

# **FTA PROCUREMENT PROCEDURES MANUAL**

**NORTHWESTERN INDIANA REGIONAL PLANNING  
COMMISSION**

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## Procedures Overview:

### FTA Procurement Procedures Agreement:

I hereby certify as a representative of the \_\_\_\_\_ (subrecipient), that by signing below, all federal requirements relating to FTA C 4220.1F will comply with the Federal Laws and Regulations that affect FTA funded procurements. These FTA requirements are incorporated into the Northwestern Indiana Regional Planning Commission's policies and procedures whereby being adopted by Resolution Number 19-25. The Resolution shall be in full force and effect from and after its adoption and the procedures required by law. Passed this seventeenth day of \_\_\_\_\_, 2019.

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Signature

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Title

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Print Name

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Date

## Section 1:Introduction:

### 1.1 Overview:

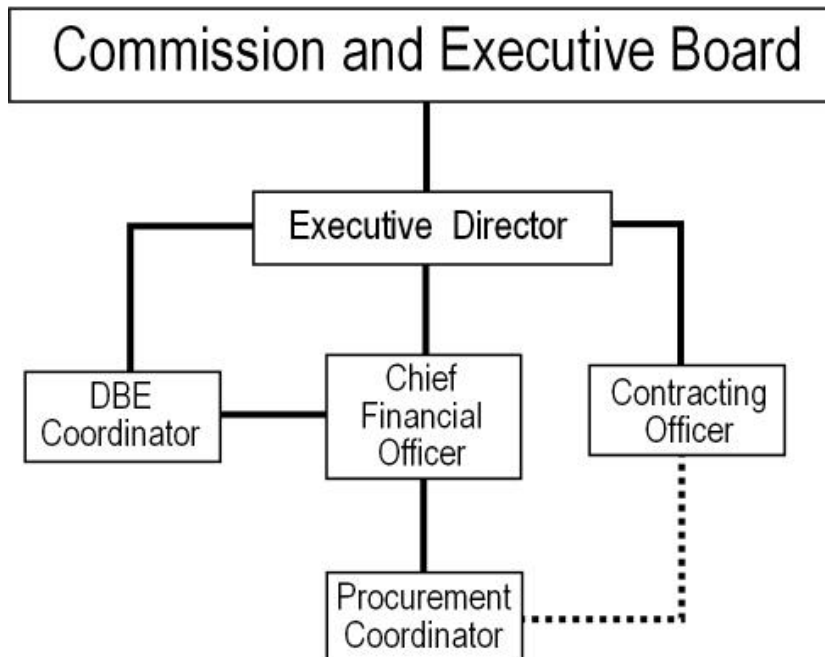
The purpose of this manual is to delineate the procedures utilized by the Northwestern Indiana Regional Planning Commission (referred to throughout this report as the Commission) for procurement when funds provided by the Federal Transit Administration (FTA) of the U.S. Department of Transportation are used to acquire goods and services.

### 1.2 About the Commission:

The Commission is a cooperative of local governments formed through state enabling legislation, IC-36-7-7-2, for the region comprised of Lake, Porter and LaPorte Counties in the northwest part of Indiana. The Commission is composed of a board comprised of elected officials and their appointments representing the three counties and forty-one municipalities. There is policy, planning, technical and administrative responsibilities to be carried out in the execution of the Commission's program of activities. Among these is the purchase of transit vehicles and equipment for use by area transit operators.

### 1.3 Organization of the Commission:

The organizational structure of the Commission as it applies to the procurement function is as depicted by the following chart:



The channel of authority flows through the lines as described above. The Commission hires the Executive Director who is responsible for oversight of the Commission's program. The Executive Director reports to the Executive Board. The Contracting Officer, who is responsible for oversight of the Commission's contractual arrangements, reports to the Executive Director. The Procurement Coordinator, who is responsible for implementing the procurement procedures set forth herein and

undertaking procurements, reports to the Contracting Officer for FTA procurements. The Disadvantaged Business Enterprise (DBE) Coordinator (a collateral duty position) provides for the function of ensuring that specific federal requirements designed to foster participation of small minority and female owned businesses in receiving federally-funded contracts are met. The DBE Coordinator reports directly to the Executive Director. Other department heads, responsible for other aspects of the Commission's activities also report to the Executive Director.

#### **1.4 The Contracting Officer:**

The Contracting Officer is the person who represents the Commission in contractual arrangements, and the Commission's point of contact. This person is responsible for the following:

- Business relationships with the contractor
- Negotiations
- Authorization of changes in contractual obligations of both the Commission and the contractor
- Entry into any new agreements during the course of the contract and
- Settlement of any disputes

The person is appointed by and reports to the Executive Director of the Commission, prepares recommendations for the Executive Board, and is capable of effecting or making changes in contracts. Should a dispute arise, the Contracting Officer is the one with responsibility for facilitating a resolution.

#### **1.5 The Procurement Coordinator:**

The Contracting Officer shall appoint the Procurement Coordinator. The Procurement Coordinator shall attend to day to day details of the Commission's FTA procurement activities as assigned by the Contracting Officer. The Procurement Coordinator develops or coordinates the development of specifications, evaluates proposals, prepares legal notices, attends to daily administrative details of procurement, and reports to the Contracting Officer.

#### **1.6 Project Managers:**

For certain procurements usually involving planning, construction, architectural, or engineering contracts, a project manager may be assigned with responsibility for oversight of the technical aspects of the project. The project manager's responsibility is to help ensure that the contract is administered as agreed upon between the Commission and the contractor. The project manager's role is to provide technical direction to the contractor and respond to correspondence from the contractor about technical matters. The project manager is to review progress of the work of the contractor on a periodic basis. The project manager shall advise the Contracting Officer if for any reason the contractor is not in conformance with the scope of the contract. The Contracting Officer can then take appropriate action. Should need for change occur, the project manager is not responsible for making any modifications to the contract. Any changes to a contract must be approved by the Contracting Officer.

#### **1.7 Code of Ethics:**

The Commission maintains standards pertaining to conduct governing performance of employees engaged in undertaking procurements and administering contracts.

No employee, Commission member or other authorized or designated agent of the Commission shall participate in the selection or in the award or in the administration of a contract supported by FTA funds when a conflict of interest (real or apparent) is involved. Such a conflict would arise when:

- the employee, Commission member or other authorized or designated agent of the Commission,
- any member of his/her immediate family
- his or her partner, or
- an organization that employs, or is about to employ any of the above
- has a financial interest or other interest in the firm selected for the award.

No employee, Commission member, or other authorized or designated agent of the Commission shall solicit gratuities, favors, or anything of monetary value from contractor(s), potential contractor(s), or sub-contractors. Nor shall the above-mentioned individuals accept anything of more than a nominal value from contractor(s), potential contractor(s), or sub-contractors.

To the extent permitted by state or local law or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary action for violation of such standards by the Commission's employees, board members, other authorized or designate agents, or by contractors or their agents.

## **1.8 The Nature of Commission Procurements utilizing FTA Funds:**

The Commission does not directly provide public transportation service. However, the Commission is the direct grantee of public transportation funds from the Federal Transit Administration (FTA) of the U.S. Department of Transportation. Public transportation service is provided by a number of Subrecipients. Currently there are seven Subrecipients providing public transportation service. They are: the City of East Chicago, the City of Valparaiso, the City of LaPorte, Porter County Aging and Community Services, Lake County Community Services, Opportunity Enterprises, and North Township Dial-A-Ride.

Typical types of procurements undertaken by the Commission include the purchase of rolling stock for use by Subrecipients, other transit equipment for use by Subrecipients, and planning studies undertaken by the Commission. Subrecipients may also enter into contracts for such activities as third-party provision of transit service or maintenance. Subrecipients are required to sign and date the FTA Procurement Procedures Agreement on an annual basis to ensure compliance that is consistent with FTA requirements.

Under no circumstances will any procurement be reimbursed with FTA funds if the Northwestern Indiana Regional Planning Commission is not aware and involved from the beginning of the procurement process.

## **1.9 Prohibition of Arbitrary Actions**

NIRPC and its Subrecipients agree to follow the policies and procedures outlined in this manual. NIRPC and its Subrecipients will prohibit any arbitrary actions that do not follow FTA guidelines and the policies and procedures within this manual.



## Section 2: Subrecipient Role and Responsibilities:

### 2.1 Overview:

The objective of this section is to provide Subrecipients a better understanding of the following requirements for FTA projects funded through the Commission:

- Responsibilities of the Direct Recipient and Subrecipient
- The processes to support federal compliance
- Fostering coordination between the Commission and Subrecipients

### 2.2 Applicability of Federal Requirements:

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 Subrecipients.

The specific requirements on particular award of funds will be found in the Master Agreement incorporated into the Grant Agreement or Cooperative Agreement that was executed by the Commission.

Subrecipients are responsible for procurements within their agency, and must be aware that compliance with Federal requirements is a condition of receipt of Federal funds. **Failure to comply with these provisions may, in accordance with the terms of your Grant or Cooperative Agreement, be grounds for default of that agreement and result in the loss of the funds.**

### 2.3 Definitions:

#### 2.3.1 Direct Recipient:

Direct Recipient refers to the entity that receives Federal assistance directly from the Federal Transit Administration (FTA). As the Direct Recipient of FTA funds, the Commission is the “grantee” and is responsible for the daily administration and management of the award in compliance with the grant agreement and applicable FTA circulars and regulations. The primary responsibility lies with the Commission as the direct recipient. As a direct recipient the Commission is responsible for following and monitoring:

- A. FTA Master Agreement accepted annually
- B. FTA requires annual renewal of Certifications and Assurances.
- C. FTA Circulars & Guidelines
- D. Funds that are "passed-through" to a Subrecipient.

#### 2.3.2 Subrecipient:

Subrecipient refers to the entity that receives Federal assistance awarded by an FTA Direct Recipient rather than by FTA directly. Although the Direct Recipient may delegate all Project responsibilities to one or more Subrecipients, the Direct Recipient agrees that it, rather than the Subrecipient, is ultimately responsible for compliance with all applicable federal laws, regulations, and directives, except to the extent that FTA determines otherwise in writing.

## 2.4 Funding Sources:

### 2.4.1 Federal Transit Administration (FTA):

- A. Subject to annual FTA Master Agreement and Certifications and Assurances
- B. Funds are appropriated annually, based on FTA's Fiscal Year (Oct. 1-Sept. 30)
- C. Use of funds must comply with FTA Program Circulars & Regulations

### 2.4.2 Local match:

- A. Match amounts can vary
- B. Public Mass Transit Funds (PMTF) or other local funds may be used to meet federal match requirements.
- C. Other federal funds cannot be used to match FTA funds
- D. Match availability
  - a. FTA grants are reimbursement grants; therefore, subrecipients must be capable of paying expenses in full prior to reimbursement from FTA.
  - b. Match must be available at the time of grant award.
  - c. Subrecipients must certify the use of local match with each invoice submitted.

## 2.5 Grant Process:

### 2.5.1 Project Introduction:

Grant recipients must first prepare and present their projects through an application process. Projects may be submitted when the Commission makes a formal call for projects or through an amendment process to the current Transportation Improvement Program (TIP).

### 2.5.2 Application:

Applications for projects will be made available by the NIRPC staff's Transportation Team. The application will indicate what documentation may be required of the Transit Operator in order to consider the application complete. Proposed changes to the TIP, including new projects, will be submitted to the appropriate committees for review and recommendation to the Commission for approval.

### 2.5.3 Transportation Improvement Program (TIP) & State Transportation Improvement Program (STIP):

A list of projects that will use FTA funds must be included in the TIP. The TIP is approved and sent to INDOT for inclusion in the State Transportation Improvement Program (STIP). The STIP is sent to FTA and the Federal Highway Administration (FHWA) for approval.

#### **2.5.4 Grant Initiation:**

The Commission's staff Transportation Team compiles the agreed upon projects for inclusion in the grant submission. The grant is then submitted to FTA and is then subject to their approval process. Once approved, FTA sends correspondence to the Commission and the Commission's Executive Director executes the grant. It is at this point that grant funds are available.

#### **2.5.5 Subrecipient Agreement:**

The funding agreements may only be issued after the grant is awarded by FTA and executed by the Commission's Executive Director.

##### **A. Commission authorizes the funding agreement:**

- a. The Compliance Manager prepares the subrecipient Fund Conveyance Agreements when needed.
- b. All other funding agreements are approved by the Commission's Contracting Officer with the necessary requirements for each project.
- c. Funding agreements are then signed and fully executed by the Commission's Executive Director and the authorized subrecipient representative.

##### **B. Funding agreement requirements:**

- a. Subrecipients must complete FTA's Annual Certifications and Assurances
- b. Provide proof of the most recent acceptable audit.
- c. Other documents required by FTA as requested by the Commission.

##### **C. Cost Reimbursement:**

- a. All procurements submitted for reimbursement must be in line with the procurement procedures as identified within this manual.
- b. Requests for reimbursement may be made in accordance with the coordinating funding agreements after the Subrecipient Agreement is executed.
- c. Invoices must be for the net expense actually incurred in direct support of the project.
- d. No advances or expenditures prior to the award of grant are allowed unless pre-award authority has been granted and all procurement guidelines were adhered to.
- e. Subrecipient must certify the use of local match with each invoice submitted.

##### **D. The agreement flows through all applicable federal requirements, including:**

- a. Procurement;
- b. Disadvantaged Business Enterprise (DBE);
- c. Program-specific concerns;
- d. Prior approvals;
- e. Reporting requirements; and invoicing.

