

WALK MAT RENTAL BID 2016-02

**MILWAUKEE TRANSPORT SERVICES
1942 NORTH 17TH STREET
MILWAUKEE, WI 53205
(414) 937-3243 / FAX: (414) 344-7080
(website: www.ridemcts.com)**

BUYER: Jennifer McIlhone (414) 937-3280 / jmcilhone@mcts.org
DBE Questions: 414-278-4747 / cbdp@milwaukeecountywi.gov

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Bids for furnishing the following will be received by the Materials Management Department at the above address:

UNTIL 2:00 P.M. – FEBRUARY 29, 2016

Requirements:

To provide MTS with Walk-Off Mat Rental services for a five (5) year period.

Specifications:

To comply with Milwaukee Transport Services, Inc. Specification No. ADM-01-16.

How to Bid and Award of Contract:

Bid a unit price per square foot of walk mat.

Apparent low Bidder may be required to submit sample walk-off mats, to be inspected for compliance to specifications. Award of contract is contingent upon approval of sample.

This is a five (5) year fixed price contract with an economic price adjustment for year three (3), four (4), and five (5).

Prices shall be firm for the first two (2) years. Pricing for years three (3), four (4), and five (5) will be determined with the Producer Price Index (PPI) as a cap or ceiling to insure reasonableness with thirty (30) days written notice. The U.S. Department of Labor, Bureau of Labor Statistics shall be used to determine price reasonableness. The group of category used will be "All commodities", Series ID: WPU00000000, not seasonally adjusted. This may be found on "www.bls.gov" website.

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Milwaukee Transport Services, Inc., reserves the unilateral right to request new bids and award new contracts if a mutually agreeable reasonable price based on the CPI as a cap or ceiling is not reached for years three (3) through five (5).

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

Bidder shall be responsible to obtain all documents pertaining to bid via the website.

All responses must be returned in a sealed envelope provided by bidder with bid number clearly marked and received by the due date and time listed above. Faxed bids shall not be allowed or accepted.

Questions Regarding Walk Mat Rental BID 2016-02:

All questions regarding BID 2016-02 must be submitted in writing via e-mail to the Buyer listed on page 1 of this BID by 2:00 PM, CST, FEBRUARY 10, 2016. Responses to questions will be provided via

Addendum on: www.ridemcts.com

Questions Regarding DBE Participation: Please refer all questions regarding the DBE goal or any DBE related question to: Development Partners (CBDP) at 414-278-4747 or cbdp@milwaukeecountywi.gov

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

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

*DBE-14 form(s) must identify (1) the DBE firm(s) by name and address, (2) the scope(s) of work/service(s) to be provided, (3) the dollar amount(s) of such work, and (4) the percentage of the DBE goal to be met. MTS is entitled to reject your Bid/Proposal for failing to identify this

information for each DBE.

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

A necessary step in the good faith efforts process is contacting Community Business Development Partners (CBDP) at 414-278-4747 or cbdp@milwaukeecountywi.gov for assistance in identifying DBEs and understanding the County's DBE Program procedures. The official directory of eligible DBE firms can be accessed through either of the following links:

<http://roadwaystandards.dot.wi.gov/hcci/>

Or

<https://mke.diversitycompliance.com/FrontEnd/VendorSearchPublic.asp>

The directory of certified firms, and further assistance with this initiative, can be obtained by contacting the Milwaukee County Community Business Development Partners (CBDP) at 414-278-4747 or: cbdp@milwaukeecountywi.gov

The Directory of DBE firms currently certified in the State of Wisconsin can be found at: <https://app.mylcm.com/wisdot/Reports/WisDotUCPdirectory.aspx>

To access the UCP Directory of certified DBE firms, please go to Unified Certification Program (UCP) DBE Directory: <http://www.dot.wisconsin.gov/business/dbe/docs/ucpdirectory.xlsx>

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

Right to Reject: MTS reserves the right to make an award based on its own determination, or to reject any or all proposals or portions of same, if in the opinion of MTS, the best interest of MTS will be served thereby.

Waiver of Informalities: In its sole discretion, MTS may waive informalities or minor irregularities in proposals received.

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

1. Purchase Order.
2. All documents contained within and related to BID 2016-02.
3. Proposal from the successful Bidder.

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

Continuation Clause:

Contractor recognizes that the services under this contract are vital to MTS and to the public and must be continued without interruption. Contractor agrees that MTS, in its sole discretion, and by written notice to Contractor at least 30 days prior to contract expiration, may extend this Agreement for up to an additional 120 days. If so extended by MTS, Contractor shall continue to provide services under this Agreement, on the same Terms as set forth in this Agreement. MTS may terminate any such extension by providing Contractor with 30 days' notice. Contractor further agrees to exercise its best efforts and cooperation to effect an orderly and efficient transition to any successor Contractor.

Chapter 111 –Milwaukee County Ordinance:

This Ordinance and minimum wage rates apply to the Contractors of this contract. This ordinance requires Milwaukee County and employers that are Contractors, subcontractors, or lessees of, or recipients of economic development financial assistance from, the county to pay all covered full and part-time employees a living wage equal to 100% of the poverty income level set forth annually by the U.S. Department of Health and Human Services for a family of four divided by 2,080 hours. Covered tipped employees and those paid on commission shall be paid an hourly wage that will, when coupled with the other compensation, at least equal the minimum wage rate. Employers with 20 or fewer employees are exempted.

Binding Contract: A proposal received in response to this BID is an offer that can be accepted by Milwaukee Transport Services, Inc., to create a binding contract without negotiation with any Bidder.

Bidder has read and accepts all of the General Directions for a BID, required contract clauses, requirements and will send via mail or return in person, any required certification, confirmations, cost submission sheets and manually signed signature sheet. All responses must be returned in a sealed envelope provided by the Bidder with BID number clearly marked and received by the due date and time listed above.

Successful vendor shall be required to comply with Executive Order 82.2, dated May 28, 1982, Non-Discrimination Milwaukee County Contracts, and must provide proper documentation for approval by the EEO Compliance Auditor, prior to award of contract. Milwaukee Transport Services, Inc. adheres to FTA Circular 4220.1F in its procurement policies. This procurement will be funded, in part, by the Federal Transit Administration (FTA). Any questions regarding this Request for Proposal shall be directed in writing to the Purchasing Agent listed on the front page of this BID.

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

Release of BID 2016-02.....JAN 19, 2016
Proposal Submission Deadline..... FEBRUARY 29, 2016, 2:00 P.M., CST
Vendor Questions Deadline..... FEBRUARY 10, 2016, 2:00 P.M., CST
Review of Proposals..... As required
Contract Award..... Upon Completion of Review

Enclosures:

1. Bid
2. Attachment A
3. SPEC No. ADM-01-16
4. Requirements and Certification Package

Documents to be returned with BID 2016-02.

1. Bid Sheet
2. Signature Sheet
3. DBE
4. EEO Certificate
5. MWO

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BID SHEET

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

ITEM 1 WALK-OFF MATS

Bid price in Words _____sq. ft.

Bid price in Figures \$ _____sq. ft.

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SIGNATURE SHEET

CASH DISCOUNT:

Cash invoice discount for payment of invoices following receipt and acceptance of goods or services _____ % 30 days.

DELIVERY:

Price shall include delivery, FOB destination freight prepaid to Milwaukee Transport Services, Inc., 1525 W. Vine St., Milwaukee, WI 53205, unless otherwise noted in this bid.

