be provided to bidders/proposers who responded to the solicitation and are in line for the award of a contract.

Where a written protest against the making of an award is received in the time specified, award will not be made prior to five (5) working days after resolution of the protest or, if a protest has been filed with FTA or HUD during the pendency of that protest, unless the City of Moorhead determines that:

- The items to be procured are urgently required;

- Delivery or performance will be unduly delayed by failure to make award promptly; or,
- Failure to make award will otherwise cause undue harm to the City of Moorhead or the Federal Government.

If award is made, the City of Moorhead will document the file to explain the need for an award and will give written notice of the decision to proceed with the award to the protestor and, appropriate, to others concerned.

- C. Protests After Award: A protest received not later than close of business (COB) ten (10) working days after award shall be reviewed by the City of Moorhead and the City Attorney. The contractor will, in any event, be furnished with the notice of protest and the basis therefore. When it appears likely that an award may be invalidated and a delay in receiving the supplies or services is not prejudicial to City of Moorhead’s interest, the City of Moorhead may consider a mutual agreement with the contractor to suspend performance on a no-cost basis.
- D. Determination of Interested Party: An interested party is an actual prospective bidder or offeror whose direct economic interest would be affected by award of a contract or failure to award a contract. This definition specifically excludes subcontractors and suppliers.
1. The ability to qualify as an actual or prospective bidder/proposer ends when the bid/proposal period ends.
 2. The offer received from the protestor must be technically responsive.
 3. The protestor must be the next in line to receive the award if the protested issues prevail.
 4. If not next in line, the protestor must successfully challenge all intervening offers to establish next in line status.
- E. Appeals: Appeals must be sent in writing to the Moorhead City Council within five (5) working days after receipt of the determination by the City of Moorhead. The Moorhead City Council will schedule a hearing where the appellant may be heard. The Moorhead City Council will issue final written determination within ten (10) working days after receipt.
- The decision of the Council is **final** and **no further appeals** may be made.
- F. Protests to FTA or HUD: Under certain limited circumstances, an interested party may protest to FTA or HUD the award of a contract pursuant to an FTA or HUD grant. FTA’s or HUD’s review of any protest will be limited to alleged failure of the City of Moorhead to have or follow its written protest procedures or alleged failure to review a complaint or protest, or when a violation of federal law occurs.

1. Time for Filing

- a. Protestors shall file a protest with FTA or HUD offices listed below not

later than five (5) working days of the date the protestor knew or should have known of the violation. Protestors should verify which address is applicable to their bid by contacting the City of Moorhead.

FTA-FUNDED PROJECTS:

**U.S. Department of Transportation
Federal Transit Administration, Region VIII
1961 Stout Street
Suite 13-301
Denver, CO 80294**

CDBG-FUNDED PROJECTS:

**Minneapolis Field Office
U.S. Department of Housing and Urban Development
International Centre
920 Second Avenue South, Suite 1300
Minneapolis, MN 55402-4012**

- b. Violations of Federal law or regulation will be handled by the compliant process stated within the law or regulation.

2. Submission of Protest to FTA or HUD

- a. A protestor must exhaust all administrative remedies with City of Moorhead before pursuing a protest to FTA or HUD.
- b. Protests to FTA or HUD should be sent to the FTA or HUD Regional or Headquarters Office. A concurrent copy of the protest must be sent to the City of Moorhead.
- c. The protest filed with FTA or HUD shall:
- Include the name and address of the protestor.
 - Identify City of Moorhead and the number or name of the contract solicitation.
 - Contain a statement of the grounds for the protest and any supporting documentation. This should detail the alleged failure of the City of Moorhead to have or follow its protest procedures or the alleged failure to review a complaint or protest.
 - Include a copy of the local protest filed with the City of Moorhead and a copy of City of Moorhead's decision, if any.

- G. Other Remedies: Contractors may seek remedy in the Minnesota state if they desire to do so.

Appendix E

MNDOT Procurement Policy and Procedures:

<http://www.dot.state.mn.us/transit/grants/procurement.html>



PROCUREMENT POLICY and PROCEDURES

For the Acquisition of Goods and Services under
Federal Transit Administration Grant Programs

Updated 12/2020

Office of Transit and Active Transportation

MS 430
395 John Ireland Blvd
St. Paul, MN 55155-1899

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Section 1: INTRODUCTION

In accordance with the U.S. Department of Transportation, Federal Transit Administration (FTA) requirements and the standards identified in 2 CFR Part 200, the Minnesota Department of Transportation (MnDOT), Office of Transit and Active Transportation (OTAT) has developed this procurement manual for all recipients utilizing FTA funding.

As a recipient that applies for and accepts federal funds, MnDOT and the sub recipient and/or grantees are accepting the responsibility to use federal assistance prudently and in compliance with all applicable Federal requirements. Recipients will maintain oversight of the procurement process and ensure fair and economical procurements methods are followed.

This manual incorporates procurement activities under the following FTA grant programs administered by MnDOT:

- + Section 5304 Planning*
- + Section 5309 Major Capital Program*
- + Section 5310 Elderly Individuals and Individuals with Disabilities (Circular 9070)*
- + Section 5311 Nonurban Area Formula Program (Circular 9040)*
- + Section 5329 State Safety Oversight*
- + Section 5339 Bus and Bus Facilities Formula Program*

Guidance Documents

This manual is based on requirements found in the following resources. This manual may not include all of the requirements that are included in statutes, regulations, and guidance documents.

- + Circular 4220 – Third Party Contracting Guidance*
<https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/third-party-contracting-guidance>

- ✦ Circular 5010 – Award Management Requirements (Grant Management Guidelines)
<https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/award-management-requirements-circular-50101e>
- ✦ Circular 9030 – Urbanized Area Formula Program
<https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/urbanized-area-formula-program-guidance-and>
- ✦ Circular 9040 – Formula Grants for Rural Areas Program (Non-Urbanized Area Formula Program)
<https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/formula-grants-rural-areas-program-guidance-and-application>
- ✦ Circular 9070 – Enhanced Mobility of Seniors and Individuals with Disabilities Program
<https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/enhanced-mobility-seniors-and-individuals-disabilities>
- ✦ Best Practices Procurement and Lessons Learned Manual
<https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/funding/procurement/8286/fta-best-practices-procurement-and-lessons-learned-manual-2016.pdf>
- ✦ FTA Master Agreement
<https://www.transit.dot.gov/funding/grantee-resources/sample-fta-agreements/fta-master-agreement-fiscal-year-2018>

While Circulars and Best Practice Manuals are guidance documents, and do not have the full force and effect of federal law or regulation, they do set forth legal requirements a recipient must adhere to in the solicitation, award, and administration of its third party contracts.

At a minimum, each recipient and sub recipient and/or grantee must comply with applicable Federal laws and regulations, including, but not limited to:

- ✦ ***Public Transportation, [49 U.S.C § 53](#) et seq.***
- ✦ ***The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, [2 C.F.R §§ 200](#) et seq. Procurement emphasis at: [2 C.F.R §§ 200.318 – 200.327](#)***

The FTA Master Agreement contains standard terms and conditions governing the administration of a project supported with Federal assistance awarded by FTA through a Grant Agreement or Cooperative Agreement. The FTA Master Agreement is updated annually at the start of each fiscal year (October 1) and is published on FTA’s public website at FTA Grant Agreements. The Master Agreement contains procurement requirements that may be referenced in this Manual.

State and federal regulations regarding procurement of goods and services are complex, detailed, and often change to reflect changes in legislation. The process for each method of procurement is provided on the MnDOT OTAT website:

<http://www.dot.state.mn.us/transit/grants/procurement.html>

Prior to recipients initiating a procurement it is recommended that recipients should review these resources and work with the MnDOT Procurement Coordinator to ensure required steps are followed. Recipients are required to have all phases of the procurement reviewed and approved by MnDOT OTAT.

There may be instances when recipients find situations that are not addressed in this manual. Recipients should contact the MnDOT Procurement Coordinator for assistance.

Section 2: OVERVIEW

MnDOT is the *recipient* authorized to receive funds directly from the FTA. [2 C.F.R. § 200.1](#). A *sub recipient* is an entity authorized to receive grant funds through MnDOT – which includes each sub grantee (a type of sub recipient), under an FTA grant or cooperative agreement, that enters into contracts with other parties financed with FTA assistance. [2 C.F.R. § 200.1](#). The responsibility for the procurement process ultimately rests with MnDOT as the *recipient* of the FTA grant. [FTA C 4220.1F at Ch. I \(5\)\(z\)](#).

