

**REQUEST FOR PROPOSALS  
FOR  
Security Services at the Ground Transportation  
Center (GTC) and Courier Services**

**FARGO, NORTH DAKOTA**

**November 11, 2019**

**Proposals due:  
December 16, 2019 by 2:00 p.m. CDT**

Metro Transit Garage  
650 23<sup>rd</sup> Street North  
Fargo, North Dakota 58012

## **SECTION 1. SUBMISSION OF PROPOSAL**

### **1.1 REQUIRED COMPETITIVE PROCUREMENT PROPOSAL FORM**

The City of Fargo will employ the competitive procurement purchase process in the award of this offer. Offers shall be submitted in the Bid Proposal Form outlined in this RFP. Bidders are required to submit six (6) complete copies of their proposals. Each package shall be sealed, and shall bear the title of "Security Services at the Ground Transportation Center (GTC), and Courier Services for Paratransit & GTC Money Deposits", and shall reflect the vendor's name.

All information must be legible. Any and all corrections and/or erasures must be initialed. Authorized respondent must sign each proposal and required information must be provided. Expenses incurred in developing and submitting a proposal are borne entirely by proposer. Proposers will not include any such expenses as part of the price proposed in response to this RFP.

Before completing the Bid Proposal Form, Proposers should read the entire Request for Proposals (RFP) carefully to insure that any proposals submitted are responsive to this request. Particular attention should be made of the completion of all forms enclosed and submission of proposals in required format. Failure to provide all information requested herein will cause the proposal to be rejected as nonresponsive.

Proposals shall provide a concise delineation of the proposer's capability to satisfy the requirements of the RFP. A duly authorized officer of the company will sign each proposal.

Proposers are required to provide proof that your firm is bonded, secured, insured, and in possession of Worker's Compensation Insurance coverage for the City of Fargo, North Dakota.

### **1.2 PROPOSAL SECURITY**

No proposal will be considered by the City of Fargo to be responsive to this request unless accompanied by a bond executed by a surety company authorized to transact business in the State of North Dakota in an amount equal to five percent (5%) of the first year contract amount. The first year contract amount on which this shall be computed is the Fargo Transit total. Such surety will be retained by the City of Fargo if the successful proposer fails, neglects or refuses to execute the contract, or fails to commence service as required under the contract. The bond of the highest ranked proposer will be returned after the execution of the contract. The bond of the second highest ranked proposer will be returned after the execution of the contract with the successful proposer. The

bonds of all other proposers will be returned promptly after the award of the contract by the City of Fargo.

**1.3 PROJECTED SCHEDULE**

The following is a schedule of dates/deadlines that pertain to all proposals received:

**Note: Throughout this proposal, COB is “close of business” – this is 4:30 p.m. CDT (Central Daylight Time).**

November 11	Cities release RFP document; publish advertisement, notify private sector.
November 25 COB	Deadline for proposer’s submittal of written request for clarification or modification of the RFP.
December 2	City of Fargo’s response to written request for clarification or modification of the RFP and pre-bid conference.
December 2	Pre-bid conference to be held.
December 9 COB	Deadline for proposer’s submittal of written bid protests regarding the solicitation (RFP).
December 16	Deadline for receipt of sealed proposals by 2:00 p.m. CDT in the Metro Transit Garage, 650 23 <sup>rd</sup> Street North, Fargo, North Dakota 58102.
December 17- 24	City of Fargo reviews and evaluates proposals, interviews finalists.
December 24	Deadline for proposer’s submittal of written pre-award bid protests.
December 30	Fargo City Commission approval and award contract.
January 6	Fargo City Commission award of contract and notice to proceed issued.
January 13	Deadline for proposer’s submittal of written post-award protests.
January 20	City of Fargo response to post-award protests.
January 27	Deadline for proposer’s submittal of written appeal of post-award decision to appropriate City governing board.
January 27 – 30	Hold hearing of appeal of post-award decision with Fargo City Commission.
January 31	City of Fargo’s final written determination on appeal issued. All decisions regarding protests shall be considered final.
February 1	Successful proposer commences service.

**1.4 PRE-BID CONFERENCE**

The pre-bid conference is scheduled for December 2, 2019 at 9:30 a.m. at the Metro Transit Garage, 650 23<sup>rd</sup> St N Fargo, ND.

**1.5 ADDENDA, REQUESTS FOR MODIFICATION OR CLARIFICATION, PROTEST PROCEDURES**

**A. Addenda**

In the event that it becomes necessary to revise any part of this RFP, or if additional information is necessary to enable the Proposer to make an adequate interpretation of the provisions of this RFP, a written addendum to the RFP will be provided to each prospective proposer by mail or e-mail. Receipt of all addenda must be acknowledged by each prospective proposer as requested on the Bid Proposal Form; acknowledgements for email receipt of addenda will be done by recipient sending an email acknowledgement. Oral instructions by the City of Fargo representatives are not binding.

