



CITY OF WATERTOWN, NEW YORK PROCUREMENT POLICY

PURPOSE:

To ensure the prudent and economical use of the public money for the purchase of goods and services of maximum quality at the most economical cost, and to guard against favoritism, improvidence, extravagance, fraud, and corruption, the City of Watertown, N.Y. is adopting internal policies and procedures governing all procurements which are not required to be made pursuant to the competitive bidding requirements of General Municipal Law, Section 103, or of any other general, special or local law.

PURCHASING ETHICS:

To maintain a high standard of conduct and to protect the reputation of the local government, the following rules of conduct will apply:

1. To consider first the interests of the local government and the betterment of its government.
2. To obtain the greatest value for every dollar spent.
3. To be receptive to advice and suggestions from department heads, insofar as such advice and suggestions are not in conflict with legal or moral restrictions in purchasing procedures.
4. To strive for knowledge of equipment and supplies in order to recommend items that may reduce cost and/or increase efficiency.
5. To insist on and expect honesty in sales representation whether offered verbally or in writing, through the advertising or in a sample of a product submitted.
6. To give all responsible bidders equal consideration and the assurance of unbiased judgment in determining whether their product meets specifications.
7. To accord a prompt and courteous reception, insofar as conditions permit, to all who call on legitimate business missions.
8. To counsel and assist other purchasing agents in the performance of their duties wherever occasion permits.
9. To cooperate with governmental and trade associations in the promotion and development of sound business methods in the purchasing of equipment and supplies.
10. To discourage the offer of, and to decline, gifts which might influence the purchase of municipal equipment and supplies.
11. To seek or dispense no personal favors. No official or employee shall be interested

financially or personally in any contract entered into by the City. All officials and employees shall comply with the City's Code of Ethics (Employee Handbook Section 300-9) to ensure there is no procurement conflict of interest.

COMPETITIVE BIDDING:

1. The purchase of materials, equipment and supplies involving an estimated annual expenditure of \$20,000 or more and public works contracts involving an estimated annual expenditure of \$35,000 or more shall be awarded only after public advertising, and the solicitation of formal bids in compliance with General Municipal Law, Section 103.
2. The Purchasing Department shall be responsible for all required public advertising and competitive bidding; shall be responsible for all bid solicitations and openings; shall secure and document the recommendations from the appropriate official for awarding bid contracts and shall award contracts within the annual appropriations authorized by the City Council.
3. Every purchase to be made must be initially reviewed by each department to determine whether it is a purchase contract or a public works contract. Once that determination is made, a good faith effort will be made to determine whether it is known or can be reasonable expected that the aggregate amount to be spent on the item of supply or service is not subject to competitive bidding, taking into account past purchases and the aggregate amount to be spent in a year. It is unlawful to artificially split or divide a contract or enter into a series of transactions, to avoid a competitive bidding threshold. The source of funds to be spent does not alter the requirements of competitive bidding i.e. Public Grants. No purchase can be made without the appropriate funding to support the purchase in place.

The following items are not subject to competitive bidding pursuant to Section 103 of the General Municipal Law: Purchase contracts under \$20,000 and public works contracts under \$35,000; emergency purchases; goods purchased from agencies for the blind or severely handicapped; goods purchased from correctional institutions, purchases under State and County contracts; surplus and second-hand purchases from another governmental entity, and Sole Source purchases. Sole Source purchases are done when a product or service is available from one source only, the product/service is uniquely required in public interest, or if there is no substantial equivalent.

The decision that a purchase is not subject to competitive bidding will be documented in writing by the department making the purchase. This documentation may include written or verbal quotes from vendors, price lists, catalogs, a memo from the requisitioner indicating how the decision was arrived at, a copy of the contract indicating the source which makes the item or service exempt, a memo from the department detailing the circumstances which led to an emergency purchase, or any other written documentation that is appropriate.

4. All goods and services will be secured by use of written requests for proposals, written quotations, verbal quotations, or any other method that assures that goods will be purchased at the lowest price and that favoritism will be avoided, except in the following circumstances: purchase contracts over \$20,000 and public works contracts over \$35,000; goods purchased from agencies for the blind or severely handicapped pursuant to Section 175-b of the State Finance Law, goods purchased from correctional institutions pursuant to Section 186 of the Correction Law; purchases under State contracts pursuant to Section 104 of the General

Municipal law; purchases under county Contracts pursuant to Section 103(3) of the General Municipal Law; or purchases pursuant to subdivision 6 of this policy.

5. As authorized by New York General Municipal Law 103, and in accordance with Local Law No. 6 of 2024, purchase contracts may be awarded on the basis of best value, as defined in section 163 of the State Finance Law and as authorized in section 103 of the General Municipal Law, to a responsive and responsible bidder. When the bid specifications state that the bid will be awarded on the basis of best value, the specifications will also include the criteria that will be used to award the bid. In assessing best value, when awarding the purchase contract, non-price factors can be considered. Non-price factors may include, but are not limited to, environmental benefits, energy efficiency, reliability of a product, efficiency of operation, difficulty/ease of maintenance, useful lifespan, ability to meet needs regarding timeliness of performance, and experience of a service provider with similar contracts.

The basis for “Best Value” shall reflect, wherever possible, objective and quantifiable analysis. Such basis may also identify a quantitative factor for offerors that are small businesses, certified minority- or women-owned business enterprises as defined in subdivisions one, seven, fifteen and twenty of section three hundred ten of the executive law or service-disabled veteran-owned business enterprises as defined in subdivision one of section forty of the veterans’ services law to be used in evaluation of offers for awarding of contracts and services.

6. All procurement and rental/lease of equipment, materials, supplies and nonpersonal services shall be requisitioned through the Purchasing Department, regardless of dollar amount, with the signed approval of the requisitioning department’s supervisor prior to ordering. Use of departmental generated requisition numbers, in lieu of a City Purchasing Department purchase order number is prohibited.
7. The Purchasing Manager shall have the authority to accept, reject, or modify any request for purchase except for those items authorized by the City Council. The Purchasing Manager shall confirm all changes with the requisitioning department prior to taking any action. The requisitioning department has the right to appeal the Purchasing Manager’s action to the City Manager for final ruling.
8. Vendors who are included on the NYS Department of Labor List of Debarred Contractors are not eligible to provide quotes or services to the City. The City does not provide a preference to any bidder who, after meeting all of the requirements of a bid, would not otherwise be entitled to a contract award as the lowest responsible bidder.
9. Purchasing Manager Tina Bartlett-Bearup shall be responsible for all procurement activities on behalf of the City of Watertown, N.Y. that are in accordance with the rules and guidelines as set forth in this policy.

The following method of purchase will be used when required by this policy in order to achieve the highest savings:

Estimated Amount of Purchase

\$ 1 - \$ 1,500
\$ 1,501 - \$ 5,000
\$ 5,001 - \$20,000
\$20,001 - over

Method Required

No quotations required
Two (2) written quotations required
Three (3) written quotations required
Sealed bid required

Estimated Amount of Public Works Contract

\$ 1 - \$ 2,500
\$ 2,501 - \$10,000
\$10,001 - \$25,000
\$25,001 - \$35,000
\$35,001 - over

Method Required

No quotation required
Two (2) written quotations required
Three (3) written quotations required
Four (4) written quotations required
Sealed bid required

Estimated Amount of Rental/Lease Equipment

\$ 1 - \$ 5,000
\$5,001 and above

Method Required

No quotation required
Two (2) written quotations required

A good faith effort shall be made to obtain the required number of proposals or quotations. If the department is unable to obtain the required number of proposals or quotations, the department will document the attempt made at obtaining the proposals. In no event shall the failure to obtain the proposals be a bar to the procurement. All documentation shall be maintained by the requisitioning department for review by the Purchasing Department.

1. Documentation is required of each action taken in connection with each purchase.
2. Documentation and written explanation are required whenever a contract is awarded to other than the lowest responsible bidder. This documentation will include an explanation of how the award will achieve savings or how the bidder was not responsible. A determination that the bidder is not responsible shall be made by the purchasing department and may not be challenged under any circumstances.
3. Pursuant to General Municipal Law Section 104-b(2)(f), the procurement policy may contain circumstances when, or types of procurements which, in the sole discretion of the governing body, the solicitation of alternative proposals or quotation will not be in the best interest of the municipality. In the following circumstances it may not be in the best interests of the City of Watertown, to solicit quotations or document the basis for not accepting the lowest bid:
 - a. Professional services or services requiring special or technical skill, training, or expertise. The individual or company must be taken based on accountability, reliability, responsibility, skill, education and training, judgment, integrity, and moral worth. The qualifications are not necessarily found in the individual or company that offers the lowest price and the nature of these services are such that they do not readily lend themselves to competitive procurement procedures.

- i. In determining whether a service fits into this category the City shall take into consideration the following guideline: (a) whether the services are subject to State licensing or testing requirements; (b) whether formal education or training is a necessary prerequisite to the performance of the services; and (c) whether the services require a personal relationship between the individual and municipal officials Professional or technical services shall include but not be limited to the following: services of an attorney; services of a physician; technical services of an engineer engaged to prepare plans, maps and estimates; securing insurance coverage and/ or services of an insurance broker; services of a certified public accountant; investment management services; services of an actuary; printing services involving extensive writing, editing or art work; management of a municipally owned property; and computer software or programming services for customized programs, or services involved in substantial modification and customizing of pre-packaged software.
 - b. Emergency purchases pursuant to Section 103(4) of the General Municipal Law. Due to the nature of this exception, these goods or services must be purchased immediately and a delay in order to seek alternate proposals may threaten the life, health, safety or welfare of the residents. This section does not preclude alternate proposals if time permits.
 - c. Sole source purchases are appropriate when it is clearly determined that there is only one vendor capable of providing a particular material or service. Justification for sole source purchases include purchase order is made to the original manufacturer or provider; there are no regional distributors, or parts/equipment are not interchangeable with similar parts of another manufacturer, or it is the only know item that will meet the specialized needs of the department or perform the intended function; purchases required by contractual obligations; or standardization approved by City Council. Sole source documentation must be attached to the requisition.
 - d. Control involves not only compliance with required purchasing policy, but also affect the paperwork necessary. There are certain expenditures for which the processing of a purchase order may be unnecessary. The following expenses may be approved without purchase orders (***unless being paid for using the City's credit card***):
 1. Employee Expenses
 2. Legal Notices
 3. Postage
 4. Medical Examinations & Fees
 5. Intergovernmental Charges
 6. Other expenses determined by the City Manager, City Comptroller, and Purchasing Manager on an individual basis.
 - e. Goods and services under \$1,500. The time and documentation required to purchase through this policy may be more costly than the item itself and would therefore not be in the best interest of the taxpayer. In addition, it is not likely that such minimal contracts would be bases on favoritism.
4. Positive efforts shall be made by the City to use small, minority owned and women-owned businesses as sources for supplies and services. Such efforts should include developing a

bidder's mailing list for these sources and encouraging these businesses to compete for contracts to be awarded.

5. General Municipal Law 103(16) allows procurement of certain goods (including apparatus, materials, equipment, and supplies) and services through contracts let by the United States or any agency thereof, any state or any other political subdivisions or district therein, if such contract was let in a manner consistent with competitive bidding and has been made available for use by other governmental agencies. The City shall take advantage of such contracts when doing so ensures that the City is buying goods at the lowest price. In addition, the City of Watertown will allow other municipalities within New York State to "piggyback" on the contracts of the City of Watertown in accordance with GML 103.
6. Pursuant to Subsection 1-b of Section 103 of the GML, the City shall have the option of purchasing information technology and telecommunications hardware, software, and professional services through cooperative purchasing permissible pursuant to Federal General Services Administration Information Schedule 70 and any successor schedule, provided the City complies with federal schedule ordering procedures as provided in the applicable federal acquisition regulation(s).
7. Purchases may be made through available state contracts of the NYS Office of General Services, GSA, or in accordance with Sub.3 of GML 103 which allows the purchase of materials, equipment or supplies, or the contract for services, other than services subject to Article 9 of the Labor Law, through any municipality with New York State, whenever such purchases are in the best interest of the City, as follows:
 - a. In lieu of obtaining quotations or issuing formal bids for the purchase of commodities or service not subject to Article 9 of the New York State Labor Law, the Purchasing Manager is authorized to make such purchases using established national and regional cooperative contracts.
 - b. Purchases of surplus and second-hand goods from any source. If alternate proposals are required, the City is precluded from purchasing surplus and second-hand goods at auctions or through specific advertised sources where the best prices are usually obtained. It is also difficult to try to compare prices of used goods and a lower price may indicate an older product.
 - c. Although a department may request a purchase be made using a particular contract source, the decision as to the appropriate contract source to be used will be that of the Purchasing Manager, in consultation with the City Manager and Attorney. Detailed and appropriate documentation of the reason(s) for the determination shall be retained by the Purchasing Department.
8. Unintentional failure to fully comply with the provisions of Section 104-b or the governing boards policies and procedures shall not be grounds to void action taken or give rise to a cause of action against the political subdivision or district or any officer or employee thereof.
9. This policy shall go into effect upon approval by the City Council and will be reviewed annually by staff to determine if updates or changes should be made.