However, *sub recipients* are obligated to comply with all applicable procurement requirements and provide documentation to MnDOT demonstrating how requirements were met. [FTA C 4220.1F at Ch. I \(5\)\(z\)](#).

For ease of use in this manual, sub recipients and/or grantees and MnDOT Office of Transit and Active Transportation staff are referred to as a recipient. Minor deviations in the process steps for sub recipients and MnDOT OTAT are noted throughout the manual.

When a recipient conducts a procurement of goods or services funded with an FTA grant, it is the responsibility of that recipient to manage the entire procurement process and to ensure its compliance with relevant FTA requirements. [2 C.F.R. § 200.300](#); *see also* [FTA C 5010.1E at Ch. I\(1\)](#). FTA requirements also apply to all transit-related third-party purchase orders and contracts, as a flow down requirement.¹ FTA, [Best Practices](#) (2016).

In addition to ensuring adequate and open competition for federally funded purchases of goods or services, recipients must ensure vendor compliance with applicable federal regulations including, developing all procurement documents, specifications, and contract administration.

These requirements do not apply to procurements undertaken in support of capital projects completely accomplished without FTA funds or to those operating and planning contracts awarded by recipients that do not receive FTA operating and planning assistance. [FTA 4220.1F Ch. II \(2\) \(b\)\(1\)\(a\) “Capital Contracts” & FTA 4220.1F Ch. II \(2\) \(b\) \(2\)\(b\) “Operations Contracts.”](#)

MnDOT OTAT in operating and capital grant agreements and contracts specifies the term period in which all purchases of goods or services must be completed. Funds will lapse at the end of the term period if the recipient has not obligated all purchases.

MnDOT, at its discretion, may exercise the approval of an extension to a grant and/or contract, on a case-by-case basis, and dependent on the type of purchase (i.e.: facility construction), if the recipient demonstrates that the circumstances resulting in the request for extension are “reason beyond the control of the recipient” and prevented them from complying with the term and the recipient shows:

1. that a good faith effort has been made to complete the purchases;
2. that it can complete the purchases within a reasonable amount of time; and
3. that the recipient made such a request for extension in timely manner (at least 3 months prior to current grant agreement and/or contract expiration).

Lack of planning is explicitly **excluded**.

2.1: [Methods of Procurement](#)

The recipient should use competitive procedure(s) appropriate for the type of acquisition. [2 C.F.R. §](#)

¹ With two exceptions found in the FTA, [Best Practices](#), 2016. There is no flow down requirement for bus testing, *see* A.3 Bus Testing; *see also* 49 U.S.C. §5318(e); 49 C.F.R. Part 665.). There is no flow down requirement for pre-award and post-delivery audits of rolling stock. *See* A.17 Pre-Award and Post-Delivery Audits of Rolling Stock Purchases; *see also* 49 U.S.C. 5323(m); 49 C.F.R. Part 663.

[200.319](#). The procedures used must comply with state and local law as well as with federal requirements. Federal restrictions vary with the type of procurement method used.

Micro-Purchases

The recipient may acquire property and services valued at \$10,000 or less without obtaining competitive quotations. [FTA C 4220.1F VI, 1\(a\)](#).

Federal Law: purchases of \$10,000 or less. [41 U.S.C. § 1902](#) and explained more fully in OMB, [Memorandum M-18-18](#) (2018); *see also* [2 C.F.R. § 200.67](#).

- These purchases are exempt from FTA's Buy America requirements and Davis-Bacon prevailing wage requirements. [2 C.F.R. § 200.320](#); *see also* [FTA C 4220.1F VI, 3\(a\)\(1\)](#).
- Exception: Buy America and Davis-Bacon requirements apply to **all** construction contracts exceeding \$2,000. [2 C.F.R. § 200.320](#); *see also* [FTA C 4220.1F VI, 3\(a\)\(1\)](#)
- The recipient should distribute micro-purchases equitably among qualified suppliers. [2 C.F.R. § 200.320](#); *see also* [FTA C 4220.1F VI, 3\(2\)\(a\)](#).
- The recipient may not divide or reduce the size of its procurement merely to come within the micro- purchase limit. [FTA C 4220.1F VI, 3\(a\)\(2\)\(b\)](#).
- Based on Title VI requirements, recipient will complete an Independent Cost Estimate and a Scope of Work for all federally funded projects at \$5,000 or above, in order to comply with Disadvantage Business Enterprise (DBE) goal setting requirements. These documents will be provided to MnDOT OTAT for review process.
- ***FTA's only documentation requirement for micro-purchases is a determination that the price is fair and reasonable and a description of how the recipient made its determination. FTA does not require the recipient to provide its rationale for the procurement method used, selection of contract type, or reasons for contractor selection or rejection.*** [FTA C 4220.1F VI, 3\(a\)\(2\)\(c\)](#).

FTA does not intend to imply that the recipient must treat any purchase of \$10,000 or less as a micro-purchase. MnDOT may set lower thresholds for micro-purchases in compliance with State and local law, or otherwise as it considers appropriate. [FTA C 4220.1F VI, 3\(a\)\(1\)](#).

Small Purchases

Small purchase procedures may be used to acquire services, supplies, or other property valued at more than the micro-purchase threshold but less than the Federal simplified acquisition threshold. [2 C.F.R. § 200.88](#).

Federal Law: Purchases of \$10,001 to \$250,000 (per OMB, [Memorandum M-18-18](#) (2018))

- For small purchases, recipients must obtain price or rate quotes from an adequate number of qualified sources. [2 C.F.R. § 200.320\(b\)](#).
- Recipients are not allowed to divide or split the procurement to avoid additional

procurement requirements that apply to the larger acquisitions. [FTA C 4220.1F VI, 3\(b\)\(2\)\(b\)](#)

- Recipients are permitted to manage their scheduled acquisitions according to their needs even when individual periodic procurements for the same or similar items keep the transaction below the small purchase threshold.
- Purchases under \$150,000 are exempt from FTA's Buy America requirements via a waiver.² [53 U.S.C. 5323\(j\)\(2\)\(a\); and see 53 U.S.C. 5323\(j\)\(13\)](#)
- The \$150,000 contract value is based on the total contract amount, including labor and options, and not just the value of the goods purchased. FTA, [FTA Guidance Letter on Buy America Small Purchase Waivers](#) (2016).
- If procurements may result in bids near \$150,000, recipients should include the Buy America certifications in the solicitation, with a note clarifying that if the bid is more than \$150,000, the bidder must certify per the Buy America requirements, but if the bid is \$150,000 or less, no certification will be necessary. FTA, [FTA Guidance Letter on Buy America Small Purchase Waivers](#) (2016).

FTA does not intend to imply that any purchase of \$250,000 or less must be treated as a small purchase. MnDOT may set lower thresholds for small purchases in compliance with State and local law, or otherwise as it considers appropriate.

Total purchase equals or exceeds \$250,000

If a total purchase equals or exceeds \$250,000 recipients must follow an ***Invitation for Bid (IFB)*** or ***Request for Proposal (RFP)*** process. 2 CFR 200.320 (c) and (d) (note: There is no Federal requirement that a recipient use the sealed bid or competitive proposal method for any of its federally funded procurements. But still considered preferred method of acquisition of construction methods. Best Practices, p. 53.

- ✚ **An Invitation for Bid (sealed bid)** are publicly solicited, and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is lowest in price.
 - Preference for the sealed bids procurement method for acquiring property, construction, and other services. [FTA C 4220.1F Ch. VI \(3\) \(c\)\(1\)](#)
 - A complete, adequate, precise, and realistic specification or purchase description is available. [FTA C 4220.1F Ch. VI \(3\) \(c\)\(1\)\(a\)](#)
 - Two or more responsible bidders are willing and able to compete effectively for the business. [FTA C 4220.1F Ch. VI \(3\) \(c\)\(1\)\(b\)](#)
 - The procurement generally lends itself to a firm fixed price contract. [FTA C 4220.1F Ch. VI](#)

² Buy America statute requires that the steel, iron and manufactured products used in FTA-funded transit projects must be produced in the United States. 49 U.S.C. § 5323(j)(1). The Buy America threshold is established at \$150,000 in FTA's statute at 49 U.S.C. 5323(j)(13) and is no longer tied to the simplified acquisition threshold.