**E. Work scope:** identifies what activity is allowable.

**F. Approved budget:** identifies the allowable costs for the work scope.

#### **2.5.6 Subrecipient Administration of Award:**

The Subrecipient is responsible for adhering to the work scope and budget as approved by FTA and as outlined in the subrecipient agreement. All changes to the work scope or budget require prior written approval from the Commission Contracting Officer and any necessary TIP modification approval. Commission staff should be made aware of all work or progress on projects as they begin

and proceed. Cost incurred outside the scope of the approved budget, may be ineligible for reimbursement under FTA guidelines.

## **2.6 Reporting:**

### **2.6.1 Reimbursement Reports:**

All reimbursements are made to subrecipients in accordance with the coordinating funding agreements. All reports submitted are required to have supporting documentation in the form of invoices for the expenses which are reported on a cost reimbursement basis. All requests for reimbursement must contain the standard certification that all attached invoices are for a reasonable price, based on market prices offered by the vendors to the general public. All requests submitted for reimbursement must also adhere to the procurement guidelines.

### **2.6.2 Milestone/progress reports:**

The requirement for milestone/progress reports applies to all FTA grants. This report is due on a quarterly basis to FTA via TrAMS.

### **2.6.3 Disadvantaged Business Enterprise (DBE) Quarterly Progress Reports:**

As with financial reports, grantees are required to submit these reports with other quarterly reports.

### **2.6.4 Use of Equipment and Supplies / Vehicle Usage Reports:**

The subrecipient agrees to report the use of FTA funded equipment for project purposes. All quarterly reports are due to the Commission no later than twenty days after the end of the quarter.

### **2.6.5 Maintenance:**

The subrecipient agrees to maintain FTA funded equipment in good operating order, in compliance with any applicable Federal laws and regulations in accordance with applicable Federal directives, except to the extent that FTA determines otherwise in writing.

Commission staff will take a physical inventory of equipment and the results reconciled with equipment records annually.

### **2.6.6 Annual Management Information System (MIS) Report:**

The subrecipient, contractor, subcontractor, and lessee are required to prepare, maintain, and submit annual MIS reports to summarize the drug and alcohol program testing results. All reports are to be completed and submitted to the Commission no later than March 1<sup>st</sup> of each year.

### **2.6.7 Drug and Alcohol Testing and Reporting:**

The subrecipient, contractor, subcontractor, and lessee are required to have drug and alcohol testing program for safety-sensitive employees. All quarterly reports are due to the Commission no later than twenty days after the end of the quarter.

**2.6.8 National Transportation Database (NTD):**

The subrecipient that receives Section 5307 funding must collect, record, and report financial and non-financial data in accordance with the Uniform System of Accounts and the National Transit Database Reporting Manual as required by 49 USC 5335(a).

**2.7 Procurement:**

The subrecipient must ensure all Federal requirements, required clauses, and certifications are properly followed and included. These clauses can be found at [www.nirpc.org](http://www.nirpc.org) and in Appendix A.5 and or Appendix A.6 of this document. The subrecipient is also required to adopt this manual and follow the procedures as identified within.

**2.7.1 Procurement Regulation (FTA C 4220.1F):**

FTA has developed Circular 4220.1F “Third Party Contracting Guidance” to assist its recipients and their subrecipients in complying with the various Federal laws and regulations that affect their FTA-assisted procurements. This document is located at <http://www.fta.dot.gov/>.

These FTA requirements are incorporated into the Commission’s purchasing and contracting policies and procedures and the Commission’s standard forms.

FTA C 4220.1F sets forth the requirements a recipient and subrecipient must adhere to in the solicitation, award and administration of its third party contracts. The Circular contains mandatory procurement standards that recipients and subrecipients must meet in their procurement operations.

The Circular applies to third party contracts and subcontracts of all other FTA recipients and their subrecipients.

## Section 3: Procurement Methods

### 3.1 Overview:

FTA Circular 4220.1F sets forth the regulatory guidance which is to be followed in undertaking procurements utilizing FTA funds. There are five basic types of procurement techniques that are permitted under these regulations. They are:

- A. **Micro-Purchases:** While the FTA allows this method to be used when the purchase amount is \$10,000.00 or less, the Commission has adopted a Micro-Purchase threshold of \$3,000 or less. When a determination has been made that the price is fair and reasonable, FTA permits purchases may be made without competitive quotes under this method. Qualified vendors in the local area should receive an equitable distribution of the awards. Splitting of procurements is not allowed.
- B. **Small Purchase Procedures:** While the FTA allows this method to be used when the purchase amount is \$10,000.00 or greater but does not exceed \$250,000.00 in the aggregate, the Commission's adopted Small Purchase threshold is for purchases greater than \$3000 but \$150,000 or less in the aggregate.
- C. **Sealed Bids:** This method is used when a complete, adequate, and realistic description of the product or services is available and two or more responsible bidders are able to compete. Bids are publicly solicited and a firm-fixed price contract (lump sum or unit price) is awarded to the responsible bidder, whose bid is lowest in price and conforms to all terms and conditions included in the bid package.
- D. **Competitive Proposals:** This method of procurement is used when conditions are inappropriate for use of sealed bid procedures. With competitive proposals, Offerors typically compete for an award on the basis of criteria including cost. For competitive negotiations including architects, engineers, and related services, selection of the most qualified competitor is based upon evaluation of qualifications.
- E. **Sole Source:** This type of procurement is utilized when competitive efforts have failed and the number of competitive bids is insufficient. A contract amendment or a change order not within the scope on an original contract is also considered sole source procurement. The use of sole source procurement is utilized only if the use of small purchase procedures, sealed bid procedures, or competitive procedures are infeasible and in strict accordance with FTA guidelines.

### 3.2 Micro-Purchase Procurement Procedures:

While the FTA allows Micro-Purchase procedures to be used for securing services, supplies, or other property when the cost for the procurement is \$10,000.00 or less in the aggregate, the Commission's adopted Micro-Purchase threshold is \$3,000 or less. These purchases are exempt from FTA's Buy America requirements. Davis-Bacon prevailing wage requirements will apply to construction contracts exceeding \$2,000, even if the recipient uses micro-purchase procurement procedures. The Procurement Coordinator or other requisitioning party is required to complete the following steps in undertaking micro-purchases:

- Determine that grant approval has been made to ensure availability of funds and determine that the item being purchased is eligible under the grant.
- If a local share is required from a Subrecipient, the Procurement Coordinator shall

verify receipt by the Commission of the local share as it must be received prior to making purchases.

- a. Subrecipients may request an exception to the local share requirement of advance payment under the following circumstances:
    1. The Subrecipient has an opportunity to be reimbursed the local share amount from a third-party but the Subrecipient cannot pre-pay the local share prior to being awarded funds from the third-party;
    2. The Subrecipient must show that they have ample cash on hand to pay the local share should the third-party funding fail to be awarded by submitting:
      - a. Audited Financial Statements
      - b. Bank statement or bank reconciliation document or other document showing cash on hand
      - c. A Purchase Order to the Commission in the amount of the required local share
    3. NIRPC staff may add additional verification standards as deemed appropriate;
    4. The local share must be paid in full to the Commission before the scheduled delivery of the item being purchased; regardless of whether or not the third-party funds have been received by the Subrecipient;
    5. The Finance and Personnel Committee shall have the authority to grant such exceptions.
- Determine the items and quantities to be procured are consistent with the approved grant budget. If the procurement is of an item for direct use by the Commission, this determination shall be concurred by the Contracting Officer. If the procurement is of an item for a Subrecipient, the Procurement Coordinator will consult with the Subrecipient.
  - Per the Commission's Purchase Policy, a minimum of three quotes shall be obtained when the purchase price is greater than \$3,000, evaluated using price or cost analysis by using C.12 Form P212 - Quote Tally Sheet, and documented by the Procurement Coordinator.
  - A written statement that the Commission has determined that the price is fair and reasonable based on the 3 quotes received, when the purchase price is greater than \$3,000.
  - A C.17 Form P305 - Responsibility Determination shall be completed before awarding.
  - The Procurement Coordinator shall complete a C.1 Form P201-1 - FTA Procurement Purchase Order Requisition and obtain necessary approvals.
  - The Contracting Officer shall approve the procurement award. Notice of the award will be made in the form of a State Board of Accounts approved Purchase Order/Claim form as required by state law.
  - The Executive Director shall ratify the approval of the award by signing the Purchase Order/Claim form.
  - The Procurement Coordinator will maintain a file with adequate documentation of each

Micro-purchase Procurement. This file will include documentation on the reasonableness of price, the quotes obtained, a copy of C.12 Form P212 - Quote Tally Sheet, a copy of the statement the Commission has determined that the price is fair and reasonable based on the 3 quotes received when the purchase price is greater than \$3,000, a copy of C.17 Form P305 - Responsibility Determination, and a copy of C.1 Form P201-1 - FTA Procurement Purchase Order Requisition.

### **3.3 Simplified Acquisition Threshold or Small Purchase Procurement Procedures:**

While the FTA allows small purchase procedures to be used for securing services, supplies, or other property valued at more than the micro-purchase threshold (which the FTA currently allows at \$10,000) but less than the Federal Simplified Acquisition Threshold (which the FTA currently allows at \$250,000.00), the Commission's small purchases threshold is twofold:

- 1) Purchases of more than \$3,000 but that do not exceed \$50,000 do not require Board of Commissioner's approval.
- 2) Purchases of more than \$50,000 but that do not exceed \$150,000 requires approval by the Board of Commissioners.

*Note: The FTA increase in the SAT to \$250,000 does not apply for Buy America purposes. The small purchase amount is established at \$150,000 in FTAs statute at 49 I.S.C. 5323(j)(13) and is no longer tied to the SAT; therefore, procurements for more than \$150,000 must comply with Buy America, as applicable.*

For small purchases, recipients must obtain price or rate quotes from an adequate number of qualified sources. The Procurement Coordinator is required to complete the following steps in undertaking small purchases:

- Determine that grant approval has been made to ensure availability of funds and determine that the items to be purchased are eligible under the grant.
- If a local share amount is required from a Subrecipient, the Procurement Coordinator shall verify receipt by the Commission of the local share as it must be received prior to making purchases.
  - a. Subrecipients may request an exception to the local share requirement of advance payment under the following circumstances:
    1. The Subrecipient has an opportunity to be reimbursed the local share amount from a third-party but the Subrecipient cannot pre-pay the local share prior to being awarded funds from the third-party;
    2. The Subrecipient must show that they have ample cash on hand to pay the local share should the third-party funding fail to be awarded by submitting:
      - a. Audited Financial Statements
      - b. Bank statement or bank reconciliation document or other document showing cash on hand
      - c. A Purchase Order to the Commission in the amount of the required local share
    3. NIRPC staff may add additional verification standards as deemed appropriate;



4. The local share must be paid in full to the Commission before the scheduled delivery of the item being purchased; regardless of whether or not the third-party funds have been received by the Subrecipient;
  5. The Finance and Personnel Committee shall have the authority to grant such exceptions.
- Determine the items and quantities to be procured are consistent with the approved grant budget. If the procurement is of an item for direct use by the Commission, this determination shall be concurred by the Contracting Officer. If the procurement is of an item for a Subrecipient, the Procurement Coordinator will consult with the Subrecipient.
  - For purchases greater than \$3,000 (Per the Commission) and \$250,000 (Per FTA), a minimum of three quotes shall be obtained and evaluated by using price or cost analysis by using C.12 Form P212 - Quote Tally Sheet and documented by the Procurement Coordinator.
  - The Procurement Coordinator shall review quotes received and conduct a price or cost analysis if necessitated. For small purchases, this will normally be accomplished through obtaining an adequate number of quotes from qualified sources to determine reasonableness of cost.
  - A C.17 Form P305 - Responsibility Determination shall be completed before awarding.
  - The Procurement Coordinator shall complete a C.1 Form P201-1 - FTA Procurement Purchase Order Requisition and obtain necessary approvals.
  - The Contracting Officer shall approve the procurement award. Notice of the award will be made in the form of a State Board of Accounts approved Purchase Order/Claim form. The Executive Director shall ratify the approval of the award by signing the Purchase Order/Claim form.
  - If the award is for more than \$50,000, the Procurement Coordinator will prepare and present a written summary of quotes obtained and these will be presented for review by the Finance and Personnel Committee and award by the Commission or its Executive Board. Upon award, the required Purchase Order/Claim form will be prepared and executed.
  - The Procurement Coordinator will maintain a file with adequate documentation of each Small Purchase Procurement. This file will include documentation on the reasonableness of price, the quotes obtained, a copy of C.12 Form P212 - Quote Tally Sheet, a copy of C.17 Form P305 - Responsibility Determination, and a copy Purchase Order and C.1 Form P201-1 - FTA Procurement Purchase Order Requisition.