RETURN OF GOODS:

Whenever the City receives a parcel that is either a duplicate shipment or an item that is to be returned for credit, the City (the department holding the goods) should request from the vendor a “Return Goods Authorization Number” or a letter of authorization to return the goods. This provides the City with the appropriate documentation to obtain the proper credit as well as to inform the vendor of the nature of its return. If no authorization is required then a letter should accompany the shipment advising the vendor as to why it is being returned with the follow information: City Purchase Order #, vendor invoice number, and or name of contact at vendor’s facility authorizing the return.

PURCHASE REQUISITION:

A purchase requisition is a request to the purchasing department for the purchase of goods or services. These requests are submitted in written and/or electronic format. ***All requisitions shall be authorized by the department head prior to submission to the purchasing department*** in order to maintain internal control. In the absence of the Department head, a listing of authorized to approve requisitions on their behalf shall be submitted to the Purchasing Department annually.

Each requisition shall include a brief description of the product or service being ordered, and the appropriate product or part number.

PURCHASE ORDER:

A purchase order is an official document that binds the City to procure goods or services as specified on the document. Purchase orders must provide sufficient description of the product being ordered or service to be performed. It should detail order quantity, item description, part number (if available), unit cost, and departmental charge code to ensure billing to the correct department’s general ledger.

Blanket Purchase Order – This is a single purchase order that is issued to cover a specified period of time for repetitive purchases of the same goods or redundant services to be utilized. If a blanket purchase order is to be issued, indicate such on the requisition by typing “BLANKET ORDER”.

REQUEST FOR PROPOSAL (RFP):

A Request for Proposal (RFP) is a competitive procurement with an award based on price and other criteria which may include negotiation. An RFP is not an alternative to competitive bidding, except when expressly authorized by the State Legislature. An RFP may be used if procurement is within exception to competitive bidding and permitted under the City’s procurement policies. They are most commonly used for professional service, true leases and licenses/concessions. Procedures include:

1. Establishment of evaluation criteria (i.e. price; experience; creditworthiness; approach to performance; staff availability; ability to perform; and time estimates).
2. Comprehensive, fair solicitation process.
3. Fair and equitable negotiation process.
4. Fair review/evaluation or rating process.

The Purchasing Department shall be responsible for issuing Requests for Proposals once a determination is made that an RFP rather than a formal competitive bid is appropriate. The RFP shall include specific language that identifies the method of award.

Upon request, the Purchasing Department will work with City departments to develop professional service contracts. Such RFP's will be developed by the individual department and Purchasing and may be issued through the Purchasing Department if requested. All other professional service contracts will be documented by the individual department.

CREDIT CARD USE:

The use of the City's credit card shall be limited to travel expenses, tuitions, educational expenses, professional memberships, subscriptions, and limited purchases whereas a purchase order is not accepted. Use of the credit card for all other expenses is prohibited, except with the expressed written approval of the City Manager.

COMPLIANCE:

Instances of failure to comply with this policy as identified by the Purchasing Manager shall be reported to the City Comptroller. The City Comptroller shall keep the City Manager apprised of non-compliance and initiate corrective action. Any questions relative to the intent or clarification of the policy contained herein shall be subject to a determination of the City Council if determined to be necessary or appropriate.

PROTEST PROCEDURE:

A protest concerning the specifications, or the bid procedure must be made in writing. This written protest must be received by the Purchasing Manager, City of Watertown, 245 Washington Street, Room 206, Watertown, New York 13601, no later than 72 hours prior to bid opening. If a protest is received that cannot be resolved by the designated time for bid opening, the City of Watertown Purchasing Department will delay the bid opening until the protest is resolved. The City's decision in connection with the protest will be issued in writing no more than 30 days from the date that the written protest was received.

If protest is made in connection with issues other than specifications or bid procedure, or in connection with an issue concerning bid procedure which only becomes evident after the bid opening, the protest must be in writing and received by the City of Watertown Purchasing Department no later than 10 working days after notification to all bidders of the contract award. The City will issue its written decision no more than 30 working days from the date the written protest was received.

Any protest to the effect that the City of Watertown Purchasing Department has not followed these protest procedures must be made in writing no later than 10 working days after the alleged infraction. The City will issue its written decision within 30 working days of its receipt of such a protest.

Any questions concerning these protest procedures shall be directed to the City's Purchasing Manager.

APPENDIX 1:

FEDERAL ADDENDA/FEDERALLY FUNDED PROCUREMENT

SUPPLEMENTAL GUIDELINES

In addition to the City's Purchasing Policies and Procedures, the following guidelines shall apply to all procurements utilizing funds from the Federal Government including the Federal Transit Administration (FTA) in conformance with applicable Federal law including Title 49 CFR Part 18, Section 18.36 and Circular 4220.1F. ***Please see Appendix 4 for the FTA Procurement Checklist for detailed actions and requirements.***

A. Written Record of Procurement History

1. The Purchasing Department shall maintain records detailing the history of each FTA associated procurement.
2. These records are placed in a procurement master file and include:
 - a. Purchase request with:
 - i. Independent Cost Estimate
 - ii. Project Justification
 - iii. Descriptions of work/scopes of services
 - iv. Acquisition planning information
 - v. Other pre-solicitation documents
 - vi. Purchase Requisition indicating availability of funding
 - b. The rationale for the method of procurement:
 - i. Full and open competition under IFB (one or two step)
 - ii. RFP
 - iii. Small or micro purchases (purchases less than \$20,000)
 - iv. Sole negotiations
 - c. List of sources solicited
 - d. Copies of published noticed of proposed contract action
 - e. Copies of the solicitation, all addenda and all amendments
 - f. Selection of contract type
 - i. Firm fixed price
 - ii. Cost reimbursement
 - iii. Incentive
 - iv. Multi-year
 - v. Time and materials
 - vi. Labor Hour
 - vii. Task Order
 - viii. Basic Ordering agreement
 - g. Reasons for contractor selection or rejection:
 - i. An abstract of each offer or rejection
 - ii. Source Selection documentation if applicable
 - iii. Contracting Officer's determination of contractor responsiveness and responsibility
 - h. The basis for the contract price
 - i. Cost or price data
 - ii. Determination that price is fair and reasonable including a tabulation and evaluation of the cost and price data.
 - iii. Extent of competition
 - i. Required internal approvals for award

- j. Liquidated damages:
 - i. The assessment for damages shall be at a specific rate per day for each day of overrun in contract time
 - ii. The rate must be specified in the solicitation and contract documents.
 - iii. Any liquidated damages recovered shall be credited to the project account involved unless FTA permits otherwise.
- k. Contractor's certifications and representations if applicable
- l. Notice of Award
- m. Record of any protest
- n. Piggybacking Checklist and all related documents, if applicable.
- o. Third party FTA Requirements Checklist and all related documents- including Buy America and Disadvantaged Business Enterprises
- p. Bond and Insurance documents
- q. Executed contract, all signed amendments and notice of award
- r. Options included in contract- An option may not be exercised unless the town has determined that the option price is better than prices available in the market or that an option is the more advantageous offer at the time the options is exercised.
- s. Post-award correspondence with contractor
- t. Notice to proceed
- u. Approvals or disapprovals of contract deliveries
- v. Requests for waivers or deviations and the associated responses
- w. Documentation of settlement of claims and disputes
- x. Documentation regarding stop work or suspension of work orders
- y. Approvals or disapprovals of waivers and deviations
- z. Contract closeout documentation

B. Debarment

The Purchasing Department shall document to the best of its knowledge and belief that none of its FTA assisted purchases involve contractors debarred, suspended, ineligible, or voluntarily excluded from participation in federally assisted transactions or procurements as indicated on the epls.gov website.

C. Geographic Preferences

The Purchasing Department shall conduct procurements in a manner that prohibits the use of statutory or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. This does not preempt State licensing laws. However, geographic location may be a selection criterion in procurements for architectural and engineering (A&E) services, provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

D. Procurement

All purchases of goods and services shall be made in accordance with the requirements of FTA Circular 4220.1F and in accordance with General Municipal Law and the City's Purchasing Policy.

E. Protest Procedures

Filing of Protests: All Protests must be filed and resolved in a manner consistent with the requirements of FTA Circular 4220.1F Third Party Contracting Guidelines must be clearly stated in the bid documents.

PIGGYBACKING WORKSHEET

Definition: ***Piggybacking is the post-award use of a contractual document/process that allows someone who was not contemplated in the original procurement to purchase the same supplies/equipment through that original document/process. ("FTA Dear Colleague" letter, October 1, 1998).***

In order to assist in the performance of your review, to determine if a situation exists where you may be able to participate in the piggybacking (assignment) of an existing agreement, the following considerations are provided. Ensure that your final file includes documentation substantiating your determination.

WORKSHEET	YES	NO
1. Have you obtained a copy of the contract and the solicitation document, including the specifications and any Buy America Pre-award or Post- Delivery audits?		
2. Does the solicitation and contract contain an express “assignability” clause that provides for the assignment of all or part of the specified deliverables?		
3. Did the Contractor submit the “certifications” required by Federal regulations? See BPPM Section 4.3.3.2.		
4. Does the contract contain the clauses required by Federal regulations? See BPPM Appendix A1.		
5. Were the piggybacking quantities included in the original solicitation, i.e., were they in the original bid and were they evaluated as part of the contract award decision?		
6. If this is an indefinite quantity contract, did the original solicitation and resultant contract contain both a minimum and maximum quantity, and did these represent the reasonably foreseeable needs of the parties to the contract?		
7. If this piggybacking action represents the exercise of an option in the contract, is the option provision still valid or has it expired?		
8. Does your State law allow for the procedures used by the original contracting agency: e.g., negotiations vs. sealed bids?		
9. Was a cost or price analysis performed by the original contracting agency documenting the reasonableness of the price? Obtain a copy for your files.		
10. If the contract is for rolling stock or replacement parts, does the contract term comply with the five-year term limit established by FTA? See FTA Circular 4220.1F, Chapter IV, 2 (14) (i).		
11. Was there a proper evaluation of the bids or proposals? Include a copy of the analysis in your files.		
12. If you will require changes to the vehicles (deliverables), are they “within the scope” of the contract or are they “cardinal changes”? See BPPM Section 9.2.1.		

Note: This worksheet is based upon the policies and guidance expressed in (a) the FTA Administrator's "Dear Colleague" letter of October 1, 1998, (b) the *Best Practices Procurement Manual*, Section 6.3.3—*Joint Procurements of Rolling Stock and “Piggybacking,”* and (c) FTA Circular 4220.1F.

Title 49 CFR Part 18, Section 18.36

(a) *States.* When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section.

(b) *Procurement standards.* (1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(i) The employee, officer or agent,

(ii) Any member of his immediate family,

(iii) His or her partner, or

(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to sub agreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial, or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

(4) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(6) Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

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

(8) Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(9) Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(10) Grantees and subgrantees will use time and material type contracts only--

- (i) After a determination that no other contract is suitable, and
- (ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

(12) Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to:

- (i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and
- (ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee.

(c) *Competition.* (1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of Sec. 18.36. Some of the situations considered to be restrictive of competition include but are not limited to:

- (i) Placing unreasonable requirements on firms in order for them to qualify to do business,
- (ii) Requiring unnecessary experience and excessive bonding,
- (iii) Noncompetitive pricing practices between firms or between affiliated companies,
- (iv) Noncompetitive awards to consultants that are on retainer contracts,
- (v) Organizational conflicts of interest,
- (vi) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance of other relevant requirements of the procurement, and
- (vii) Any arbitrary action in the procurement process.

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

(3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:

- (i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform

if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and

(ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(4) Grantees and subgrantees will ensure that all pre-qualified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.

(d) *Methods of procurement to be followed-* (1) *Procurement by small/micro purchase procedures.* Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. 403(11). If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.

(2) Procurement by *sealed bids* (formal advertising). Bids are publicly solicited, and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in Sec.

18.36(d)(2)(i) apply.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available.

(B) Two or more responsible bidders are willing and able to compete effectively and for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids.

(B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond.

(C) All bids will be publicly opened at the time and place prescribed in the invitation for bids.

(D) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(3) Procurement by *competitive* proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical.

(ii) Proposals will be solicited from an adequate number of qualified sources.

(iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees.

(iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated, and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(4) Procurement by *noncompetitive* proposals is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

(A) The item is available only from a single source.

(B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.

(C) The awarding agency authorizes noncompetitive proposals; or (D) After solicitation of a number of sources, competition is determined inadequate.

(ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required.

(iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section.

(e) *Contracting with small and minority firms, women's business enterprise and labor surplus area firms.* (1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists.

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources.

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises.

(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises.

(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2) (i) through (v) of this section.

(f) *Contract cost and price.* (1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source

procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

(2) Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and, in all cases, where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred, or cost estimates included in negotiated prices are consistent with Federal cost principles (see Sec. 18.22). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.

(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(g) *Awarding agency review.* (1) Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solicitation has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(2) Grantees and subgrantees must on request make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc. when:

- (i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this section; or
- (ii) The procurement is expected to exceed the simplified acquisition threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or
- (iii) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a "brand name" product; or
- (iv) The proposed award is more than the simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
- (v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold.

(3) A grantee or subgrantee will be exempt from the pre-award review in paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section.