[\(3\)\(c\)\(1\)\(c\)](#)

- The successful bidder can be selected on the basis of price and those price-related factors listed in the solicitation including, but not limited to, transportation costs, life cycle costs, and discounts expected to be taken. Apart from responsibility determinations, contractor selection may not be determined on the basis of other factors whose costs cannot be measured at the time of award. [FTA C 4220.1F Ch. VI \(3\)\(c\)\(1\)\(d\)](#)
- Discussions with one or more bidders after bids have been submitted are expected to be unnecessary as award of the contract will be made based on price and price-related factors alone. [FTA C 4220.1F Ch. VI \(3\)\(c\)\(1\)\(e\)](#)



A Request for Proposal (Competitive Proposals) are publicly solicited and the evaluation factors and their relative importance are specified in the solicitation. [FTA C 4220.1F Ch. VI\(3\)\(d\)\(2\)\(b\)](#)

The nature of the procurement does not lend itself to sealed bidding and the recipient expects that more than one source will be willing and able to submit an offer or proposal. [FTA C 4220.1F Ch. VI\(3\)](#)

- The property or services to be acquired are described in a performance or functional specification; or if described in detailed technical specifications, other circumstances such as the need for discussions or the importance of basing the contract award on factors other than price alone are present. [FTA C 4220.1F Ch. VI\(3\)\(d\)\(1\)\(a\)](#)
Uncertainty about whether more than one bid will be submitted in response to an invitation for bids and the recipient lacks the authority or flexibility under State or local law to negotiate the contract price if it receives only a single bid. [FTA C 4220.1F Ch. VI\(3\)\(d\)\(1\)\(b\)](#)
- Due to the nature of the procurement, contract award need not be based exclusively on price or price-related factors. In different types of negotiated acquisitions, the relative importance of cost or price may vary. When the recipient's material requirements are clearly definable and the risk of unsuccessful contract performance is minimal, cost or price may play a dominant role in source selection. The less definitive the requirements, the more development work required, or the greater the performance risk, the more technical or past performance considerations may play a dominant role in source selection and supersede low price. [FTA C 4220.1F Ch. VI\(3\)\(d\)\(1\)\(c\)](#)
- Separate discussions with individual offeror(s) are expected to be necessary after they have submitted their proposals. [FTA C 4220.1F Ch. VI\(3\)\(d\)\(2\)\(d\)](#)
- The recipient may award the contract to the offeror whose proposal provides the greatest value to the recipient. To do so, the recipient's solicitation must inform potential offerors that the award will be made on a "best value" basis and identify what factors will form the basis for award. [FTA C 4220.1F Ch. VI\(3\)\(d\)\(2\)\(f\)](#)

For specific information on IFBs and RFPs, please refer to the appropriate process on the MnDOT website and work with the OTAT Procurement Coordinator to ensure compliance.

<http://www.dot.state.mn.us/transit/grants/procurement.html>

Architectural Engineering (A&E) Services

- FTA’s enabling legislation at [49 U.S.C. Section 5325\(b\)\(1\)](#) requires the use of the qualifications-based procurement procedures contained in the “Brooks Act,” [40 U.S.C. Sections 1101 through 1104](#), to acquire A&E services, but also for program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping and related services. The nature of the work to be performed and its relationship to construction, not the nature of the prospective contractor, determine whether qualifications-based procurement procedures may be used. [4220.1F Ch. VI \(3\)\(f\) “Architectural Engineering \(A&E\) Services and Other Services.”](#)

Design-Bid-Build

- Recipients may procure design-bid-build services through means of sealed bidding or competitive negotiations. These services must be procured in a manner that conform to applicable state and local law, the requirements in Circular 4220.1F, relative to the method of procurement used, and all other applicable federal requirements. [4220.1F Ch. VI \(3\)\(g\) “Design-Bid-Build.”](#)

Design-Build

- Recipients must procure design-build services through means of qualifications based competitive proposal procedures based on the Brooks Act when the preponderance of the work to be performed is for architectural and engineering (A&E). [4220.1F Ch. VI \(3\)\(h\) “Design-Build.”](#)

Sole Source

When the recipient requires supplies or services available from only one responsible source, and no other supplies or services will satisfy its requirements, the recipient may make a sole source award. FTA acknowledges that under certain circumstances sole sourcing is generally an accepted procurement method; however, it is one that is subject to close scrutiny due to the limited circumstances which justify its use. [4220.1F Ch. VI, \(3\)\(i\)\(1\)\(b\) “Sole Source.”](#)

When the recipient requires an existing contractor to make a change to its contract that is

beyond the scope of that contract, the recipient has made a sole source award that must be justified. [FTA C 4220.1F Ch. VI\(3\)\(i\)\(1\)\(b\) "Sole Source"](#) and see [Best Practices, p. 61 & 99](#)

The property or services are available from one source if one of the conditions described below is present:

- The offeror demonstrates a unique or innovative concept or capability not available from another source.
- Patent or data rights restrictions preclude competition.
- In the case of a follow-on contract for the continued development or production of highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in substantial duplication of costs that are not expected to be recovered through competition.
- In the case of a follow-on contract for the continued development or production of a highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in unacceptable delays in fulfilling the recipient's needs.

[FTA C 4220.1F Ch. VI, \(3\)\(i\)\(1\)\(b\)\(1\)\(a – d\) "Other than Full and Open Competition."](#)

MnDOT OTAT Procurement Coordinator will provide a form to document any sole source procurements and provide additional guidance.

2.2: Procurement Resources

The total procurement cost determines the type of procurement process that must be followed. MnDOT OTAT has developed resources to assist in each procurement method. Documents can be found at the MnDOT OTAT website by method and under each method the documents are provided in the order to be completed.

In any case, the MnDOT OTAT Procurement Coordinator will provide assistance in completing procurements. All stages of the procurement review and approval process by MnDOT must be adhered to.

Per the Uniform Guidance:

- ✚ Files must be maintained on all procurement actions, sufficiently detailed to sustain an audit of the procurement, and clearly document what goods or services were purchased with the associated costs.
- ✚ The files must document compliance with FTA and MnDOT requirements. A Procurement History Form is included in each procurement method. Recipients should use the Procurement History Form as the framework for the procurement process to ensure completeness of procurement files.
- ✚ FTA requires recipients to maintain procurement files and grant files for a period of not less than (3) three years from the closing of the grant. [2 C.F.R § 200.318\(i\)](#); [2 C.F.R. § 200.333](#); and *see*

[FTA Circular 4220.1F, Ch. III \(3\)\(d\) “Record Keeping.”](#)

2.3: Federal Requirements

Each recipient and sub recipient must comply with applicable Federal laws and regulations including, but not limited to, Federal transit laws at [49 U.S.C. Chapter 53](#), FTA regulations, and other Federal laws and regulations that contain requirements applicable to FTA recipients and their FTA assisted procurements.

The following general requirements are established in FTA Circular 4220 Third Party Contracting Requirements: <https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/third-party-contracting-guidance>

Cost Plus Percentage of Cost Contracts (CPPC)

Federal law prohibits the use of Cost plus Percentage of Cost Contracts. [FTA C 4220.1F Ch.VI\(2\)\(c\)\(2\)\(a\) “Cost Plus a Percentage of Cost—Prohibited.”](#)

Recipients must not only avoid using this type of contract, they must also insert clauses in their cost-type contracts (i.e., those where the contractor is reimbursed for the allowable costs incurred in performance of the contract) that prohibit their prime contractors from using CPPC subcontracts. Profit must be set at a fixed amount (the “fixed fee”) on contracts with third party vendors, based on the initial estimate of work. [Best Practices, § 3.1.8, p. 37](#)

Conformance with State and Local Law

Recipients shall use their own procurement procedures that reflect applicable State and local laws and regulations, provided that the procurements conform to applicable federal law, including the requirements and standards identified in Circular 4220 Third Party Contracting Requirements. [Best Practices](#), p. 33. Copies of local Procurement Policies and Procedures must be provided to MnDOT OTAT when developed, updated and/or changed in any manner. [Best Practices](#), p. 33.

Special Notification Requirements

Recipient must include provisions in all its requests for proposals, solicitations, Federal assistance applications, forms, notifications, press releases, or other publications involving FTA assistance, that FTA is or will be providing Federal assistance for the project, the amount of Federal assistance FTA has provided or expects to provide, and the Catalog of Federal Domestic Assistance (CFDA) Number of the program that authorizes the Federal assistance. [Best Practices](#), p.108; [FTA C 4220.1F, Ch. III \(3\)\(a\)\(e\)](#); and *see* [FAR, 48 C.F.R. Ch.1, Part 5 “Publicizing Contract Actions.”](#)

The FTA is or will be providing federal assistance for this project in an estimated expected amount of

\$000,000; the Assistance Listing number is 20.509, under Section 53XX.