### **3.4 Procurement by Sealed Bid:**

Procurement by sealed bids is the procurement method of choice for acquisitions of property, construction, and other services when a complete, adequate, precise, and realistic specification or purchase description is available. There must be two or more responsible bidders willing and able to compete effectively for the business. The procurement generally lends itself to a firm, fixed price

contract awarded on the basis of price. The Procurement Coordinator is required to complete the following steps in undertaking sealed bids:

- Determine that grant approval has been made to ensure availability of funds and determine that the items to be purchased are eligible under the grant.
- Determine the items and quantities to be procured are consistent with the approved grant budget. If the procurement is of an item for direct use by the Commission, this determination shall be concurred by the Contracting Officer. If the procurement is of an item for use by a Subrecipient, the Procurement Coordinator will consult with the Subrecipient. A fair and reasonable cost estimate shall be developed and documented by the Procurement Coordinator.
- A C.18 Form P306 - Independent Cost Estimate shall be completed before obtaining bids or proposals.
- If a local share amount is required from a Subrecipient, the Procurement Coordinator shall verify receipt by the Commission of the local share which must be received prior to any award.
  - a. Subrecipients may request an exception to the local share requirement of advance payment under the following circumstances:
    1. The Subrecipient has an opportunity to be reimbursed the local share amount from a third-party but the Subrecipient cannot pre-pay the local share prior to being awarded funds from the third-party;
    2. The Subrecipient must show that they have ample cash on hand to pay the local share should the third-party funding fail to be awarded by submitting:
      - a. Audited Financial Statements
      - b. Bank statement or bank reconciliation document or other document showing cash on hand
      - c. A Purchase Order to the Commission in the amount of the required local share
    3. NIRPC staff may add additional verification standards as deemed appropriate;
    4. The local share must be paid in full to the Commission before the scheduled delivery of the item being purchased; regardless of whether or not the third-party funds have been received by the Subrecipient;
    5. The Finance and Personnel Committee shall have the authority to grant such exceptions.
- The Procurement Coordinator shall, in consultation with appropriate Commission personnel and/or Subrecipient personnel, determine technical specifications for the items to be procured. A bid solicitation document will be prepared.
- The Procurement Coordinator shall establish a date for bid opening in accordance with regulatory requirements.
- Legal notice of Invitation for Bids (IFBs) will be published in area newspapers or other publications appropriate to the solicitation with a set a deadline for potential vendors to submit proposals. The purpose of the publication is to solicit bids. Responses to such publication will be honored to the maximum extent possible. The bid solicitation document must include the Buy America, Lobbying, Debarment and Suspension, and

DBE forms. IFBs will be distributed to those vendors on a potential vendor list as well as to those responding to the legal notice. IFBs will also be distributed to the appropriate personnel of affected Subrecipients.

- At the bid opening, bids are opened by the Contracting Officer or his/her designee and the total amount of each bid is read aloud.
- Upon conclusion of the public bid opening, under the direction of the Contracting Officer, a pre-award audit is conducted by the Procurement Coordinator. Bids are evaluated for responsiveness, reviewed for responsibility and analyzed to determine which bid provides the lowest price. In determining responsiveness, the proposal is evaluated to determine its conformance to all requirements of the bid document. In determining responsibility, the bidder's potential ability to perform successfully under the terms and conditions contained in the bid document are evaluated. This includes the bidder's integrity, combined with public policy, past performance records, and a review of financial and technical resources. Price is evaluated according to factors specified in the bid solicitation package and may involve such considerations as discounts, transportation costs and life-cycle costs. The Commission always reserves the right to reject any all bids for sound and documented business reasons.
- The Contracting Officer will cause to be prepared, usually by the Procurement Coordinator, a written determination of the lowest, responsive, responsible bidder as the basis for making a recommendation for review by the Commission's Finance and Personnel Committee and award by either the full Commission or its Executive Board.
- A C.17 Form P305 - Responsibility Determination shall be completed before awarding.
- The Procurement Coordinator shall complete a Purchase Order Requisition (Form P201) and obtain necessary approvals.
- If the item being procured is for use by a Subrecipient and is a durable good with a useful life of more than one year, it is entrusted to the Subrecipient through the use of an existing lease agreement.
- After award by the Commission, a formal written contract is entered into with the successful bidder. Execution of State Board of Accounts approved Purchase Order/Claim forms are also required to make payment.
- Contracts are administered under the direction of the Contracting Officer.
- The Procurement Coordinator will maintain a file for each sealed bid procurement.

### **3.5 Competitive Proposal Procurements:**

The competitive negotiation process is used when conditions are inappropriate for use of sealed bid procedures. All procurements made through competitive negotiation shall conform to state law and applicable federal requirements. The Procurement Coordinator shall develop, maintain and keep current potential bidder lists for items that are purchased on a recurring basis. Before utilizing the competitive negotiation process, the Procurement Coordinator must perform a C.18

Form P306 - Independent Cost Estimate.

Legal notice of Requests for Proposals (RFPs) will be published in area newspapers or other publications appropriate to the solicitation with a set a deadline for potential vendors to submit proposals. The purpose of the publication is to solicit proposals. Responses to such publication will be honored to the maximum extent possible. RFPs will be distributed to those vendors on a potential vendor list as well as to those responding to the legal notice. RFPs will also be distributed to the appropriate personnel of affected Subrecipients.

The Commission may select one proposal based upon the original submission of a proposal, without negotiations with any Proposers. If the Commission elects to exercise this option, then the option to do so must be clearly stated in the Request for Proposals. Negotiations, if entered into, shall be with all Proposers identified by the Contracting Officer as being within a competitive range and consistent with federal cost principals. This determination is made after a review of all proposals received.

Award is to be made to the most responsive and responsible bidder whose proposal is most advantageous to the Commission's program as determined through application of technical evaluation criteria which take price and other factors into consideration. Before awarding the Contract, you must complete C.17 Form P305 - Responsibility Determination.

An evaluation committee shall be responsible for evaluation of proposals. A typical evaluation committee may consist of:

- the Contracting Officer and/or the Procurement Coordinator
- a Project Manager or other Commission personnel
- appropriate personnel of a Subrecipient
- the DBE Officer
- others as designated and appropriate

Evaluation criteria shall be established prior to proposal being opened. Evaluation criteria shall address cost and technical aspects of the proposals. Evaluation criteria may consist of such factors as: understanding of the project, identification of risks, method and techniques for accomplishing project objectives, technical expertise, approach to task management, clarity of the proposal and overall approach to the project. Cost may also be a factor. In any event costs shall be analyzed by the Evaluation Committee to determine if they are reasonable and appropriate (Price/Cost Analysis). Comparison to an independent estimate will be used when possible. Competition for award shall be through negotiations, evaluated through application of the identified criteria.

The Evaluation Committee shall make a written recommendation including the application of its evaluation criteria. The Procurement Coordinator shall present the written recommendation to the Finance and Personnel Committee for its review and to the full Commission or its Executive Board for contract award. A contract shall be executed by the Executive Director with the selected vendor. Contracts are administered under the direction of the Contracting Officer.

The Procurement Coordinator will maintain a file for each competitive negotiation procurement. Documentation that must be included in each file is identified in the "Maintenance of Procurement Files" portion of Section 4.16 of this manual.

### 3.6 Non-Competitive (Sole Source or Single Bid) Procurements:

The Non-Competitive procurement process is used only when the award of a contract is not feasible through small purchase, sealed bid, or competitive negotiation procedures. At least one of the following conditions must apply:

- Item is available from only one source.
- Public exigency or emergency is such that a delay would result from competitive solicitation cannot be permitted.
- FTA authorizes noncompetitive negotiations.
- Competition is determined to be inadequate after solicitation of a number of sources.
- The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) repealed the special procurement preference previously authorized for associated capital maintenance items. Thus any sole source procurement of associated capital maintenance items must qualify for an exception under the same standards that would apply to other sole source acquisitions.

**As a standard practice, the Commission does not utilize Non-Competitive (sole source or single bid) for FTA procurements.** If this technique is utilized, proposed costs must be verified and a cost analysis performed to demonstrate the price is fair and reasonable and show why the sole source or single bid is being selected (e.g. how another product could not meet minimum requirements, or of the critical nature of the delivery schedule). Certain sole source or single bid procurements may need to be submitted to the FTA for prior review (FTA approval for noncompetitive negotiation is not required unless you are relying on justification in the Circular).

### 3.7 Acquisition Through Assigned Contract Rights/Piggybacking Procurements:

Recipients may find it useful to acquire contract options through assignment by another recipient. This practice is also known as “piggybacking.” A recipient that obtains contractual rights through assignment may use these rights after determining: (1) that the original contract price remains fair and reasonable; (2) that the original contract provisions comply with all applicable Federal requirements and (3) that the assigning recipient originally procured quantities necessary for their needs (i.e., they did not procure unreasonably large quantities). Before proceeding with the assignment, the recipient seeking the assignment must review the original contract to be sure that the quantities the assigning recipient acquired, together with the quantities the acquiring recipient seeks, do not exceed the amounts available under the assigning recipient’s contract. Recipients do not need to perform a second price analysis if one was performed for the original contract. FTA does, however, expect the recipient to determine whether the contract price or prices that were established under the original agreement are still fair and reasonable. Also, recipients using assigned contract rights are separately responsible for ensuring that the contractor complies with FTA’s Buy America requirements for the assigned quantities. Finally, recipients should be mindful that piggybacking on contracts with the pre-FAST Act domestic content requirement of more than 60 percent may be restricted as well.

If it appears that there may be an existing governmental contract which may be used for a specific need, obtain a copy of the solicitation and resulting contract and review it carefully to determine if the documents contain an assignability clause. The clause cannot be added to the contract after the award if it was missing from the original solicitation documents. Determine when the contract

expires to ensure that you have sufficient lead time for the procurement before the contract expires. The contract must also have all the required federal certifications, if the contract does not have the required federal clauses and certifications, you must obtain all the necessary items from the contractor before the first purchase order is issued. Without the necessary required federal clauses and certifications, you cannot issue a purchase order with that contract.

- A C.18 Form P306 - Independent Cost Estimate shall be completed before obtaining bids or proposals.
- Determine that the specifications in the existing contract will meet your needs. On rolling stock only minor specification changes are permitted. No major component changes such as substituting an engine or transmission is permitted unless the engine or transmission specified in the original solicitation is no longer available.
- Review the terms and conditions carefully to determine that they are acceptable to you; e.g., warranty provisions, insurance requirements, etc.
- Determine that the requirements needed by your Agency will not be beyond the scope of the existing contract, creating a sole-source (noncompetitive) add-on to the contract which will have to be justified in accordance with FTA Circular 4220.1F. Generally, if you are working with an indefinite quantity contract you should have the needed flexibility to order additional quantities without having a "new procurement" action requiring a sole-source justification.
- Determine that the contract was awarded competitively, either through sealed bids or competitive proposals. If the contract was a sole-source award, you will have to justify a sole-source award in accordance with FTA Circular 4220.1F. and your Agency's procurement procedures.
- Perform a price/cost analysis against the ICE to determine that the contract prices originally established are still fair and reasonable. For example, if the original award was made some time ago, you may want to do a market survey and/or perform price/cost analysis to ensure that the prices are still fair and reasonable (even if the original award was competitive and a price/cost analysis was performed initially).
- If applicable, obtain written authorization from the governmental agency authorizing you to piggyback off of their contract and include the quantity of the purchase. See sample letter.
- Complete C.15 Form P303 - Piggybacking Worksheet, C.16 Form P304 - Contract Clause Checklist, and a C.17 Form P305 - Responsibility Determination.

For more assistance, please review the piggybacking worksheet in Appendix C.15 and please refer to the FTA Circular 4220.1F.

### **3.8 State Cooperative Purchasing Contracts**

Under Section 3019 of the FAST Act, grantees may purchase rolling stock and related equipment from a State cooperative procurement contract. A "cooperative procurement contract" means a contract entered into between a State government or eligible nonprofit entities and one or more vendors under which the vendors agree to provide an option to purchase rolling stock and related equipment to multiple participants. The contract term for a cooperative procurement contract may

be for an initial term or not more than two years and may include three optional extensions of one year each. A lead procurement agency or lead nonprofit entity in such a procurement may charge participants in the contract no more than one percent of the total value of the contract.

Under prior law, FTA referred to these types of State contracts as “State purchasing schedules” and, as such, were only available to recipients within that State. Under the FAST Act, a grantee may purchase rolling stock and related equipment from any State’s cooperative procurement contract or schedule. State cooperative purchasing contracts or state schedules are subject to federal requirements, including, but not limited to, full and open competition, no geographic preferences, Buy America, and bus testing, and must include all FTA required clauses and certifications with its purchase orders issued under the State contract. Pursuant to Section 3019 of the FAST Act, recipients may purchase from another State’s schedule.

### 3.9 Design-Build:

The design-build procurement method consists of contracting for design and construction simultaneously with contract award to a single contractor, consortium, joint venture, team, or partnership that will be responsible for both the projects design and construction. This must be done in compliance with 49 U.S.C. Section 5325(d)(2).

- A. Procurement Method Determined by Value:** First, the recipient must separate the various contract activities to be undertaken and classify them as design or construction, and then calculate the estimated total value of each. Because both design and construction are included in a single procurement, the FTA expects the recipient to use the procurement method appropriate for the services having the greatest cost, even though other necessary services would not typically be procured by that method.
- a. Construction Predominant: The construction costs of a design-build project are usually predominant so that the recipient would be expected to use competitive negotiations or sealed bids for the entire procurement rather than the qualification-based — “Brooks Act” procurement procedures. Specifically, when construction costs will be predominant, unless FTA determines otherwise in writing, an FTA recipient may not use qualifications-based procurement procedures to acquire architectural engineering, program management, construction management, feasibility studies, preliminary engineering, design, architectural and engineering, surveying, mapping, or related A&E services.
  - b. Design Services Predominant: In the less usual circumstance in which the cost of most work to be performed will consist of costs for architectural and engineering, program management, construction management, feasibility studies, preliminary engineering, design, architectural engineering, surveying, mapping, or related A&E services, FTA expects the recipient to use qualifications-based procurement procedures based on the — “Brooks Act”, 40 U.S.C. Sections 1101 through 1104.
- B. Selection Processes:** The recipient may structure its design-build procurement using one or more steps as described below:
- a. One-Step Method: The recipient may undertake its design-build procurement in a single step.
  - b. Two-Step Method: Another procurement method the recipient may use for large design-build projects is a two-step selection process as authorized for Federal Government use by 41 U.S.C. Section 253m. This method consists of:
    - i. Review of Technical Qualifications and Approach: The first step is a review of the prospective contractors’ technical qualifications and technical approach to the project. The recipient may then narrow the competitive range to those prospective contractors with satisfactory qualifications that demonstrate a technically satisfactory approach.