BY SIGNING THIS BID YOU ARE AGREEING WITH THE FOLLOWING STATEMENTS:

1. This bid has been made without any connection with any other bidder and is in all respects fair and without collusion or fraud.
2. This bid has been made with the understanding that no elected officer/employee of Milwaukee Transport Services, Inc., or Milwaukee County is interested therein, directly or indirectly.
3. The specifications for this bid have been read and understood.
4. Your company has never defaulted on any contract with Milwaukee Transport Services, Inc., or Milwaukee County.

In signing and submitting this bid, the bidder assures Milwaukee Transport Services, Inc., that the furnishing of the subject materials or equipment is under his/her control and accepts and has read all of the Terms and Conditions of MTS, of this BID/RFP and all its documents. If the bidder's performance, in the event he/she is successful is contingent upon the act of another party, the bidder assures that he/she has the necessary commitments to complete the contract which may be awarded to him/her.

Date _____

____ No bid at this time
____ Please retain on bidder list

Submitted by _____
Name of Bidder
(Print Firm, Corporation or Person)

Address _____

Signed per _____
(Manual signature required)

(Please print name)

Title _____

Telephone _____

FAX _____

E-mail address _____

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ATTACHMENT A
QUANTITIES AND LOCATIONS OF WALK MATS

ADMINISTRATION BUILDING

1942 NORTH 17TH STREET, MILWAUKEE, WI 53205

FIRST FLOOR

Entrance - Entrance way	4x6 - 1	Silver Slate - year round
Vestibule:		
Front Doors	3x10-1	Silver Slate - year round
Receptionist Desk-(front)	4x6 - 1	Silver Slate - year round
Lost & Found Window	3x5 - 1	Silver Slate - year round
Elevator - (front)	4x6 - 1	Silver Slate - year round
Human Resource Reception Area	3x5 - 2	Silver Slate - year round
Cashier's	3x5 - 2	Silver Slate - year round
Back Door -(east)	3X5 - 1	Silver Slate - year round
Lunch Room - Patio Door Area	3x5 - 1	Silver Slate - year round
Materials Management	2x3 - 1	Silver Slate - year round

BASEMENT

Print Shop	4x6 - 3	Silver Slate - year round until Print Shop closing, date unknown. MTS will alert Vendor of closing date for the Print Shop. Vendor will stop providing mats for Print Shop upon request by MTS.
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FLEET MAINTENANCE BUILDING

1525 W. VINE STREET, MILWAUKEE, WI 53205

Reception Area - Front door	3x10 - 1	Silver Slate - year round
Front of desk	4x6 - 1	Silver Slate - winter only
(Fleet Maintenance Bldg. cont.)		

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Transit Security Office	3x5 - 1	Brown - winter only
Employee Entrance	4x6 - 1	Brown - year round
Employee Entrance into hallway	4x6 - 2	Brown - year round
Body shop door track 19	3x10 - 1	Brown - year round
Shipping & Receiving	3x10 - 1	Brown - year round
Stores office	3x4 - 2	Brown - year round
All doors	3x4 - 6	Brown - winter only

FOND DU LAC TRANSPORTATION

3343 W. FOND DU LAC AVENUE, MILWAUKEE, WI 53210

Entrance Drivers	4x6 - 4	Brown - year round
Clerks entrance	3x10 - 1	Brown - year round
Howard Davis - office	4x6 - 1	Brown - year round
Men's room	4x6 - 1	Brown - year round
Emmitt Nash - office	4x6 - 1	Brown - year round
Pat Boone - office	4x6 - 1	Brown - year round
Vending Area	4x6 - 2	Brown - year round
Loading dock	4x6 - 1	Brown - year round
Clerk Counter Area	4x6 - 2	Brown - year round
Vestibule	3x2 - 2	Brown - year round
	3x10 - 1	Brown - year round
	4x6 - 1	Brown - winter only
Spares	3x10 - 1	Brown - as needed
	4x6 - 2	Brown - as needed
	3x2 - 1	Brown - as needed

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FOND DU LAC MAINTENANCE

2932 W. 35TH STREET, MILWAUKEE, WI 53210

Entrance	4x6 - 1	Brown - year round
Clerks area	3x10 - 1	Brown - year round

FIEBRANTZ MAINTENANCE

1900 W. FIEBRANTZ, MILWAUKEE, WI 53210

Bernadette Thompson - office	4x6 - 1	Brown - year round
Locker room	3x4 - 1	Brown - year round
Office	3x10 - 1	Brown - year round

FIEBRANTZ TRANSPORTATION

1900 W. FIEBRANTZ, MILWAUKEE, WI 53209

Second floor	3x10 - 8	Brown - year round
	4x6 - 2	Brown - year round
Spares	3x10 - 2	Brown - as needed
	4x6 - 1	Brown - as needed

KINNICKINNIC MAINTENANCE

1701 S. KINNICKINNIC, MILWAUKEE, WI 53204

Outside Maintenance office door	3x5 - 1	Brown - year round
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KINNICKINNIC TRANSPORTATION

1701 S. KINNICKINNIC, MILWAUKEE, WI 53204

Station Manager	4x6 - 1	Brown - year round
Entrance & operator's area	3x10 - 14	Brown - year round
Public Entrance	4x6 - 3	Brown - year round
	3x5 - 2	Brown - year round
	3x2 - 2	Brown - winter only
	3x5 - 3	Brown - winter only

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SPECIFICATION ADM-01-06
FOR
WALK-OFF MAT RENTAL

1. SCOPE AND CLASSIFICATION

1.1 Scope

1.1a It is the intent of this specification to describe the minimum requirements for the rental of walk-off mats as required by Milwaukee Transport Services, Inc., for a five (5) year period. All items, features or services not specifically mentioned which are necessary or normally provided, shall be furnished by the successful bidder at the bid price and shall conform in quality of materials and workmanship to that usually provided by the standard practices indicated in this specification. The Milwaukee County Transit System is managed and operated by Milwaukee Transport Services, Inc., and shall be referred to as MTS hereinafter.

1.2 Classification

1.2a The agreement shall require the successful bidder to supply and service the walk mats as detailed for the various locations of MTS.

1.2b The approximate monthly rental during the past year was \$585.00.

1.2c The information given in 1.2b above is given for bid information only and is no guarantee of actual rental amount to be provided during the term of the agreement. MTS reserves the right to add or delete mats at contract price, by a one (1) week written notice.

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2. DOCUMENTS

- 2.1 The successful bidder shall furnish data and specification sheet describing the type style, color and size of walk-off mats being proposed.
- 2.2 Bidder shall provide names, addresses and telephone numbers of at least three (3) client references (excluding MTS) which have received similar services from Bidder as described.
- 2.3 The successful bidder shall provide a liability insurance certificate prior to issue of purchase order, in the sum of \$1, 000,000.00. (For further insurance information, see Requirements/Certifications).

3. REQUIREMENTS

- 3.1 The mats shall be heavy duty industrial quality, nylon over a heavy duty rubber backing.
- 3.2 Mat colors shall be dark (brown, navy, black, etc.).
- 3.3 Mats shall not create a hazard to the public. Mats shall lay flat and not emit offensive odors.

4. SAMPLE AND INSPECTION

- 4.1 Sample
 - 4.1a A sample mat shall be provided within 24 hours of notification by MTS for BID evaluation.
- 4.2 Inspection
 - 4.2a An authorized agent of MTS shall periodically inspect the provided walk-off mats to determine compliance with this specification.

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5. DELIVERY AND PREPARATION

5.1 Delivery

5.1a The walk mats shall be delivered F.O.B. destination, freight prepaid to the various locations listed below.