- (i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis.
- (ii) A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

(h) *Bonding requirements.* For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

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

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

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

(i) *Contract provisions.* A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy.

Contractor shall comply with the required FTA clauses listed in Appendix 2 of this document.

APPENDIX 2:
FEDERAL TRANSIT ADMINISTRATION (FTA) REQUIRED
CLAUSES

(Revised 10/2024)

Contractor shall comply with the following FTA requirements. For purposes of these clauses, the AGENCY is the FTA recipient or subrecipient that is entering the Contract with Contractor.

- 1. NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES.** *[These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).]*

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

- 2. NOTIFICATION TO FTA.** *[These requirements apply to all contracts and subcontracts in excess of \$25,000.]*

If a current or prospective legal matter that may affect the Federal Government emerges, Contractor must promptly notify the AGENCY, which must then promptly notify the FTA Chief Counsel and FTA Regional Counsel for Region 9. Contractor must include an equivalent provision in its sub agreements at every tier for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.

- A. Types of Legal Matters Requiring Notification.** The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
- B. Matters Affecting the Federal Government.** Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the Contract, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.
- C. Additional Notice to U.S. DOT Inspector General.** Contractor must promptly notify the AGENCY, which must then promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for Region 9 if Contractor has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery,

gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Contract or another agreement between the AGENCY and FTA, or an agreement involving a principal, officer, employee, agent, or Third-Party Participant of the AGENCY. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of Contractor. In this paragraph, "promptly" means to refer information without delay and without change. This notification provision also applies to all divisions of the AGENCY, including divisions tasked with law enforcement or investigatory functions.

3. PROGRAM FRAUD & FALSE/FRAUDULENT STATEMENTS OR RELATED ACTS.
[These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).]

- A.** 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 CFR part 31, apply to its actions pertaining to this Project. Upon execution of the Contract, 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 Contract or the FTA-assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, 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 Contractor to the extent the Federal Government deems appropriate.
- B.** Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on Contractor, to the extent the Federal Government deems appropriate.
- C.** Contractor shall include the above two paragraphs 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.

4. ACCESS TO RECORDS, REPORTS, & SITES.

- A. Record Retention.** Contractor shall retain and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third-party agreements of any type, and supporting materials related to those records.
- B. Retention Period.** Contractor shall comply with the record retention requirements in accordance with 2 CFR § 200.333. Contractor shall maintain all books, records,

accounts and reports required under this Contract for a period of at not less than three years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.

C. Access to Records. Contractor shall provide sufficient access to the U.S. Secretary of Transportation, the Comptroller General of the United States, FTA, the Agency, and their duly authorized representatives to inspect and audit records and information related to performance of this contract as reasonably may be required.

D. Access to the Sites of Performance. Contractor shall permit FTA, the Agency, and their duly authorized representatives' access to the sites of performance under this Contract as reasonably may be required.

5. FEDERAL CHANGES. Contractor shall at all times comply with all applicable federal laws, regulations, requirements, policies, procedures, guidance, and directives, including without limitation those listed directly or by reference in the FTA Master Agreement between the City of Phoenix and the FTA, as they may be amended or promulgated from time to time during the term of the Contract. Contractor's failure to so comply shall constitute a material breach of the Contract.

6. CIVIL RIGHTS. The AGENCY must comply with applicable federal civil rights laws, regulations, and requirements, and follow applicable federal guidance, except as the Federal Government determines otherwise in writing. Therefore, unless an AGENCY or federal program, including any Indian Tribe or Tribal Transit Program, is specifically exempted from a civil rights statute, FTA requires compliance with each civil rights statute, including compliance with equity in service requirements.

A. Nondiscrimination in Federal Public Transportation Programs.

1. Contractor must prohibit: **(a)** discrimination based on race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age; **(b)** exclusion from participation in employment or a business opportunity for reasons identified in 49 U.S.C. § 5332; **(c)** denial of program benefits in employment or a business opportunity identified in 49 U.S.C. § 5332; and **(d)** discrimination identified in 49 U.S.C. § 5332, including discrimination in employment or a business opportunity identified in 49 U.S.C. § 5332.

2. Contractor must follow the most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable federal laws, regulations, requirements, and guidance. However, FTA does not require an Indian Tribe to comply with FTA program specific guidelines for Title VI when administering its agreement supported with federal assistance under the Tribal Transit Program.

B. Nondiscrimination – Title VI of the Civil Rights Act. Contractor must:

1. Contractor must prohibit discrimination based on race, color, or national origin,

2. Contractor must comply with: **(a)** Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, et seq.; **(b)** U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964," 49 CFR Part 21; and **(c)** Federal transit law, specifically 49 U.S.C. § 5332; and

3. Contractor must follow: **(a)** the most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to

the extent consistent with applicable federal laws, regulations, requirements, and guidance; **(b)** U.S. DOJ, “Guidelines for the enforcement of Title VI, Civil Rights Act of 1964,” 28 C.F.R. § 50.3; and **(c)** all other applicable federal guidance that may be issued.

C. Equal Employment Opportunity.

1. **Federal Requirements and Guidance.** Contractor must prohibit discrimination based on race, color, religion, sex, sexual orientation, gender identity, or national origin. Contractor must also comply with: **(a)** Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq.; **(b)** Title I of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12101, et seq.; **(c)** Executive Order No. 11246, “Equal Employment Opportunity” September 24, 1965 (42 U.S.C. § 2000e note), as amended by any later Executive Order that amends or supersedes it in part and is applicable to federal assistance programs; **(d)** federal transit law, specifically 49 U.S.C. § 5332, as provided in section 12 of this Master Agreement; and **(e)** FTA Circular 4704.1 “Equal Employment Opportunity (EEO) Requirements and Guidelines for Federal Transit Administration Recipients.” Further, Contractor must follow other federal guidance pertaining to EEO laws, regulations, and requirements.
2. **Affirmative Action.** If required to do so by U.S. DOT regulations (49 CFR Part 21) or U.S. Department of Labor regulations (41 C.F.R. chapter 60), Contractor must take affirmative action that includes, but is not limited to: **(a)** recruitment advertising, recruitment, and employment; **(b)** rates of pay and other forms of compensation; **(c)** selection for training, including apprenticeship, and upgrading; and **(d)** transfers, demotions, layoffs, and terminations.
3. **Indian Tribe.** Contractor recognizes that Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of “Employer.”
4. **Equal Employment Opportunity for Construction Activities.** When undertaking “construction” as recognized by the U.S. Department of Labor (U.S. DOL), Contractor must comply with: **(a)** U.S. DOL regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. chapter 60; and **(b)** Executive Order No. 11246, “Equal Employment Opportunity in Federal Employment,” September 24, 1965, 42 U.S.C. § 2000e note (30 Fed. Reg. 12319, 12935), as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note.

7. INCORPORATION OF FTA TERMS. *[These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).]*

The preceding provisions include, in part, certain Standard Terms and Conditions required by the U.S. Department of Transportation (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, and 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 the contract. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any requests of the AGENCY that would cause the AGENCY to be in violation of the FTA terms and conditions. Contractor shall include this clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA.

8. **FREE SPEECH & RELIGIOUS LIBERTY.** All Federal funding must be expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements, including but not limited to those prohibiting discrimination and protecting free speech, religious liberty, public welfare, and the environment.
9. **FEDERAL TERMINATION RIGHTS.** The termination rights under this Contract are in addition to, and in no way limit, the Federal Government's right to terminate as described in 2 CFR § 200.340.

A. DEBARMENT, SUSPENSION, INELIGIBILITY, & VOLUNTARY EXCLUSION. *[This requirement does not apply to contracts and subcontracts under \$25,000.]* Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Non- procurement Suspension and Debarment," 2 CFR part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Government-Wide Debarment and Suspension (Non-procurement)," 2 CFR part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount.

B. Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally-funded contract (which includes review of SAM at sam.gov, if necessary to comply with U.S. DOT regulations, 2 CFR Part 1200) and are not presently declared by any Federal department or AGENCY to be: **(1)** debarred from participation in any federally-assisted Award; **(2)** suspended from participation in any federally-assisted Award; **(3)** proposed for debarment from participation in any federally-assisted Award; **(4)** declared ineligible to participate in any federally-assisted Award; **(5)** voluntarily excluded from participation in any federally-assisted Award; or **(6)** disqualified from participation in any federally assisted Award.

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

The certification in this clause is a material representation of fact relied upon by the AGENCY. If it is later determined by the AGENCY that Contractor knowingly rendered an erroneous certification, in addition to remedies available to the AGENCY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. Contractor shall comply with the requirements of 2 CFR part 180, subpart C, as supplemented by 2 CFR part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

10. **TERMINATION.** The AGENCY must include provisions in their contracts and subcontracts that allows for termination for cause and for convenience by the AGENCY, including the manner by which it will be affected and the basis for settlement. See Appendix II(B) to 2 CFR part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, and FTA Circular 4220.1F, Chapter IV, paragraph 2.b.(6)(b)4 – Termination.
11. **VIOLATION & BREACH OF CONTRACT.** *[These requirements are not applicable to contracts and subcontracts under the simplified acquisition threshold (currently set at*

.\$250,000).]

Unless otherwise provided for by the AGENCY, the following provisions shall apply:

- A. Dispute Resolution.** Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by the authorized representative of AGENCY. This decision shall be final and conclusive unless within ten calendar days from the date of receipt of its copy, Contractor mails or otherwise furnishes a written appeal to the authorized representative of AGENCY. In connection with any such appeal, Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the authorized representative of AGENCY shall be binding upon Contractor, and Contractor shall abide by the decision.
- B. Performance During Disputes.** Notwithstanding the existence of any dispute between the parties, insofar as is possible, under the terms of the Contract, Contractor shall continue to perform the obligations required of Contractor during the continuation of any such dispute unless enjoined or prohibited by an Arizona Court of competent jurisdiction.
- C. 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 the AGENCY or Contractor shall constitute a waiver of any right or duty afforded any of them under this 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 upon in writing.

12. LOBBYING RESTRICTIONS. *[These requirements do not apply to contracts and subcontracts under \$100,000.]*

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 AGENCY.

13. CARGO PREFERENCE (USE OF U.S.-FLAG VESSELS). *[These requirements apply to all contracts involving equipment, material, or commodities that may be transported by ocean vessels.]*

- A.** Contractor shall 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 Contract to the extent such vessels are available at fair

and reasonable rates for United States-Flag commercial vessels.

- B. Contractor shall furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through Contractor in the case of a subcontractor's bill-of-lading); and
- C. Contractor shall 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.

14. FLY AMERICA. *[These requirements apply to contracts and subcontracts involving the transportation of persons or property by air between a place in the United States and a place outside of the United States, or between places outside the United States, when the FTA will participate in the cost of such air transportation.]*

- A. As used in this clause: **(1) "international air transportation"** means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States; **(2) "United States"** means the 50 States, the District of Columbia, and outlying areas; and **(3) "U.S.-flag air carrier"** means an air carrier holding a certificate under 49 U.S.C. Chapter 411.
- B. When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, recipients, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.
- C. If available, Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.
- D. If Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, then Contractor shall include a statement on vouchers involving such transportation essentially as follows:

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

(End of statement)

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

15. EMPLOYEE PROTECTIONS.

A. Prevailing Wage & Anti-Kickback. *[These requirements apply to all prime construction, alteration, or repair contracts in excess of \$2,000.]*

1. For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FTA, Contractor shall comply with the Davis-Bacon Act and the Copeland "Anti-Kickback" Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction." In accordance with the statute, Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
2. In addition, Contractor shall pay wages not less than once a week. Contractor shall also comply with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States." Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

B. Contract Work Hours/Safety Standards for Awards Involving Construction.

[These requirements apply to all contracts involving construction in excess of \$100,000 that involve the employment of mechanics or laborers.]

1. For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the DOL regulations at 29 CFR part 5. Under 40 U.S.C. § 3702 of the Act, Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.
2. In the event of any violation of the clause set forth herein, Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen

and guards, employed in violation of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by this clause.

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

C. Contract Work Hours/Safety Standards for Awards Not Involving Construction.

[These requirements apply to all contracts (not involving construction) in excess of \$100,000 that involve the employment of mechanics or laborers.]

1. Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 *et seq.*, and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 CFR part 5.
2. Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.
3. Such records maintained under this paragraph shall be made available by Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and Contractor will permit such representatives to interview employees during working hours on the job.
4. Contractor shall require the inclusion of the language of this clause within subcontracts of all tiers.

- 16. SEISMIC SAFETY.** *[These requirements apply only to contracts for the construction of new buildings or additions to existing buildings.]*

Contractor shall design and construct any new building or addition to an existing building in accordance with the standards for Seismic Safety required in Department of Transportation (DOT) Seismic Safety Regulations (49 CFR part 41) and will certify its compliance to the extent required by the regulation. Contractor shall 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.