- ii. **Review of Complete Proposals:** The second step consists of soliciting and reviewing complete proposals, including price, submitted by prospective contractors first determined to be qualified. By using this two-step method, it will not be necessary for the recipient to undertake extensive proposal reviews, nor will prospective offers need to engage in expensive proposal drafting. This two-step selection procedure is separate and distinct from prequalification and is but one procurement method available to the recipient.

### 3.10 Design-Bid-Build:

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

- A. **Design Services:** For design services, the recipient must use qualifications-based procurement procedures.
- B. **Construction:** Because the recipient may not use qualifications-based procurement procedures for the actual construction, alteration or repair of real property, the recipient generally must use competitive procedures for the construction. These may include sealed bidding or competitive negotiation procurement methods, as appropriate.

### 3.11 Architectural and Engineering Services (A&E):

Competitive proposal procedures shall be based on the "Brooks Act" when contracting for A&E services as defined in 40 U.S.C. Chapter 11, Section 1101 through 1104 and 49 U.S.C. Section 5325(b). Other types of services considered A&E services include program management, construction management, feasibility studies, preliminary engineering, design, surveying, mapping, and services which require performance by a registered or licensed architect or engineer. For the procurement of architectural and engineering services, FTA mandates a qualifications-based procurement process.

It is possible that the professional services desired may be obtained from only one source and, thus, you will select your professional service provider on the basis of a sole source (noncompetitive) method of procurement. In this case, you must comply with the provisions of the Section VI.3.f of [FTA Circular 4220.1F](#) as well as state law. Even though negotiations are with only one source the goal should be to obtain a price that is fair and reasonable.

Qualifications-based competitive proposal procedures require that:

- A. An offeror's qualifications be evaluated;
- B. Price be excluded as an evaluation factor;
- C. Negotiations be conducted with only the most qualified offeror; and
- D. Failing agreement on price, negotiations with the next most qualified offeror be conducted until a contract award can be made to the most qualified offeror whose price is fair and reasonable to the grantee.

This "qualifications-based procurement method" can only be used for the procurement of A&E services. This method of procurement cannot be used to obtain other types of services even though a firm that provides A&E services is also a potential source to perform other types of services.



Section VI.3.h of FTA Circular 4220.1F Procurement of Design-Build: Grantees must procure design-build services through means of qualifications-based competitive proposal procedures based on the “Brooks Act” as set forth in Section VI.3.f of FTA Circular 4220.1 F when the preponderance of the work to be performed is considered to be for A&E service.

Qualifications-based competitive proposal procedures should not be used to procure design-build services when the preponderance of the work to be performed is not of an A&E nature.

### **3.11.1 Request for Technical Proposals:**

If you determine to require detailed technical proposals after the short list has been determined, you will need to establish the evaluation criteria to be used in selecting the successful contractor and to advise the firms of the criteria in your Request for Proposal (RFP Criteria will normally involve such matters as the following:

- A. Past Performance:** The solicitation should advise offerors of your approach in evaluating past performance, including evaluating offerors that have no relevant performance history, and should also advise offerors to identify past relevant contracts for efforts similar to your requirement. The solicitation should also allow offerors to provide information on problems encountered on the identified contracts and corrective measures taken. This evaluation should also consider the past performance of key personnel and subcontractors that will perform major or critical aspects of the work. This evaluation of past performance, as one indicator of an offeror’s ability to perform the contract successfully, is separate from the responsibility determination.
- B. Technical Criteria:** Technical factors regarding the specific methods, designs, and systems proposed to be used by the offeror will be considered and they must be tailored to the specific requirements of your solicitation. These factors must represent the key technical areas of importance that you intend to consider in the source selection decision. Technical factors should be chosen to support meaningful comparison and discrimination between competing proposals. If the agency has established minimum standards for determining technical acceptability of proposals, these standards must be clearly set forth in the solicitation.
- C. Key Personnel:** An evaluation of key personnel is often suggested when the procurement involves services or requirements where management of the work is a critical factor in determining its success. Qualifications and experience of key personnel may be an important evaluation factor. Some agencies have required oral presentations by key personnel during which the agency officials may ask these key personnel relevant questions to determine the depth of their knowledge in critical areas.
- D. Specialized Criteria:** Include specialized criteria such as experience in complying with the Americans with Disability Act requirements and previous work on landmark or historic structures as it pertains to the project.

### **3.11.2 Design Competition:**

The Brooks Act would permit the selection of an A&E firm on this basis of conceptual design. Consideration will have to be made for payment of proposal stipends to those firms that are requested to submit design proposals. The amount of the proposal stipend would be uniform for all competitors.

### **3.11.3 Architect-Engineer Selection Committee:**

When establishing an A&E Selection Committee, members will need to be appointed who have specific expertise in the disciplines needed for performing the contract. It is also recommended to have a DBE advisor. Members should be appointed to this Committee who are organizationally outside the engineering office that will be managing the A&E contract. Care must be taken that one member does not control the selection process to the point where only a select group of “favorite” contractors are winning contract awards. This committee performs the initial review of A&E contractor qualifications and determines the rankings.

### **3.11.4 Developing the Short List:**

Determination of the short list or competitive range of qualified firms with whom oral discussions/presentations will take place should be the prerogative of the procurement officer. The short list should be a number appropriate for adequate competition and should consist of those firms that have a reasonable chance of getting the award. These firms would then be invited to make presentations to the evaluation committee.

### **3.11.5 Oral presentations by A&E firms:**

Having evaluated the qualifications of the A&E firms who submitted detailed qualification statements (or technical proposals), and developed the short list of qualified firms, the A&E Selection Committee would establish a schedule for each firm to make oral presentations, although presentations are not always necessary or appropriate. If discussions are necessary, they can be written or done by phone. The Committee would advise the firms in advance of any questions the Committee had regarding the firm and its capabilities. These questions would be addressed by the A&E firm at the oral presentation. The Committee may also wish to specify those key personnel of the A&E firm that should present in order to answer the Committee’s questions. It is important that the user organization be comfortable with the actual project managers being assigned to the project, and for this reason the presentations should be made by the firm’s proposed key staff, not by a sales executive.

### **3.11.6 Final ranking of A&E Firms:**

At the conclusion of the oral presentations, each of the Selection Committee members would perform a final scoring and ranking of the short-listed firms. These final scores would then be discussed, and the procurement officer chairing the panel should strive for consensus - finding a firm that is valued by most members and acceptable to the rest. This process should not be a mechanical “majority-rules” vote. Once an agreement is reached on the highest qualified firm, a request will be made to that firm to submit a cost proposal for negotiation of a contract.

### **3.11.7 Contract Negotiations:**

The Brooks Act requires qualifications-based procurement method for the selection of A&E firms. Price is excluded as an evaluation factor, and negotiations are conducted with the most qualified firm only. If an agreement cannot be reached on price with the most qualified firm, negotiations are formally terminated with that firm. Once negotiations are terminated, that firm is irrevocably out of contention for the contract and cannot be brought back in. Negotiations are then conducted with the next most qualified firm. This process continues until a negotiated agreement is reached which the grantee considers to be fair and reasonable.

### **3.11.8 In-house Cost Estimate:**

Technical staff shall prepare a detailed in-house cost estimate (work estimate) of the work required by the A&E firm before the solicitation is issued. In order to be useful as a tool in evaluating the cost proposal, this in-house estimate needs to be prepared in the same level of detail that is required of the A&E firm to submit its proposal. A&E firms shall submit their cost proposals in the same format in which the in-house estimate was prepared. Request for Proposal (RFP) shall be issued with a sample cost proposal format and a list of position descriptions for each of the direct labor categories used by grantee's in-house cost estimating team.

### **3.11.9 Terms and Conditions:**

The RFP should contain all of the required terms and conditions (clauses, etc.). This will allow the contractor to address these terms and conditions in its proposal, which can then be discussed at negotiations. The A&E contractor should be advised before it submits its proposal what contract clauses are negotiable and what are not. Federally required clauses would not be subject to negotiation and contractors should be so advised before they put their proposals together. Any exceptions taken by the contractor to terms and conditions should be included in the price proposal only.

### **3.11.10 Controlling the Negotiations:**

An experienced contract specialist who can control the meeting should lead the negotiation team and control the meeting. Resource personnel (engineers, architects, lawyers, cost analysts, etc.) are a valuable resource to the contract specialist for advice. Discussion of alternatives or possible concessions during negotiations should be done in private caucuses and not in the presence of the contractor.

### **3.11.11 Contract Type:**

The type of contract that is most appropriate for the scope of work anticipated shall be chosen. FTA's Best Practices Procurement Manual (BPPM) Section 3 contains a discussion of contract types, including fixed price, cost reimbursement, time and materials, and labor hour contracts. This section should be reviewed for general guidance as to the circumstances when each type of contract may be appropriate.

## **3.12 Prohibited or Restricted Contract Types:**

### **3.12.1 Cost Plus a Percentage of Cost - Prohibited:**

The use of the cost plus a percentage of cost and percentage of construction cost methods of contracting are prohibited.

### **3.12.2 Time and Materials - Restricted:**

Time and materials contracts may only be used after a determination that no other type of contract is suitable; and if the contract specifies a ceiling price that the contractor may not exceed except at their own risk.

### 3.13 Revenue Contracts:

A revenue contract is a contract in which the recipient or subrecipient provides access to public transportation assets for the primary purpose of either producing revenues in connection with an activity related to public transportation, or creating business opportunities with the use of FTA assisted property. The recipient has broad latitude in determining the extent and type of competition appropriate for a particular revenue contract. Nevertheless, to ensure fair and equal access to FTA assisted property and to maximize revenue derived from such property, the recipient should conduct its revenue contracting as follows:

- A. **Limited Contract Opportunities:** If there are several potential competitors for a limited opportunity (such as advertising space on the side of a bus), then the recipient should use a competitive process to permit interested parties an equal chance to obtain that limited opportunity.
- B. **Open Contract Opportunities:** If, however, one party seeks access to a public transportation asset (such as a utility that might seek cable access in a subway system), and the recipient is willing and able to provide contracts or licenses to other parties similarly situated (since there is room for a substantial number of such cables without interfering with transit operations), then competition would not be necessary because the opportunity to obtain contracts or licenses is open to all similar parties.

### 3.14 Tag-ons:

The use of tag-ons, or the addition of work including supplies, equipment or services, that is beyond the scope of the original contract that amounts to a cardinal change is prohibited and applies to the original buyer as well as to others. In scope “tag-on” changes are not considered tag-ons.

### 3.15 Documentation of Procurement Actions:

Recipients are required to maintain and make available to FTA written records detailing the history of each procurement action for a period of three years after the recipient and subrecipients, if any, have submitted a final expenditure report. Different retention periods may apply in the event of litigation or in other limited circumstances. 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. See 2 C.F.R § 200.318(i) and 200.333 and FTA Circular 4220.1F, Chapter III, paragraph 3.d – *Record Keeping*.

## **Section 4: Commission Policies for FTA Procurements:**

### **4.1 Overview:**

The purpose of this section is to describe the policy guidelines which have been established by the Commission for undertaking procurements utilizing FTA funds. These policy guidelines have been developed to be consistent with FTA requirements.

### **4.2 Bonding Requirements:**

For construction contracts in excess of \$150,000, the Commission follows the specific requirements of the FTA as set forth in FTA Circular 4220.1F.

For all other contracts, the determination is made by the Contracting Officer as to whether a bid bond will be required. If a bid bond is to be required, it is so stated in the written bid solicitation package. In these instances, the following apply:

- Each bid shall be accompanied by a bidder's bond or certified cashier check in an amount pre-established by the Contracting Officer. This amount is normally equal to 5% of the bid and is payable to the Northwestern Indiana Regional Planning Commission. When a bid bond is received, a copy of the check is made and placed in the bid file. The original check is placed in a secure location in the Commission's business office.
- A performance bond on the part to the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- A payment bond on the part of the contractor for a percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts required from Contractors are as follows:
  - 50% of the contract price if the contract price is not more than \$1 million;
  - 40% of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
  - \$2.5 million if the contract price is more than \$5 million.
- The successful bidder is required to acknowledge the acceptance of the award by returning three (3) signed copies of the agreement and a signed copy of the Purchase Order/Claim form, normally within fifteen (15) days of their receipt of the aforementioned material. The bid deposit of the successful bidder will be retained as assurance of performance until work is completed; it will be returned after all contractual requirements of the bidder have been satisfied. If the successful bidder refuses to execute the agreement within the identified time frame, the amount of the bid bond will be forfeited to and retained by the Commission as liquidated damages for such neglect or refusal, and the Commission may proceed to place the order with another bidder.
- Bid bonds are returned to unsuccessful bidders after the contract is awarded and the signed purchase order has been received. When bid bonds are returned to a bidder, the Contracting Officer will oversee arrangements by the Procurement Coordinator to transmit them to the bidder. A copy of the transmittal letter is placed in the bid files.

### **4.3 Capital Equipment Lease Agreements:**

Prior to procurement, channels of responsibility are established between the Commission and its Subrecipients. These channels of responsibility are affected through written agreements. Capital equipment lease agreements between the Commission and Subrecipients provide a framework for procurements made on behalf of Subrecipients. Provision for local share, provision for insurance of Commission owned equipment, and other requirements are provided for in the lease agreement.