Administration Building
1942 North 17th Street
Milwaukee, WI 53205

Fleet Maintenance Facility
1525 West Vine Street
Milwaukee, WI 53205

Fond Du Lac - Transportation
3343 West Fond Du Lac Avenue
Milwaukee, WI 53210

Fond Du Lac - Maintenance
2932 North 35th Street
Milwaukee, WI 53210

Fiebrantz Transportation (2nd Floor)
1900 West Fiebrantz Avenue
Milwaukee, WI 53209

Fiebrantz Maintenance
1900 West Fiebrantz Avenue
Milwaukee, WI 53209

Kinnickinnic Station
1718 South Kinnickinnic Avenue
Milwaukee, WI 53204

Kinnickinnic Maintenance
1710 South Kinnickinnic Avenue
Milwaukee, WI 53204

A detailed location list including size, quantity, current color and seasonal requirements are provided as attachment "A" for all locations.

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5.1b The walk-off mats shall be changed as follows:

Winter Service: Once a week - November 1st through March 31st (include mats specified as winter only).

Regular Service: Twice per month (bi-weekly) - April 1st through October 31st. Delivery schedule may be changed by a one (1) week written notice from MTS. MTS reserves the right to change delivery schedules by providing a one (1) week written notice.

5.1c Failure to adhere to delivery schedules or to promptly replace rejected material, shall render the successful bidder liable for the difference in replacement rental cost between the open market price and the contract price, where emergency procurement is necessary.

6. NOTES

6.1 This agreement may be cancelled by either party for cause, with a thirty (30) day written notification to the other party. **NOTE:** MTS will invoke this option if minimum requirements of this specification are not met.

6.2 MTS shall not pay any penalties in case of cancellation.

7. CHANGES TO SPECIFICATION

7.1 No verbal responses from any agent of MTS shall be acted upon. For non-protest clarifications, submit questions in writing no later than February 10, 2016, 2:00 PM, CST. to:

Jennifer McIlhone
Buyer
Milwaukee Transport Services, Inc.
1942 N. 17th Street

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Milwaukee, WI 53205
jmcilhone@mcts.org
FAX: (414) 344-7080

Questions regarding DBE information, contact:

414-278-4747
cdbp@milwaukeecountywi.gov

**Declaration of Commitment to Compliance
with
Milwaukee County's Minimum Wage Provision**

Bid/RFP #: _____

In accordance with Chapter 111 of the Milwaukee County Code of General Ordinances, it is the policy of Milwaukee County that certain contractors, subcontractors, lessees, and recipients of financial assistance doing business with the county shall pay employees performing part- or full-time work for the County a minimum wage rate. The current required minimum wage rate is as follows:

Effective Date	Base Wage Required (\$ per hour)
February 28, 2015	\$11.66

Milwaukee County's Minimum Wage Ordinance generally applies to employers with more than 20 employees that entered into one of the following types of contracts or agreements as of June 1, 2014:

- Service Contracts under Chapter 32 of the Milwaukee County Code of General Ordinances
- Certain Personal Care/Supportive Home Care Services provided by agencies that contract exclusively with Milwaukee County
- Concession Contracts
- Lease Agreements
- Economic Development Financial Assistance Agreements

Exemptions to the policy are listed in section 111.03(2), Milwaukee County Ordinances.

In order to be considered responsive to the Bid/RFP, you must submit this form. The undersigned hereby agrees to the following:

• To pay all workers employed by the Contractor in the performance of this contract, whether on a full-time or part-time basis, a base wage of not less than the minimum wage rate as determined annually by Milwaukee County.

• New rates that go into effect (annually on the last business day of February) will be adhered to promptly.

• To provide the Milwaukee County Office of the Comptroller-Audit Services Division a Declaration of Compliance and supporting payroll data every three (3) months during the contract term and within 10 days following the completion of the contract.

To procure and submit a like Declaration and supporting payroll data from every subcontractor employed by the contractor.

☐ I believe that I am exempt from Chapter 111 for the following reasons:

Please attach documentation to substantiate your claim of an exemption. Milwaukee County will review the documentation you provide; if your exemption is not substantiated, your proposal/bid will be deemed unresponsive, and will be removed from further consideration.

I declare under penalty of perjury that the forgoing is true and correct. I have read and understand Chapter 111 of the Milwaukee County Ordinances. I have executed this Declaration on _____ (date).

Company Name: _____

Authorized Signature: _____

Printed Name: _____



COMMUNITY BUSINESS DEVELOPMENT PARTNERS MILWAUKEE COUNTY

COMMITMENT TO CONTRACT WITH DBE

(This form is to be completed by the bidder/proposer and the DBE named for submission with bid/proposal)

PROJECT No.: _____ PROJECT TITLE: _____

TOTAL CONTRACT AMOUNT \$ _____ DBE Goal: _____

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

(* Separate commitment form must be completed for each DBE firm)

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

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

Signature of Authorized Representative

Name & Title of Authorized Representative

Date

Subscribed and sworn to before me this _____ day of _____, 20 _____

Signature of Notary Public

State of _____. My Commission expires _____.

[SEAL]

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

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

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

Signature of Authorized DBE Representative

Name & Title of Authorized DBE Representative

Date

FOR CBDP USE ONLY

Commitment number ____ of ____
\$ _____

Project Total: (A) _____ (V) _____

Date

Authorized Signature

Signature

Date



COMMUNITY BUSINESS DEVELOPMENT PARTNERS MILWAUKEE COUNTY

COMMITMENT TO CONTRACT WITH DBE

ADDITIONAL INFORMATION & REQUIREMENTS:

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

<http://roadwaystandards.dot.wi.gov/hcci/>

or

<https://mke.diversitycompliance.com/FrontEnd/VendorSearchPublic.asp?TN=mke&XID=6238>

2. **CONTRACT ADJUSTMENTS:** The successful Bidder/Proposer will maintain the approved DBE participation level during the term of the contract with the County, including any additional work on the contract, e.g., change orders, addendums, scope changes, etc. Contract adjustments shall include proportional DBE participation.
3. **WRITTEN CONTRACTS WITH DBEs:** The County requires that the successful Bidder/Proposer enter into contract, directly or through subcontractors, as stated in this form. Agreements must be submitted to the County within 7 days of receipt of the Notice-To-Proceed. By executing this commitment, you are certifying that you have had contact with the named DBE firm and that they will be hired if awarded the contract by the County. VIOLATION OF THE TERMS OF THIS COMMITMENT IS GROUNDS FOR TERMINATION OF YOUR CONTRACT.
4. **SUBSTITUTIONS, DBEs SUBCONTRACTING WORK, TRUCKING FIRMS:** The successful Bidder/Proposer must submit written notification of desire for substitution to the DBE affected, and send a copy to the County, stating the reason(s) for the request. The DBE will have five (5) business days to provide written objection/acceptance of the substitution. The "right to correct" must be afforded any DBE objecting to substitution/termination for less than good cause as determined by the County. Approval must be obtained from the County prior to making any substitutions. DBEs are also required to notify and obtain approval from the County prior to seeking to subcontract out work on this project. In the case of DBE trucking firms, credit will be given for trucks leased from other DBE firms; however, if the DBE leases trucks from non-DBE firms, the commission or fee will be counted for DBE crediting.
5. **REQUESTS FOR PAYMENT:** The successful Bidder/Proposer must indicate on the Continuation Sheet (AIA form G703, or equivalent) the work being performed by DBE by either a) placing the word "DBE" behind the work item or b) breaking out the work done by DBEs at the end of the report. The successful Bidder/Proposer shall notify DBEs of the date on which they must submit their invoices for payment.
6. **DBE UTILIZATION REPORTS:** The successful Bidder/Proposer will enter payments to subs and suppliers directly into the County's online reporting system on a monthly basis. These entries will cover payments made during the preceding month and will include zero dollar (\$0) entries where no payment has occurred.