17. VETERANS EMPLOYMENT. *[These requirements apply only to capital projects. See 49 U.S.C. § 5302(3).]*

Contractor shall give a hiring preference, to the extent practicable, to veterans (as defined in U.S.C. Section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the Contract. This requirement shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

18. BONDING. *[These requirements are applicable to all construction or facility improvement contracts and subcontracts exceeding the simplified acquisition threshold (currently set at \$250,000). See FTA Circular C 4220.1F for specific bonding requirements.]*

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

- A.** A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- B.** A performance bond on the part of Contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all of Contractor's obligations under such contract.
- C.** A payment bond on the part of Contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

19. PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS. *[These requirements apply only to contracts for transit operations performed by employees of contractors and subcontractors recognized by FTA to be a transit operator.]*

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

- A. U.S. DOL Certification.** Under this Contract or any Amendments thereto that involve public transportation operations that are supported with federal assistance, a certification issued by U.S. DOL is a condition of the Contract.

- B. Special Warranty.** When the Contract involves public transportation operations and is supported with federal assistance appropriated or made available for 49 U.S.C. § 5311, U.S. DOL will provide a Special Warranty for its Award, including its Award of federal assistance under the Tribal Transit Program. The U.S. DOL Special Warranty is a condition of the Contract.
- C. Special Arrangements.** The conditions of 49 U.S.C. § 5333(b) do not apply to Contractors providing public transportation operations pursuant to 49 U.S.C. § 5310. FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate, and, in those instances, any special arrangements required by FTA will be incorporated herein as required.
- D. Flow Down.** Contractor shall include the substance of this clause in each subcontract that may involve operating public transit services.

20. CHARTER SERVICE. *[These requirements apply to contracts for operating public transportation service.]*

- A.** Contractor shall comply with 49 U.S.C. 5323(d), (g), and (r), 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 as permitted under: **(1)** federal transit laws, specifically 49 U.S.C. § 5323(d); **(2)** FTA regulations, “Charter Service,” 49 CFR part 604; **(3)** any other federal Charter Service regulations; or **(4)** Federal guidance, except as FTA determines otherwise in writing.
- B.** If Contractor engages in a pattern of violations of FTA’s Charter Service regulations, then FTA may require corrective measures or impose remedies on it. These corrective measures and remedies may include: **(1)** barring it or any subcontractor operating public transportation under its Award that has provided prohibited charter service from receiving federal assistance from FTA; **(2)** withholding an amount of federal assistance as provided by Appendix D to part 604 of FTA’s Charter Service regulations; or **(3)** any other appropriate remedy that may apply.
- C.** Contractor should also include the substance of this clause in each subcontract that may involve operating public transit services.

21. SCHOOL BUS OPERATIONS. *[These requirements apply to contracts for operating public transportation service.]*

Contractor shall comply with 49 U.S.C. 5323(f) and (g), and 49 CFR part 605, and not engage in school bus operations using federally-funded equipment or facilities in competition with private operators of school buses, except as permitted under: **(A)** federal transit laws, specifically 49 U.S.C. § 5323(f); **(B)** FTA regulations, “School Bus Operations,” 49 CFR part 605; **(C)** any other Federal School Bus regulations; or **(D)** federal guidance, except as FTA determines otherwise in writing. If Contractor violates these school bus requirements, then FTA may bar Contractor from receiving Federal assistance for public transportation or require Contractor to take such remedial measures as FTA considers appropriate. When operating exclusive school bus service under an allowable exemption, Contractor may not use federally funded equipment, vehicles, or facilities. Contractor should include the substance of this clause in each subcontract or purchase under this Contract that may operate public transportation services.

22. MOTOR CARRIER SAFETY. *[These requirements apply to contracts for operating bus operation service.]*

- A. Financial Responsibility.** Contractor shall comply with the economic and insurance registration requirements of: **(1)** U.S. Federal Motor Carrier Safety Administration (U.S. FMCSA) regulations, “Minimum Levels of Financial Responsibility for Motor Carriers,” 49 C.F.R. part 387, if Contractor is: **(a)** engaged in operations requiring compliance with 49 C.F.R. part 387, **(b)** engaged in interstate commerce, and **(c)** not within a defined commercial zone; and **(2)** provisions of 49 U.S.C. § 31138(e)(4), which supersede inconsistent provisions of 49 C.F.R. part 387, and reduce the amount of insurance the Recipient must obtain to the highest amount required by any state in which the public transportation provider operates, if it operates within a public transportation service area located in more than one state, and receives federal assistance under 49 U.S.C. §§ 5307, 5310, and 5311.
- B. U.S. FMCSA Requirements.** Contractor shall comply with: **(1)** safety requirements of U.S. Federal Motor Carrier Safety Administration (**U.S. FMCSA**) regulations, “Federal Motor Carrier Safety Regulations,” 49 C.F.R. parts 390 – 397, to the extent applicable; and **(2)** driver’s license requirements of U.S. FMCSA regulations, “Commercial Driver’s License Standards, Requirements, and Penalties,” 49 C.F.R. part 383, and “State Compliance with Commercial Driver’s License,” 49 C.F.R. part 384, to the extent applicable, with the substance abuse requirements and guidance of U.S. FMCSA’s regulations, “Drug and Alcohol Use and Testing Requirements,” 49 C.F.R. part 382, and implementing federal guidance, to the extent applicable.

23. SAFE OPERATIONS OF MOTOR VEHICLES.

- A. Seat Belt Use.** Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company- rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by Contractor or AGENCY.
- B. Distracted Driving.** Contractor shall adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract.
- C. Subcontracts.** Contractor shall insert the substance of this clause, including this paragraph, in all subcontracts that exceed the micro-purchase threshold, as defined in Federal Acquisition Regulation 2.101 on the date of subcontract award.

24. CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING. *[These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).]*

- A. Definitions.** As used in this clause: **(1) "driving"** means operating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise (**note:** "driving" does not include operating a motor vehicle with or without the motor running when one has pulled over to the side of, or off, an active roadway and has halted in a location where one can

safely remain stationary); and (2) “text messaging” means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication (**note:** “text messaging” does not include glancing at or listening to a navigational device that is secured in a commercially designed holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving or while stopped in a location off the roadway where it is safe and legal to park).

- B. Executive Order.** This clause implements Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, dated October 1, 2009. Contractor is encouraged to adopt and enforce policies that ban text messaging while driving company-owned/rented vehicles, Government-owned vehicles, and privately- owned vehicles when on official Government business or when performing any work for or on behalf of the Government. Contractor is also encouraged to conduct initiatives in a manner commensurate with the size of the business, such as: (1) establishment of new rules and programs or reevaluation of existing programs to prohibit text messaging while driving; and (2) education, awareness, and other outreach to employees about the safety risks associated with texting while driving.
- C. Subcontracts.** Contractor shall insert the substance of this clause, including this paragraph, in all subcontracts that exceed the micro-purchase threshold, as defined in Federal Acquisition Regulation 2.101 on the date of subcontract award.

25. SUBSTANCE ABUSE (DRUG & ALCOHOL TESTING). *[These requirements apply to contracts with contractors who perform safety-sensitive functions, as defined in 49 CFR Part 655.4, “Definitions.”]*

- A.** Contractor shall establish and implement a drug and alcohol testing program that complies with “Procedures for Transportation Workplace Drug and Alcohol Testing Programs” (49 CFR Part 40) and “Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations” (49 CFR Part 655), produce any documentation necessary to establish its compliance with parts 655 and 40, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of Arizona, or the City of Phoenix, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR part 655 and 49 CFR part 40 and review the testing process.
- B.** Contractor shall also submit for review and approval a copy of its substance abuse prevention policy developed to implement its drug and alcohol testing program. Further, Contractor shall certify annually its compliance with parts 655 and 40 and to submit the Drug and Alcohol Management Information System (DAMIS) reports before March 15 to Transit Compliance Officer, City of Phoenix Public Transit Department, 302 N. 1st Avenue, Phoenix, AZ 85003. To certify compliance, 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.
- C.** Contractor shall require the inclusion of the language of this clause within subcontracts of all tiers involving the performance of a safety-sensitive function under the Contract.

- 26. BUY AMERICA.** *[These requirements apply to contracts over \$150,000 if they involve the purchase of iron, steel, manufactured goods, or rolling stock.]*
- A.** Contractor shall comply with 49 U.S.C. 5323(j) and 49 CFR part 661, which provide that federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR § 661.7 and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 CFR § 661.11. Contractor must submit to AGENCY the appropriate Buy America certification with its offer. Offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive.
 - B.** Construction materials used in FTA-funded projects are subject to the domestic preference requirement of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 – 70927 (2021), as implemented by the U.S. Office of Management and Budget, the U.S. Department of Transportation, and FTA.
- 27. PROHIBITED TELECOMMUNICATIONS/SURVEILLANCE SERVICES/EQUIPMENT.** The AGENCY is prohibited from obligating or expending loan or grant funds to: procure or obtain, extend or renew a contract to procure or obtain, or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Contractor shall not provide covered telecommunications equipment or services in the performance of the Contract. As described in Public Law 115-232, section 889, covered telecommunications equipment is: **(A)** telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities); **(B)** video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities) for the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes; **(C)** Telecommunications or video surveillance services provided by such entities or using such equipment; and **(D)** telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
- 28. AIR POLLUTION & FUEL ECONOMY.** *[These requirements apply to contracts for the purchase of rolling stock.]*

The Contractor agrees to comply with applicable Federal air pollution control and fuel economy regulations, such as: EPA regulations, "Control of Air Pollution from Mobile Sources," 40 CFR Part 85; EPA regulations, "Control of Air Pollution from New and In-Use

Motor Vehicles and New and In-Use Motor Vehicle Engines,” 40 CFR Part 86; and EPA regulations, “Fuel Economy of Motor Vehicles,” 40 CFR Part 600.

29. ROLLING STOCK LIMITATIONS. *[These requirements apply to contracts for the purchase of rolling stock.]*

Contractor and its subcontractors must comply with the limitation on certain rolling stock procurements at 49 U.S.C. § 5323(u), prohibiting the procurement of rolling stock from specified manufacturers for public transportation use.

30. PRE-AWARD & POST-DELIVERY AUDITS OF ROLLING STOCK PURCHASES. *[These requirements apply to contracts for the purchase of rolling stock.]*

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

31. BUS TESTING. *[These requirements apply to contracts for the purchase/lease of any bus model that is new or has any major change in configuration/components to be acquired/leased.]*

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

32. ENVIRONMENTAL PROTECTIONS. Contractor shall comply with all applicable environmental and resource use laws, regulations, and requirements, and follow applicable guidance, now in effect or that may become effective in the future, including state and local laws, ordinances, regulations, and requirements and follow applicable guidance.

A. National Environmental Policy Act.

1. Contractor shall comply and facilitate compliance with federal laws, regulations, and requirements, including, but not limited to: **(a)** federal transit laws, such as 49 U.S.C. § 5323(c)(2), and 23 U.S.C. § 139; **(b)** the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. §§ 4321 et seq., as limited by 42 U.S.C. § 5159, and CEQ's implementing regulations 40 C.F.R. part 1500 – 1508; **(c)** joint FHWA and FTA regulations, “Environmental Impact and Related Procedures,” 23 C.F.R. part 771 and 49 C.F.R. part 622; **(d)** Executive Order No. 11514, as amended, “Protection and Enhancement of Environmental Quality,” March 5, 1970, 42 U.S.C. § 4321 note; and **(e)** other federal environmental protection laws, regulations, and requirements applicable to Contractor.
2. Contractor shall follow federal guidance to the extent that the guidance is consistent with applicable authorizing legislation, which may include: **(a)** joint FHWA and FTA final guidance, “Interim Guidance on MAP-21 Section 1319,

Accelerated Decision making in Environmental Reviews,” January 14, 2013; (b) joint FHWA and FTA final guidance, “SAFETEA-LU Environmental Review Process (Pub. L. 109-59),” 71 Fed. Reg. 66576, November 15, 2006; and (c) other federal environmental guidance applicable to the Contractor.

- B. Environmental Justice.** Contractor shall promote environmental justice by following: (1) Executive Order No. 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” February 11, 1994, 42 U.S.C. § 4321 note, as well as facilitating compliance with that Executive Order; (2) U.S. DOT Order 5610.2, “Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations,” 62 Fed. Reg. 18377, April 15, 1997; and (3) the most recent edition of FTA Circular 4703.1, “Environmental Justice Policy Guidance for Federal Transit Administration Recipients,” August 15, 2012, to the extent consistent with applicable federal laws, regulations, requirements, and guidance.
- C. Other Environmental Federal Laws.** Contractor shall comply or facilitate compliance with all applicable federal laws, regulations, and requirements, and will follow applicable guidance, including, but not limited to, the Clean Air Act, Clean Water Act, Wild and Scenic Rivers Act of 1968, Coastal Zone Management Act of 1972, the Endangered Species Act of 1973, Magnuson Stevens Fishery Conservation and Management Act, Resource Conservation and Recovery Act, Comprehensive Environmental Response, Compensation, and Liability Act, Executive Order No. 11990 relating to “Protection of Wetlands,” and Executive Order Nos. 11988 and 13690 relating to “Floodplain Management.”
- D. Use of Certain Public Lands.** Contractor shall comply with U.S. DOT laws, specifically 49 U.S.C. § 303 (often referred to as “section 4(f)), and joint FHWA and FTA regulations, “Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites,” 23 C.F.R. part 774, and referenced in 49 C.F.R. part 622.
- E. Historic Preservation.** Contractor shall comply with: (1) U.S. DOT laws, including 49 U.S.C. § 303 (often referred to as “section 4(f)”), which requires certain findings be made before an Award may be undertaken if it involves the use of any land from a historic site that is on or eligible for inclusion on the National Register of Historic Places; (2) federal historic and archaeological preservation requirements of section 106 of the National Historic Preservation Act, as amended, 54 U.S.C. § 306108; (3) the Archeological and Historic Preservation Act of 1974, as amended, 54 U.S.C. § 312501 et seq.; (4) U.S. Advisory Council on Historic Preservation regulations, “Protection of Historic Properties,” 36 C.F.R. part 800; and (5) other federal requirements and federal guidance to avoid or mitigate adverse effects on historic properties.
- F. Indian Sacred Sites.** Contractor shall facilitate compliance with federal efforts to promote the preservation of places and objects of religious importance to American Indians, Eskimos, Aleuts, and Native Hawaiians, and facilitate compliance with the American Indian Religious Freedom Act, 42 U.S.C. § 1996, and Executive Order No. 13007, “Indian Sacred Sites,” May 24, 1996, 42 U.S.C. § 3161 note.