### **4.4 Changes to Bid Documents:**

A potential bidder must submit, in writing, a request for changes to the specifications or terms and conditions of the solicitation package by the date specified in the solicitation request to allow for analysis of the request.

The Contracting Officer may approve or reject the request. If a request for changes is approved, the Contracting Officer may direct the Procurement Coordinator to issue an amendment to the solicitation to all prospective bidders.

All amendment acceptance forms issued must be included with a proposal. Failure to include all amendment acceptance forms may cause the proposal to be considered non-responsive to the solicitation request.

All requested changes to the technical specifications must be fully supported with catalog information, tests, specifications and illustrations or other pertinent information as evidence that the substitute offered is equal to or better than the specification required. The Commission shall have the right to determine whether the substitute is equal and acceptable.

Any unapproved request for changes contained in a proposal may be cause for its rejection.

### **4.5 Commission Bid Protest Procedures:**

Bid protests based upon restrictive specifications or alleged improprieties in a solicitation that are apparent prior to bid opening must be received by the Commission, in writing, three (3) business days prior to the deadline date for submission of bids.

Protest of a decision concerning a contract award made by the Commission must be received by the Contracting Officer in writing within five (5) business days after the date of the contract award.

A protest shall include the name and address of the protestor, the bid/proposal number, the grounds for the protest, and any supporting documentation. The Contracting Officer shall notify the protestor, in writing and in a timely manner, of its receipt of the protest.

If the protest is received prior to the bid/proposal opening, all interested parties may be notified and the opening of bids/proposals may be postponed. If the protest is received after a contract award, the award may be withheld until a local decision is rendered concerning the protest.

The Contracting Officer will review the protest with any supporting documents submitted and the FTA Circular 4220.1F. The Contracting Officer shall perform an investigation of the protest. The Contracting Officer then presents the results of the investigation to the Finance and Personnel Committee of the Commission.

The Finance and Personnel Committee will review the results and provide a recommendation to the Commission. The Commission shall make a decision regarding the protest and notify the

Contacting Officer of the result. The Contracting Officer shall notify all affected parties of such decision in writing.

Any protest which is not resolved at the local level between the Commission and the protester may be filed with the Federal Transit Administration (FTA) in accordance with the Bid Protest Procedures outlined in FTA Circular 4220.1F.

#### **4.6 Contract Change Orders Procedures:**

Either party to a contract or agreement may request a change order. This request may be accepted or modified by negotiations between the Proposer and Contracting Officer. All change orders agreed upon between the contractor and the Commission will be detailed in writing through use of the Commission's change order form. A copy of the Commission's change order form is included in Appendix C.2. Each agreed to change order shall be approved by the Contracting Officer. Change orders shall document changes in scope of work as well as increases or decreases in cost to the original contract.

#### **4.7 Contract Close Out:**

This part concerns the final phase of the contract life cycle. The contract close out process can vary. However, in many cases it is a very simple process. In almost all cases all that is needed is:

- Acceptance/Authorization Release of Funds (See Form 211)
- Procurement Document Summary Sheet (See Form 301) that includes
  - Project Bid/Quote Number
  - Grant # (If applicable)
  - Equipment or General Description
  - Method of Procurement
  - Method of Advertisement
  - Certifications
  - Evaluation of Proposals
  - Offer
  - Vendors
  - Type of Contract
  - Change Orders
  - Delivery Confirmation
  - Final Total Cost

#### **4.8 Price/Cost Analysis:**

A price/cost analysis will be conducted for every procurement in accordance of FTA Circular 4220.1F when the cost for the procurement is \$10,000.00 or less in the aggregate and will be documented in the procurement file. However, the Commission's threshold for a price/cost analysis is \$3,000 or less.

#### **4.9 Disadvantaged Business Enterprise Considerations:**

The Commission has established a Disadvantaged Business Enterprise (DBE) program pursuant to U.S. Department of Transportation regulations as set forth in 49 CFR, Part 26. It is the policy of the Commission to ensure full and open competition for all procurements financed in whole or in part with federal financial assistance received from the U.S. Department of Transportation and to ensure that DBE firms have an equal opportunity to receive and participate in DOT assisted contracts.

The Procurement Coordinator will ensure that request for proposals and invitation for bids are made available to participating DBE firms in a timely manner and assist the DBE Coordinator in identifying contracting opportunities to achieve the annual DEB goal established by the Commission. If it becomes necessary to establish specific contract goals for DBE participation, the Procurement Coordinator will work with the DBE Coordinator to accomplish the appropriate contract goal. A sample of the DBE policy statement which is adopted annually is included as Appendix A.1.

#### **4.10 Full and Open Competition:**

The Commission will seek to ensure full and open competition for all procurements. Potential vendor lists are maintained by the procurement coordinator to solicit bids and proposals but are not meant to preclude in any way other potential bidders. Lists are kept current and enough qualified sources are included to promote maximum levels of full and open competition. The Commission will not place unreasonable requirements on potential bidders in order for them to qualify as viable bidders; nor impose excessive bonding or experience requirements. Requests for bids and proposals will be publicized, and necessary steps will be taken to ensure that disadvantaged business enterprises, are used when possible.

#### **4.11 General Terms and Conditions:**

This is standard language that is identical in both the solicitation document and the contract award. It is used in all procurements resulting in a contract award. It sets forth provisions required by FTA for all contracts awarded. This document is contained in Appendix A.5. By title, the general terms and conditions included are:

- Access to records and Reports
- ADA Access
- Bonding Requirements
- Breach of Contract and Violations
- Bus Testing
- Buy America Requirements
- Cargo Preference Requirements
- Charter Bus and School Bus
- Civil Rights Laws and Regulations
- Clean Air Act
- Clean Water Act
- Contract Work Hours and Safety Standards Act
- Copeland Anti-kickback
- Davis-Bacon Act
- Disadvantaged Business Enterprise (DBE)
- Drug and Alcohol Testing
- Energy Conservation
- Federal Changes
- Federal Privacy Act
- Fly America
- Government-Wide Debarment and Suspension
- Incorporation of FTA terms
- ITS National Architecture
- Lobbying Restrictions
- No Government Obligation to Third Parties



- Notification of Federal participation
- Patent and Rights in Data
- Pre-Award/Post Audit
- Program Fraud
- Recycled products
- School Bus Operations
- Seismic Safety
- State and Local law disclaimer
- Termination
- Transit Employee Protective Arrangements
- Veterans Employment

#### **4.12 Independent Cost Estimate (ICE):**

As set forth in FTA 4220.1F, it is required that before receiving bids or proposals that an Independent Cost Estimate (ICE) be performed. ICEs can be made by accounting for past purchase prices, quantities, physical inspection of the product, drawings, analysis of similar work. For more complex projects, ICEs can be made by an independent architect or engineer that will provide estimated hours, direct and indirect labor costs, and estimated profit or fee for a particular project.

To determine if the basis of the ICE is reliable and can be used, you must account for the following factors:

- What was the source of the information and is there a potential conflict of interest?
- What information and techniques were used?
- How reliable were earlier estimates?
- Is the ICE based upon the same technical approach as the current product or service?

Before awarding, you must consider whether the requirements or the assumptions of the solicitation have changed since the ICE was performed. Often, an ICE is prepared early in the acquisition process; by the time the solicitation is issued and offers are received, specifications and requirements have changed. This may cause the price or the nature of the product or service to change significantly, rendering a direct comparison to the ICE invalid.

For commercial off-the-shelf (COTS) items, a simple Independent Cost Estimate can be completed by filling out C.18 Form P306 - Independent Cost Estimate. Acceptable methods for COTS items are past prices, market surveys or research (which is not the same as receiving quotes or bids then performing a price or cost analysis), or prices paid for similar items being proposed.

#### **4.13 Justification of Need:**

Procurements must be necessary for execution of the Commission's programs and projects. Procurements may be justified based upon need, such as: for a new or expanded activity; for replacement of existing goods that have a defect or have met useful life criteria; for increasing productivity and/or efficiency; for meeting increased workload requirements; for new or revised procedures; or for health, safety or required protection. Other factors that may contribute to justifying need are based upon utilization considerations such as: no similar product is on hand; an existing product cannot economically be continued in use; or all similar products are presently used to the maximum extent possible. Other relevant considerations may include if the product is required by law, or if the value of proposed need warrants its acquisition.

Procurements for transit equipment and related items procured on behalf of Subrecipients are justified through a regional program of projects, the Transportation Improvement Program (TIP). Through this process, regional priorities for capital improvements are established. The process can

be briefly described as follows. A notification of solicitation for TIP projects is made to area transit operators. The TIP is a region-wide multi-year program for making capital improvements. Along with the notification are instructions, a timetable, any requirements, worksheets and plans. After the deadline (listed in the timetable), the assigned Commission staff performs an initial screening and ranking of all the projects according to the evaluation criteria and a screening process. Once TIP projects have been screened and ranked, a designated Commission Committee reviews all submitted projects and either accepts or rejects the ranking. Once this process is completed, a public meeting is held. After the public meeting, the Technical Planning Policy Committee (TPC) meets to review and recommend the TIP to the full Commission or its Executive Board. When approved by the Commission, the TIP is submitted to INDOT and FTA. The TIP may be described as a regional program for capital improvements.

The Transportation Improvement Program identifies those projects which are included in the grant application. The approved grant provides the list of items which will be procured.

#### **4.14 Legal Notice:**

The legal notice for sealed bids and competitive proposals contains the description of the desired item, the contact person, and the deadline for submitting the proposal. For purposes of public notification, it is not the Commission's practice to publish a detailed description of the item(s) needed. The detailed description can be provided to those vendors who respond to the public notice and those on the potential vendor list.

#### **4.15 Liquidated Damages:**

Liquidated damages clauses may be utilized in a contract if the Commission may reasonably expect to suffer damages such as increased costs from late completion of work and/or delivery of product and the extent of such damages would be difficult to determine. Assessment for damages shall be set at a specific rate per day to be determined by the Contracting Officer. The rate is to be specified in the contract with the third party. Recovered liquidated damages shall be credited to the project account involved, unless the FTA permits otherwise.

#### **4.16 Maintenance of Procurement Files:**

Proper maintenance of procurement records is an essential part of the procurement process. It is the responsibility of the Procurement Coordinator to accomplish the following:

- A procurement file shall be established for all procurements of more than \$2,500 made as a direct expenditure utilizing FTA funds and a procurement number shall be assigned to each procurement.
- Each procurement file shall consist of one (or more if necessary) pocket folder. It shall be labeled in the upper right-hand corner with the assigned procurement number and a brief title describing that which is procured.
- Each procurement file shall be kept in a file cabinet designated by the Chief Financial Officer.
- Each file for procurements made through an IFB or RFP process shall contain all applicable items as outlined on the procurement file checklist. A completed copy of the checklist shall also be included in each procurement file.

- Each file for procurements made through the quote process shall contain the following information:
  - Specifications or Brochures
  - Independent Cost Estimate (ICE)
  - Quotes Received
  - Project Summary
  - Cost/Price Analysis
  - Responsibility Determination
  - Purchase Order Requisition
  - Purchase Order
  - Invoice
  - Acceptance of Work/Authorization to Release Funds
  - Procurement Document Summary Sheet
  - Correspondence & Miscellaneous
- Each procurement file shall be completed and placed in the designated file cabinet within thirty (30) days after delivery of the item procured.
- Procurement files shall be kept for a minimum of ten years but no files will be disposed of without the authorization of the Contracting Officer.

#### **4.17 Option Clauses:**

From time to time, it may be preferable to include option clauses in contracts. Options may be included in contracts with the approval of the Contracting Officer. An option in a contract is a unilateral right whereby the purchaser may, for a specified time, purchase additional rolling stock, equipment, supplies or services called for by the contract, or may elect to extend the term of the contract. The following requirements must be met.

- Evaluation:
  - If options are required in a solicitation, option quantities or periods in the contractor's bid or offer must be evaluated in the determination of the contract award. Under FTA guidelines, when options are used, but not evaluated, the procurement will be considered to be a Sole Source Procurement.
- Exercise of Option Clauses:
  - If options are used in the solicitation, then exercise of such options must be in accord with the terms and conditions of the original contract award. Such use should be indicated in the bid solicitation document.
  - Options may only be used when the option price has been determined to be better than the prices available in the market or that the option is the more advantageous offer at the time the option is exercised.
  - Contract period of performance, inclusive of options, will not exceed five (5) years without prior written approval of the FTA.
  - Options clauses are to be used only upon approval of the Contracting Officer.

#### **4.18 Pre-Award and Post-Delivery Procedures:**

Whenever applicable, the Procurement Coordinator shall be responsible for assuring that the procurement is undertaken in accordance with FTA's Buy America Certifications, Purchaser's Requirements Certifications, and Federal Motor Vehicle Safety Standards Certifications. This

includes required pre-award and post-delivery documentation. For piggybacking purchases, you can obtain the certifications from the awarding Agency or the contractor. Forms specific to these certifications are included in Section 7.

The required Pre-Award Certifications are:

- Form P205: Pre-Award FMVSS Compliance Certification
  - This certification is only for Rolling Stock.
  - The Contractor shall submit
    - Manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or
    - Manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.
  - This indicates the rolling stock will comply with the relevant Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in Title 49 of the Code of Federal Regulations, Part 571.
- Form P204: Pre-Award Purchaser's Requirements Certification
  - This certifies that the item in question is the same product described in the recipient's solicitation specification and that the proposed manufacturer is a responsible manufacturer with the capability to produce an item that meets the specifications.
- Form P203: Pre-Award Buy America Certifications
  - The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. It shall submit documentation which lists 1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and 2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.
  - This verifies that:
    - The rolling stock will contain a minimum of:
      - FY18 & FY19: more than 65% domestic content
      - FY20 & beyond: more than 70% domestic content
    - Final assembly of the buses will take place in the United States.