If you have any questions on forms or related to Milwaukee County's DBE Program, please contact us at
414.278.4747 or cbdpcompliance@milwaukeecountywi.gov



COMMUNITY BUSINESS DEVELOPMENT PARTNERS MILWAUKEE COUNTY

CERTIFICATE OF GOOD FAITH EFFORTS

This document should detail what your firm has done to meet this project's participation goal. Guidance as to what 'good faith efforts' are and are not is found on pages 5 & 6 of this document.

Failure to use good faith efforts to meet the assigned participation goal will result in the rejection of your bid/proposal.

I, _____, do hereby acknowledge that I am the
_____ of _____, who has been identified as a
bidder/proposer on the following Milwaukee County Project:

Project No.	Project Title	Total Contract Amount	DBE Percentage	
			Goal	Pledged

Provide a brief summary of why your firm is unable to meet the participation goal on this project. (Attach additional pages if necessary)

I hereby certify that our firm has used good faith efforts to solicit, negotiate with, and utilize certified firms to meet the participation goal of this contract, as demonstrated by my responses to the following questions:

A. Identifying Contractible Work Items

You were encouraged to select portions of work to be contracted in a manner that will increase the likelihood of meeting the participation goal. In selecting work to be contracted, you considered, where appropriate, breaking down contracts into economically feasible units to facilitate small business participation.

1. Which portion(s) or section(s) of the project work was/were selected to be contracted to certified firms (or broken down into economically feasible units to facilitate participation)?

B. Notifying Certified Firms of Contracting Opportunities

2. List the certified firms that received written notification of work items to be subcontracted. In the appropriate space, also indicate when firms received subsequent telephone, or email (with deliver, read receipts and certified firm's response) solicitations. Include copies of the written notice(s) sent to certified firms. (Attach additional pages if necessary)

Certified Firm Contacted	Date of Written Notification	DBE (Yes/No)	Date of Follow-up Telephone Call/or Email

3. Identify publications in which announcements or notifications were placed and published, if any. Include a copy of each announcement or notification.

Published Announcement/Publication (please describe)	Date

4. Identify minority and/or women's associations or organizations that received written notifications, including dates of notifications. Provide person's name contacted during, and the date of, the follow-up call. If no follow-up calls were made, explain why not. Include copies of notice(s) sent.

Association/Organization	Date of Notification	Contact Person	Date of Follow-Up Call

5. Did you contact Milwaukee County's Community Business Development Partners Department (CBDP) to assist in identifying certified firms for this project?

Yes _____ No _____

Contact was made by: _____ Telephone _____ Email _____ Other _____

Date contacted: _____ Person Contacted: _____

C. Providing Certified Firms with Assistance

6. Explain any efforts to provide certified firms with timely, accurate and complete information about the project, scope(s) of work and/or requirements of the project.

7. Describe any other efforts to provide special assistance to certified firms interested in participating in the project.

D. Soliciting Proposal/Quotes from Interested Certified Firms

You must solicit quotes in good faith from certified firms. Quotes, proposals and/or bids, from certified firms shall not be rejected without sound justification.

8. List certified firm(s) that submitted quote(s) for the project, and include copies of all quotes received. If any quotes from certified firms were rejected provide an explanation as to why. (Attach additional pages if necessary)

Name, Phone & Address of Contact Person at Certified Firm	Work Quoted / Explanation for Rejecting Quote

9. Please include all other comments you want Milwaukee County to consider. (Attach additional pages if necessary)

NOTE: The information requested above is the minimum information required.

AFFIDAVIT OF CERTIFICATION

The undersigned, being duly sworn, deposes that he/she has examined and carefully prepared this Certificate of Good Faith Efforts and has verified that the information given in this certificate is true and correct to the best of his/her knowledge and belief.

Signed: _____

Authorized Representative

Subscribed and sworn to before me:

This _____ day of _____, 20 ____.

Notary Public

My commission expires _____, 20 ____.

GUIDANCE CONCERNING GOOD FAITH EFFORTS

When Milwaukee County assigns a participation goal, you will make good faith efforts to meet this goal prior to submitting a bid or proposal in order to be responsive. You can meet this requirement in one of two ways. First, you can meet or exceed the goal with commitments for participation of certified firms. Second, even if you don't meet the goal, you can document adequate good faith efforts toward that end. This means that you must show that you took all necessary and reasonable steps to achieve the participation goal.

The County will make a fair and reasonable judgment as to whether you made adequate good faith efforts according to the following guidelines. It is important to consider the quality, quantity, and intensity of the different kinds of efforts that were made. These efforts should be those that one could reasonably expect you to take if you were actively and aggressively trying to obtain participation sufficient to meet the participation goal. Going through the motions by making a phone call or two to a firm that you think should qualify is not good faith efforts to meet the project requirements. The County's determination concerning the sufficiency of your good faith efforts is a judgment call and meeting quantitative formulas is not required.

The following is a list of types of actions the County considers as part of your good faith efforts. This isn't a mandatory checklist, nor is it all-inclusive. Other factors or types of efforts may be relevant in appropriate cases:

1. Solicit, through all reasonable and available means (e.g., attendance at pre-bid meetings, advertising and/or written notices), all certified firms who have the capability to perform work on the project. Get the solicitation(s) out with enough time for them to review and respond. Be sure to record who you sent information to, and how/when they verified their interest in the project.
2. Select portions of the work to be performed by certified firms in order to increase the likelihood that the participation goal will be achieved. This includes, where appropriate, breaking out contract work items into smaller pieces, even when you might otherwise prefer to self-perform the work.
3. Provide certified firms with timely, accurate and complete plans, specifications, and requirements of the project to assist them in bidding/quoting.
4. Negotiate in good faith with certified firms.
 - a. It is your responsibility to make a portion of the work available to certified firms and to select that work based on the available certified firms. Evidence of such negotiation includes the names, addresses, email, and telephone numbers of certified firms that were considered; a description of the information provided regarding the plans and specifications for the work selected for contracting; and evidence as to why agreements could not be reached for certified firms to perform the work.
 - b. A bidder/proposer using good business judgment would consider a number of factors in negotiating with subcontractors, including certified subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, **the fact that there may be some additional costs involved in finding certified firms is not sufficient reason for your failure to meet the participation goal.** Also, self-performing work does not relieve you of the responsibility to make good faith efforts. You are not required to accept higher quotes from certified firms if the price difference is excessive or unreasonable.
5. Do not reject certified firms as being unqualified without sound reasons based on a thorough investigation of their capabilities. Your standing within the industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union status) are not legitimate causes for the rejection or non-solicitation of bids in your efforts to meet the project goal.

6. Effectively use the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations to provide assistance in the recruitment and placement of certified firms.

In determining whether you have made good faith efforts, the County may take into account the performance of other bidders/proposers in meeting the contract goal. For example, when you fail to meet the contract goal, but others meet it, the County may raise the question of whether, with additional reasonable efforts, you could have met the goal. If you fail to meet the goal, but you meet or exceed the average participation obtained by other bidder/proposers, the County may view this, in conjunction with other factors, as evidence of you having made good faith efforts.