**B. Request for Modification or Clarification**

Requests for clarification or modification of this RFP must be in writing. The City of Fargo must receive any such request by **COB December 2, 2019**. Any request must be accompanied by all relevant information supporting the request for modification, interpretation, clarification or amendment of this solicitation.

Inquiries about Fargo-Moorhead Transit services and the Request for Proposal shall be directed to:

Matthew Peterson  
Assistant Transit Director  
City of Fargo  
650 23<sup>rd</sup> Street North  
Fargo, ND 58102  
TEL: (701) 476-6660  
FAX: (701) 241-8558  
mgpeterson@fargond.gov

or

Cole Swingen  
Transit Planner  
City of Fargo  
650 23<sup>rd</sup> Street North  
Fargo, ND 58102  
TEL: (701) 476-5989  
FAX: (701) 241-8558  
cswingen@fargond.gov

**C. Bid Protest Procedures**

1.0 General: Protests will be accepted from prospective bidders or offerors whose direct economic interest would be affected by the award of a contract or by failure to award a contract. The Fargo Assistant Transit Director will consider all protests or objections filed in a timely manner regarding the award of a contract, whether

submitted before or after award. All protests shall be in writing and shall be supported by sufficient information to enable the protest to be considered. A protest will not be considered if it is insufficiently supported or it is not received within the time limits specified herein. Protest submissions should be concise, logically arranged, and clearly state the ground for the protest. Protests must include at least the following information:

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

Protests should be sent via certified mail through the U.S. Postal Service to:

**City of Fargo**  
**Assistant Transit Director**  
**650 23<sup>rd</sup> Street North**  
**Fargo, ND 58102**

**City of Fargo**  
**Transit Planner**  
**650 23<sup>rd</sup> Street North**  
**Fargo, ND 58102**

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

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

## 2.0 Protests Before Award

2.1 Solicitation Phase: Protests concerning the solicitation must be submitted in writing by **COB December 9, 2019**. If the written protest is not received by the time specified, award may be made in the normal manner unless the Fargo Assistant Transit Director, upon investigation, find that remedial action is required. Oral protests not followed up by a written protest will be disregarded.

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

- 2.2 Pre-Award Phase: When a protest against the making of an award is received after receipt of bids or proposals but prior to award, **COB December 24, 2019**, the Fargo Assistant Transit Director may determine to withhold the award pending disposition of the protest. City of Fargo will provide a written response to each material issue raised in the written protest. Notice of a protest as well as City of Fargo's response will be provided to bidders/proposers who responded to the solicitation and are in line for the award of a contract.

Where a written protest against the making of an award is received by the time specified (**COB December 24, 2019**), an award will not be made unless City of Fargo determines that:

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

If award is made, the Fargo Assistant Transit Director will document the file to explain the need for an award and will give written notice of the decision to proceed with the award to the protestor and, as appropriate, to others concerned by October 27, 2019.

- 3.0 Protests After Award: A protest received by **COB January 19, 2020** shall be reviewed by the Fargo Assistant Transit Director and the Legal Department. The selected contractor will, in any event, be furnished with the notice of protest and the basis therefore. When it appears likely that an award may be invalidated and a delay in receiving the supplies or services is not prejudicial to City of Fargo's interest, the Fargo Assistant Transit Director may consider a mutual agreement with the contractor to suspend performance on a no-cost basis. A written response by the Fargo Assistant Transit Director will be issued by **COB January 26, 2020**.

- 4.0 Post-Award Appeals: Appeals must be sent in writing to the Fargo City Commission by **COB January 26, 2020**. The Fargo City Commission will schedule a hearing between January 27-30, 2020, where the appellant may be heard. The Fargo City Commission will issue City of Fargo a final written determination by **January 30, 2020**.

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

- 5.0 Determination of Interested Party: An interested party is an actual prospective bidder or offeror whose direct economic interest would be affected by award of a contract or failure to award a contract. This definition specifically excludes subcontractors and suppliers.

5.1 The ability to qualify as an actual or prospective bidder/proposer ends when the bid/proposal period ends.

5.2 The offer received from the protestor must be technically responsive.

5.3 The protestor must be the next in line to receive the award if the protested issues prevail.

5.4 If not next in line, the protestor must successfully challenge all intervening offers to establish next in line status.

- 6.0 Protests to FTA: Under certain limited circumstances, an interested party may protest to FTA the award of a contract pursuant to an FTA grant. FTA's review of any protest will be limited to alleged failure of City of Fargo to have or follow its written protest procedures or alleged failure to review a complaint or protest.