The required Post-Delivery Certifications are:

- Form P208: Post-Delivery FMVSS Compliance Certifications
  - The Contractor shall submit
    - Manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or
    - Manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.
  - This certification indicates the rolling stock will comply with the relevant Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in Title 49 of the Code of Federal Regulations, Part 571.
- Form P207: Post-Delivery Purchaser's Compliance Certifications
  - This certification certifies that the rolling stock is the same product described in the recipient's solicitation specification and that the proposed manufacturer is a responsible manufacturer with the capability to produce an item that meets the specifications.
- Form P206: Post-Delivery Buy America Certifications
  - The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. It shall submit documentation which lists 1) component and subcomponent parts of the rolling stock to be



- Form P101: Bid, Offer or Proposal for Sale or Lease of Materials
- Form P102: Certification of Compliance with Government-wide Debarment, Suspension, Ineligibility and Voluntary Exclusion Provisions – Lower Tier Transactions
- Form P103: Certification of Warranty Provision
- Form P104: Certification of Compliance with DBE Requirements
- Form P105: Transit Vehicle Manufacturer’s Certification of Compliance with DBE Requirements
- Form P106: Certification of Compliance with FTA’s Bus Testing Requirements
- Form P107: Certification of Compliance with FTA Buy America Requirements for Buses, Other Rolling Stock, or Associated Equipment
- Form P108: Certification of Compliance with Federal Motor Vehicle Safety Standards
- Form P109: Certification of Compliance with Lobbying Provisions

Additional forms utilized in the procurement process are included in Appendix C.

#### **4.22 Responsibility Determination:**

The Procurement Coordinator shall complete a C.17 Form P305 - Responsibility Determination or some other form to document that the Offeror, Contractor, or Vendor is determined to be responsible. To be determined responsible, an Offeror/Contractor/Vendor must:

- Have adequate financial resources to perform the contract, or the ability to obtain them.
- Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and government business commitments
- Have a satisfactory performance record
- Have a satisfactory record of integrity and business ethics
- Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them
- Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them and
- Be otherwise qualified and eligible to receive an award under applicable laws and regulations

The Procurement Coordinator or Contract Officer is allowed to develop special standards apart from these general standards listed above. However, the special standards must be set forth in the solicitation and apply to all Offerors/Contractors/Vendors.

#### **4.23 Single Bid Situations:**

This type of procurement occurs when a single bid is received in response to a bid solicitation. When this condition is present, procedures for sole source procurements should be followed. In most circumstances, the items will be re-bid.

#### **4.24 Solicitation Terms:**

Awards will be made to only those contractors possessing the ability to meet the terms of the procurement bid or proposal. Factors which are considered before an award is made include: contractor integrity, past performance records, and the contractor's ability to meet the terms of the proposal, both technically and financially. Unless otherwise provided for in a written agreement, the vendor will be paid following completion of an acceptable product. Advance payments are not made. At the discretion of the Contracting Officer, progress payments may be made in professional services contracts where no property is involved or may be paid when: (1) costs are incurred in the performance of the contract, and (2) title is provided to the Commission for the property (materials, work in progress, finished goods) for which progress payments may be made. Alternative security for progress payments by irrevocable letter of credit or equivalent means to protect the grantee's interests in the progress payments may be used in lieu of obtaining title.

#### **4.25 Special Terms and Conditions:**

This is standard language that is identical in both the solicitation document and the contract award depending of type of item being procured. There are several categories of procurement types. They include:

- Professional Services
- A&E Brooks Act Method
- Management/Operations of Transit Services
- Rolling Stock Purchases
- Construction
- Materials and Supplies

These provisions are included, as appropriate. Section 3 includes the language included as special terms and conditions in various types of procurement.

#### **4.26 Sub-Grantee Bid Protest Appeal Process:**

Bid protests based upon restrictive specifications or alleged improprieties in a solicitation that are apparent prior to bid opening must be received by the Commission, in writing, three (3) business days prior to the deadline date for submission of bids.

Protest of a decision concerning a contract award made by the Commission must be received by the Contracting Officer in writing within five (5) business days after the date of the contract award.

A protest shall include the name and address of the protestor, the bid/proposal number, the grounds for the protest, and any supporting documentation. The Commission shall notify the protestor, in writing and in a timely manner, of its receipt of the protest.

If the protest is received prior to the bid/proposal opening, all interested parties may be notified and the opening of bids/proposals may be postponed. If the protest is received after a contract award, the award may be withheld until a local decision is rendered concerning the protest.

The Contracting Officer will review the protest with any supporting documents submitted and the FTA Circular 4220.1F. The Contracting Officer shall perform an investigation of the protest. The Contracting Officer then presents the results of the investigation to the Finance and Personnel Committee of the Commission. The Finance and Personnel Committee will review the results and

provide a recommendation to the Commission. The Commission shall make a decision regarding the protest and notify the Contracting Officer of the result. The Contracting Officer shall notify all affected parties of such decision in writing.

Any protest which is not resolved at the local level between the Commission and the protester may be filed with the Federal Transit Administration (FTA) in accordance with the Bid Protest Procedures outlined in FTA Circular 4220.1F.

#### **4.27 Technical Specifications/Scope of Work:**

Clear and well-designed specifications are critical in the procurement process. The amount of detail or specificity for any given specification may vary depending upon the nature of the procurement. The following guidelines are followed when preparing specifications.

- Specifications should be made clear and concise toward the objective of obtaining free and open competition.
- Specification parameters should be neither so narrow nor so broad as to restrict competition.
- Specifications should clearly define the bidder's obligation.
- Specifications should contain quality assurance provisions that provide a means of determining that the supplies, construction or product meet the minimum requirements.
- Specifications should be written in plain, precise language, avoiding the use of vague, ambiguous terms. Appropriate terms and words of the trade should be used.
- Specifications should provide a detailed description of the item or items to be procured.
- Brand Name or Equal. When it is impractical or uneconomical to provide a clear and accurate description of the technical requirements of the property or services to be acquired, a brand name or equal description may be used to define the performance or other salient characteristics of the property or services sought. The Commission must identify the salient characteristics of the named brand that offerors must provide. When using a brand name specification, the Commission does not need to reverse-engineer a complicated part to identify precise measurements or specifications in order to describe its salient characteristics. FTA's Best Practices Procurement Manual, (BPPM) contains additional information on preparation of specifications including examples with specific language.

With regard to an IFB, the technical specifications included in the contract award would be the same as provided in the solicitation document modified only by approved, documented and disseminated changes made prior to bid opening. With regard to an RFP, the Contract Scope of Work will be a product developed during the negotiations phase of the process.

#### **4.28 The Basic Agreement:**

The Basic Agreement is relatively simple document that summarizes who the parties to the agreement are, references and incorporates the other parts of the Agreement, describes in general term the goods and/or services to be provided, identifies the amount and terms compensation, and



sets forth any other necessary provisions that are not covered in the other parts of the Agreement. It also includes the signature pages for the parties to agreement to execute. A sample Basic Agreement is included in Appendix A.4.

#### **4.29 The IFB, RFP and Contract Documents:**

Whenever the Invitation for Bid (IFB) or Request for Proposal (RFP) processes are utilized, both a solicitation package and a contract document needs to be prepared. The elements included in both these documents are similar. The solicitation package is prepared to solicit bids or proposals and includes most provisions that will be included in the contract awarded to the successful bidder.

##### **A. The solicitation package consists of five parts:**

- a. A project or proposal summary;
- b. technical specifications for an IFB or a desired scope of work for an RFP;
- c. general term and conditions;
- d. special terms and conditions depending on the nature of the procurement; and
- e. required forms and certifications.

##### **B. The contract award also consists of four parts:**

- a. the basic agreement;
- b. the technical specification for an IFB or agreed upon scope of work for an RFP;
- c. general terms and conditions;
- d. and special terms and conditions depending on the nature of the procurement.

Each part of these documents is described in turn.

#### **4.30 Prohibition of Geographic Preferences**

Specifying in-State or local geographical preferences, or evaluating bids or proposals in light of in-State or local geographic preferences is prohibited when purchasing with FTA Funds.

Exceptions expressly mandated or encouraged by Federal law include the following:

- Architectural Engineering (A&E) Services. Geographic location may be a selection criterion if an appropriate number of qualified firms are eligible to compete for the contract in view of the nature and size of the project.
- Licensing. A State may enforce its licensing requirements, provided that those State requirements do not conflict with Federal law.
- Major Disaster or Emergency Relief. Federal assistance awarded under the Stafford Act, 42 U.S.C. Section 5150, to support contracts and agreements for debris clearance, distribution of supplies, reconstruction, and other major disaster or emergency assistance activities permits a preference, to the extent feasible and practicable, for organizations, firms, and individuals residing or doing business primarily in the area affected by a major disaster or emergency.

#### **4.31 Organizational Conflicts of Interest**

NIRPC staff will analyze each planned acquisition in order to identify and evaluate potential organizational conflicts of interest as early in the acquisition process as possible, and avoid, neutralize, or mitigate potential conflicts before contract award.

An organizational conflict of interest occurs when any of the following circumstances arise:

- **Lack of Impartiality or Impaired Objectivity.** When the contractor is unable, or potentially unable, to provide impartial and objective assistance or advice to the recipient due to other activities, relationships, contracts, or circumstances.
- **Unequal Access to Information.** The contractor has an unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier contract.
- **Biased Ground Rules.** During the conduct of an earlier procurement, the contractor has established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents.

## **Appendix A: Sample DBE Program, Solicitation, and Contract Documents**

## A.1 Sample DBE Program under 49 CFR Part 26:

# NORTHWESTERN INDIANA REGIONAL PLANNING COMMISSION

Year 2018 DBE PROGRAM under – 49CFR PART 26

### Definitions of Terms

The terms used in this program have the meanings defined in 49 CFR 26.5.

### Objectives /Policy Statement

The Northwestern Indiana Regional Planning Commission has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The Northwestern Indiana Regional Planning Commission has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the Northwestern Indiana Regional Planning Commission has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the Northwestern Indiana Regional Planning Commission to ensure that DBEs, and small businesses, as defined in part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy –

1. To ensure nondiscrimination in the award and administration of DOT assisted contracts;
2. To create a level playing field on which DBEs and small businesses can compete fairly for DOT assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs or small businesses;
5. To help remove barriers to the participation of DBEs and small businesses in DOT assisted contracts; and
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

Allen Hammond has been delegated as the DBE Liaison Officer. In that capacity Allen Hammond is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the Northwestern Indiana Regional Planning Commission in its financial assistance agreements with the Department of Transportation. Any questions or comments regarding DBE should be addressed to Allen Hammond at 219-763-6060.

The Northwestern Indiana Regional Planning Commission's and their sub-grantees overall goal for FFY 2017-2019 is the following: 2.79% of the Federal financial assistance we will expend in DOT-assisted contracts excluding FTA funds to be used for the purchase of transit vehicles.

We estimate that, in meeting our overall goal of 2.79%, we will obtain 100% from race-neutral DBE participation. We base this on previous years goals met through 100% race neutral means.

The following is a summary of the method we used to calculate this goal:

Step 1-A: Developing a rationale, including assessment of impediments as a recipient of federal funding from the FTA, the Northwestern Indiana Regional Planning Commission is required to establish a three-year goal for public transportation-related contracting with DBEs. In effect, the three-year goal becomes a performance standard of measuring progress toward achieving the anticipated level of DBE participation, and a partial means of assessing compliance with FTA, DBE regulations.

A two-step process for goal setting has been adopted by the Northwestern Indiana Regional Planning Commission to ensure that the program is narrowly tailored to remedy the effects of discrimination. The process is intended to provide the maximum flexibility while insuring that goals are based on the availability of ready, willing and able DBE's and small businesses in the Northwestern Indiana market.

Step 1: Calculating a baseline figure to represent the availability of ready, willing and able DBE's in the Northwestern Indiana market. The DBE Directory and Census Bureau data was used as a model to determine the baseline figure. Base rate goal = number of DBE firms available divided by the number of all available firms. Weighting is used in the Step One Base Figure calculation by multiplying the base figure and the percent of total contracts.

Step 2 Adjustments: Past Participation Median + Weighted Base Figure

Adjusted Goal:

Step 1: The method used to calculate the relative availability to DBE's ("base figure") for Step1" of the process. The percentage figure is calculated by dividing a number representing available DBE's by a number representing all available firms.

The data sources used to derive the numerator and denominator in the calculation was DBE's in the Indiana Department of Transportation Directory and total firms in the NAICS codes for Lake, Porter and La Porte County found in the Census Bureau's database.

The weighted base figure was calculated by multiplying the base figure and the percent of total contracts.

While Northwestern Indiana Regional Planning Commission has no registered DBE, we believe there are disadvantaged firms in the area who are not registered with the Indiana Department of Transportation.

Step 2: An adjustment was made to the base figure to reflect past participation. We then determined the historical median of the past three years and averaged it with our base figure.

Since the contracting opportunities were substantially the same over the past three years, we decided to make an adjustment based on past participation.

#### **Nondiscrimination**

The Northwestern Indiana Regional Planning Commission will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

In administering its DBE program, the Northwestern Indiana Regional Planning Commission will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

\_\_\_\_\_  
Tyson R. Warner, Executive Director

\_\_\_\_\_  
Date

Requests for alternate formats please contact Allen Hammond at (219) 763-6060 or ahammond@nirpc.org. Individuals with hearing impairments may contact us through the Indiana Relay 711 service by calling 711 or (800) 743-3333.