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REQUIREMENTS/CERTIFICATIONS
PACKAGE**

11/2/2015

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2. Designation of Confidential and Proprietary Information
3. Minimum Wage Ordinance

**THE FOLLOWING MUST BE SIGNED AND RETURNED WITH BIDS WITH A
VALUE OF \$100,000 OR MORE:**

1. Buy America Certificate
2. Certification of Restrictions On Lobbying

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

1. Substance Abuse Certification

B. General Directions/Terms and Conditions for Bidding

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

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

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

Non-Discrimination

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

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

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

Affirmative Action Program

VENDOR certifies that it will strive to implement the principles of equal employment opportunity through an effective affirmative action program, which shall have as its objective to increase the utilization of women, minorities, and persons with disabilities and other protected groups, at all levels of employment in all divisions of the seller, successful respondent or contractor's work force, where these groups may have been previously under-utilized and under-represented

Non-Segregated Facilities

VENDOR certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location under its control where segregated facilities are maintained.

Subcontractors

VENDOR certifies that it has obtained or will obtain certifications regarding non-discrimination, affirmative action program and non-segregated facilities from proposed subcontractors that are directly related to any contracts with Milwaukee County, if any, prior to the award of any sub-contracts, and that it will retain such certifications in its files.

Reporting Requirements

Where applicable, **VENDOR** certifies that it will comply with all reporting requirements and procedures in Title Code 41 Code of Federal Regulations, Chapter 60.

Affirmative Action Plan

VENDOR certifies that, if it has 50 or more employees, it has filed or will develop and submit (within 120 days of contract award) for each of its establishments a written affirmative action plan. Current affirmative action plans, if required, must be filed with ANY one of the following: The Office of Federal Contract Compliance Programs, or the State of Wisconsin, or the Milwaukee County Department of Audit, Milwaukee County - City Campus, 9th Floor, 2711 W. Wells Street, Milwaukee, Wisconsin 53208. If a current plan has been filed, indicate where filed _____ and the year covered _____. Please provide proof of your AA Plan approval.

VENDOR will also require its lower-tier subcontractors who have 50 or more employees to establish similar written affirmative action plans.

Employees

VENDOR certifies that it has _____ employees in the Standard Metropolitan Statistical _____
(No. of Employees)

Area (Counties of Milwaukee, Waukesha, Ozaukee and Washington, Wisconsin)
and _____ employees in total.
(Total No. of Employees)

Compliance

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

Executed this _____ day of _____ 20____ by:

Firm Name: _____

Address: _____

City/State/Zip _____

Telephone: _____
(Title)

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

By _____
(Signature)

DESIGNATION OF CONFIDENTIAL AND PROPRIETARY INFORMATION

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

We request that the following pages not be released:

Section	Page #	Topic

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

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

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

Name-Authorized Representative

Company Name

Signature-Authorized Representative

Date

Provisions A.1.2, A.1.25 Apply to – Awards exceeding the Simplified Acquisition Threshold (\$100,000)

Provision A.1.2 Applies when tangible property or construction will be acquired.

BUY AMERICA REQUIREMENTS (Non-Rolling)

49 U.S.C. 5323(j)

49 CFR Part 661

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

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

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

Certificate of Compliance with Buy America Requirements

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 CFR Part 661.

Date _____

Signature _____

Company _____

Name _____

Title _____

Certificate of Non-Compliance with Buy America Requirements

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

Date _____

Signature _____

Company _____

Name _____

Title _____

Provisions A.1.10, A.1.14, A.1.7 Apply to – Awards exceeding \$100,000 by Statute Provision A.1.10

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

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

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

APPENDIX A, 49 CFR PART 20 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements *(To be submitted with each bid or offer exceeding \$100,000)*

Certificate Regarding Lobbying

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

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form—LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions [as amended by “Government wide Guidance for New Restrictions on Lobbying,” 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)]
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

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

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

Signature of Contractor's Authorized Official

Name of Contractor's Authorized Official

Title of Contractor's Authorized Official

Date

Substance Abuse Certifications

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

A. Drug-Free Workplace Agreement

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

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

workplace it maintains in which project activities supported by FTA are conducted, and make that list readily accessible to FTA

B. Prevention of Alcohol Misuse and Prohibited Drug Use Certification

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

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

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

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

Executed this _____ day of _____, 20____

(Company)

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

(Title)

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

11/2/15

GENERAL DIRECTIONS FOR SUBMITTING BIDDING

1. How to Bid

All bids shall be in writing (PRINTED) or typed and all prices and amounts stated in words and figures. All bids shall be submitted on the official form furnished by Materials Management and signed with the firm's name and manually signed by an officer or employee authorized to sign bids. Unsigned bids shall not be considered. If this form does not provide sufficient space, bidders may attach a sheet supplying the additional information. This sheet shall also be signed as described above in order to properly identify attachments to bid.

2. How to Amend a Bid Before Due Date and Time

After a bid has been filed with Materials Management Department and the bidder desires to amend his/her bid, he/she may do so before the due date and time by filing an amendment, fully identified with the original bid submitted by number, commodity and opening date. All of the conditions and provisions of the original bid will be in effect. This must be submitted before the date and time for receipt of bids as set forth in the bid documents. No bids or amendments will be accepted after the bid opening date and time specified.

3. Facsimile Response Not Allowed

Proposals will not be accepted in response to this Bid, by facsimile, modem, telephone or other electronic means. Furthermore, no proposal will be accepted that is not legible and clear.

TERMS AND CONDITIONS OF BID

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

1. Award

Award will be made to the lowest responsive, responsible bidder meeting specifications. MTS reserves the right to award a separate contract for each item unless otherwise specified in the bid; any group of items.

MTS reserves the right to make an award based on its own determination, or to reject any or all bids or portions of same, if in the opinion of MTS, the best interest of MTS will be served thereby.

2. Tie Bids

If there are tie bids, award will be made in accordance with tie bid provisions as outlined in Chapter 32 of the Milwaukee County General Ordinances.

3. Changes in Specifications

Changes to specifications are not permitted. Bids not meeting the minimum requirements specified shall be rejected. All merchandise shall be new and unused unless otherwise specified in the specifications.

4. Defaulting Bidders Excluded

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

5. Delays in Delivery

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

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

6. Delivery Terms

Bids shall include delivery costs to the specified delivery point, all transportation charges prepaid and borne by you.

7. Taxes

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

8. Code of Ethics

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

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

9. Funds

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

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

10. Insurance

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

Type of Coverage	Minimum Limits
Wisconsin Workers' Compensation	Statutory or Proof of all States Coverage
Employers' Liability	\$100,000/\$500,000/\$100,000
United States Longshoreman and Harbor Workers Compensation Act Coverage	If required by law
Commercial General Liability	
Bodily Injury & Property Damage	\$1,000,000 Per Occurrence
(Incl. Personal, Injury, Fire, Legal	\$1,000,000 General Aggregate

Contractual & Products/Completed
Operations

Automobile Liability

Bodily Injury & Property Damage	\$1,000,000 Per Occurrence
All autos-owned, non-owned and/or hired	
Uninsured Motorists	Per Wisconsin Statutes

MILWAUKEE TRANSPORT SERVICES, INC AND MILWAUKEE COUNTY , AS ITS INTEREST MAY APPEAR, SHALL BE NAMED AS AN ADDITIONAL INSURED FOR GENERAL & AUTOMOBILE LIABILITY, AND BE AFFORDED A THIRTY DAY (30) WRITTEN NOTICE OF

CANCELLATION OR NON-RENEWAL. DISCLOSURE MUST BE MADE OF ANY NON STANDARD OR RESTRICTIVE ADDITIONAL INSURED ENDORSEMENT, AND ANY USE OF THE NON STANDARD OR RESTRICTIVE ADDITIONAL INSURED ENDORSEMENT WILL NOT BE ACCEPTABLE. A CERTIFICATE INDICATING THE ABOVE COVERAGES SHALL BE SUBMITTED TO 1942 N. 17TH STREET, MILWAUKEE, WI 53205, FOR REVIEW AND APPROVAL BY MTS INC. FOR THE DURATION OF THIS AGREEMENT.