6.1 Time for Filing

6.1.1 An appeal to FTA must be received by FTA Region VIII **within five (5) working days** of the date the protestor learned or should have learned of an adverse decision by the grantee or other basis of appeal to FTA. Protests should be addressed to:

**U.S. Department of Transportation**

**Federal Transit Administration, Region VIII  
1961 Stout Street, Suite 13-301  
Denver, CO 80294**

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

6.2 Submission of Protest to FTA

6.2.1 A protestor must exhaust all administrative remedies with City of Fargo before pursuing a protest to FTA.

6.2.2 Protests to FTA should be sent to the FTA Regional or Headquarters Office. A concurrent copy of the protest must be sent to City of Fargo.

6.2.3 The protest filed with FTA shall:

- Include the name and address of the protestor.
- Identify City of Fargo and the number/title of the contract solicitation.
- Contain a statement of the grounds for the protest and any supporting documentation. This should detail the alleged failure of City of Fargo to have or follow its protest procedures or the alleged failure to review a complaint or protest.
- Include a copy of the local protest filed with City of Fargo and a copy of City of Fargo's decision, if any.

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

**1.6 SUBMISSION OF PROPOSAL**

The proposals will be clearly marked as Request for Proposal for Security Services at the Ground Transportation Center (GTC) and Courier Services for Paratransit & GTC Money Deposits.

**Proposals must be submitted no later than 2:00 p.m. Central Daylight Time on December 16, 2019, to the Metro Transit Garage, 650 23<sup>rd</sup> Street North, Fargo, ND 58102.**



Proposals received after this deadline shall not be considered and shall be returned unopened. Proposals may be withdrawn or modified prior to the proposal opening. All such transactions must be submitted in writing and received prior to the proposal opening.

**1.7 SELECTION CRITERIA**

The selection committee will review and analyze each response. The committee members will independently rate the proposal. Upon review, the committee may interview the selected firm or firms. They will then determine if they feel additional firms merit interviews. Upon completion of all interviews, using the evaluation form, the committee will then re-evaluate the firms. The firm that best meets the specification will be recommended to the Fargo City Commission. All evaluations will be signed by the evaluator and retained as part of the public official records. No proposals will be considered that do not meet mandatory elements.

There will not be a public opening since this is not a Low Bid Award but is instead a Request for Proposal. All proposals will be reviewed by the selection committee. Only after an award is made shall proposals be made public. If for any reason the City of Fargo elects to cancel the RFP any and all documents submitted shall not be made public.

**1. EVALUATION TABLE**

<b>EVALUATION</b>	Maximum Points	Score
Minimum Qualifications & Specifications	40	
Price	50	
References - Reliability & Service	10	
<b>TOTAL POINTS</b>	100	

\* *Price Evaluation Example:* The lowest proposed price will receive 50 points. The other proposers will receive points in direct proportion to the lowest price. For example, if the lowest total cost is \$100,000 and someone bid \$110,000, they would receive 45 points ( $10,000/100,000 = 10\%$ ,  $100\% - 10\% = 90\%$ ,  $90\% \times 50 = 45$  pts)

No proposals will be considered that do not meet mandatory elements.

**Prohibited Contact with Proposers:** Except as otherwise provided, oral communications between Evaluators and Proposers regarding procurement in progress is prohibited. Each Evaluation Panel member shall report any such communication, in writing to the RFP Administrators, who shall determine any appropriate remedial action.

**Permitted Contact with Proposers:** The Evaluation panel may conduct written communications, directly or indirectly, with the Proposers. In addition, the role of the Evaluation Panel may include formal interviews with the top choice(s).

### **NEGOTIATIONS**

The City of Fargo may undertake concurrent negotiations with all Proposers whose offers are within the competitive range after the detailed evaluation. The City of Fargo does, however, reserve the right to award a contract based on an original offer without any negotiations. The decision to award without negotiation may be made by the City of Fargo if, in their opinion, preliminary evaluation of the offers indicates that the best achievable and technically acceptable offer has been received.

Concurrent negotiations with all Proposers whose offers are within the competitive range may be conducted by the Evaluation Panel. The Evaluation Panel consists of the Fargo Transit Director, Fargo Assistant Transit Director, and Fargo Transit Planner.

Upon completion of negotiations with all Proposers within the competitive range, the offer that best meets the requirements of the specifications and ranks the highest evaluation score, earned by its offer based on evaluation criteria stated in Evaluation Criteria, will be recommended to the Fargo City Commission for award as the successful vendor. ***The City of Fargo will make the award to the responsible Proposer whose proposal is most advantageous.***

## **1.8 CONDITIONS FOR RESPONDING**

### **A. Scope**

The following terms and conditions shall prevail unless otherwise modified by the City of Fargo within this RFP. The City of Fargo reserves the right to reject any proposal, which take exception to these terms and conditions.

### **B. Definitions as Used Herein**

1. The terms "request for proposal, RFP, proposal, bid, offer" are synonymous and mean a solicitation of a formal sealed proposal and refer to the product required by the Request for Proposals.
2. The terms "City of Fargo, MAT, MATBUS, Fargo Transit, Grantee, Transit Office", are synonymous and mean the City of Fargo.
3. The terms "Bidder, Contractor, Offerer, Proposer, Vendor, Firm, Company" are synonymous and mean the offerer or vendor.