The Northwestern Indiana Regional Planning Commission prohibits discrimination in all its programs and activities on the basis of race, color, sex, religion, national origin, age, disability, marital status, familial status, parental status, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program.

## A.2 Legal Notice:

### LEGAL NOTICE

Notice is hereby given that bids (proposals) will be received by the Northwestern Indiana Regional Planning Commission for the following:

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

The Commission desires to  
XX  
XX  
XXXX.

Bid (Submittal) Due Date:	xxxxx xx, xxxx at x:xx a.m.(p.m.), local time
Bid (Submittal) Location:	Northwestern Indiana Regional Planning Commission 6100 Southport Road Portage, Indiana 46368
Pre-Bid (Submittal) Conference:	xxxxx xx, xxxx at x:xx a.m.(p.m.) local time
Conference Location	Northwestern Indiana Regional Planning Commission

Bid (proposal) solicitation documents (including technical specifications, contract terms and conditions and offer forms) may be obtained by contacting XXXXX XXXXXXXX, Procurement Coordinator at (219) 254-2527.

This procurement is being undertaken and financed, in part, through financial assistance received from the Federal Transit Administration (FTA) of the U.S. Department of Transportation. Any award made as a result of this solicitation is subject to a grant agreement between the FTA and the Commission, which is available for examination at the Commission offices during normal business hours. The successful bidder (Proposer) shall be required to comply with all applicable provisions of the grant agreement as well as contract provisions as set forth in the solicitation document.







it will be returned after all contractual requirement of the bidder have been satisfied. If the successful bidder refuses to execute the contract, the amount of the bid deposit shall be forfeited to and retained by the Commission as liquidated damages for such neglect or refusal and the Commission may proceed to place the order with another bidder.

#### **10. Exclusionary of Discriminatory Specifications:**

Apart from inconsistent requirements imposed by Federal Statue or regulations, the Commission agrees to comply with the requirements of 49 U.S.C § 5323(h)(2) by refraining from using any federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

#### **11. Pricing:**

The price to be quoted in any bid submitted shall include all items of labor, materials, tools, equipment, delivery and other costs necessary to fully complete the scope of the work specified in this solicitation. Any additions, deletions or variations from the specifications must be noted when the bid is submitted. If a bidder does not specifically identify a deviation from the specifications, it will be assumed that all requirements are either met or exceeded. The bidder guarantees that the bid submitted is not a product of collusion with any other individual or group of individuals, and further guarantees that no effort has been made to fix the bid price of any bidder or to fix any overhead, profit or cost element of any bid.

The Commission is exempt from payment of all federal, state and local taxes in connection with the purchase. Said taxes must be included in proposal prices. The Commission will provide necessary tax exemption certificates to the Proposer upon request.

#### **12. Single Proposal Response:**

If only one responsive proposal is received in response to the solicitation request, the Commission shall conduct a cost analysis in order to facilitate a determination of the fairness and reasonableness of the proposal price. The single bidder shall be requested to submit cost information.

#### **13. Protest Procedures:**

Bid protests based upon restrictive specifications or alleged improprieties in this solicitation that are apparent prior to bid opening must be received by the Commission, in writing, three (3) working days prior to the deadline date for submission of bids.

- Protest of a decision concerning a contract award made by the Commission or its Executive Board must be received by the Contracting Officer in writing within five (5) working days after the date of the contract award.
- A protest shall include the name and address of the protestor, the bid/proposal number, the grounds for the protest, and any supporting documentation. The Commission shall notify the protestor, in writing and in a timely manner, of its receipt of the protest.
- If the protest is received prior to the bid/proposal opening, all interested parties may be notified and the opening of bids/proposals may be postponed. If the protest is received after a contract award, the award may be withheld until a local decision is rendered concerning the protest.

- The Contracting Officer will review the protest with any supporting documents submitted and FTA Circular 4220.1F. A conference will be held with appropriate Commission staff and the affected Subrecipient or Subrecipients. The Contracting Officer shall make a decision regarding the protest and notify all affected parties of such decision in writing.
- Any protest which is not resolved at the local level between the Commission and the protester may be filed with the Federal Transit Administration (FTA) in accordance with the Bid Protest Procedures outlined in FTA Circular 4220.1F

#### **14. Procedure for Requesting Changes to the Solicitation Document:**

- A potential bidder must submit, in writing, a request for changes to the specifications, terms, and conditions of the proposal by the date specified in Part 1 of this solicitation request to allow for analysis of the request.
- The Commission may approve or reject the request. If a request for changes is approved, the Commission may issue an amendment to the solicitation to all prospective bidders.
- All amendment acceptance forms issued must be included with a proposal. Failure to include all amendment acceptance forms may cause the proposal to be considered non-responsive to the solicitation request.
- All requested changes to the technical specifications must be fully supported with catalog information, tests, specifications and illustrations or other pertinent information as evidence that the substitute offered is equal to or better than the specification required. The Commission shall have the right to determine whether the substitute is equal and acceptable.
- Any unapproved request for changes contained in a proposal may be cause for its rejection.

#### **15. Bid Withdrawal:**

Each and every bidder who submits his bid specifically waives any right to withdraw it or modify it except as herein provided. A bidder will be given permission to withdraw or modify any proposal after it has been deposited at the Commission, provided that the bidder makes his request by telephone, telegraph, fax machine, in writing, or in person by the proposal deadline. Requests pertaining to withdrawal or modification by telephone, telegraph, fax machine, or in person, must be confirmed in writing by the bidder and must reach the Commission by the proposal deadline. A modification to the proposal may delete, change or replace any part of the original proposal submitted. This must be specifically stated in writing. No bidder may withdraw his/her proposal within 45 calendar days after the proposal deadline.

#### **16. Late Proposal:**

Bids are "late bids" when the Procurement Coordinator receives them after the exact time for bid opening. Late proposals will only be considered if evidence acceptable to the Commission is supplied proving that the lateness was not the fault of the Proposer. For example, if the proposal is internally lost in the Commission office or if the package was postmarked at least 4 days prior to the closeout date and time. When a late proposal is received and it is clear from available information that it cannot be considered for award, the Procurement Coordinator shall promptly notify the bidder that the received late proposal will not be considered. Late proposals that are not considered shall be held unopened, unless opened for identification, and returned after an award is made. Any late

proposal(s) that are eligible to be considered for contract award will be opened at a specific time determined by the Procurement Coordinator.

**C. Other Considerations:**

**17. Type of Contract:**

*The type of award to be made is a firm fixed price contract.*

**18. Warranty Requirements:**

*Developed, if applicable, for each procurement.*

**19. Terms of Delivery:**

All items procured through this solicitation shall be delivered to the Northwestern Indiana Regional Planning Commission at 6100 Southport Road, Portage Indiana between the hours of 8:30a.m. and 3:30p.m. Delivery shall be made (*describe time frame*). Delivery costs shall be the responsibility of the successful bidder. The bidder shall assume risk or loss of all equipment, including any damages sustained during delivery.

**20. Acceptance:**

Within fourteen (14) calendar days after arrival at the designated point of delivery, the equipment delivered shall undergo an inspection for acceptance by the Commission. The inspection shall include: 1) a visual inspection to identify any delivery damage, and 2) a technical inspection to determine if the specifications have been met. If the equipment passes the inspection, of the equipment occurs on the fifteenth day after delivery. Acceptance may occur earlier if the Commission provides notification of early acceptance. If the equipment fails inspection, the Contracting Officer shall provide notification on non-acceptance of the equipment. In the event of non-acceptance, the Commission may require that repairs be made by the bidder, or an acceptable local vendor, to enable eventual acceptance of the equipment.

**21. Terms of Payment:**

Ninety-five (95%) payment for the specified equipment and assembly shall be net thirty (30) calendar days after acceptance of all equipment. Five percent (5%) of the award may be withheld for up to sixty (60) calendar days beyond the date of acceptance for the discovery and correction of any infancy failures or defects. The withheld funds shall be paid in full upon repair of any defects or upon receipt of a written commitment from the bidder reflecting a mutual agreement to resolve the identified deficiency.

**22. Contact:**

Written correspondence and phone inquiries should be addressed to:

**Procurement Coordinator  
Northwestern Indiana Regional Planning Commission  
6100 Southport Road  
Portage, Indiana 46368**

**Phone: (219) 254-2527**

**Fax: (219)762-1653**



## **A.5 General Terms and Conditions Associated with FTA Contracts:**

The following general terms and conditions will govern the basic Agreement and are a part thereof.

### **1. FINANCIAL ASSISTANCE:**

The work provided for in this Contract (Agreement) is financed, in part, through financial assistance received from the Federal Transit Administration (FTA) of the U.S. Department of Transportation under the authority provided by the Surface Transportation Act of 1982, as amended, the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991, the Transportation Efficiency Act for the 21st Century (TEA-21), and Safe, Accountable, Flexible, and Efficient Transportation Equity Act - A Legacy for Users (SAFETEA-LU). As such it is subject to a grant agreement between FTA and the Commission which will be furnished to Contractor upon request. The Contractor is required to comply with all terms and conditions prescribed for third party contracts in the grant agreement between FTA and the Commission.

### **2. CONTRACTS AMENDMENTS:**

Any proposed change in this Agreement shall be submitted to the Commission for its prior approval, and when approved the Commission will make the change by a written contract modification. The Commission may at any time by written order, and without notice to the sureties, make changes, within the general scope of this contract in one or more of the following: (1) drawings, designs, or specifications; (2) methods of shipment or packing; and (3) place of delivery. If any such change causes an increase or decrease in the cost of, or the time required for the performance of any part of the work under this contract, whether changed or not changed by any such order, an equitable adjustment shall be made in the contract price or delivery schedule, or both; and the contract shall be modified in writing accordingly. The Contractor must request an adjustment under this clause within 15 days from the date of receipt of the notification change. The Commission may decide to act upon the Contractor's request for adjustment at any time prior to final payment under the contract, provided the facts warrant such action.

**Change Order Procedures:** Within 15 days after receipt of the written change order to modify the contract, the Contractor shall submit to the Contracting Officer a detailed price and schedule proposal for the work to be performed. This proposal shall be accepted or modified by negotiations between the Proposer and Contracting Officer. At that time, both parties shall execute a detailed contract modification in writing. All changes in the contract that either increase or decrease the cost of, or the time required for the performance of any part of the work under this contract, thereby affecting the contract price or delivery schedule, shall be resolved by mutual agreement between the Proposer and the Commission. Disagreements that cannot be resolved through negotiations shall be resolved in accordance with the contract disputes provisions of FTA Guidelines. Regardless of any disputes, the Contractor shall proceed with the work ordered, provided the Commission has obtained the prior concurrence of FTA.

Notice of the acceptance of the change order will be made by the issuance of a Commission change order form to the Contractor. The Contractor will be required to evidence its acceptance of the change order by endorsing and returning to the Commission the change order form within 10 days of its receipt thereof. The acceptance of the change order will bind the Contractor on his part to finish and deliver at his adjusted proposal price in accordance with conditions of said accepted proposal

and specifications. The contractor shall be liable for all costs resulting from, and/or for satisfactorily correcting, and specification or other change not properly ordered by written modification to the contract.

**Price Adjustment for Regulatory Changes:** If a price adjustment is indicated, either upward or downward, it shall be negotiated between the Commission and the Contractor for changes that are mandatory as a result of legislation or regulations that are promulgated and become effective between the date of proposal acceptance and the date of manufacture. Such price adjustment may be audited, where required.

### 3. CONTRACT TERMINATION PROVISIONS:

The following provisions have been developed by the Northwestern Indiana Regional Planning Commission in accordance with 2 CFR Part 200 and FTA Circular 4220.1F

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

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

**Termination for Default:** If the Contractor does not deliver the goods or services provided by this solicitation in accordance with the provisions contained herein, or if the Contractor fails to perform in the manner called for with regard to other provisions of a contract awarded in conjunction with this solicitation, the Commission may notify the Contractor of its intention to terminate this contract for default. The Proposer shall be allowed fifteen (15) calendar days after receipt of the notice of intent to terminate for default in which to rectify the problems that were cause for such notice. Termination shall be effected by serving a final notice of termination on the Contractor setting forth the manner in which the Contractor may be paid for only items delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

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

**Opportunity to Cure:** The Commission in its sole discretion may, in the case of a termination for breach or default, allow the Contractor 30 days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to the Commission's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor or written notice from Commission setting forth the nature of

said breach or default, the Commission shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude the Commission from also pursuing all available remedies against Contractor and its sureties for said breach or default.

#### 4. BREACHES AND DISPUTE RESOLUTION:

The following provisions have been developed by the Northwestern Indiana Regional Planning Commission in accordance with 2 CFR Part 200 and FTA Circular 4220.1F

**Disputes:** Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the Commission's Contracting Officer. This decision shall be final and conclusive unless within [five (5)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Contracting Officer. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Contracting Officer shall be binding upon the Contractor and the Contractor shall abide by the decision.

**Performance during Dispute:** Unless otherwise directed by the Commission, the Contractor shall continue performance under this Contract while matters in dispute are being resolved.

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

**Remedies:** Unless this Agreement provides otherwise, all claims, counterclaims, disputes and other matters in question between the Commission 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 State of Indiana.