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

11. Indemnification Agreement

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

12. Intellectual Property Indemnification

The successful bidder shall defend, at its expense, any action brought against MTS or Milwaukee County or their employees to the extent that it is based on a claim that the goods, services, or products provided in connection with this purchase order infringes any patent, trade secret, trademark, copyright, or other proprietary right. Successful bidder shall indemnify MTS and Milwaukee County for any costs, damages, and fees, including any costs, damages, and fees finally awarded against MTS and Milwaukee County, which are attributable to such claim, provided that MTS or Milwaukee County notifies successful bidder of the claim. MTS and Milwaukee County shall permit successful bidder, at successful bidder's sole discretion, to defend, compromise or settle the claim. MTS and Milwaukee County shall provide all available information, assistance and authority to enable Vendor to do so, provided successful bidder reimburses MTS and Milwaukee County for such activity.

13. Independent Contractor

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

14. Retention of Records

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

15. Audit of Records

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

16. Non-Discrimination

The contractor, lessee, offeror, supplier, purchaser, etc., agrees not to discriminate against any employee or applicant for employment because of race, religion, color, national origin, age, sex, or handicap, which includes, but not limited to: recruitment or recruitment advertising; employment; upgrading; demotion or transfer, layoff or termination; rates of pay or other forms of compensation; selection for training, including apprenticeship. A violation of this provision shall be sufficient cause for MTS to terminate the contract, lease, order, etc. pursuant to County Ordinance 56.17 - Non Discriminatory Contracts.

17. Disadvantaged Business Enterprise

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

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

The directory of firms can be obtained by contacting Community Business Development Partners (CBDP) at (414) 278-4747 or by visiting the following Internet site:

<https://app.mylcm.com/wisdot/Reprts/WisDotUCPDirectory.aspx>

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

18. Termination for Convenience

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

19. Termination for Default

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

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

20. Opportunity to Cure

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

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

21. Employee's Right to Know

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

22. Brand Names

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

23. Price and Cost Analysis

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

24. Written Change Orders

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

25. Waiver of Irregularities

1. MTS may waive informalities and minor irregularities in bids received.

26. PROTESTS AND APPEALS

Protest Policy for Sealed Bids:

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

A. Prior to sealed bid opening:

1. Protests to form and content of bid documents shall be received by the Director of Materials Management not less than five (5) days prior to the time scheduled for bid opening. Protests shall be in writing and state the reason for it.

2. The Director of Materials Management shall review protests and if modification is necessary, the bid opening date shall be extended and addenda containing the changes shall be sent to each bidder. If the modification is rejected, the protestor shall be notified. The decision of the Director of Materials Management is final.

B. After sealed bid opening:

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

C. Appeals to the Purchasing Appeals Committee:

1. Protest from the decision of the Director of Materials Management shall be made to the Purchasing Appeals Committee by delivering a written request for appeal hearing both to the Materials Management Department and the Purchasing Appeals Committee within seventy-two (72) hours after the receipt of the Director of Materials Management's decision.
2. **Written appeals to the Purchasing Appeals Committee shall be addressed as follows:**
Purchasing Appeals Committee
C/O MTS Materials Management Department
1942 North 17th Street
Milwaukee, WI 53205
3. The request shall state the grounds upon which the protest is based and shall request an appeal hearing. No contract shall be awarded until the final disposition of the protest.
4. The Chairperson of the Purchasing Appeals Committee shall notify all interested persons of the time and place of the hearing.
5. The Purchasing Appeals Committee shall affirm, reverse or modify the decision of the Director of Materials Management and its' decision shall be final. Milwaukee Transport Services (MTS) reserves the right to immediately act on the decision of the Purchasing Appeals Committee regardless of a potential appeal to the FTA.

D. Appeals To FTA

A protest may be filed with FTA following an adverse decision by the Purchasing Appeals Committee. The protest must be filed in accordance with procedures set forth in FTA Circular 4220.IF. Any protest must be filed with FTA in writing not later than five days of notification of an adverse decision by the Purchasing Appeals Committee. Protest should be filed with FTA, Region V, 200 West Adams Street, Suite 320, Chicago, IL 60606 and a concurrent copy sent to Milwaukee Transport Services, Inc. FTA's review of any protests will be limited to:

1. Alleged failure of Milwaukee Transport Services to have a written protest procedure.

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

Protest filed with FTA shall:

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

E. Contract Continuation Clause:

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

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Provisions A.1.19, A.1.20, A.1.11, A.1.12, A.1.24, A.1.28, A.1.30, A.1.6

Apply to – All FTA-assisted third-party contracts and subcontracts.

Provision A.1.19

NO GOVERNMENT OBLIGATION TO THIRD PARTIES

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

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

Provision A.1.20

**PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS
AND RELATED ACTS**

31 U.S.C. 3801 et seq.

49 CFR Part 31 18 U.S.C. 1001

49 U.S.C. 5307

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

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53 or any other Federal law, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323 (1), or other applicable Federal law on the Contractor, to the extent the Federal Government deems appropriate.

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

Provision A.1.11

ACCESS TO RECORDS AND REPORTS

49 U.S.C. 5325

49 CFR 18.36(i)

49 CFR 633.17

The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a sub-grantee to the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the U.S. Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after final payment is made by the grantee and all other matters are closed.
7. FTA does not require the inclusion of these requirements in subcontracts.

Provision A.1.12

FEDERAL CHANGES

49 CFR Part 18

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

Provision A.1.24

CIVIL RIGHTS REQUIREMENTS

29 U.S.C. § 623, 42 U.S.C. § 2000

42 U.S.C. § 6102, 42 U.S.C. § 12112

42 U.S.C. § 12132, 49 U.S.C. § 5332

29 CFR Part 1630, 41 CFR Parts 60 et seq.

Civil Rights – The following requirements apply to the underlying contract

(1) Non-discrimination – In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex,

FTA Required Third-Party Contract Clauses
(Excluding micro-purchases, except for construction contracts over \$2,000)

Updated 12/2011

age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity – The following equal employment opportunity requirements apply to the underlying contract:

- (a) Race, Color, Creed, National Origin, Sex – In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. Parts 60 *et seq.*, (which implement Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” 42 U.S.C. §2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- (b) Age – In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- (c) Disabilities – In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirement FTA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

Provision A.1.30

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

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

Provision A.1.6

ENERGY CONSERVATION REQUIREMENTS

42 U.S.C. 6321 et seq.

49 CFR Part 18

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

Provision A.1.21

Apply to - Contracts > \$10,000. For contracts with nonprofit organizations and institutions of higher education, the threshold is \$100,000.

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

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

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

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

c. Opportunity to Cure (General Provision) Milwaukee County in its sole discretion may, in the case of a termination for breach or default, allow the Contractor appropriately thirty (30) days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

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

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

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

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

FTA Required Third-Party Contract Clauses
(Excluding micro-purchases, except for construction contracts over \$2,000)
Updated 12/2011

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

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

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

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

h. Termination for Default (Construction) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, Milwaukee County may terminate this contract for default. Milwaukee County shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Recipient may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Recipient resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Recipient in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if:

1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. The Contractor, within **[10]** days from the beginning of any delay, notifies Milwaukee County in writing of the causes of delay. If in the judgement of Milwaukee County, the delay is excusable, the time for completing the work shall be extended. The judgement of Milwaukee County shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

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

i. Termination for Convenience or Default (Architect and Engineering) Milwaukee County may terminate this contract in whole or in part, for the Recipient's convenience or because of the failure of the contractor to fulfill the contract obligations. Milwaukee County shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the Recipient, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

FTA Required Third-Party Contract Clauses
(Excluding micro-purchases, except for construction contracts over \$2,000)

Updated 12/2011

If the termination is for failure of the Contractor to fulfill the contract obligations, the Recipient may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Recipient.