**C. Applicable State and Local Clauses:**

1. Confidentiality of Proposal Information

Each proposal and supporting documents must be submitted in or under cover of a sealed envelope to provide confidentiality of the proposal information prior to the proposal opening.

Financial information required to be submitted with proposals to establish financial responsibility; cost/price proposals; and other financial data, such as overhead rates, etc. shall be handled as confidential data to the extent allowed under applicable law, including M. S. Chapter 13, and utilized on a "need-to-know" basis for proposal evaluation. Such information shall be treated as confidential to the extent allowed under North Dakota's open records law, Chapter 44-04, N.D.C.C. (specifically, N.D.C.C. § 44-04-18.4).

2. Accuracy of Proposal

Each proposal is publicly opened and the name of bidder is made part of the public record. Therefore, it is necessary that any and all information presented is accurate and/or will be that by which the respondent will complete the contract.

3. Proposals Binding

All proposals submitted in accordance with the terms and conditions of the RFP shall be binding upon the bidder for ninety (90) calendar days after the proposal opening.

4. Disclaimer of Liability

The City of Fargo will not hold harmless or indemnify any contractor for any liability whatsoever.

5. Hold Harmless

The City of Fargo will be held harmless and free from any and all liability, claims, or expenses whatsoever incurred by, or on behalf of, any person or organization responding to this RFP.

6. Law Governing

All contractual agreements shall be subject to, governed by, and construed according to the laws of the States of North Dakota, as applicable.

7. Conditional Proposals

Conditional proposals are subject to rejection in whole or in part.

8. Subletting of Contract

The contract that will be derived from this RFP shall not be sublet except with the written consent of the City of Fargo. No such consent shall be construed as making the City of Fargo a party to such subcontract, or subjecting the City of Fargo to liability of any kind to any subcontractor. No subcontract shall, under any circumstances, relieve the Contractor of his liability and obligation under his contract, and all transactions with the City of Fargo must be through the General Contractor.

9. Assignment/Transfer of Interests

There shall be no assignment/transfer of interests or delegation of Contractor's rights, duties or responsibilities of Contractor under the contract derived from this RFP without the prior written approval of the City of Fargo.

10. Severability

In the event any provision of the contract is declared or determined to be unlawful, invalid or unconstitutional, such declaration shall not affect, in any manner, the legality of the remaining provisions of the contract and each provision of the contract will be and is deemed to be separate and severable from each other provision.

11. Regulatory Requirements

The Contractor shall comply with all Federal, State, and local licensing, training, testing and/or regulatory requirements (including permits) for the provision of the transit services.

The successful Contractor shall be appropriately licensed for the work required as a result of the contract. The cost for any required licenses or permits shall be the responsibility of the Contractor. Contractor is liable for any and all taxes due as a result of the contract.

12. Responsible Firms

Nothing herein is intended to exclude any responsible firm or in any way restrain or restrict competition. On the contrary, all responsible firms are encouraged to submit proposals.

13. Reserved Rights

The City of Fargo reserves the right to accept or reject any or all of the proposals submitted, waive informalities and technicalities and negotiate any or all elements of the proposals.

14. Publication, Reproduction and Use of Material

No custom material produced in whole or in part under the Contract shall be subject to copyright in the United States or in any country. The Cities of Fargo and Federal Transit Administration shall have authority to publish, disclose, distribute and otherwise use, in whole or in part, any custom material prepared under any contract resulting from this RFP.

15. Waiver

By submission of its proposal, the Proposer represents and warrants that it has sufficiently informed itself in all matters affecting the performance of work or the furnishing of the labor services, supplies, materials, or equipment and facilities called for in the solicitation; that it has checked its proposal for errors and omissions; that the prices stated in its proposal are correct and as intended by it; and, are a complete and correct statement of its prices for performing the labor, services, supplies, materials or equipment and facilities required by the Contract Documents. The Proposer waives any claim for the return of its proposal security if, on account of errors or omissions claimed to have been made by it in its proposal or for any other reason it should refuse or fail to execute the contract.

16. Independent Price Determination

The Proposer certifies that he/she has not colluded, conspired, connived, or agreed, directly or indirectly, with any Proposer or person to put in a sham proposal or to refrain from proposing, and further, that he has not in any manner, directly or indirectly sought by agreement, collusion, communication, or conference, with any person, to fix the proposal amount herein or any other Proposer, or to fix any overhead, profit, or cost element of said proposal amount, or that of any other Proposer, or to secure any advantage against City of Fargo or any person interested in the proposed contract.

17. Prohibited Interest

No administrator or employee of the City of Fargo and no member of its governing body shall participate in selection or in the award or administration of a contract if a conflict of interest real or apparent would be involved.