Contract Administration System

Recipients must maintain oversight to ensure that contractors perform in accordance with the terms,

conditions, and specifications of their contractors or purchase orders. [FTA C 4220.1F, Ch. III \(3\)](#)

Recipient must maintain records sufficient to detail the history of the procurement. These records will include, but are not limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price. See [2 C.F.R. §200.318\(b\) and \(i\), “General Procurement Standards”](#) and *see* [FTA C 4220.1F, Ch. III, paragraph 3. “Third Party Contracting Capacity.”](#)

Recipients should refer to the contract during the life of the contract to ensure the contractor is complying with all requirements.

Contract administration starts with the procurement. Recipients should ensure all pertinent information required in the contract is included in the solicitation. [FTA C 4220.1F Ch. III \(3\)\(a\)\(1\)](#). Failure to do so may cause cardinal changes which are prohibited by FTA. [FTA C 4220.1F Ch. V \(7\)\(b\)\(2\)](#).

Anything negotiated during an RFP should also be included in the contract. Recipients should watch for any changes that may not have been in the original solicitation. [FTA C 4220.1F Ch. III \(3\)\(a\)\(1\)](#).

Written Standards of Conduct

A recipient must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award, and administration of contracts. [2 C.F.R. § 200.318\(c\) “General Procurement Standards,”](#) and *see* [FTA Circular 4220.1F, Chapter III \(3\) “Third Party Contracting Capacity.”](#)

No employee, officer, agent, board member, or immediate family member, partner, or organization that employs or is about to employ any of the parties listed above may participate in the selection, award, or administration of a contract supported with FTA assistance if a conflict of interest, real or apparent, is involved, nor may they solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. Such a conflict would arise when any of those individuals listed has a financial or other interest in the firm selected for award. [FTA C 4220.1F, Ch. III\(1\)\(a\)](#).

If a recipient or sub recipient has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, that entity must also maintain written standards of conduct covering organizational conflicts of interest. [Best Practices § 2 \(p. 14\)](#).

Liquidated Damages

FTA has determined that a recipient may use liquidated damages if the recipient reasonably expects to suffer damages through delayed contract completion, or if weight requirements are exceeded, and the extent or amount of such damages are uncertain and would be difficult or impossible to determine. The rate and measurement standards must be calculated to reasonably reflect the recipient’s costs

should the standards not be met, and must be specified in the solicitation and contract. The assessment for damages is often established at a specific rate per day for each day beyond the contract's delivery date or performance period. A measurement other than a day or another period of time, however, may be established if that measurement is appropriate, such as weight requirements in a rolling stock purchase. The procurement file should include a record of the calculation and rationale for the amount of damages established. Any liquidated damages recovered must be credited to the project account involved unless FTA permits otherwise. [FTA C 4220.1F Ch. V\(2\)\(6\)\(b\)\(1\)](#)

Ensuring Most Efficient and Economic Purchase

Recipients are required to establish procedures to avoid the purchase of unnecessary property and services including duplicative items and quantities or options it does not intend to use or whose use is unlikely. *See* [FTA Circular 4220.1F, Chapter IV, paragraph 1.b "Necessity."](#) Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase.

Written Record of Procurement History

Recipients shall maintain records detailing the history of procurement. Documents included in a procurement history should be commensurate with the size and complexity of the procurement itself. FTA recognizes that these written records will vary greatly for different procurements. [FTA C 4220.1F Ch. III\(3\)\(d\)\(1\) "Methods of Procurement."](#)

Awards to Responsible and Responsive Contractors

Recipients shall make awards only to responsible and responsive contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as conforming to the requirements of the solicitation, contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. All procurements must include a printout from www.sam.gov, with the date of the printout must be shown on the bottom of the page. [2 C.F.R. 200.319 \(j\)\(2\)](#) and [FTA C 4220.1F Ch. V \(8\) "Contract Award."](#)

Procurement resources on the MnDOT website include documents on determining cost and price reasonableness, evaluation factors, contractor reasonableness, and contractor selection procedures.

Advanced Payments

Advance payments are payments made to a contractor before the contractor incurs contract costs. The recipient may use its local share funds for advance payments. The recipient 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. FTA recognizes that advance payments are typically required for, but are not limited to, public utility connections and services, rent, tuition, insurance premiums, subscriptions to publications, software licenses, construction mobilization costs, transportation, hotel reservations, and conference and convention registrations. Accordingly, the recipient may use FTA assistance to support or reimburse the costs of such acquisitions. [2 C.F.R.](#)

[200.305; FTA C 4220.1F Ch. IV\(2\)\(b\)\(5\)\(b\) “Payment Provisions: Advanced Payments.”](#)

Revenue Contract

A contract in which the recipient provides access to public transportation assets for the primary purpose is either to generate revenues in connection with a transit related activity, or to create business opportunities utilizing an FTA funded asset.

The recipient has broad latitude in determining the extent and type of competition appropriate for a particular revenue contract. Nevertheless, to ensure fair and equal access to FTA assisted property and to maximize revenue derived from such property, the recipient should conduct its revenue contracting as follows:

(a) Limited Contract Opportunities. If there are several potential competitors for a limited opportunity (such as advertising space on the side of a bus), then the recipient should use a competitive process to permit interested parties an equal chance to obtain that limited opportunity.

(b) Open Contract Opportunities. If, however, one party seeks access to a public transportation asset (such as a utility that might seek cable access in a subway system), and the recipient is willing and able to provide contracts or licenses to other parties similarly situated (since there is room for a substantial number of such cables without interfering with transit operations), then competition would not be necessary because the opportunity to obtain contracts or licenses is open to all similar parties. [FTA C 4220 Ch. I \(5\)\(aa\) “Definitions.”](#)

Written Protest Procedures

[Section 200.318\(k\) of Title 2, Code of Federal Regulations](#), provides that a recipient “alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the [recipient] of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the [recipient] unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.”

Recipient shall in all instances disclose information regarding any protests to MnDOT. MnDOT is responsible for expeditiously notifying FTA when applicable. [FTA C 4220.1F Ch. VII, \(1\)\(a\)\(2\)\(a\)](#). All protest decisions must be in writing. [FTA C 4220.1F Ch. VII\(1\)\(a\)\(1\)](#).

Changes and Modifications

Recipients are responsible for issuing, evaluating, and making necessary decisions involving any change to its third party contracts, and any change orders or modifications it may issue and shall in all instances disclose such information to MnDOT is responsible for notifying FTA, as needed. [2 C.F.R 200.308 \(b\) “Revision of Budget and Program Plans.”](#)

All changes and modifications to a procurement must be documented. [FTA C 4220.1F Ch. VII, \(2\)\(b\) “FTA’s Role and Responsibilities.”](#)

All recipients’ third party contracts should contain a Changes Clause. The language of the clause may differ depending upon the nature of the contract and the end-item being procured. [Best Practices](#), § 5.1, “Contract Changes” p. 114 – 116.

All changes must be within the contract scope – cardinal changes must be processed as new procurements. [Best Practices](#), § 5.1.1, “Contract Changes” p. 114 – 116.

Minnesota legislation further requires that the commissioner or an agency official to whom the commissioner has delegated contracting authority under section 16C.03, subdivision 16, must determine that an amendment would serve the interest of the state better than a new contract and would cost no more. [Minn Stat. 16C.05 Subd. 2\(c\) “Creation and Validity of Contracts.”](#)

Contract Period of Performance Limitation

The contract term for a cooperative vehicle procurement contract may be for an initial term of not more than two years and may include three optional extensions of one year each. Recipients may enter into a multi-year contract to acquire buses or replacement parts, with an option not exceeding five (5) years to buy additional buses or replacement parts, [49 U.S.C. Section 5325\(e\)\(1\)\(A\)](#), but may not exercise the option to acquire buses or replacement parts later than five (5) years after the date of its original contract.

For more information, the text of the regulatory code has been included for convenience.

(e) Multiyear Rolling Stock.—

(1)Contracts.—A recipient procuring rolling stock with Government financial assistance under this chapter may make a multiyear contract to buy the rolling stock and replacement parts under which the recipient has an option to buy additional rolling stock or replacement parts for—

- (A) not more than 5 years after the date of the original contract for bus procurements; and
- (B) not more than 7 years after the date of the original contract for rail procurements, provided that such option does not allow for significant changes or alterations to the rolling stock.

(2)Cooperation among recipients.—

The Secretary shall allow recipients to act on a cooperative basis to procure rolling stock in compliance with this subsection and other Government procurement requirements.

The recipient’s other third party contracts (such as property, services, leases, construction, revenue, and so forth) are not encumbered by Federal requirements restricting the maximum periods of performance. FTA expects the recipient to use sound business judgment and be judicious in establishing and extending a contract’s period of performance.

General Standards. The period of performance generally should not exceed the time necessary to accomplish the purpose of the contract. The recipient should also consider competition, pricing, fairness, and public perception. The recipient’s procurement files should document its rationale for determining the performance period designated for each contract.