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

j. Termination for Convenience of Default (Cost-Type Contracts) Milwaukee County may terminate this contract, or any portion of it, by serving a notice of termination on the Contractor. The notice shall state whether the termination is for convenience of Milwaukee County or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from Milwaukee County, or property supplied to the Contractor by Milwaukee County. If the termination is for default, Milwaukee County may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Milwaukee County and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of Milwaukee County, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, Milwaukee County determines that the Contractor has as excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, Milwaukee County, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

Provision A.1.22

Apply to - All grantee contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contract or subcontract (at any level) for Federally required auditing services.

GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NON-PROCUREMENT)

49 CFR Part 29

Executive Order 12549

Executive Order 12689

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

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

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

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

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

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

Provision A.1.25

BREACHES AND DISPUTE RESOLUTION

49 CFR Part 18

FTA Circular 4220.1F

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

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

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

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

Rights and Remedies – The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by Milwaukee County, (*Architect*) or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

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Provision A.1.14 Apply to all contracts exceeding \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year

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

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

Provision A.1.7 Applies to each contract and subcontract, which exceeds \$100,000

CLEAN WATER REQUIREMENTS
33 U.S.C. 1251

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

Provisions A.1.4, A.1.1 Apply to – Transport of property or persons.

Provision A.1.4 Applies when acquiring property suitable for shipment by ocean vessel

CARGO PREFERENCE REQUIREMENTS

46 U.S.C. 1241

46 CFR Part 381

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

Provision A.1.1 Applies when property or persons transported by air between US and foreign destinations or between foreign locations, or between foreign locations when the FTA will participate in the costs of such air transportation

FLY AMERICA REQUIREMENTS

49 U.S.C. § 40118

41 CFR Part 301-10

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

Provisions A.1.16, A.1.17, A.1.13, A.1.5 Apply to – Construction activities

Provision A.1.16 Provisions of Davis-Bacon Act apply except for contracts < \$2,000 or third party contracts for supplies, materials, or articles ordinarily available on the open market. Provisions of Copeland Anti-Kickback Act apply to contracts > \$2,000.

DAVIS-BACON and COPELAND ANTI-KICKBACK ACTS

40 USC 3141, et seq.

18 USC 874

(1) Minimum wages –

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rates and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set for the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
- (4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

- (iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
- (v) (A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:
 - (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - (2) The classification is utilized in the area by the construction industry; and
 - (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

- (2) **Withholding** – Milwaukee County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-

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Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, Milwaukee County may, after written notice to the contractor, sponsor, applicant, or owner, take such action as maybe necessary to cause the suspension of any further payment, advance or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records –

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. When ever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to Milwaukee County for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a “Statement of Compliance,” signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

- (1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;
- (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
- (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the “Statement of Compliance” required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of the title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(I) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the

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job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees –

(i) Apprentices – Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

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

Provision A.1.17 Applies to contracts > \$100,000

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

40 U.S.C. 3701, et seq.

29 C.F.R. 5.2 (h)

49 C.F.R. 18.36 (i)(6)

- (1) **Overtime requirements** – No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) **Violation; liability for unpaid wages; liquidated damages** – In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- (3) **Withholding for unpaid wages and liquidated damages** – Milwaukee County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from 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

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determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

- (4) **Subcontracts** – The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

Provision A.1.13 *Apply to construction activities >\$100,000. Bond minimums are: 5% bid guarantee bond; 100% performance bond; Payment bond equal to 50% for contracts <\$1M, 40% for contract >\$1M - <\$5M, \$2.5M for contracts > \$5M.*

BONDING REQUIREMENTS

Bid Bond Requirements (Construction)

(a) Bid Security

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

(b) Rights Reserved

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

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

It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by Milwaukee County as provided in [***Item x "Bid Security" of the Instructions to Bidders***]) shall prove inadequate to fully recompense Milwaukee County for the damages occasioned by default, then the undersigned bidder agrees to indemnify Milwaukee County and pay over to Milwaukee County the difference between the bid security and Milwaukee County's total damages, so as to make Milwaukee County whole.

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

Performance and Payment Bonding Requirements (Construction)

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

(a) Performance bonds

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless Milwaukee County determines that a lesser amount would be adequate for the protection of Milwaukee County.
2. Milwaukee County may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. Milwaukee

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County may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(b) Payment bonds

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

Performance and Payment Bonding Requirements (Non-Construction)

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

(a) The following situations may warrant a performance bond:

1. Milwaukee County property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).
2. A contractor sells assets to or merges with another concern, and the Milwaukee County, after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.
3. Substantial progress payments are made before delivery of end items starts.
4. Contracts are for dismantling, demolition, or removal of improvements.

(b) When it is determined that a performance bond is required, the Contractor shall be required to

obtain performance bonds as follows:

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

(c) A payment bond is required only when a performance bond is required, and if the use of payment bond is in Milwaukee County's interest.

(d) When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:

1. The penal amount of payment bonds shall equal:
 - (i) Fifty percent of the contract price if the contract price is not more than \$1 million;
 - (ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
 - (iii) Two and one half million if the contract price is increased.

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Advance Payment Bonding Requirements

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

Patent Infringement Bonding Requirements (Patent Indemnity)

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

Warranty of the Work and Maintenance Bonds

1. The Contractor warrants to Milwaukee County, the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by Milwaukee County, free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by the [***Project Manager***], the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

The work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by Milwaukee County and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to Milwaukee County. As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment [***as provided in Item X below***], furnish separate Maintenance (or Guarantee) Bonds in form acceptable to Milwaukee County written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all)

Provision A.1.5 Applies to contracts for construction of new buildings or additions to existing buildings excluding micro purchases (under \$3,000), except for construction contracts over \$2,000.

SEISMIC SAFETY REQUIREMENTS

42 U.S.C. 7701 et seq.

49 CFR Part 41

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify 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.

Provision A.1.17 Applies to – Non-construction Activities

***Provision A.1.17 Apply to all turnkey, rolling stock, and operational contracts
(excluding transportation services contracts) in excess of \$100,000***

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

40 U.S.C. 3701, et seq.

29 C.F.R. 5.2 (h)

49 C.F.R. 18.36 (i)(6)

- (1) Overtime requirements** – No contractor or subcontractor contraction for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages** – In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- (3) Withholding for unpaid wages and liquidated damages** – Milwaukee County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- (4) Subcontracts** – The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

Provisions A.1.27, A.1.3, A.1.31 Apply to – transit operations except for micro-purchases, defined as purchases under \$3,000.

Provision A.1.27 Applies to Section 5307, 5309, 5311 or 5316 projects.

TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS

49 U.S.C. § 5310, § 5311, and § 5333

29CFR Part 215

- (1) The Contractor agrees to comply with applicable transit employee protective requirements as follows:
 - (a) General Transit Employee Protective Requirements – To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. § 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310 (a)(2) or subsection 3012(b) of SAFETEA-LU, or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311, or projects for over-the-road bus accessibility program authorized by section 3038 of TEA-21, as amended by section 3039 of SAFETEA-LU, 49 U.S.C. § 5310 note.
 - (b) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310 (a)(2) for Elderly Individuals and Individuals with Disabilities – If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(b)(2), or subsection 3012(b) or SAFETEA-LU, 49 U.S.C. § 5310 note, and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirement of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth in the Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.
- (2) The Contractor also agrees to include any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

Provision A.1.3

CHARTER BUS REQUIREMENTS

49 U.S.C. 5323(d)

49 CFR Part 604

Charter Service Operations – The contractor agrees to comply with 49 U.S.C. 5323(d) and 49 CFR 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 under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be “incidental,” i.e., it must not interfere with or detract from the provision of mass transportation.