No member or delegate to the North Dakota Legislature or to the Congress of the United States shall be admitted to any share or part of the Agreement or any benefit arising therefrom.

## **SECTION 2. PROJECT DESCRIPTION**

The City of Fargo is seeking security Contractors for a 5-year agreement to provide Security Guard Services at the (1) Ground Transportation Center (GTC) and (2) Fargo Courier Services from the GTC and the Metro Transit Garage (MTG) to Wells Fargo Bank.

Security Guard Services at the GTC (502 NP Ave, Fargo ND) description:

- a. One shift of security services would be from 7:30 p.m. to 11:30 p.m. Monday through Saturday (These hours are set/non-negotiable).
- b. In addition, security services for 4 hours per day at random, not to exceed 20 hours per week are to be included in the proposal as well, for a total of 44 hours each week.
  - i. These random hour shifts can be no more than 4 hours at a time.

Courier Services from the GTC to Wells Fargo Bank (406 Main Avenue):

- a. Transport large denomination bills from the GTC to Wells Fargo Bank to exchange for smaller currency/coinage. The smaller currency/coinage will need to be brought back to the GTC dispatchers (Monday through Friday, at 1:00 PM each day).
- b. If the security to be utilized already has a service that provides for this service (having an officer on staff to make such currency exchanges and thereby eliminating the trip to Wells Fargo), please include this option as a part of the quote.

Courier Service from the MTG at (650 23<sup>rd</sup> St N, Fargo ND), to Wells Fargo Bank description:

Transport several bags of farebox currency and coinage (valued at an average of \$5,500) from the money room at the the MTG to Wells Fargo Bank in downtown Fargo (406 Main Ave). Pick ups for the City of Fargo will be on Tuesday of each week, no later than 12:00 p.m.

Courier Service for Paratransit & GTC Deposits:

- a. The quote should denote the per trip charge for the following:
  - i. *The quote shall include the utilization of a security guard to transport money bags. If armed, the security guard must be covered under a compliant drug & alcohol program per 49 CFR Parts 40 and 655 – documentation will need to be provided for verification of coverage.*

Services will be invoiced monthly as listed below:

One invoice to the City of Fargo Transit will include the following:

Security Guard Services at the GTC  
Courier Services from GTC to Wells Fargo Bank  
Courier Services for Fargo Transit from MTG to Wells Fargo Bank

## **SECTION 3. CONTRACTOR RESPONSIBILITIES - OPERATING REQUIREMENTS**

### **3.10 QUALIFICATIONS OF CONTRACTOR**

#### **A. Experience**

Any Proposer (**firm/company**) must demonstrate at least three (3) years within the past five (5) years of extensive hands-on experience involving all aspects of security operations. The Proposer must have a satisfactory record of performance demonstrated by providing references from clients for which Proposer has provided service. A reference list of clients will be supplied to the City of Fargo. Additional client references may be requested by the City and will be provided by the Contractor.

### **3.11 DRUG/ALCOHOL PROGRAM**

If the Contractor is armed (carries a weapon), the Contractor is responsible for compliance with all approved or pending Federal Transit Administration regulations with regard to drug and alcohol testing - 49CFR Parts 40 and 655. The Contractor shall submit with the proposal any current drug/alcohol testing programs in place. Contractor shall also submit a list of proposed test sites, Medical Review Officer, and Substance Abuse Professionals with the proposal and annually thereafter along with the federally-required annual MIS report.

### **3.12 CONTRACT TERM**

The term of any agreement arising from this RFP shall be for the five-year period February 1, 2020 through January 31, 2024.

# PROPOSAL SUBMITTAL FORM

Description	Frequency	# of Hours/Trips per Week	# of Weeks Annually	Total Annual Hours/Trips	Cost Per Hour/Trip	Annual Cost
<b>FARGO TRANSIT:</b>						
Security Guard Services at GTC	44 total hours per week	44	52	2288		
Courier - GTC Large Denomination Exchange	Once Daily Monday - Friday	5	52	260		
Courier - Farebox Deposits	Once per week	1	52	52		
Courier - Paratransit Deposits	Once per week	1	52	52		
Courier - GTC Deposits	Twice per week	2	52	104		
<b>SUBTOTAL FARGO TRANSIT</b>						

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



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

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



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

- a) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. 3801 *et seq.* and U.S. DOT regulations, “Program Fraud Civil Remedies,” 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- b) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(1) on the Contractor, to the extent the Federal Government deems appropriate.
- c) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.



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

- a) Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases,

subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.

- b) Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- c) Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.
- d) Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.

✘ 4. **Federal Changes:** *Applies to all contracts.*

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

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

The AGENCY is an Equal Opportunity Employer. As such, the AGENCY agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the AGENCY agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

Under this Agreement, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

- a) Nondiscrimination. In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- b) Race, Color, Religion, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42

U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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



6.