[FTA C 4220.1F Ch. IV \(2\)\(b\)\(3\).](#)

Nevertheless, the duration of the recipient’s other contracts must be reasonable. With respect to rolling

stock, MnDOT has adopted a multi- year contract terms not to exceed five (5) years, including any option years.

Full and Open Competition

All procurement transactions will be conducted in a manner providing full and open competition where all responsible sources are permitted to compete. [FTA C 4220.1F: Ch. VI \(1\)\(a\) “Procedural Guidance for Open Market Procurements.”](#)

Full and open competition is the guiding principle of Federal procurement requirements and practices. The principle of full and open competition has one primary and two secondary purposes. The primary purpose is to obtain the best quality and service for the least cost. The secondary purposes are to guard against favoritism and profiteering at the public’s expense, and to provide equal opportunities for all qualified offerors to participate in public business opportunities. [Best Practices](#) § 2.4, pg. 21, “Competition Requirements.”

Some of the situations considered to be restrictive of competition include, but are not limited to:

1. Unreasonable requirements placed on firms in order for them to qualify to do business;
2. Unnecessary experience and excessive bonding requirements;
3. Noncompetitive pricing practices between firms or between affiliated companies;
4. Noncompetitive awards to any person or firm on retainer contracts;
5. Organizational conflicts of interest. An organizational conflict of interest means that because of other activities, relationships, or contracts, a contractor is unable, or potentially unable, to render impartial assistance or advice to the grantee; a contractor's objectivity in performing the contract work is or might be otherwise impaired; or a contractor has an unfair competitive advantage;
6. The specification of only a "brand name" product without listing its salient characteristics and not allowing "an equal" product to be offered;
7. Any arbitrary action in the procurement process.

[2 C.F.R § 200.319 \(a\) \(1 – 7\) “Competition”](#)

The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

[2 C.F.R § 200.319 \(b\) “Competition”](#)

Written Procurement Selection Procedures

Recipients shall have written selection procedures for procurement transactions. All solicitations shall:

- Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features that unduly restrict competition. The description 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.
- Detailed product specifications should be avoided if at all possible.
- Use a "brand name or equal" description only when it cannot provide an adequate specification or more detailed description, without performing an inspection and analysis, in time for the acquisition under consideration. A recipient wishing to use "brand name or equal" must carefully identify its minimum needs and clearly set forth those salient physical and functional characteristics of the brand name product in the solicitation.
- Identify all requirements that vendors must fulfill and all other factors to be used in evaluating bids or proposals.
- Solicitation must include protest procedures.

[2 C.F.R § 200.319 \(c\) "Competition"](#)

Pre-Qualification Criteria

Recipients shall ensure 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. Also, recipients shall not preclude potential bidders/proposers from qualifying during the solicitation period, which is from issuance of the solicitation to its closing date. [2 C.F.R § 200.319\(d\) "Competition."](#)

Options

An option is a unilateral right in a contract by which, for a specified time, a recipient may elect to purchase additional equipment, supplies, or services called for by the contract, or may elect to extend the term of the contract. Recipients may include options in contracts so long as the recipient is able to justify those options as needed for its public transportation or project purposes. [FTA C 4220.1F Ch. I \(d\) "Options."](#)

If a recipient chooses to use options, the requirements below apply:

- **Evaluation of Options:** The option quantities or periods contained in the contractor's bid or offer must be evaluated as part of the original contract award. When options have not been evaluated as part of the award, the exercise of such options will be considered a sole source procurement. [FTA C 4220.1F Ch. V \(7\)\(c\)\(1\) "Existing Contracts"](#)
- Exercise of Options:
 - The exercise of an option are substantially similar to the terms and conditions of the option stated in the initial contract awarded. [FTA C 4220.1F Ch.VI \(2\)\(i\)\(7\)\(a\)\(1\)\(a\) "Exercise of Options."](#)
 - An option may not be exercised unless the recipient has determined that the option price is better than prices available in the market or that the option is the more advantageous offer at the time the option is exercised. [FTA C 4220.1F Ch.VI \(2\)\(i\)\(7\)\(a\)\(1\)\(a\) "Exercise of Options."](#)
 - At the time options are signed, it is imperative to include the updated federal clauses. The contractor should have signed copies of the clauses for every year of the contract.

Intergovernmental Procurement Agreements

To foster greater economy and efficiency, recipients are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services. The requirements and standards of [Circular 4220 Third Party Contracting Requirements](#) apply to procurements entered into under such agreements using FTA funds. [FTA C 4220.1F Ch. V\(4\) "Sources."](#)

Veterans Hiring Prefer

Recipients and sub recipients of Federal financial assistance shall ensure that contractors working on a capital construction project funded using such assistance give a hiring preference, to the extent practicable, to veterans ([5 U.S.C. 2108](#)) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or former employee. [49 USC 5325\(k\)](#)

Use of General Services Administration (GSA) Schedules And Excess Or Surplus Federal Property

State and local grantees may use approved federal supply schedules of GSA for the procurement of certain goods and services, [40 U.S.C. § 481\(b\)](#). Price lists will be available from GSA and may include an administrative fee for GSA in the price of items on the schedule. Recipients must contact GSA for guidance on using the GSA supply schedules. [FTA C 4220.1F Ch. V \(5\) "Sources."](#)

Use of Value Engineering in Construction Contracts

Recipients are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the

lowest overall cost. [2 C.F.R. § 200.318\(g\) “General Procurement Standards.”](#)

In all instances, the required function should be achieved at the lowest possible life-cycle cost consistent with requirements for performance, maintainability, safety, security, and aesthetics. [FTA C 4220.1F Ch. I \(5\)\(ff\). “Definitions.”](#)

Use of Time and Materials Type Contracts

Time and materials contracts are defined by the Uniform Guidance as contracts whose cost to a recipient is the sum of (i) the actual cost of the materials; and (ii) direct labor hours charged at fixed hourly rates that reflect wages, general, and administrative expenses, and profit. [2 C.F.R. § 200.318\(j\)\(1\)\(i and ii\) General Procurement Standards.](#)

Recipients are permitted to use time and materials contracts only: (1) after determining that no other type of contract is suitable; and (2) if the contract specifies a ceiling price that the contractor will not exceed except at its own risk. [2 C.F.R. § 200.318\(j\)\(1\) “General Procurement Standards.”](#)

Per the Uniform Guidance, recipients awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls. [2 C.F.R. § 200.318\(j\)\(2\) “General Procurement Standards.”](#)

Responsibility for Settlement of Contract Issues/Disputes

Recipients alone will be responsible for sound administrative and business practices and settlement of all contractual and administrative issues arising out of procurements. [2 C.F.R. § 200.318\(k\) General Procurement Standards.”](#)

Geographic Restrictions

With limited exceptions, recipients are not permitted to specify in-State or local geographical preferences, or evaluate bids or proposals in light of in-State or local geographic preferences even if those preferences are imposed by State or local laws or regulations. This prohibition extends to the use of geographic hiring preferences in contracts. [FTA C 4220.1F, Ch.VI \(2\)\(a\)\(g\).](#)

Additionally, FTA prohibits recipients limiting its bus purchase solicitations to in-State dealers. *See* FTA Circular [4220.1F, Ch.VI \(2\)\(a\)\(g\) “In-State or Local Geographic Restrictions”](#) and *see* [49 U.S.C. § 5325\(D\).](#)

There are, however, several exceptions expressly mandated or encouraged by Federal law, which include the following:

- **Architectural Engineering (A&E) Services.** 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.
- **Licensing.** A State may enforce its licensing requirements, provided that those State requirements do not conflict with Federal law.
- **Major Disaster or Emergency Relief.** Federal assistance awarded under the Stafford Act.

- **Construction Hiring Preferences.** For construction contracts advertised or awarded in FY 2015 and 2016.

Architectural and Engineering (A & E) Contracts

FTA’s enabling legislation [at 49 U.S.C. § 5325\(b\)\(1\)](#) requires the use of the qualifications-based procurement procedures contained in the [Brooks Act, 40 U.S.C. §§ 1101-1104](#), to acquire program management, architectural engineering, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, or related services for an FTA-funded project.

The nature of the services to be performed and its relationship to construction, not the nature of the prospective contractor, determines whether qualifications-based procurement procedures may be used. [FTA C 4220.1F Ch. V \(3\)\(f\)\(2\) “Architectural Engineering \(A&E\) Services and Other Services.”](#)

The Brooks Act requires selection to be based on qualifications and specifically excludes price as an evaluation factor (provided the price is fair and reasonable). [FTA C 4220 Ch. V \(3\)\(f\)\(3\)](#) and *see* [40 U.S.C §1101 et. seq.](#)

FTA Required Clauses

FTA required clauses must be included in the recipient procurement process. [FTA C 4220.1F Ch. IV \(2\)](#) Master lists of all clauses are provided by MnDOT OTAT when needed.