33. CLEAN AIR ACT & FEDERAL WATER POLLUTION CONTROL ACT. *[These requirements do not apply to contracts and subcontracts under \$150,000.]*

Contractor shall ensure that it: (A) will not use any violating facilities; (B) will report the use of facilities placed on or likely to be placed on the U.S. EPA “List of Violating Facilities;” (C) will report violations of use of prohibited facilities to FTA; and (D) will comply with the inspection and other requirements of the Clean Air Act, as amended (42 U.S.C. §§ 7401

– 7671q); and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387).

- 34. ENERGY CONSERVATION.** Contractor shall 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 (42 U.S.C. §§ 6321 et seq.).
- 35. RECYCLED PRODUCTS (SOLID WASTES).** *[These requirements apply to all contracts and subcontracts involving the purchase of items designated by the EPA (that contain the highest percentage of recovered materials practicable) in excess of \$10,000. See 40 C.F.R part 247 for federal designation of items.]*

Contractor shall provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), “Comprehensive Procurement Guideline for Products Containing Recovered Materials,” 40 CFR part 247. The requirements of Section 6002 include: **(A)** procuring only items designated in guidelines of the U.S. EPA at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; **(B)** procuring solid waste management services in a manner that maximizes energy and resource recovery; and **(C)** establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

- 36. INTELLECTUAL PROPERTY/PATENT RIGHTS & RIGHTS IN DATA.** *[These requirements apply to contracts for the performance of experimental, developmental, or research work.]*

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

analyses, or other similar information used for performance or administration of the Contract.

- B.** 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”: **(1)** any subject data developed under the Contract, whether or not a copyright has been obtained; and **(2)** any rights of copyright purchased by Contractor using federal assistance in whole or in part by the FTA. 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.
- C.** Unless FTA determines otherwise, Contractor performing experimental, developmental, or research work required as part of this Contract agrees to permit FTA to make available to the public, either FTA’s license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.
- D.** Unless prohibited by state law, upon request by the Federal Government, Contractor shall 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 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. 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 Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the Contract is exempt from the requirements herein, provided that Contractor identifies those data in writing at the time of delivery of the Contract work.
- G.** Contractor shall include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

37. COMPLIANCE WITH NATIONAL ITS ARCHITECTURE POLICY. *[These requirements apply only to contracts for National Intelligent Transportation System projects.]*

Contractor shall conform to the National Intelligent Transportation Systems **(ITS)** Architecture requirements of 23 U.S.C. § 517(d), unless it obtains an exemption from those requirements, and follow FTA Notice, “FTA National ITS Architecture Policy on Transit Projects,” 66 Fed. Reg. 1455, January 8, 2001, and all other applicable federal guidance.

38. NTD REPORTING. As a condition of benefitting from federal assistance for public transportation operations, Contractor and its subcontractors must: **(A)** facilitate compliance with 49 U.S.C. § 5335(a), which authorizes the National Transit Database

(NTD); (B) conform to the NTD reporting system and the Uniform System of Accounts and Records; (C) comply with FTA regulations, "Uniform System of Accounts and Records and Reporting System," 49 CFR Part 630; (D) report when required to the National Transit Database in accordance with FTA regulation 49 CFR Part 630, "National Transit Database," and applicable FTA instructions: (1) any information relating to a transit asset inventory or condition assessment; (2) any data on assaults on transit workers; (3) any data on fatalities that result from an impact with a bus; and (4) such other information as FTA may require; (E) comply with any other applicable reporting regulations, and requirements; and (F) follow FTA guidance.

- 39. TRAFFICKING IN PERSONS.** Contractor and its subcontractors or their employees shall not: (A) engage in severe forms of trafficking in persons during the Contract Term; (B) procure a commercial sex act during the Contract Term; or (C) use forced labor in the performance of the Contract. Contractor shall inform City of Watertown immediately of any information Contractor receives from any source alleging a violation of a prohibition in this section. City of Watertown may terminate this Contract for any violation of this section; such right of termination is in addition to all other remedies for noncompliance that are available to the City of Watertown.
- 40. DBE REQUIREMENTS.**
(DBE requirements to be provided by PTD Compliance Section)
- 41. DOMESTIC PREFERENCES FOR PROCUREMENT.** As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award. "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.
- 42.** (j) 23 U.S.C. 112(a) directs the Secretary to require recipients of highway construction grants to use bidding methods that are "effective in securing competition." Detailed construction contracting procedures are contained in 23 CFR part 635, subpart A.
- 43.** (k) Section 3(a)(2)(C) of the UMT Act of 1964, as amended, prohibits the use of grant or loan funds to support procurement utilizing exclusionary or discriminatory specifications.
- 44.** (l) 46 U.S.C. 1241(b)(1) and 46 CFR part 381 impose cargo preference requirements on the shipment of foreign made goods.
- 45.** (m) Section 165 of the Surface Transportation Assistance Act of 1982, 49 U.S.C. 1601, section 337 of the Surface Transportation and Uniform Relocation Assistance Act of 1987, and 49 CFR parts 660 and 661 impose Buy America provisions on the procurement of foreign products and materials.
- 46.** (n) Section 105(f) of the Surface Transportation Assistance Act of 1982, section 106(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987, and 49 CFR part 23 impose requirements for the participation of disadvantaged business enterprises.

47. (o) Section 308 of the Surface Transportation Assistance Act of 1982, 49 U.S.C. 1068(b)(2), authorizes the use of competitive negotiation for the purchase of rolling stock as appropriate.
48. (p) 23 U.S.C. 112(b) provides for an exemption to competitive bidding requirements for highway construction contracts in emergency situations.
49. (q) 23 U.S.C. 112 requires concurrence by the Secretary before highway construction contracts can be awarded, except for projects authorized under the provisions of 23 U.S.C. 171.
50. (r) 23 U.S.C. 112(e) requires standardized contract clauses concerning site conditions, suspension or work, and material changes in the scope of the work for highway construction contracts.
51. (s) 23 U.S.C. 140(b) authorizes the preferential employment of Indians on Indian Reservation road projects and contracts.
52. (t) FHWA, UMTA, and Federal Aviation Administration (FAA) grantees and subgrantees shall extend the use of qualifications-based (e.g., architectural and engineering services) contract selection procedures to certain other related areas and shall award such contracts in the same manner as Federal contracts for architectural and engineering services are negotiated under Title IX of the Federal Property and Administrative Services Act of 1949, or equivalent State (or airport sponsor for FAA) qualifications-based requirements. For FHWA and UMTA programs, this provision applies except to the extent that a State adopts or has adopted by statute a formal procedure for the procurement of such services.

[53 FR 8086 and 8087, Mar. 11, 1988, as amended at 53 FR 8087, Mar. 11, 1988; 60 FR 19639, 19647, Apr. 19, 1995]

APPENDIX 3:
FEDERAL TRANSIT ADMINISTRATION CERTIFICATIONS

**EACH CERTIFICATION PROVIDES
INSTRUCTION DESCRIBING WHEN
THE CERTIFICATION IS APPLICABLE**

**INAPPLICABLE FTA CERTIFICATIONS
MAY BE LEFT BLANK**

**OFFERS THAT DO NOT INCLUDE
COMPLETED CERTIFICATIONS,
IF APPLICABLE,
WILL BE REJECTED AS NONRESPONSIVE.**

DEBARMENT AND SUSPENSION CERTIFICATION

This certification does not apply to contracts and subcontracts under \$25,000. Offers that do not include this completed certification, if applicable, will be rejected as nonresponsive.

Check one box below (and provide explanation if necessary):

- The Proposer certifies that the Proposer and its principals:
 1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily or involuntarily excluded from covered transactions by any federal department or agency.
 2. Have not, within the preceding three years, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction; violation of federal or state antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging; commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; or commission of any other offense indicating a lack of business integrity or business honesty;
 3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any offense described in Paragraph 2 of this certification.
 4. Have not, within the preceding three years, had one or more public transactions (federal, state, or local) terminated for cause or default.

- OR -

- The Proposer is unable to certify to all of the statements in this certification and attaches its explanation to this certification. (In the explanation, the Proposer must certify to those statements that can be certified and explain why the other statements cannot be certified.)

The Proposer shall require that the language of this certification be included in the contract documents for all subcontractors and material suppliers at all tiers, and that all subcontractors and material suppliers shall certify and disclose accordingly.

The Proposer certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification. In addition, the Proposer understands and agrees that the provisions of 31 U.S.C. §§ 3801 et al. are applicable to this certification.

Company: _____

Name: _____

Title: _____

Signature: _____

Date: _____

BUY AMERICA CERTIFICATION

This certification applies to contracts over \$150,000 if they involve the purchase of iron, steel, manufactured goods, or rolling stock. Offers that do not include this completed certification, if applicable, will be rejected as nonresponsive.

If this Offer is valued in excess of \$150,000 and **involves the procurement of steel, iron, or manufactured products (as defined in 49 CFR §§ 661.3 and 661.5)**, the Proposer 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.

OR

- Cannot comply the requirements of 49 U.S.C. § 5323(j) (and 49 CFR part 661) but may qualify for an exception to the requirements pursuant to 49 U.S.C. § 5323(j)(2), as amended, and the applicable regulations in 49 CFR § 661.7.

If this Offer is valued in excess of \$150,000 and **involves the procurement of buses or other rolling stock (including associated equipment)**, the Proposer hereby certifies that it:

- Will comply with the requirements of 49 U.S.C. § 5323(j) and the applicable regulations of 49 CFR § 661.11.

OR

- Cannot comply with the requirements of 49 § U.S.C. 5323(j) (and 49 CFR § 661.11) but may qualify for an exception to the requirements consistent with 49 U.S.C. § 5323(j)(2)(C), as amended, and the applicable regulations in 49 CFR § 661.7.

The Proposer certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification. In addition, the Proposer understands and agrees that the provisions of 31 U.S.C. §§ 3801 et al. are applicable to this certification

Company: _____

Name: _____

Title: _____

Signature: _____

Date: _____

LOBBYING CERTIFICATION

This certification does not apply to contracts and subcontracts under \$100,000. Offers that do not include this completed certification, if applicable, will be rejected as nonresponsive.

The Proposer certifies that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the Proposer, 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 influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the Proposer shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The Proposer shall require that the language of this certification be included in the contract documents for all subcontractors and material suppliers at all tiers, and that all subcontractors and material suppliers shall certify and disclose accordingly.

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

The Proposer certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification. In addition, the Proposer understands and agrees that the provisions of 31 U.S.C. §§ 3801 et al. are applicable to this certification.

Company: _____

Name: _____

Title: _____

Signature: _____

Date: _____

Per paragraph 2 above, complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," if applicable.

CERTIFICATE OF COMPLIANCE WITH BUS TESTING REQUIREMENT

This certification applies to contracts for the purchase or lease of any bus model that is new or has any major change in configuration or components to be acquired or leased. Offers that do not include this completed certification, if applicable, will be rejected as nonresponsive.

The Proposer certifies that the bus was tested at the Bus Testing Facility and that the bus received a passing test score as required by 49 CFR Part 665. The applicant has received or will receive the appropriate full Bus Testing Report and any applicable partial testing reports before final acceptance of the first vehicle.

The Proposer 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 Proposer understands that FTA may suspend or debar a manufacturer under the procedures in 49 CFR Part 29.

The Proposer certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification. In addition, the Proposer understands and agrees that the provisions of 31 U.S.C. §§ 3801 et al. are applicable to this certification.

Company: _____

Name: _____

Title: _____

Signature: _____

Date: _____

**TRANSIT VEHICLE MANUFACTURER DISADVANTAGED BUSINESS
ENTERPRISE CERTIFICATION**

This certificate applies to contracts for the purchase of rolling stock. Offers that do not include this completed certification, if applicable, will be rejected as nonresponsive.

The Proposer, a Transit Vehicle Manufacturer, hereby certifies that it has complied with the requirements of 49 CFR § 26.49 by submitting an annual DBE goal to the Federal Transit Administration (FTA). The goal has either been **approved** or **is pending approval** by FTA.