**Termination Provisions:** *Applies to all contracts in excess of \$10,000. Those contracts must address termination for cause and for convenience, including the manner by which it will be effected and the basis for settlement.*

- a) The CITY reserves the right to cancel any contract for cause upon written notice to the Contractor. Cause for cancellation will be documented failure(s) of the contractor to provide services in the quantity and/or quality required. Notice of such cancellation will be given with sufficient time to allow for the orderly withdrawal of the Contractor without additional harm to the participants or the CITY.
- b) The CITY may cancel or reduce the amount of service to be rendered if there is, in the opinion of the City Council, a significant increase in local costs; or, in the opinion of the City Council, insufficient state or federal funding available for the service, thereby terminating the contract or reducing the compensation to be paid under the contract. In such event, the CITY will notify Contractor in writing ninety (90) days in advance of the date such actions are to be implemented.

CONTRACTOR is hereby notified that the CITY Transit system pursuant to this agreement is dependent upon the necessary receipt of local, state and federal funding.

In the event of any termination, the CITY shall pay the agreed rate only for services delivered up to the date of termination. The CITY has no obligation to Contractor, of any kind, after the date of termination. Contractor shall deliver all records, equipment and materials to the CITY within 24 hours of the date of termination.

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

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

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

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

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

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

The Contractor agrees to meet any goals established by CITY for purchases pertaining to this Contract to the best of the Contractor's ability and will provide the CITY with the necessary certification and records for reporting purposes. When the majority of the contract is labor,

which is not a contracting opportunity, DBE goals will not be set but Contractors are encouraged to use DBE businesses.

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

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

#### Fostering Small Business Participation

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

- X** 8. **Incorporation of FTA Terms:** *Applies to all contracts.*  
The preceding provision includes, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1 as amended, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any CITY requests which would cause the CITY to be in violation of the FTA terms and conditions.
- X** 9. **Debarment, Suspension, Ineligibility and Voluntary Exclusion:** *Applies to contracts in an amount expected to equal or exceed \$25,000 or a contract award at any tier for a federally required audit (irrespective of the contract amount) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. part 180. Recipients, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) with which they propose to contract or subcontract is not excluded or disqualified. This is done by: (a) checking the SAM exclusions; (b) collecting a certification from that person; or (c) adding a clause or condition to the contract or subcontract.*

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate

in this federally funded contract and are not presently declared by any Federal department or agency to be:

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

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

- \_\_\_\_\_ 10. **Buy America:** *Applies to projects that involve the purchase of more than \$150,000 of iron, steel, manufactured goods, or rolling stock to be delivered to the recipient to be used in an FTA assisted project.*

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

- ✘ 11. **Breach of Contract and Dispute Resolution:** *Applies to all contracts in excess of the Simplified Acquisition Threshold (currently set at \$150,000) and those contracts shall contain administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.*

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

*Fargo:* If the Transit Director and Contractor cannot resolve the dispute, the issue will be presented in writing to the Fargo City Administrator within ten [10] working days of dispute. If the dispute cannot be resolved by the City Administrator, it will be submitted in writing within ten [10] working days of the Fargo City Administrator's decision to the Fargo City Commission – it is the sole responsibility of the Contractor to schedule a

hearing with the Fargo City Commission. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position at the hearing.

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

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

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

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

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

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

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

- b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

13. **Clean Air and Federal Water Pollution Control Act:** *Applies to each contract and subcontract exceeding \$150,000. The Clean Air Act and Federal Water Pollution Control Act requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.*

The Contractor agrees:

- a) It will not use any violating facilities;
- b) It will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities;"
- c) It will report violations of use of prohibited facilities to FTA; and
- d) It 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).

- ✘ 14. **Contract Work Hours & Safety Standards Act:** *Applies to all FTA funded contracts in excess of \$100,000 that involve the employment of mechanics or laborers. Certain employee protections apply to all FTA funded contracts with particular emphasis on construction related projects. The recipient will ensure that each third party contractor complies with all federal laws, regulations, and requirements, including:*

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

**a) For construction contracts:**

- i. For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, the Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the DOL regulations at 29 C.F.R. part



5. Under 40 U.S.C. § 3702 of the Act, the Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.

- ii. In the event of any violation of the clause set forth herein, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by this clause.
- iii. The FTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in this section.
- iv. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this agreement.

**b) For Awards Not Involving Construction**

- i. The Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq., and U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. part 5.
- ii. The Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the

contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

- iii. Such records maintained under this paragraph shall be made available by the Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and the Contractor will permit such representatives to interview employees during working hours on the job.
- iv. The contractor shall require the inclusion of the language of this clause within subcontracts of all tiers.



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

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

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

16. **Charter Service:** *Applies to contracts for operating public transportation service.*

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

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

The contractor agrees that if it engages in a pattern of violations of FTA's Charter Service regulations, FTA may require corrective measures or impose remedies on it. These corrective measures and remedies may include:

- a) Barring it or any subcontractor operating public transportation under its Award that has provided prohibited charter service from receiving federal assistance from FTA;
- b) Withholding an amount of federal assistance as provided by Appendix D to part 604 of FTA's Charter Service regulations; or
- c) Any other appropriate remedy that may apply.