FTA Required Third-Party Contract Clauses
(Excluding micro-purchases, except for construction contracts over \$2,000)
Updated 12/2011

SCHOOL BUS REQUIREMENTS

**49 U.S.C. 5323(f) or (g)
49 CFR Part 605**

School Bus Operations – Pursuant to 49 U.S.C. 5323(f) or (g) and 49 CFR Part 605, recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles, or facilities.

Provision A.1.31 Apply to safety sensitive functions. Applies to Section 5307, 5309, and 5311 projects.

DRUG AND ALCOHOL TESTING

**49 U.S.C. § 5331
49 CFR Parts 653 and 654**

The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of Wisconsin, or Milwaukee County, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 before ***(January 31)*** and to submit the Management Information System (MIS) reports before ***(February 15)*** to the ***(Director of Transportation Planning and Programming)***, Milwaukee County – City Campus, 2711 W. Wells Street, Suite 300, Milwaukee, WI 53208. 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.

Provision A.1.26 Applies to – Planning, research, development and documentation projects

Provision A.1.26 Apply only to research projects in which FTA finances and the purpose of the grant is to finance the development of a product or information. The requirements do not apply to capital projects or operating projects.

PATENT AND RIGHTS IN DATA

37 CFR Part 401

49 CFR Parts 18 and 19

CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.

- A. Rights in Data** – This following requirements apply to each contract involving experimental, developmental or research work:
- (1) The term “subject data” used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term “subject data” does not include financial reports, cost analyses, and similar information incidental to contract administration.
 - (2) The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:
 - (a) Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.
 - (b) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for “Federal Government purposes,” any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, “for Federal Government purposes,” means use only for the direct purposes of the Federal Government. Without the copyright owner’s consent, the Federal Government may not extend its Federal license to any other party.
 1. Any subject data developed under that contract, whether or not copyright has been obtained; and
 2. Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.
 - (c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA’s general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA’s license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor’s use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

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

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- (d) Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
 - (e) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
 - (f) Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.
 - (g) Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
- (3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.
- (4) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
- B. Patent Rights** – This following requirements apply to each contract involving experimental, developmental, or research work:
- (1) **General** – If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.
 - (2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.
 - (3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

Provisions A.1.8, A.1.9 Apply to – Acquisition of rolling stock/turnkey except for micro-purchases, defined as purchases under \$3,000

Provision A.1.8 Requirements pertain only to the acquisition of Rolling Stock/Turnkey

BUS TESTING
49 U.S.C. 5323(c)
49 CFR Part 665

The Contractor [Manufacturer] agrees to comply with 49 U.S.C. A 5323(c) and FTA’s implementing regulation at 49 CFR Part 665 and shall perform the following:

- 1) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient at a point in the procurement process specified by the recipient which will be prior to the recipient’s final acceptance of the first vehicle.
- 2) A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.
- 3) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to recipient’s final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer’s basis for concluding that it is not a major change requiring additional testing.
- 4) If the manufacturer represents that the vehicle is “grandfathered” (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle’s configuration and major components.

Certificate of Compliance with 49 U.S.C. 5323 (c)

The undersigned [Contractor/Manufacturer] certifies that the vehicle offered in this procurement complies with 49 U.S.C. A 5323(c) and FTA’s implementing regulation at 49 CFR Part 665.

The undersigned understands that misrepresenting the testing status of a vehicle acquired with Federal financial assistance may subject the undersigned to civil penalties as outlined in the Department of Transportation’s regulation on Program Fraud Civil Remedies, 49 CFR Part 31. In addition, the undersigned understands that FTA may suspend or debar a manufacturer under the procedures in 49 CFR Part 29.

Date _____

Signature _____

Company Name _____

Title _____

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Provision A.1.9 Apply only to the acquisition of rolling stock/turnkey
PRE-AWARD AND POST DELIVERY AUDIT REQUIREMENTS
49 U.S.C. 5323
49 CFR Part 663

The Contractor agrees to comply with 49 U.S.C. § 5323(1) and FTA's implementing regulation at 49 CFR Part 663 and to submit the following certifications:

- (1) Buy America Requirements: The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists 1) component and sub-component parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and 2) the location of the final assembly point of the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.
- (2) Solicitation Specification Requirements: The Contractor shall submit evidence that it will be capable of meeting the bid specifications.
- (3) Federal Motor Vehicle Safety Standards (FMVSS): The Contractor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

Buy America Certificate of Compliance with FTA requirements for buses, other rolling stock or associated equipment.

(To be submitted with a bid or offer exceeding the small purchase threshold for Federal assistance programs, currently set at \$100,000.)

Certificate of Compliance

The bidder hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C), Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, and the regulations in 49 CFR Part 661.11:

Date _____

Signature _____

Company Name _____

Title _____

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Certificate of Non-Compliance

The bidder hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, but may qualify for an exception to the requirements consistent with 49 U.S.C. 5323(j)(2)(B) or (j)(2)(D), Sections 165(b)(2) or (b)(4) of the Surface Transportation Assistance Act, as amended, and regulations in 49 CFR Part 661.7.

Date _____

Signature _____

Company Name _____

Title _____

Provisions A 1.28, A.1.15, A.1.23, §15.p, §12.g, 16 Apply to - Miscellaneous special requirements

Provision A.1.28 Apply to – Contracts awarded on the basis of a bid or proposal offering to use DBEs

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

49 CFR Part 26

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

b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as Milwaukee County deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

c. **{If a separate contract goal has been established, use the following}** Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following **[concurrent with and accompanying sealed bid] [concurrent with and accompanying an initial proposal] [prior to award]**:

1. The names and addresses of DBE firms that will participate in this contract;
2. A description of the work each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
6. If the contract goal is not met, evidence of good faith efforts to do so.

[Bidders][Offerors] must present the information required above **[as a matter of responsiveness] [with initial proposals] [prior to contract award]** (see 49 CFR 26.53(3)).

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

d. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 7 days after the contractor's receipt of payment for that work from the **{insert agency name}**. In addition, the contractor is required to return any retainage payments to those subcontractors within 7 days after the subcontractor's work related to this contract is satisfactorily completed.

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

Provision A.1.15 Applies to contracts for items designated by EPA, when procuring \$10,000 or more per year

RECYCLED PRODUCTS

42 U.S.C. 6962

40 CFR Part 247

Executive Order 12873

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

Provision §12.g Applies to contracts for rolling stock or facilities construction or renovation. Language taken from Master Agreement

AMERICANS With DISABILITIES ACT (ADA)

Access Requirements for Persons with Disabilities The recipient agrees to comply with the requirements of 49 U.S.C. § 5301(d) which states the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement that policy. The Recipient also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, and with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act. In addition, the Recipient agrees to comply with all applicable requirements of the following regulations and any subsequent amendments thereto:

- (1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
- (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
- (3) Joint U.S. Architectural and Transportation Barriers Compliance Board(U.S.ATBCB)/U.S. DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
- (4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
- (5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
- (6) U.S. General Services Administration (US. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
- (7) U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
- (8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment of the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and
- (9) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194; and
- (10) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and
- (11) Any implementing requirements FTA may issue.

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Provision 16 Applies to piggyback procurements

ASSIGNABILITY

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