Construction Contracts exceeding Simplified Acquisition Threshold

Bonds are required for all construction or facility improvement contracts and subcontracts exceeding the simplified acquisition threshold. The following minimum requirements apply:

- **Bid Guarantee.** Bid guarantee equivalent to 5% of its bid price.
- **Performance Bond.** Performance bond for 100% of the contract price.
- **Payment Bond.** Standard payment bond, with established percentage minimums based on contract price, to assure payments to all people supplying labor and materials for the third party contract.

[2 U.S.C 200.325](#); and *see* [FTA 4220.1F Ch. IV \(2\)\(b\)\(i\)](#)

Service Contracts

The types of contracts that typically may be structured as cost-reimbursement contracts requiring final cost audits would include consultant, engineering or service contracts. Any service contracts that exceed five years in total length including base and options require prior written approval from FTA. Competitive procurement requirements must be included in the recipient’s third party contract for services funded with federal dollars.

Cost-reimbursement contracts are suitable for use only when the uncertainties involved in contract

performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed price contract. [FTA C. 4220.1F Ch. VI \(2\)\(c\)\(1\)\(b\)](#)

Progress Payments

Progress payments are payments for contract work that has not been completed. The recipient may use FTA assistance to support progress payments provided the recipient obtains adequate security for those payments and has sufficient written documentation to substantiate the work for which payment is requested. [FTA C 4220 Ch. IV \(2\)\(b\)\(5\)\(c\) “Progress Payments.”](#)

Adequate security for progress payments may include taking title or obtaining a letter of credit or taking equivalent measures to protect the recipient’s financial interest in the progress payment. Adequate security should reflect the practical realities of different procurement scenarios and factual circumstances. FTA acknowledges the practical reality that taking title to work in progress may not be desirable in some circumstances. The recipient should always consider the costs associated with providing security (for example, the recipient may need to acquire bonds or letters of credit in the commercial marketplace) and the impact of those costs on the contract price, as well as the consequences of incomplete performance.” [FTA C 4220 Ch. IV \(2\)\(b\)\(5\)\(c\)\(2\) “Progress Payments.”](#)

The Common Grant Rules requires that any progress payments for construction contracts be made on a percentage of completion method. The recipient, however, may not make progress payments for other than construction contracts based on this percentage method. [FTA C 4220 Ch. IV \(2\)\(b\)\(5\)\(c\)\(3\) “Progress Payments.”](#)

Vehicle Procurements

The Cooperative Purchasing Venture (CPV) is a program administered by the Minnesota State Department of Administration, Minnesota Materials Management Division. Through the CPV, the State enters into purchasing Agreements with responsible contractors for bus procurement from which members of the CPV (Transit Agencies) can issue purchase orders without the need for additional competition. To ensure full and open competition, an orderly process for procuring vehicles and proper documentation throughout the procurement process; including development of specifications, Bid or RFP (Request for Proposal) process, ordering, inspection, delivery and final payment have been established to assure full compliance and to meet the federal guidelines, per 4220.1f. Pursuant to Section 3019 of the FAST Act, recipients may purchase from another State’s schedule. See [MN Department of Administration](#).

Eligible transit agencies within the state of MN must follow procedures in place for the procurement of vehicles supported with FTA funds. Agencies have the option to procure vehicles either within the CPV or direct vehicle procurements and must adhere to the Buy America requirements. ([Minnesota Department of Administration](#).)

Piggybacking

Piggybacking is the post-award use of a contractual/process that allows an entity who was not contemplated in the original procurement to purchase the same supplies/equipment through that original document/process. [FTA C. 4220 Ch. V \(7\)\(C\) “Assignment of Contract Rights.”](#)

Refer to the [Piggybacking Worksheet in the Best Practices Manual](#) for additional information.

Note:

- ✚ The original contract price must remain fair and reasonable
- ✚ The Original contract provisions comply with all applicable federal requirements
- ✚ That the assigning recipient originally procured quantities necessary for their needs (i.e., they did not procure unreasonably large quantities).
- ✚ Any procurement where “piggy-backing” is involved shall have an assignability clause that provides for the assignment of all or part of the specified deliverables (base and option included) as originally advertised, competed, evaluated, and awarded. The clause cannot be added to the contract after award if it was missing from the original solicitation. Bidders must be placed on notice that an assignment is likely and that they will thus be delivering all of the quantities called for by the contract. [FTA FAQ](#)
- ✚ The procurement documents shall contain a minimum and maximum quantity of deliverables.
- ✚ Any contract clauses that unduly restrict competition are prohibited. *See* 2 CFR 200 et seq.
- ✚ If a recipient is procuring any equipment or materials using option clauses, these must be evaluated at the time of the initial bid with prices established at that time.
- ✚ The use of liquidated damage clauses in recipient procurements is mandatory.

2 MnDOT Procurement Review Process

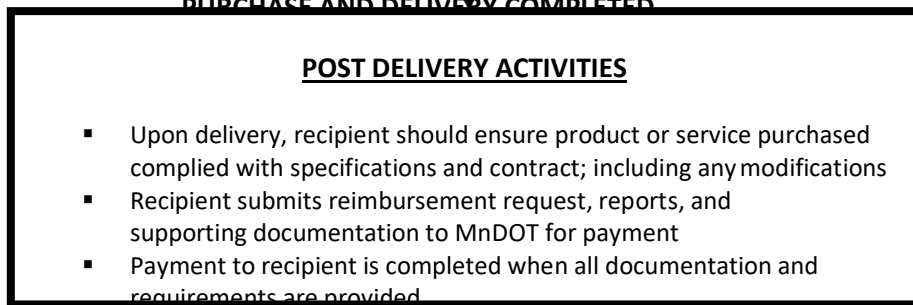
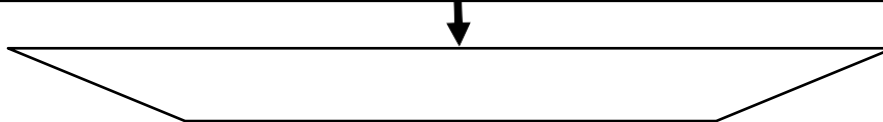
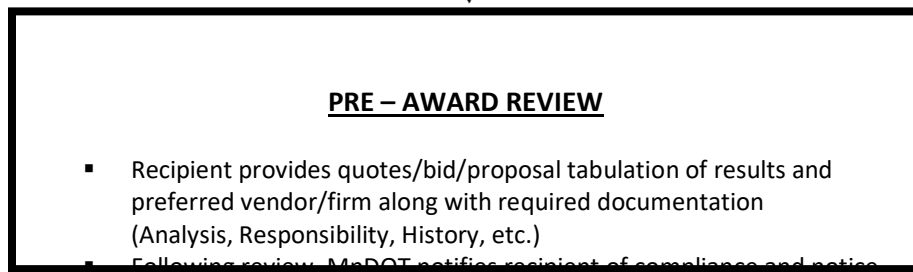
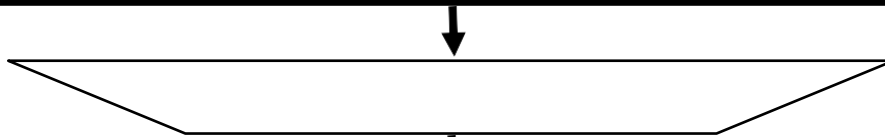
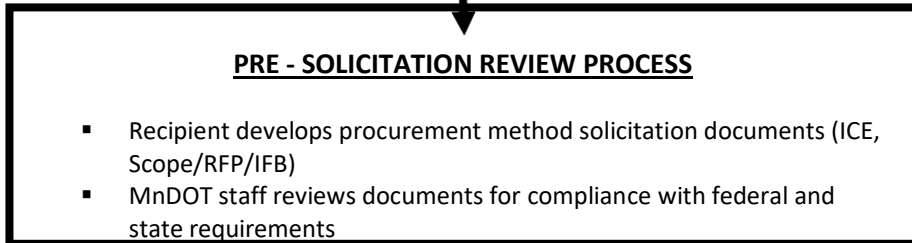
MnDOT considers the sub recipient procurement to be a local process. The sub recipient is responsible for the procurement of goods and services under its funding grant agreement/contract with MnDOT. MnDOT follows a procurement review process to ensure compliance with federal and state regulations. *See* MNDOT Contracts: 2.7.2 Local Procurement Policy; 2.9 Independent Contractor; and 3 Responsibilities of the State.