The contractor should also include the substance of this clause in each subcontract that may involve operating public transit services.

17. **School Bus Service Operations:** *Applies to contracts for operating public transportation service.* The contractor agrees to comply with 49 U.S.C. 5323(f), and 49 C.F.R. part 604, and not engage in school bus operations using federally funded equipment or facilities in competition with private operators of school buses, except as permitted under:
- a) Federal transit laws, specifically 49 U.S.C. § 5323(f);
  - b) FTA regulations, "School Bus Operations," 49 C.F.R. part 605;
  - c) Any other Federal School Bus regulations; or
  - d) Federal guidance, except as FTA determines otherwise in writing.

If Contractor violates this School Bus Agreement, FTA may:

- a) Bar the Contractor from receiving Federal assistance for public transportation; or
- b) Require the contractor to take such remedial measures as FTA considers appropriate.

When operating exclusive school bus service under an allowable exemption, the contractor may not use federally funded equipment, vehicles, or facilities.

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

18. **Substance Abuse Requirements: Drug & Alcohol Testing:** *Applies to third party contractors who perform safety-sensitive functions. Contractors must comply with FTA's substance abuse management program under 49 C.F.R. part 655, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations." Under 49 C.F.R. § 655.4, Safety-sensitive function means any of the following duties, when performed by employees of recipients, subrecipients, operators, or contractors:*
- a) *Operating a revenue service vehicle, including when not in revenue service;*
  - b) *Operating a nonrevenue service vehicle, when required to be operated by a holder of a Commercial Driver's License;*
  - c) *Controlling dispatch or movement of a revenue service vehicle;*
  - d) *Maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service. This section does not apply to the following: an employer who receives funding under 49 U.S.C. § 5307 or § 5309, is in an area less than 200,000 in population, and contracts out such services; or an employer who receives funding under 49 U.S.C. § 5311 and contracts out such services;*
  - e) *Carrying a firearm for security purposes.*
- Additionally, third party contractors providing testing services involving the performance of safety sensitive activities must also comply with 49 C.F.R. part 40, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs."*

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. part 655, produce any documentation necessary to establish its compliance with part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of North Dakota and/or Minnesota, or the Cities of Fargo/Moorhead, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. part 655 and review the testing process. The Contractor agrees further to certify annually its compliance with part 655 before February 1 and to submit the Management Information System (MIS) reports before February 1 to the City of Moorhead Transit Manager and City of Fargo Transit Director. To certify compliance, the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the *Federal Register*.

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

The contractor agrees:

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

20. **Davis-Bacon Act and Copeland Act – Prevailing Wage and Anti-Kickback:** *Applies to all FTA funded contracts for all prime construction, alteration or repair contracts in excess of \$2,000. The recipient will ensure that each third party contractor complies with all federal laws, regulations, and requirements, including:*

a) Prevailing Wage Requirements

- i. *Federal transit laws, specifically 49 U.S.C. § 5333(a), (FTA's "Davis-Bacon Related Act");*
- ii. *The Davis-Bacon Act, 40 U.S.C. §§ 3141 – 3144, 3146, and 3147; and*
- iii. *U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5.*

b) "Anti-Kickback" Prohibitions

- i. *Section 1 of the Copeland "Anti-Kickback" Act, as amended, 18 U.S.C. § 874;*
- ii. *Section 2 of the Copeland "Anti-Kickback" Act, as amended, 40 U.S.C. § 3145; and*

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

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



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

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

22. **Construction—Special Requirements:** *Applies to FTA assisted construction projects:*

- a) **Bonding.** The Common Grant Rules require bonds for all construction contracts exceeding the simplified acquisition threshold (exceeding \$150,000. *Minnesota State Statute 574.26 limit is \$100,000*) unless FTA determines that other arrangements adequately protect the Federal interest. FTA's bonding policies are as follows:
- i. **Bid Guarantee.** Both FTA and the Common Grant Rules generally require each bidder to provide a bid guarantee equivalent to 5 percent of its 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 to ensure that the bidder will honor its bid upon acceptance.
- ii. **Performance Bond.** Both FTA and the Common Grant Rules generally require the third party contractor to obtain a performance bond for 100 percent of the contract price. A "performance bond" is obtained to ensure completion of the obligations under the third party contract.