The Proposer certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification. In addition, the Proposer understands and agrees that the provisions of 31 U.S.C. §§ 3801 et al. are applicable to this certification.

Company: _____

Name: _____

Title: _____

Signature: _____

Date: _____

FEDERAL MOTOR VEHICLE SAFETY STANDARDS CERTIFICATION

This certificate applies to contracts for the purchase of rolling stock. Offers that do not include this completed certification, if applicable, will be rejected as nonresponsive.

The Proposer certifies that it shall submit, if awarded the Contract: (1) the manufacturer’s FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS; or
(2) the manufacturer’s certified statement that the contracted buses will not be subject to FMVSS regulations.

The Proposer certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification. In addition, the Proposer understands and agrees that the provisions of 31 U.S.C. §§ 3801 et al. are applicable to this certification.

Company: _____

Name: _____

Title: _____

Signature: _____

Date: _____

TAX LIABILITY CERTIFICATION

This certificate applies to all contracts. Offers that do not include this completed certification will be rejected as nonresponsive.

The Proposer certifies that:

- 1. It has no unpaid federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.
- 2. It has not been convicted of a felony criminal violation under any federal law within the preceding 24 months; and
- 3. It shall require that the language of this certification be included in the award documents for all subcontractors and material suppliers at all tiers, and that all subcontractors and material suppliers shall certify and disclose accordingly.

The Proposer certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification. In addition, the Proposer understands and agrees that the provisions of 31 U.S.C. §§ 3801 et al. are applicable to this certification.

Company: _____

Name: _____

Title: _____

Signature: _____

Date: _____

APPENDIX 4:

FEDERAL TRANSIT ADMINISTRATION PROCUREMENT CHECKLIST

City of Watertown



FTA PROCUREMENT GUIDANCE CHECKLIST

Grantee: City of Watertown, NY
Operator: Watertown CitiBus

Each FTA recipient is responsible for managing its programs and projects in compliance with applicable Federal requirements, and the FTA is responsible for ensuring that recipients comply with those requirements. This also applies to each subrecipient, under an FTA grant or cooperative agreement) that enters into contracts with other parties financed with FTA assistance. City of Watertown, as the Designated Recipient of FTA Section funds, must ensure that subrecipients of these funds also comply with those requirements. Each recipient and subrecipient must comply with applicable Federal laws and regulations including, but not limited to, Federal transit laws at 49 U.S.C. Chapter 53, FTA regulations, and other Federal laws and regulations that contain requirements applicable to FTA recipients and their FTA assisted procurements. The following process was developed to assist FTA funded recipients and subrecipients in complying with these federal requirements.

The Checklists on the following pages are intended to offer guidance through a procurement process when utilizing federal and state funding; it does not constitute full compliance and local procurement guidelines may supersede federal and state procedures.

Table of Contents:

STEP 1 – Complete Grantee Information Below

STEP 2 – Complete Solicitation Process to Be Used Below – *Use Rational for Method Procurement Form.*

STEP 3 – Solicitation Development and Submission Requirements

- Method 1 - Required Documentation (OGS Solicitation)
- Method 2 -Required Documentation (Non-Competitive Solicitation)
- Method 3 - Required Documentation (Competitive Solicitation)
- Method 4 - Required Documentation (PIGGYBACK Solicitation)
- Method 5 - Required Documentation (SOLE SOURCE Solicitation)
- Method 6 - Required Documentation (QUALIFICATION BASED - BROOKS ACT)

STEP 4 – Solicitation and Bid Opening Submission Requirements

STEP 5 – Award and Contract Administration Requirements

STEP 6 – Project Closeout and Reimbursement Requirements

“Exhibit I” - Checklist of Required Federal Clauses, Certifications & Other Recommended
Federal & Contract Requirements

“Exhibit II” - Written Record of Procurement History Best Practices

“Exhibit III” - Evaluation and Selection Criteria

“Exhibit IV” - Full and Open Competition

“Exhibit V” - Vendor Information Form

“Exhibit VI” - Guidance Concerning Good Faith Efforts

Procurement Management Master Checklist

City of Watertown

STEP 1 – Complete Grantee Information Below

Grantee: City of Watertown, NY CitiBus **Project ID: Date:** _____

PROCUREMENT TYPE		PROJECT DESCRIPTION
<input type="checkbox"/> Professional Services	<input type="checkbox"/> Operations/Management	
<input type="checkbox"/> Architectural	<input type="checkbox"/> Rolling Stock	
<input type="checkbox"/> Engineering	<input type="checkbox"/> Construction	
<input type="checkbox"/> Architectural & Engineering	<input type="checkbox"/> Material & Supplies	

City of Watertown Contact Person: _____
Has a Project Manager been assigned: Y/N If so, what is their name & position _____

STEP 2 – Complete Solicitation Process to Be Used Below

Solicitation Development (Choose the solicitation process used from categories below)

- NYSOGS Contract Solicitation**
(If the project is not an OGS solicitation select from the non-competitive process below or the competitive process to the right).

- Non-Competitive Solicitation** *Use if a projects cost threshold requires only the acquisition of quotes to satisfy competition.*

- Competitive Solicitation** (Select Below)
- Information for Bid (IFB)
 - Request For Proposal (RFP)
 - Piggyback
 - Sole Source
 - Qualification Based (Brooks Act)
 - Other _____

Based on your solicitation process selected above, continue to “STEP 3” below to assure the required documentation necessary to advance the project is developed, collected and submitted to Purchasing for review and approval.

Please Note:

It is required that an “Independent Cost Estimate” be performed prior to receiving bids or proposals to improve the reliability of forecasting costs. This can range from a budget estimate, previous purchases from NYS or other transit agencies to a complex estimate based on inspection and review.

STEP 3 – Solicitation Development and Submission Requirements

Select the “Method” of acquisition chosen above from the 6 methods below to determine necessary requirements to follow.

Method 1 - Required Documentation (NYSOGS Adult Bus Contract Solicitations Only) *all required documents are to be submitted to PURCHASING for review and approval prior to project advancement to be eligible for applicable funding.*

Requirement	Performed?		Requirement	Performed?
1 Obtain written approval from PURCHASING to purchase off of the NYSOGS Contract.	Yes No _	5	<u>Price/cost Analysis</u> – Perform a price or cost analysis to assure price is reasonable.	Yes No _
2 Contact desired NYSOGS vendor to develop technical specs and cost sheet and submit to PURCHASING for review and approval	Yes No _	6	<u>Copy of contract or purchase order</u> Submit a copy of contract or PO containing all federally required clauses and signed certifications.	Yes No _
3 <u>Excluded Parties List System (EPLS)</u> – Review the Excluded Parties List at, https://www.sam.gov/ to assure the contractor hasn’t been declared ineligible from receiving Federal contracts.	Yes No _	7	Was written approval received from PURCHASING to proceed?	Yes No __
4 Review FTA’s TVM website prior to award to verify TVM Certification. Include a printout of the website page (Rolling Stock Procurements only) (http://www.fta.dot.gov/civilrights/12891.html)	Yes No _ N/A__	8	Develop a Record of Procurement History" to maintain details of a procurement history (see Exhibit II),	Yes No __
FOR PURCHASING USE ONLY				
Enter Milestones in database Yes No				

Continue to **“STEP 5 – Award and Contract Administration Requirements”**

Method 2 -Required Documentation (Non-Competitive Solicitation) all required documents are to be submitted to PURCHASING for review and approval prior to project advancement to be eligible for applicable funding. *(If you are NOT purchasing via the “Non-Competitive Solicitation” process please skip this section and move to the appropriate section above or below).*

- 1) Was an Independent Cost Estimate Performed (required)? Yes ___ No ___
- 2) Search the DBE directory to foster small business participation. (Perform search at: <https://www.dot.ny.gov/main/business-center/civil-rights/ucp-directory>) Was this performed? Yes ___ No ___
- 3) Obtain and submit three written quotes to PURCHASING, with evidence of a National and DBE search, for review and approval to purchase products or services. Was this performed? Yes ___ No ___
- 4) Was written notice of approval received from PURCHASING to proceed with the project solicitation? Yes ___ No ___
- 5) A "Written Record of Procurement History" is required of grantees to maintain details of a procurement history (see Exhibit II), was this file created? Yes ___ No ___
- 6) Enter Milestones in database

FOR PURCHASING USE ONLY	Yes	No
-------------------------	-----	----
- 7) Continue to **“STEP 4 (question 8) – Solicitation and Bid Opening Submission Requirements”**

Method 3 - Required Documentation (Competitive Solicitation) all required documents are to be submitted to PURCHASING for review and approval prior to project advancement to be eligible for applicable funding. *(If you are NOT purchasing via the “Competitive Solicitation” process skip this section and move to the appropriate section above or below).*

- 1) Was an Independent Cost Estimate Performed (required)? Yes ___ No ___
- 2) Submit final version of Solicitation and Specification Development Package to PURCHASING for review and approval prior to project advancement

The solicitation package should contain at minimum the following content

- a) Project Scope and Technical Specifications Yes ___ No ___
- b) Written Standards of Conduct and Conflicts of Interest Yes ___ No ___
- c) Contract Term Limitations (e.g. 5yr limit for Rolling Stock contracts) Yes ___ No ___
- d) Evaluation and Selection Criteria, (see Exhibit III) Yes ___ No ___
- e) Include written DBE Requirements to foster small business participation. Yes ___ No ___
Search the NY State Unified Certification Program to assess qualified DBE’s to send a solicitation too, at <https://www.dot.ny.gov/main/business-center/civil-rights/ucp-directory>
- f) Assignability Rights Yes ___ No ___
- g) Protest and Appeals Process Yes ___ No ___
- h) Model Contract Yes ___ No ___

Federal Requirements

- Are required Federal Clauses and Certification attached? Yes ___ No ___

One of the principles of contracting with Federal funds received directly or indirectly from FTA is a recognition that, as a condition of receiving the funds, certain specific Federal requirements must be met not only by the recipient of the funds (the grantee) but also by sub recipients and a grantee’s third party contractors. The Federal requirements to be met by the grantee’s third party contractors will be defined by the clauses and certifications included in the grantee’s third party contracts. See “Exhibit I” for comprehensive checklist of required federal clauses & certifications.

State Requirements

- Are required State Clauses and Certification attached? Yes ___ No ___

Procurements utilizing New York State funds must contain applicable State clauses and certifications. PURCHASING will provide the latest requirements to the grantee for inclusion in the solicitation package.

- 3) Was the final version of the Solicitation and Specification Development Package submitted to PURCHASING for review and approval? Yes ___ No ___
- 4) Was written notice of approval received from PURCHASING to proceed with the project solicitation? Yes ___ No ___
- 5) A "Written Record of Procurement History" is required of grantees to maintain details of a procurement history (see Exhibit II), was this file created? Yes ___ No ___

6) Enter Milestones in database

FOR PURCHASING USE ONLY Yes No

7) Continue to **“STEP 4 – Solicitation and Bid Opening Submission Requirements”**

Method 4 - Required Documentation (PIGGYBACK Solicitation) *Your Agency may be able to take advantage of existing contracts awarded by other governmental entities for goods/services which you currently need. This practice is called “piggybacking.” Required documents are to be submitted to PURCHASING for review and approval prior to project advancement to be eligible for applicable funding. (If you are NOT purchasing via the “PIGGYBACK” process please skip this section and move to the appropriate section above or below).*

- 1) Was an Independent Cost Estimate Performed (required)? Yes ___ No ___
- 2) Request in writing to the contracting agency the right to piggyback of the existing contract. Was a written request sent to the contracting agency? Yes ___ No ___
- 3) Obtain written approval from contracting agency for rights to piggyback of the existing contract. Was written approval received from contracting agency? Yes ___ No ___
- 4) Obtain and review from original contracting agency, the original contract, and review for compliance with federal procurement requirements as stated below.
 - a) Was Procurement Competitively Procured? Yes ___ No ___
 - b) Have you obtained a copy of the contract and the solicitation document, including the specifications and any Buy America requirements? Yes ___ No ___
 - c) Does the solicitation contain an express "assignability" clause that provides for the assignment of the specified deliverables? Yes ___ No ___
 - d) Did it include the signed "certifications" required? See “Exhibit 1”. Yes ___ No ___
 - e) Did it contain the clauses required by FTA and other Federal regulations? See “Exhibit 1”. Yes ___ No ___
 - f) Were the piggyback quantities (including indefinite quantity) included in the original solicitation; and were they evaluated as part of the contract award decision? Yes ___ No ___
 - g) If an indefinite quantity contract, did the original solicitation/contract contain minimum and maximum quantity/value, and represent the foreseeable needs? Yes ___ No ___
 - h) If this piggybacking action represents the exercise of an option, is it still valid? Yes ___ No ___
 - i) Does State law allow for the procedures used by original contracting agency? Yes ___ No ___
 - j) Was a cost/price analysis performed by the original contracting agency? Yes ___ No ___
 - k) Does the contract meet FTA term limitations (i.e.: 5yr for rolling stock)? Yes ___ No ___
 - l) Was there a proper evaluation of the bids or proposals? Yes ___ No ___
 - m) If changes are required to deliverables, are they within scope of the contract. Yes ___ No ___ N/A ___
- 5) Was a copy of the original contract obtained? Yes ___ No ___
- 6) Were you able to answer yes or N/A to the 13 points of number 4 above? Yes ___ No ___
- 7) Have you checked SAM.GOV and any “Excluded Parties List System” (EPLS) to assure the contractor hasn’t been declared ineligible from receiving Federal contracts? Yes ___ No ___
- 8) All piggyback acquisitions require a new municipal/vendor contract be established, including the required federal clauses and certifications. Is there a new municipal/vendor contract? Yes ___ No ___
- 9) Was there a current “Price/Cost Analysis performed? Yes ___ No ___
- 10) Was new “Buy America” pre-award/post-delivery audits done, if applicable, to ensure nothing has changed since the original award? Yes ___ No ___ N/A ___
- 11) Was the full draft procurement package forwarded to PURCHASING and was written approval received from PURCHASING to proceed? Yes ___ No ___
- 12) A "Written Record of Procurement History" is required of grantees to maintain details of a procurement history (see Exhibit II), was this file created? Yes ___ No ___

13) Enter Milestones in database

FOR PURCHASING USE ONLY Yes No

14) Continue to **“STEP 4 – Solicitation and Bid Opening Submission Requirements”**

Method 5 - Required Documentation (SOLE SOURCE Solicitation) *When the recipient requires supplies or services available from only one source, and no other supplies or services will satisfy its requirements, the recipient may make a sole source award. Subsequently, when the recipient requires an existing contractor/worker to make a change to its contract that is beyond the scope of that contract, the recipient has made a sole source award. These scenarios must be justified in writing and supported with evaluation of continuing best value.*

The determination of unique capability or availability of property or services from one source will be a consideration if one of the conditions described below are present and justified.