This review process takes place at three distinct points during the recipient’s procurement:

- Pre-Solicitation Review Process
- Pre-Award Review Process
- Post-Delivery Activities

The following diagram illustrates the MnDOT Procurement Review Process. The forms for sub recipient submittal to MnDOT are included in the procurement method documents available on the MnDOT website.

MnDOT
PROCUREMENT
REVIEW PROCESS



Section 3: RECIPIENT PROCUREMENT PROCESS DETAILS

This section is intended to explain the requirements of the recipient procurement process.

3.1: Prior to Procurement Process

Determine the Estimated Costs and Scope of the Procurement

To begin the procurement, recipients should first review the original grant request and determine the scope and independent estimated cost of the procurement. The Independent Cost Estimate is not completed using quotes; it is completed using estimates from an independent source, other than for this project. Obtaining invoices from previous similar projects or from projects from other systems or agencies is required. [Best Practices](#), § 4.6, p. 100, “Cost and Price Analysis.”

The scope of your procurement should coincide with the approved grant agreement from MnDOT. Once the goals of the procurement are clear, detailed specifications and a procurement packet can be developed. The recipient should consider the desired goals and outcomes. Clearly stated goals allow recipients to make effective decisions regarding the scope of the procurement and what and how much to purchase.

Identify Who Needs to be Involved

Internal (local) Agency Involvement

Early in the procurement process identify the individuals involved as this will facilitate the overall process and save time in the long term. Depending on the procurement type, seek input from different functional areas in the organization. This could include staff from any or all of the following areas: purchasing, engineering, legal, financial/ accounting, transit manager, drivers, maintenance staff or others.

The following work area responsibilities should be considered:

- Department initiating the procurement for items to be purchased;
- Drivers and maintenance personnel for technical input related to vehicles;
- Finance for invoicing and payment scheduling;
- Legal for contracts, bonding, insurance, certification, procurement timetable
- Areas of specialized expertise that can provide technical information on items such as performance standards, evaluation criteria, incentives, required forms or procedures, and desired timetable.

External Resources

Consider soliciting outside assistance if your agency is small and has limited procurement experience. This could include legal or other technical assistance in writing specifications, and/or assuring bidder compliance with state, federal or local regulations.

Potential resources include:

- Technical personnel within the community or neighboring communities;
- Transit agencies;
- Local, State and federal agencies
- MnDOT

MnDOT also recommends the bid /proposal packet be reviewed by your transit advisory committee and/or legal board to ensure the type of goods or services procured meet the needs of your community. One way to reduce the need for outside assistance is to include language in the procurement package which requires contractors to assume responsibility for compliance with certain process elements included in the bid or proposal.

The recipient of federal funds as the administrator of the procurement and the contract has the ultimate responsibility for compliance with all requirements of the procurement process.

Plan the Procurement Process

Once identified individuals have been determined and selected, address the following items with the group:

- Review agency resources in terms of managing the procurement process, and determine if others need to be involved
- Assign specific responsibilities to each participant
- Create advertising policies for solicitation or publication of notices
- Review local, state and federal government requirements
- Clearly identify bidder/proposer responsibilities
- Establish a communication and reporting process
- Identify key dates, timeline and frequency of meetings
 - ✓ Meet as many times as needed to complete the procurement process on time
 - ✓ Ensure the procurement occurs at the correct time of year. For example, if working on a construction procurement, the specifications should be developed in fall/winter for a spring solicitation, summer construction.
 - ✓ Set the meeting schedule to coincide with board or council meetings, if board/council approval is required. If possible, build in extra time if an emergency meeting is warranted.
- Use the Procurement Management Checklist to ensure proper procurement documents are recorded and organized.

Decide the Method of Procurement based on the amount:

The process for each type of procurement is outlined in the Procurement Management Checklist. The total procurement cost determines the type of procurement process that must be followed:

<http://www.dot.state.mn.us/transit/grants/procurement.html>

Invitation for Bid (IFB)

The Invitation for Bid (IFB) is a sealed bid and the most common method used in the public sector to obtain specific goods, such as vehicles and equipment. This method is typically used when complete specifications or purchase descriptions are available or can be easily developed. The IFB process must involve two or more bidders and the award is made to the bidder who complies with the

requirements and instructions of the IFB, and who offers **the lowest total bid price** while meeting all specifications and requirements. *See* Best Practices § 3.4.4

Request for Proposal (RFP)

The Request for Proposal (RFP) is a competitive procurement method when a general, rather than specific, description of goods and/or services is used. This method allows for the procurement of goods and/or services in which every detail of the work to be done cannot be specified and/or when creativity on the part of the proposer is desired. *See* Best Practices § 3.4.7.

Request for Qualifications (RFQ)

The Request for Qualifications (RFQ) process provides information on the background and experience of the proposer. This process is followed by an RFP process, if more than one qualified bidder is available. Frequently, the RFQ and RFP processes are combined into a single “RFP” document. This is used most frequently for A & E solicitations. These procedures are defined in [MN Stat. 16C.32, subd. 1 \(21\), and 16C.33 – 16C.35](#), to comply with the Brook’s Act.

Request for Information (RFI)

The Request for Information (RFI) process provides technical information on a commodity and allows the recipient to determine if an item is available in the market place. In instances in which information on items are not readily available, recipients may contact vendors to provide information that can be incorporated into the specifications. [FTA FAQ](#).

Other than full and open competition

When other than full and open competition is contemplated, procurement methods such as sole source, single bidder proposal, national emergency, etc. can be utilized. Recipients are instructed to follow the procurement requirements for these methods as outlined in FTA Circular 4220.

Section 4: DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS

Disadvantaged Business Enterprise (DBE) provisions apply to USDOT assisted programs for highways, transit, and airports. This includes the use of Federal Transit Administration (FTA) planning, capital, and/or operating programs. The FTA requires organizations receiving FTA funds to make efforts to purchase from, or use, DBE firms.

This part seeks to achieve several objectives:

- (a) To ensure nondiscrimination in the award and administration of DOT-assisted contracts in MnDOT's highway, transit, and airport financial assistance programs;
- (b) To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
- (c) To ensure that the MnDOT's DBE program is narrowly tailored in accordance with applicable law;
- (d) To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as DBEs;

- (e) To help remove barriers to the participation of DBEs in DOT-assisted contracts;
- (f) To promote the use of DBEs in all types of federally-assisted contracts and procurement activities conducted by recipients.
- (g) To assist the development of firms that can compete successfully in the marketplace outside the DBE program; and
- (h) To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs. [29 C.F.R 26.1 “Objectives.”](#)

MnDOT's DBE Program was established by the federal government to ensure women- and minority-owned businesses have the opportunity to participate in contracts financed in whole or in part by the U.S. Department of Transportation. The MnDOT Office of Civil Rights administers the DBE program and sets goals for DBE participation on applicable MnDOT contracts. (MnDOT Civil Rights website: <https://www.dot.state.mn.us/civilrights/dbe.html>)

Disadvantaged Business Enterprise certification benefits businesses through marketing, training, and contract opportunities. Businesses who meet the eligibility requirements in the federal regulations may apply for certification as Disadvantaged Business Enterprise. (<https://www.dot.state.mn.us/civilrights/certification.html>)

As a FTA funding recipient, the Minnesota Department of Transportation (MnDOT) Office of Transit and Active Transportation, and its sub recipients must adhere to DBE provisions that are completed in the procurement process. These provisions include:

DBE Goal Setting

As a condition of receiving federal money, MnDOT is required by the Federal Highway Administration and Federal Transit Administration to establish an annual statewide goal for DBEs to perform on federally- funded contracts over the next three years. ([49 C.F.R 26.45](#)) The annual goal is a percentage of the federal contracting dollars that are targeted for certified DBE firms to perform based on the availability of ready, willing, and able firms in Minnesota.

Information on MnDOT's DBE goal is available on the MnDOT website:

<http://www.dot.state.mn.us/civilrights/dbe-goal.html>

Contract Specific Goals

On a contract, the participation goal is a percentage of the contract that is targeted for certified DBE firms to perform on the project. The DBE participation goal considers the location, scopes of work to be performed and availability of DBE firms. To be awarded a contract with a DBE participation goal, the prime contractors must either meet the DBE participation goal or make good faith efforts to meet the goal. Prime contractors can get credit toward DBE goals by subcontracting work to DBEs, purchasing supplies from DBEs, and other methods detailed in the DBE Special Provisions.