- iii. Payment Bond. The Common Grant Rules generally require the third party contractor to obtain a standard payment bond for 100 percent of the contract price. A “payment bond” is obtained to ensure that the contractor will pay all people supplying labor and material for the third party contract as required by law. FTA, however, has determined that payment bonds in the following amounts are adequate to protect FTA’s interest and will accept a local bonding policy that meets the following minimums:
- Less Than \$1 Million. Fifty percent of the contract price if the contract price is not more than \$1 million,
  - More Than \$1 Million but Less Than \$5 Million. Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million, or
  - More Than \$5 Million. Two and one half million dollars if the contract price is more than \$5 million.
- iv. Acceptable Sureties. The Common Grant Rule for non-governmental recipients requires the non-governmental recipient to obtain construction bonds from companies holding certificates of authority as acceptable sureties under Department of the Treasury regulations, “Surety Companies Doing Business with the United States,” 31 CFR Part 223. For a current list of approved sureties, see Department of the Treasury’s Listing of Approved Sureties (Department Circular 570), <http://fms.treas.gov/c570/c570.html>. FTA encourages each governmental recipient to require similarly acceptable sureties.
- v. Reduced Bonding. FTA recognizes that bonding costs can be expensive. FTA will accept a local bonding policy that conforms to the minimums described in this subparagraph 2.h(1) of this Chapter. FTA reserves the right to approve bonding amounts that do not conform to these minimums if the local bonding policy adequately protects the Federal interest. A recipient that wishes to adopt less stringent bonding requirements, for a specific class of projects, or for a particular project should submit its policy and rationale to the Regional Administrator for the region administering the project.
- vi. Excessive Bonding. Compliance with State and local bonding policies that are greater than FTA’s bonding requirements do not require FTA approval. FTA recognizes that in some situations bond requirements can be useful if the recipient has a material risk of loss because of a failure of the prospective contractor. This is particularly so if the risk results from the likelihood of the contractor’s bankruptcy or financial failure when the work is partially completed. Nevertheless, if the recipient’s “excessive bonding” requirements would violate the Common Grant Rules as restrictive of competition, FTA will not provide Federal assistance for procurements encumbered by those requirements. Consequently, if the recipient’s bonding policies far exceed those described in this subsection; FTA reminds the recipient that it may find it useful to submit its policy and rationale to the Regional Administrator for the region administering the project.

23. **Bus Testing**: *Applies only to the purchase or lease of any new bus model, or any bus model with a major change in configuration or components to be acquired or leased with funds obligated by FTA. Recipients are responsible for determining whether a vehicle to be acquired requires full or partial testing or has already satisfied the bus testing requirements by achieving a passing test score in*

*accordance with 49 C.F.R. part 665. Recipients must certify compliance with FTA's bus testing requirements in all grant applications for FTA funding for bus procurements.*

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

24. **Fly America:** *Applies to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation.*

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

“International air transportation” means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

“United States” means the 50 States, the District of Columbia, and outlying areas.

“U.S.-flag air carrier” means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

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

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

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

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

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(End of statement)

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

25. **Patent Rights and Rights in Data:** *Applies when entering into a contract (or subcontract) with a small business firm or nonprofit organization for the performance of experimental, developmental, or research work under the FTA award. The recipient or subrecipient must comply with the requirements of 37 C.F.R. part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency. Except in the case of an "other agreement" in which the Federal Government has agreed to take more limited rights, the Federal Government is entitled to a non-exclusive, royalty free license to use the resulting invention, or patent the invention for Federal Government purposes. The FTA has the right to:*
- a) Obtain, reproduce, publish, or otherwise use the data produced under a Federal award; and*
  - b) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.*

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

- a) The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for "Federal Government Purposes," any subject data or copyright described below. For "Federal Government Purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.
  - i. Any subject data developed under the Contract, whether or not a copyright has been obtained; and



- ii. Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part by the FTA.
- b) Unless FTA determines otherwise, the Contractor performing experimental, developmental, or research work required as part of this Contract agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.
- c) Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. The Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
- d) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
- e) Data developed by the Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying Contract is exempt from the requirements herein, provided that the Contractor identifies those data in writing at the time of delivery of the Contract work.
- f) The Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

26. **Pre-Award and Post-Delivery Audits of Rolling Stock Purchases:** *Applies to the purchase of revenue service rolling stock with FTA funds and must comply with the pre-award and post-delivery audit requirements set forth in 49 U.S.C. 5323(m) and supplemented by 49 C.F.R. part 663.*

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

27. **Recycled Products:** *Applies to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier where the value of an EPA designated item exceeds \$10,000. Applies to States and local governmental authorities to provide a competitive preference to products and services that conserve natural resources, protect the environment, and are energy efficient. Recipients are required to procure only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of*

*the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000.*

The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), “Comprehensive Procurement Guideline for Products Containing Recovered Materials,” 40 C.F.R. part 247.

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

Seat Belt Use

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

Distracted Driving

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

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

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

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*Note: Information on clauses was obtained from the FTA Best Practices Procurement and Lessons Learned Manual, and Circular FTA C 4220.1F Third Party Contracting Guidance.*

<https://www.transit.dot.gov/funding/procurement/third-party-procurement/best-practices-procurement-manual>

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