CONDITIONS:

1. **Unique or Innovative Concept.** The offeror demonstrates a unique or innovative concept or capability not available from another source. Unique or innovative concept means a new, novel, or changed concept, approach, or method that is the product of original thinking, and has not in the past been available to the recipient from another source.
2. **Patents or Restricted Data Rights.** Patent or data rights restrictions preclude competition.
3. **Substantial Duplication Costs.** In the case of a follow-on contract for the continued development or production of highly specialized services, when it is likely that award to another contractor would result in substantial duplication of costs that are not expected to be recovered through competition.
4. **Unacceptable Delay.** In the case of a follow-on contract for the continued development or production of a highly specialized service, when it is likely that award to another contractor would result in unacceptable delays in fulfilling the recipient’s needs.

Sole Source Justification Checklist

The development of a Sole Source justification should be well documented and have several supporting components to it and have met one or more of the above conditions.

Justification should contain at minimum the following checklist credentials:

- Justification** – Why items/services to be purchased or performed are available only from a single source.
- Business Rational** – Reason for acquiring items or services and their applicability to the project.
- Alternative Evaluation** – Narrative of sole source preference verses performing a re-solicitation and award.
- Cost/Price Analysis** – A cost/price analysis is necessary for all sole source procurements to assure continued best value is being sought.
- Reasonableness of Price** – Narrative of reasonable of price, demonstrating the level of work being performed is a prudent use of resources.
- Certification** – Administrative sign-off on the justification in support of all documentation having been reviewed and approved.
- Scope of Services** – Attach a current “Scope of Services” pertaining to the sole source award.

- | | | | | |
|---|--|-------------------------|-----|----|
| 1) Has at least one (1) of the four (4) conditions above been met? | Yes ___ No ___ | | | |
| 2) Has a justification been submitted to PURCHASING for review? | Yes ___ No ___ | | | |
| 3) Was written approval received from PURCHASING to proceed? | Yes ___ No ___ | | | |
| 4) A "Written Record of Procurement History" is required of grantees to maintain details of a procurement history (see Exhibit II), <u>was this file created?</u> | Yes ___ No ___ | | | |
| 5) Enter Milestones in database | <table border="1" style="display: inline-table; border-collapse: collapse;"> <tr> <td style="padding: 2px;">FOR PURCHASING USE ONLY</td> <td style="padding: 2px;">Yes</td> <td style="padding: 2px;">No</td> </tr> </table> | FOR PURCHASING USE ONLY | Yes | No |
| FOR PURCHASING USE ONLY | Yes | No | | |

6) Continue to **“STEP 4 – Solicitation and Bid Opening Submission Requirements”**

Method 6 - Required Documentation (QUALIFICATION BASED - BROOKS ACT)

For applicable projects related to or leading to construction, an FTA recipient must use the qualifications-based procurement procedures (Brooks Act procedures) when contracting for A&E services and other services including program and construction management, feasibility studies, preliminary engineering, design, architectural, surveying, mapping, or related services.

Not all projects involving construction require qualifications-based procurement procedures such as: end products used in construction, design of message signs, signals, movable barriers, intelligent transportation system (ITS) projects, and actual construction. Whether qualifications-based procurement procedures are necessary depends on the actual services.

Qualifications-Based Procurement Procedures - The following procedures apply to qualifications-based procurements:

1. Qualifications - Unlike other two-step procurement procedures in which price is an evaluation factor, an offeror’s qualifications are evaluated to determine contract award.
2. Price - Price is excluded as an evaluation factor.
3. Most Qualified - Negotiations are first conducted with only the most qualified offeror.
4. Next Most Qualified - Only after failing to agree on a fair and reasonable price may negotiations be conducted with the next most qualified offeror.

Applicability to Design-Bid-Build and Design-Build Procurements

Design-Bid-Build - The design-bid-build procurement method requires separate contracts for design services and for construction.

1. Design Services - For design services, the recipient must use qualifications-based procurement procedures, in compliance with applicable Federal, State and local law.
2. Construction - Because the recipient may not use qualifications-based procurement procedures for the actual construction, alteration or repair of real property, the recipient generally must use competitive procedures for the construction.

Design-Build - The design-build procurement method consists of contracting for design and construction simultaneously with contract award to a single contractor or team.

1. Procurement Method Determined by Value - First separate out the various activities into design or construction costs, and then calculate the estimated total value of each.
2. Construction Predominant - When construction costs are predominant use competitive negotiations or sealed bids for the entire procurement unless determines otherwise in writing.
3. Design Services Predominant - When design costs are predominant use qualifications-based procurements for the entire procurement.

4. Enter Milestones in database

FOR PURCHASING USE ONLY	Yes	No
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5. Continue to **“STEP 4 – Solicitation and Bid Opening Submission Requirements”**

STEP 4 – Solicitation and Bid Opening Submission Requirements

The solicitation and BID Opening phase encompasses the Advertising, Opening, Review, Analysis, and the Selection processes of competitive and non-competitive procurements. Detailed and comprehensive execution of this phase can help avoid conflicts

that could result in delay or possibly even a re-bid of the entire project. Opportunity for clarification of Solicitation Documents may be necessary. A process to address any potential questions should be offered well in advance of the submission deadline.

Examination of all proposals received for responsiveness to all corresponding instructions, forms, terms and specifications contained in the solicitation is necessary to provide a proper evaluation. Failure to do so may affect the evaluation of the Bid.

The Checklist below is intended to offer guidance through the opening and review phase if a solicitation/bid was performed utilizing federal funding, it does not constitute full compliance. State and local procurement guidelines may supersede federal practices and should be reviewed for further compliance requirements.

All required documents are to be submitted to PURCHASING for review and approval prior to project advancement to be eligible for applicable funding. If your purchase is off the NY State OGS Adult Bus Contract please skip to Step 5, all other NY State OGS purchases must complete all questions.

- 1) Advertisement of the solicitation without geographic preference, except in A/E under certain circumstances is required.
*PURCHASING will require documented proof this was performed.
For further information on geographic preference please see Exhibit IV.
Was this project advertised without geographic preference?* Yes ___ No ___ N/A ___
- 2) Approved Equals/Request for Clarifications process. *See Exhibit IV for more on approved equal's process. Was an approved equal's process documented?* Yes ___ No ___ N/A ___
- 3) Pre-Bid Meeting - Communicating with potential contractors through pre-bid conferences is a good way to control costs and minimize claims. The grantee "should" post and make the materials distributed and discussed at the conference available to the potential offeror, upon request.
*Was a Pre-Bid Meeting held?
If so, was all material and discussions posted and made available?* Yes ___ No ___ N/A ___
Yes ___ No ___
- 4) Bid opening and recording - The opening of bids are public events and open to the general public. The bids are opened at a specified time and recorded on a document called an Abstract of Bids and this document is available for public inspection after completion. *Was a Bid Opening and Recording performed?* Yes ___ No ___ N/A ___
- 5) Review of all request for proposals in accordance with selection criteria –*Were all proposals evaluated based on established Evaluation and Selection Criteria (see Exhibit III) set forth in the solicitation for responsiveness?* Yes ___ No ___ N/A ___
- 6) Disadvantaged Business Enterprises opportunities (DBE)- *Were all proposals evaluated to determine if a "Good Faith Effort" to involve DBE's and documentation provided? (See Exhibit VI)* Yes ___ No ___ N/A ___
- 7) Tabulation of Bids/Proposals – Document in a tabular format all bids/proposals including selection criteria, responsibility determination and grading. *Was the process of tabulating all bid/proposals performed?* Yes ___ No ___ N/A ___
- 8) Cost or Price Analysis - A cost or price analysis is required for every contract and every change order so that the essential objective of a reasonable price is assured. *Was a cost/price analysis performed?* Yes ___ No ___
- 9) SAMS.GOV or any Excluded Parties List System (EPLS) – Review of the Excluded Parties List at, <https://www.sam.gov/> must be performed for all solicitations to assure the contractor hasn't been declared ineligible from receiving Federal contracts.
Was this process performed and a copy printed? Yes ___ No ___

Continued: Solicitation and Bid Opening Submission Requirements

- 10) Review FTA's TVM website (<http://www.fta.dot.gov/civilrights/12891.html>) prior to bid award to verify TVM Certification. Include a print out of the website page with bid documentation. Was this process performed and a copy printed and submitted? Yes ___ No ___ N/A ___

- 11) Award Selection and Justification - The potential winning vendor selected, based on evaluation criteria to offer a contract to must be supported with documented justification explaining the decision. If procurement was low bid, provide justification if award is to be to someone other than lowest bidder. *Was this process performed?* Yes ___ No ___
- 12) Formal Protests - Were any filed? (if your answer is no move onto number 13) Yes ___ No ___
If you answered yes, has PURCHASING received all documentation? Yes ___ No ___
- 13) Draft copy of proposed Contract – A draft copy of a contract should be developed, containing all federally required clauses and certifications for review prior to actual contract being entering into. *Was this process performed?* Yes ___ No ___
- 14) Provide copies of all documentation gathered and prepared in steps 1-13 above to PURCHASING for review and approval. Proceeding to contract award prior to approval can render the project ineligible for funding. Has all documentation been submitted to PURCHASING for review? Yes ___ No ___
- 15) Was written approval received from PURCHASING to proceed? Yes ___ No ___
- 16) Has all documentation gathered above been placed in the "Written Record of Procurement History" files? Yes ___ No ___
- 17) Enter Milestones in database

FOR PURCHASING USE ONLY	Yes	No
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- 18) Continue to **“STEP 5 – Award and Contract Administration Requirements”**

STEP 5 – Award and Contract Administration Requirements

The Project Award and Contract Administration phase encompasses the contract development, contract award, and order to precede portion of procurement. Clarity of work task expectations spelled out within the contract can help avoid conflicts that could result in delay of the project. Some example expectations include: expected milestones and benchmarks, processes for change orders, and chain of command to be followed.

The Checklist below is intended to offer guidance through the Award and Contract Administration phase if a solicitation/bid was performed utilizing federal funding, it does not constitute full compliance. State and local procurement guidelines may supersede federal practices and should be reviewed for further compliance requirements.

- 1) Award contract, adhering to applicable contract term limitations.
Was a correspondence for contract award performed? Yes ___ No ___
- 2) Finalize Contract w/appropriate clauses & certifications. Was this Performed? Yes ___ No ___
- 3) Complete Background Check and Secure Bonds and Insurance as required. Was this Performed?
– *Utilize the Determination of Responsibility Form* Yes ___ No ___ N/A ___
- 4) Develop milestones and closeout procedures. Was this Performed? Yes ___ No ___
- 5) Awarded Vendor Information – Provide information on “Exhibit V” “Vendor Information Form” including name, address, phone, fax, email, web, Federal ID, DUNS number, contract amount, force account and DBE/WMBE status. Was “Exhibit” V submitted to PURCHASING for review? Yes ___ No ___
- 6) Submitted documentation to PURCHASING for review and approval. Yes ___ No ___
- 7) Written order to Proceed, upon approval from PURCHASING. Was this Performed? Yes ___ No ___
- 8) Change Orders will require approval before project can proceed further.
a. *Were there any “Change Orders”?* Yes ___ No ___
b. *Did all change orders receive approval to proceed in writing?* Yes ___ No ___
c. *Did a Price/Cost Analysis accompany all change orders?* Yes ___ No ___
- 9) Submit all documentation gathered above to PURCHASING and place in the "Written Record of Procurement History" file? Yes ___ No ___
- 10) Project management plan Yes ___ No ___
- 11) Enter Vendor data and Milestones in database

FOR PURCHASING USE ONLY	Yes	No
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- 12) Continue to **“STEP 6 – Project Closeout and Reimbursement Requirements”**

STEP 6 – Project Closeout and Reimbursement Requirements

A completed contract is one that is both *physically* and *administratively* complete. The eventual request for reimbursement will hinge on close-out having occurred in its entirety. A contract is physically complete only after all deliverable items and services called for under the contract have been delivered and accepted by the grantee. A contract is administratively complete when all

payments have been made and all administrative actions accomplished. The steps that must be completed to close out a contract will depend upon the type and/or nature of the contract.