Not all projects are required to have DBE goals. Smaller projects that are federally funded may not

have a DBE participation goal and are considered race/gender neutral contracts. Race/gender neutral contracts are still monitored for DBE participation. The DBE Special Provisions outline the requirements and details for contract DBE goals. [49 C.F.R. § 26.45\(e\)\(2\)](#) and *see* <https://www.dot.state.mn.us/civilrights/dbe.html>;

Recipients must work with the MnDOT OTAT Procurement Coordinator of upcoming procurements to ensure the Office of Civil Rights (OCR) has appropriate time to review and set goals and any follow-up requirements. The OTAT Procurement Coordinator is responsible to coordinate the process with the OCR to complete the goal setting and all other requirements, based on the project.

Note: Vehicle bus procurements, under the CPV program are not subject to MnDOT's DBE goal setting requirements. *See* the MN CPV Agreement.

No DBE Goal

If MnDOT determines that no specific DBE goal should be assigned to the procurement, the Procurement Coordinator will work with the recipient to assign the appropriate federal clause. This includes eliminating the language on any specific goal since the procurement falls under the MnDOT overall goal.

DBE Goal Established

If MnDOT determines there should be an assigned DBE goal to the procurement, the Procurement Coordinator will assist the recipient in completing the additional paperwork to be include in the solicitation along with the appropriate federal clause.

The DBE goal setting process on a procurement is technical and requires specific steps that must be followed throughout the procurement process and as part of contract administration. The MnDOT Procurement Coordinator will provide assistance for recipients whose procurement is assigned a DBE goal.

Good faith efforts are a consideration when a contract specific goal is established. MnDOT OCR and the Procurement Coordinator will work with recipients for procedures and methodology on determining good faith efforts. [49 C.F.R. §26.53](#).

DBE Contract Clauses

All FTA-assisted solicitations by MnDOT or its sub recipients must be reviewed and approved by the Transit Procurement Coordinator to ensure they contain the appropriate FTA clauses. These clauses contain provisions related to DBE requirements.

The required contract clauses address non-discrimination, third-party contracting, prompt payment, Transit Vehicle Manufacturer (TVM) certification, termination, and remedies for prime contractors that do not comply.

Bidders List

Sub recipients with third-party contracts are required to submit a bidders list to MnDOT. A full description of the process used and documentation required for a bidders list can be found in the

MnDOT OCR website and provided by the Procurement Coordinator ([Disadvantaged Business Enterprise \(DBE\) Special Provisions pdf](#))

Prompt Payment

Prompt payment by prime contractors to their subcontracts is also required, including the return of retainage.

(Minn. Stat. 16A.1245)

While contract-specific goals are not required on all contracts, if a contract-specific goal is established, additional information must be collected from bidders prior to contract award. It is imperative that the appropriate federal clauses are attached whether there is a DBE goal or not. ([Disadvantaged Business Enterprise \(DBE\) Special Provisions pdf](#))

TVM Certification

Recipients must ensure that transit vehicle procurements using FTA funds only occur with TVMs that adhere to FTA requirements. This is done through the inclusion of FTA required contract clauses and a certification, to be completed by the TVM, in the solicitation and pre-award documents. The required process for handling TVM solicitations is included in the documents related to vehicle purchases. [49 C.F.R § 26.49](#)

Transit Vehicle Manufacturer Compliance with DBE Requirements. Before a transit vehicle manufacturer (TVM) may submit a bid or proposal to provide vehicles to be financed with FTA assistance, [49 C.F.R § 26.49](#) requires the TVM to submit a certification that it has complied with FTA's DBE requirements.

Transit Vehicle Award Report

Recipients are required to submit, within 30 days of making an award, the name of the successful transit vehicle manufacturer and the total dollar value of the contract (49 C.F.R. § 26.49) using the FTA Transit Vehicle Award Report form. The FTA report form and instructions can be found at:

<https://www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/eligible-transit-vehicle-manufacturers>

Sub recipients must contact MnDOT Vehicle Procurement Coordinator to assist with the completion and submission of the Transit Vehicle Award Report form. Completed forms are to be kept in the procurement file. (OTAT Policy)

Section 5: REQUIRED FEDERAL CONTRACT CLAUSES

Recipients, sub recipients and contractors are expected to be familiar with and meet all stated or otherwise applicable federal clauses and standards. FTA third party contract clauses can be obtained through the MnDOT Procurement Coordinator.

Recipients are responsible for evaluating these requirements for relevance and applicability to each procurement. Recipients should work with the MnDOT Procurement Coordinator to ensure completeness of contract clauses. [2 C.F.R 200.318\(a\) "General procurement standards."](#)

Section 6: CONTRACT ADMINISTRATION

After the procurement is complete, the recipient is responsible for ensuring that the product or services procured are actually received.

The recipient should identify a person within their agency to oversee the contract and to be responsible for the following activities:

- Understand the nature of the solicitation, what was agreed to as part of the negotiations, and the structure and substance of the contract.
- Monitor the contract to ensure there is no scope creep, cardinal changes, or tag-ons.
 - Scope creep is when small changes in service levels or commodity purchases are made to multi-year agreements over a period of time, resulting in a large change from the original procurement.
 - Cardinal changes are major deviations from the original purpose of the work or the intended method of achievement, or a revision of contract work so extensive, significant, or cumulative that, in effect, the contractor is required to perform very different work from that described in the original contract.
 - Tag-ons are adding quantities on to the contracted quantities (base and option) as originally advertised, competed, and awarded, whether for the use of the buyer or for others and then treating the add-on portion as though it met the requirement of the original competition.
 - If modifications are required, complete the necessary paperwork listed in the appendices of the respective toolkit. Work with the person who conducted the procurement to complete the required paperwork.
- Track the progress of the project.
 - Document the progress, deliverables reached and decisions made.

If the contract requirements are not being met, document the areas of noncompliance. Discuss areas of non-compliance with the contractor, document the conversations and timeframe and deliverables of corrective actions. Discuss and document issues such as if the project is on time and on budget? If not, discuss and document what needs to happen to get it back on track.

- Ensure that contract invoicing is consistent and compliant with contract provisions
- Key documents in the contract administration file:
 - Statement of Work
 - Required Reports
 - Documentation necessary to review, approve and pay invoices
- Manage the project throughout the life of the contract.
 - If there are multiple years to the contract, know when the contract was executed, the original term of the contract (1 year or 2 years). Ask - were the options included in the contract? Is a new solicitation needed? If it's in an option year, there is documentation needed to be completed a couple of months before the contract

expires. If a new solicitation is needed, it should be started 6-12 months before the current contract expires.

- If the contract has an option year(s), verify and document the following:
 - The price for the current year is fair and reasonable. Check the contract to see if there is an escalator/de-escalator based on Consumer Price Index (CPI) or Producer Price Index (PPI). If CPI or PPI is the only factor, and the contractor is willing to sign an Exercise of Options to extend the contract for another year at the existing price, submit written documentation supporting that decision.
 - If recipient does not execute an exercise of option year, then procurement must be resolicited.
 - Whether the contractor has performed as required in the contract. If not, consider resoliciting for a contractor that can perform satisfactorily.
 - The statement/scope of work for the next year. Check with all personnel that may be affected by the contract to verify completeness of the statement of work. Keep in mind, the scope of work must be consistent with the contract and should not include scope creep or cardinal changes.
 - Obtain signed federal clauses for each option year.
- For Items
 - Verify the item received was the item on the purchase order. Complete any necessary paperwork and/or reporting. The recipient must ensure that the item met the specifications and document in writing any changes that may have been made in the procurement process. If the item does not meet the contract requirements, notify the contractor immediately. Payment must be held from the contractor until all contract requirements are met.
- For Services:
 - Verify the service procured is thoroughly completed. A detailed statement of work must be included as part of the contract so both the recipient and the contractor understand the contract terms. Complete any necessary paperwork and/or reporting. If the service does not meet the contract requirements, notify the contractor in writing as soon as there is deviation from the contract. Develop a plan to allow the contractor to achieve compliance with the contract. A payment made for a service indicates acceptance that the service met all contractual requirements. Payment must be held from the contractor until all contract requirements are met.

Section 7: USING AVAILABLE RESOURCES AND TECHNICAL ASSISTANCE

Whether you are new at the procurement of goods and services or an experienced hand at the process, ensuring that you follow up-to-date requirements and properly utilize available documents is essential. MnDOT OTAT provides a valuable resource with technical assistance and template documents to assist in the procurement process, utilize this service to your advantage. Plan ahead for all your procurement needs, it takes time to document your process. If you utilize the resources available and follow the procurement process and approvals, recipients and sub recipients will have a sound procurement program. (OTAT)