The closeout of routine purchase orders or contracts will need to ensure that all acquisitions have been inspected and accepted in conformance with the purchase order/contract specifications. An inspection/acceptance form should be in the file attesting to the contractor's delivery of all contract end items, including any descriptive literature or warranty documentation. There must also be documentation attesting to final payment by the accounts payable department.

Non-routine contracts for services, construction, rolling stock, etc. - Contracts for personal services, complex equipment, construction, and other one-of-kind items will require a number of steps to affect an administrative closeout. Major elements of the closeout process, and related documentation, might include:

- | | | | | |
|---|--|-------------------------|-----|----|
| 1. Has resolution of all contract changes, claims, and final quantities to be delivered taken place? | Yes ___ No ___ | | | |
| 2. Has settlement of all prime and subcontracts as well as any retainage taken place? | Yes ___ No ___ | | | |
| 3. Have all post-delivery inspections been performed and documented as acceptable? | Yes ___ No ___ N/A ___ | | | |
| 4. Have all post-delivery certifications, as applicable, been signed, received and documented, including post-delivery buy America requirements? | Yes ___ No ___ N/A ___ | | | |
| 5. Did submittal of all required documentation (final reports, lease & service agreements, maintenance policy and plans, etc.) take place? | Yes ___ No ___ | | | |
| 6. Have all cancelled checks, electronic transfers, project invoice(s), signed agreements and certifications been submitted to PURCHASING for review and final approval of project close-out? | Yes ___ No ___ | | | |
| 7. Enter Milestones in database | <table border="1" style="display: inline-table; border-collapse: collapse;"> <tr> <td style="padding: 2px;">FOR PURCHASING USE ONLY</td> <td style="padding: 2px;">Yes</td> <td style="padding: 2px;">No</td> </tr> </table> | FOR PURCHASING USE ONLY | Yes | No |
| FOR PURCHASING USE ONLY | Yes | No | | |

Important information:

Record Retention - The Recipient agrees to maintain intact and readily accessible all data, documents, reports, records, contracts, and supporting materials relating to the Project as the Federal Government may require during the course of the Project and for three years thereafter.

Access to Records of Recipients and Subrecipients - Upon request, the Recipient agrees to permit and require its Subrecipients to permit the Secretary of Transportation, the Comptroller General of the United States, and, if appropriate, the State, or their authorized representatives, to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts of the Recipient and its Subrecipient pertaining to the Project.

Project Closeout - Project closeout does not alter these reporting and record retention requirements.

“Exhibit II”

Written Record of Procurement History Best Practices

Many procurement reviews may find few problems with the fundamental decisions leading to the results of procurement but may reach negative conclusions and unwanted recommendations due to well considered decisions not being well documented. Stating briefly why a decision was made may help you and your agency, as well as satisfy the requirements of applicable third-party contracting requirements.

Where appropriate, the procurement documentation file should contain¹:

- Purchase request, acquisition planning information, and other pre-solicitation documents;
- Evidence of availability of funds;
- Rationale for the method of procurement (negotiations, formal advertising);
- List of sources solicited;
- Independent cost estimate;
- Statement of work/scope of services;
- Copies of published notices of proposed contract action;
- Copy of the solicitation (without geographic preference), all addenda, and amendments;
- Liquidated damages determination;
- An abstract of each offer or quote;
- Contractor's contingent fee representation and other certifications and representations;
- Source selection documentation;
- Contracting Officer's determination of contractor responsiveness and responsibility; Background check completed and Determination of Responsibility Form Completed.
- Cost or pricing data;
- Determination that price is fair and reasonable including an analysis of the cost and price data, required internal approvals for award;
- Notice of award;
- Notice to unsuccessful bidders or offerors and record of any debriefing;
- Record of any protest;
- Bid, Performance, Payment, or other bond documents, and notices to sureties;
- Required insurance documents, if any; and
- Notice to proceed.

Purchase order forms (electronic or manual) and standard files for small purchases can be designed to make the recording of most of the relevant data for small purchases automatic. Bid and proposal files, particularly if you use sealed bids under \$100,000 can also be standardized to facilitate recording the appropriate data. For larger procurements, there are often memoranda or correspondence that, if assembled in the file, addresses many of the key issues.

The procurement file and the contract administration file can be coordinated by standard practice, so that nothing between bid opening and notice of award is omitted.

¹ FTA Best Practices Procurement Manual, 2.4 Source Selection Plan, 2.4.1 (file documentation)

“Exhibit III”
Evaluation and Selection Criteria

PURPOSE

The required feature that principally distinguishes an RFP from an IFB is the listing of evaluation factors. These factors typically include responsibility factors (financial, human, and physical capacity to perform), and technical factors (ability to perform based on information submitted and the relative qualifications of the proposer's personnel).

Some criteria also list order of importance, weighting and the scoring methods use in selection. For instance, in the case of Qualification-Based procurements the elimination of cost as being a deciding factor emphasized the importance of writing to technical, educational and experience skillsets.

The purposes for disclosing of the evaluation process are so that:

- Offerors can more accurately respond to your needs; and
- Clearly present the information you need to conduct your evaluation; and

The competitive proposal process involves a subjective evaluation process and discussions that are typically confidential. Acceptance by the public and dissatisfied offerors is more likely if the evaluation and selection process is well documented.

The following is a listing of elements commonly found in the competitive proposal method of procurement.

- 1) *Technical and cost proposal may be requested under separate cover so that they may be evaluated, frequently by separate staff. Where the appearance of technical objectivity is important, it is a better practice to initially evaluate the technical proposals without knowledge of costs, so that an objective and impartial evaluation can be obtained;*
- 2) *The evaluation factors² to be considered (past performance, technical criteria, key personnel, education and experience, cost, and relative importance) in the award are identified in the RFP along with the relative importance of each. While this requires only the ranking of the factors without quantifying the importance or describing the process for applying the factors to proposals, some agencies disclose their selection process in detail. (Disclosing the specific weights and scoring processes may encourage proposers to distort their proposals, and may strengthen the disappointed proposer's attack on the agency decision);*
- 3) *Provide a full description of the process to be undertaken to guide proposers in a strong understanding your needs. This can also strengthen the impartiality of your evaluation team, encourages openness in a negotiation process, and encourage.*
- 4) *Notify prospective offerors that award may be made on the basis of initial proposals submitted without any negotiations or discussions. This clearly states the initial proposal should be their best effort.*

² FTA Best Practices Procurement Manual, 4.5.2 Evaluation of Proposals

“Exhibit IV”
Full and Open Competition

REQUIREMENT

The Federal Transit Administration requires all procurements to be conducted in a manner providing for full and open competition. This requirement limits the use of noncompetitive contract awards to those situations when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and at least one of several specifically named circumstances are present. Thus, contracts with a value of more than \$100,000 shall be awarded by sealed bid or competitive negotiation unless there is an explicit exception.

The FTA considers the following practices to be restrictive of competition³:

- Unreasonable requirements placed on firms in order for them to qualify to do business;
- Unnecessary experience and excessive bonding requirements;
- Noncompetitive pricing practices between firms or between affiliated companies;
- Noncompetitive awards to any person or firm on retainer contracts;
- Restrictive use of brand names⁴;
- Any arbitrary action in the procurement process;
- Geographic preferences⁵;
- Organizational Conflicts of Interest; and
- Prohibitive or restrictive type contracts.

⁴Brand Names - A name of a product or service that is limited to the product or service produced or controlled by one private entity or by a closed group of private entities. Brand names may include trademarks, manufacturer names, or model names or numbers that are associated with only one manufacturer. The FTA considers use of brand names restrictive without opportunity for an Approved Equals process (an item or service which has been approved by the procuring agency as equal to the brand name item originally specified).

⁵Prohibition Against Geographic Preferences - Grantees shall conduct procurements in a manner that prohibits the use of statutory or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. This does not preempt State licensing laws. However, geographic location may be a selection criterion in procurements for architectural and engineering (A&E) services provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

³ Federal Transit Administration (FTA) Federal Circular 4220.1F, Chapter VI(2)

“Exhibit V”
Vendor Information Form

INSTRUCTIONS FOR COMPLETING THE VENDOR INFORMATION FORM

After selection of the vendor chosen to award the contract to, please complete the "Vendor Information Form" below and attach documentation of the “Good Faith Efforts” performed to engage DBE’s and WMBE’s in the solicitation. Once complete please return to your PURCHASING procurement representative for processing. Failure to return this form complete, with documentation of the “Good Faith Efforts, will delay approval to award the contract.

Step 1 - Complete the form

Enter the vendor’s information on the form below. All information must be provided before approval to award will be given. If force account is not used enter \$0. Incomplete forms will be returned.

Step 2 – Form Submission

After completing this form, please submit by mail directly to:

Office of Integrated Modal Services
 Public Transportation Bureau – Procurement Section
 50 Wolf Road, POD 54
 Albany, NY 12232

If by Fax: (518) 485-7563, or you may email the form directly to your procurement representative.

Vendor Information Form

VENDOR NAME	Empire Bus Sales LLC				
VENDOR ADDRESS	3050 Lake Road				
CITY	Horseheads	STATE	NY	ZIP CODE	14845
PHONE	607-767-4295		FAX	607-733-4824	
EMAIL ADDRESS	rm@empirebus.com		WEB ADDRESS	Empirebus.com	
FEDERAL ID NUMBER	20-4684842		DUNS NUMBER		
CONTRACT AMOUNT	\$442,709.00		FORCE ACCOUNT	\$	
DBE STATUS	YES <input type="checkbox"/>	NO <input type="checkbox"/>	WMBE STATUS	YES <input type="checkbox"/>	NO <input type="checkbox"/>
GOOD FAITH EFFORTS REQUIRED <i>(Attach required documentation to this form)</i>	Documentation of the good faith efforts performed to reach out to DBE’s and WMBE’s is required regardless of awarded. Please use “Exhibit VI” below for guidance in providing this required documentation. Was this performed?			YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>

“Exhibit VI”

Guidance Concerning Good Faith Efforts

Good Faith Efforts proceduresⁱ must be documented on contracts utilizing federal funds that have an established DBE goal. Award requires a bidder/offeror be able to show good faith efforts were performed to meet the goal. A good faith effort is defined as one where the bidder:

1. *Documents that it has obtained enough DBE participation to meet the goal; or*
2. *Documents adequate good faith efforts, even though it did not meet the goal.*

This appendix “Guidance Concerning Good Faith Efforts” provides grantees with suggested types of actions they should perform/document to demonstrate good faith efforts.

These efforts must be active steps, which could reasonably be expected to lead to sufficient DBE participation to meet the contract DBE participation goal. Good Faith Efforts require that the bidder consider all qualified DBEs, who express an interest in performing work under the contract. This means that the bidder cannot reject a DBE as unqualified unless the bidder has sound reasons based on a thorough investigation of the DBE’s capabilities. Further, the DBE’s standing within its industry, membership in specific groups, organizations or associations and political or social affiliation (for example, union vs. non-union employee status) is not legitimate causes for the rejection or non-solicitation of bids in the Contractor’s efforts to meet the contract DBE participation goal.

The following, which is not all inclusive, list types of actions which indicate good faith efforts on the part of a bidder to meet the DBE goal. The extent and type of actions required will vary depending on such things as industry practice; the time available for submitting a bid and the type of contract.

1. *Attendance at a pre-bid meeting, if any, scheduled to inform DBEs of subcontracting opportunities under a given solicitation.*
2. *Advertisement in general circulation media, trade association publications, and minority-focus media.*
3. *Written notification to capable DBEs that their interest in the contract is solicited.*
4. *Documentation of efforts to negotiate with DBEs for specific sub-contracts including at a minimum:*
 - a. *The names, addresses, and telephone numbers of DBEs contacted and the date.*
 - b. *A description of the information provided to DBEs.*
 - c. *A statement explaining why additional agreements with DBEs were not reached.*
5. *For DBE bidders contacted but rejected as unqualified, the reason for that conclusion.*
6. *Documentation of efforts made to assist the DBEs contacted that needed assistance in obtaining bonding or insurance required by the bidder.*
7. *Documentation of efforts to utilize the services of small business organizations, community and contractor groups to locate qualified DBEs.*
8. *Documentation that the bidder has broken out contract work items into economically feasible units in fields where there are available DBE firms to perform the work.*
9. *Evidence that adequate information was provided to DBEs about the plans, specifications and requirements of the contract, and that information was communicated in a timely manner.*
10. *Documentation of any efforts made to assist interested DBEs in obtaining necessary equipment, supplies, materials or related assistance or services.*

ⁱ Best Practices Procurement Manual, 7.3.5.4 “Good Faith Efforts to Meet Contract Goals”