**Rights and Remedies:** The duties and obligations imposed by the Agreement 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 Commission or the Contractor shall constitute a waiver of any right or duty afforded any of them under the Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

**Notification of Current or Prospective Legal Matters that may affect the Federal Government:** The Contractor acknowledged that the provision of the FTA Master Agreement, Section 39(b), apply to its actions pertaining to this project. Upon execution of the underlying contract, the Contractor certifies or affirms that if a current or prospective legal matter that may affect the Federal Government emerges, the Contractor must notify the [Recipient]. (1) 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. (2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interest in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and

requirements. The Contractor agrees to include the above clause or similar clause in each subcontract financed in whole or in part with Federal assistance provided by FTA.

**5. ACCESS TO RECORDS AND REPORTS:**

The following access to records requirements apply to this Agreement:

Where the Purchaser is not a State but a local government and is the FTA Recipient or a Subrecipient of the FTA Recipient in accordance with 2 CFR Part 200, the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. The Contractor also agrees, pursuant to 49 CFR 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a) 1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after 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 Contractor agrees to maintain same until the Commission, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 2 CFR Part 200.

**6. CHANGES TO FEDERAL REQUIREMENTS:**

Pursuant to 2 CFR Part 200, 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 (Form FTA MA) between the Commission and FTA, as they may be amended or promulgated from time to time during the term of this contract. The Contractor's failure to so comply shall constitute a material breach of this contract.

**7. NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES:**

The Commission 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 Commission, the Contractor, or any other party (whether or not a party to this Agreement) pertaining to any matter resulting from the Agreement. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**8. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS:**

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. 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. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate. 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.

#### **9. CIVIL RIGHTS LAWS AND REGULATIONS:**

**Civil Rights and Equal Opportunity:** The Commission is an Equal Opportunity Employer. As such, the Commission agrees to comply with all applicable Federal civil rights laws and regulations, the Commission agrees to comply with the requirements of 49 U.S.C. § 5332(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.

**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, creed, 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.

**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, 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.

**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.

**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.

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

**10. DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS:**

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

The (prime) contractor shall not terminate a DBE subcontractor for convenience and then perform that work with its own forces or its affiliate.

Prime contractors must make payment to subcontractors for satisfactory performance of their contracts no later than 30 days from the receipt of each payment made by the Commission to the prime contractor.

If retainage is withheld by from the subcontractor, prompt and full payment must be made by the prime contractor to the subcontractor within 30 days after the subcontractor’s work is satisfactorily completed.

A subcontractor’s work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the Commission. When the Commission has made an incremental acceptance of a portion of a prime contract or a progress payment, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

Any delay or postponement of payment to subcontractors may only take place for good cause. Any such delay or postponement requires the prior written approval of the Commission.

If any of these conditions are not met, the Commission reserves the right to withhold payment until the Commission is satisfied that these conditions are met.

The contractor agrees to place this clause in all subcontracts.

**11. ENERGY CONSERVATION REQUIREMENTS:**

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act. These requirements are set forth in 42 U.S.C 6201 and 2 CFR Part 200.

**12. RECYCLED PRODUCTS:**

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

**13. CARGO PREFERENCE:**

If awarded a contract, the contractor shall agree to comply with cargo preference requirements on the shipment of foreign made goods, as provided for in 46 USC 12241 (b) (1) and 46 CFR Part 381.

As required by 46 CFR Part 381, the contractor agrees:

(1) To utilize 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, materials, or commodities pursuant to this contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels.

(2) To furnish within 20 days following the date of loading for shipments originating within the United States, or within 30 working days following the date of loading for shipment 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 FTA recipient (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, D.C. 20590.

**14. FLY AMERICA REQUIREMENTS:**

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

**15. SEISMIC SAFETY REQUIREMENTS:**

The Seismic Safety requirements apply 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 Seismic Safety Regulations 49 CFR 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.

**16. INTELLIGENT TRANSPORTATIONS SYSTEM REQUIREMENTS:**

The Contractor agrees that in the course of implementing any project involving any aspects of an intelligent transportation system it will be compliant with 23 CFR Parts 655 and 940 and Section VII, unless it obtains an exemption from those requirements, and follow FTA Notice of “FTA National ITS Architecture Policy on Transit Projects” at 66 Fed. Reg. 1446, January 8, 2001, and all other applicable federal guidance.

**17. STATE AND LOCAL LAW DISCLAIMER:**

State and Local Law Disclaimer – The Contractor hereby agrees to comply with all applicable statutes, ordinances, and regulations of the United States, the U.S. Department of Transportation, the State of Indiana and local governments.

**18. FEDERAL PRIVACY ACT:**

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

**19. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS:**

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 this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Commission requests which would cause the Commission to be in violation of the FTA terms and conditions.

**20. SUSPENSION AND DEBARMENT PROVISIONS:**

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to Executive Order 12549 and 12689, as implemented by 2 CFR Part 180, regarding government-wide debarment and suspension of contractors. The Contractor agrees to sign required certifications. The Contractor agrees to pass this requirement on to sub-contractors seeking subcontracts over \$25,000.

By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.

1. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, (Recipient) may pursue available remedies, including suspension and/or debarment.
2. The prospective lower tier participant shall provide immediate written notice to (Recipient) if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
3. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "lower tier covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact (Recipient) for assistance in obtaining a copy of those regulations.
4. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by (Recipient).
5. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
6. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List issued by U.S. General Service Administration.
7. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
8. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all

remedies available to the Federal Government, (Recipient) may pursue available remedies including suspension and/or debarment.

**2. "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction"**

1. The prospective lower tier participant certifies, by submission of this bid or proposal, that neither it nor its "principals" [as defined at 2 C.F.R. Part180] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**21. LOBBYING:**

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

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

**22. CLEAN WATER REQUIREMENTS:**

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

**23. CLEAN AIR REQUIREMENTS:**

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq., 40 CFR 15.61, and 2 CFR Part 200. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

**24. NOTIFICATION OF FEDERAL PARTICIPATION:**

To the extent required by law, in the announcement of any third party contract award for goods and services (including construction services) having an aggregate value of

\$500,000 or more, the recipient agrees to specify the amount of federal assistance to be used in financing that acquisition of goods and services and to express that amount of that federal assistance as a percentage of the total cost of that third party contract.

**25. RECOVERED MATERIALS:**

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

**26. ADA ACCESS:**

The Contractor agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with FTA Master Agreement MA(15), 10-1-2008 33 disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Contractor also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, with 29 U.S.C. § 794, which prohibits discrimination on the basis of disability; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities; and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities; and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable. In addition, the Contractor agrees to comply with applicable implementing Federal regulations any later amendments thereto, and agrees to follow applicable Federal directives except to the extent FTA approves otherwise in writing. Among those regulations and directives are:

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

10. FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and FTA Master Agreement MA(15), 10-1-2008 34; and
11. Federal civil rights and nondiscrimination directives implementing the foregoing Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing.

**27. VETERANS EMPLOYMENT:**

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

**28. BONDING REQUIREMENTS:**

Applicability to Contracts: For those construction or facility improvement contracts or subcontracts exceeding \$100,000, FTA may accept the bonding policy and requirements of the recipient, provided that they meet the minimum requirements for construction contracts as follows:

- a. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantees" shall consist of a firm commitment such as a bid bond, 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.
- b. A performance bond on the part to the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts required from Contractors are as follows:
  - (1) 50% of the contract price if the contract price is not more than \$1 million;
  - (2) 40% of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
  - (3) \$2.5 million if the contract price is more than \$5 million.
- d. A cash deposit, certified check or other negotiable instrument may be accepted by a grantee in lieu of performance and payment bonds, provided the grantee has established a procedure to assure that the interest of FTA is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond.

Flow Down Requirement: Bonding requirements flow down to the first tier contractors.

Model Clauses/Language: FTA does not prescribe specific wording to be included in third party contracts. FTA has prepared sample clauses as follows:

**Bid Bond Requirements (Construction)**

- (a) Bid Security



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

(b) Rights Reserved

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

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

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

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

**Performance and Payment Bonding Requirements (Construction)**

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

(a) Performance bonds

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).

2. The (Recipient) may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The (Recipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(b) Payment bonds

1. The penal amount of the payment bonds shall equal:

(i) Fifty percent of the contract price if the contract price is not more than \$1 million.

(ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or

(iii) Two and one half million if the contract price is more than \$5 million.

2. If the original contract price is \$5 million or less, the (Recipient) may require additional protection as required by subparagraph 1 if the contract price is increased.

### **Performance and Payment Bonding Requirements (Non-Construction)**

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

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

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

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

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

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

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

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

### **Advance Payment Bonding Requirements**

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

### **Patent Infringement Bonding Requirements (Patent Indemnity)**

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

### **Warranty of the Work and Maintenance Bonds**

1. The Contractor warrants to (Recipient), the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless

otherwise specified by (Recipient), free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by the [Project Manager], the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

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

**29. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS:**

The Davis-Bacon and Copeland Acts are codified at 40 USC 3141, et seq. and 18 USC 874. The Acts apply to grantee construction contracts and subcontracts that “at least partly are financed by a loan or grant from the Federal Government.” 40 USC 3145(a), 29 CFR 5.2(h), 2 CFR Part 200. The Acts apply to any construction contract over \$2,000. 40 USC 3142(a), 29 CFR 5.5(a). ‘Construction,’ for purposes of the Acts, includes “actual construction, alteration and/or repair, including painting and decorating.” 29 CFR 5.5(a). The requirements of both Acts are incorporated into a single clause (see 29 CFR 3.11) enumerated at 29 CFR 5.5(a) and reproduced below.

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

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in

which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

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

(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

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

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

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

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the

contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

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

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

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

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

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

(2) **Withholding** - The Commission shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or

working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the Commission may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

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

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

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

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

specified in the applicable wage determination incorporated into the contract.

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

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

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

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

program is approved.

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

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

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

(6) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) **Contract termination: debarment** - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) **Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) **Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their



representatives.

(10) **Certification of eligibility** - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

### 30. EQUAL EMPLOYMENT OPPORTUNITY

Construction contracts over \$10,000. Federal Requirements and Guidance. The Recipient agrees to prohibit, and assures that each Third Party Participant will prohibit, discrimination on the basis of race, color, religion, sex, or national origin, and:

(a) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*,

(b) Facilitate compliance with Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note, and as further amended by Executive Order 13672, "Further Amendments to Executive Order 11478, Equal Employment Opportunity in the Federal Government, and Executive Order 11246, Equal Employment Opportunity," July 21, 2014,

(c) Comply with Federal transit law, specifically 49 U.S.C. § 5332, as provided in section 13.a of this Master Agreement, and

(d) Follow Federal guidance pertaining to Equal Employment Opportunity laws and regulations, and prohibitions against discrimination on the basis of disability,

The Recipient agrees:

(a) **Prohibited Discrimination.** As provided by Executive Order 11246, as amended, and as specified by U.S. Department of Labor regulations, to ensure that applicants for employment are employed and employees are treated during employment without discrimination on the basis of their:

1. Race,
2. Color,
3. Religion,
4. National origin,
5. Disability,
6. Age,
7. Sexual origin,
8. Gender identity, or
9. Status as a parent, and

(b) **Affirmative Action.** Take affirmative action that includes, but is not limited to:

1. Recruitment advertising, recruitment, and employment,
2. Rates of pay and other forms of compensation,
3. Selection for training, including apprenticeship, and upgrading, and
4. Transfers, demotions, layoffs, and terminations, but

(c) **Indian Tribe.** Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of "Employer," and

Equal Employment Opportunity Requirements for Construction Activities. In addition to the foregoing, when undertaking “construction” as recognized by the U.S. Department of Labor (U.S. DOL), the Recipient agrees to comply, and assures that each Third Party Participant will 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 11246, “Equal Employment Opportunity,” as amended by Executive Order 11375, “Amending Executive Order 11246, Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note.

### **31. PATENT AND RIGHTS IN DATA:**

#### **Rights in Data:**

1. The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.
2. The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:
  - (a) Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.
    - a. In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.
      1. Any subject data developed under that contract, whether or not a copyright has been obtained; and
      2. Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.
    - b. When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather

than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c) , however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

- c. Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
- 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 Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause , provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.
- f. Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

3. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e. , a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in

U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

**Patent Rights:**

1. General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.
2. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

**32. CONTRACT WORK HOURS & SAFETY STANDARDS ACT:**

Pursuant to 40 U.S.C. § 3701 -3708; 29 C.F.R. § 5; 29 C.F.R. § 1926, the Contractor shall comply with the following:

**Pursuant to Section 102:**

1. **Overtime requirements:**  
No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. **Violation; liability for unpaid wages; liquidated damages:**

In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$ 10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

3. **Withholding for unpaid wages and liquidated damages:**

The Consortium shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

4. **Subcontracts:**

The contractor or subcontractor shall insert in any subcontracts the clauses set forth in 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 section.

**Pursuant to Section 107:**

The Contractor agrees to comply with section 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. section 333, and applicable DOL regulations, " Safety and Health Regulations for Construction " 29 C.F.R. Part 1926. Among other things, the Contractor agrees that it will not require any laborer or mechanic to work in unsanitary, hazardous, or dangerous surroundings or working conditions.

1. **Payrolls and basic records:**

Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of

any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

2. **Sub-contracts:**

Subcontracts: The Contractor also agrees to include the requirements of this section in each subcontract. The term "subcontract" under this section is considered to refer to a person who agrees to perform any part of the labor or material requirements of a contract for construction, alteration or repair. A person who undertakes to perform a portion of a contract involving the furnishing of supplies or materials will be considered a "subcontractor" under this section if the work in question involves the performance of construction work and is to be performed: (1) directly on or near the construction site, or (2) by the employer for the specific project on a customized basis. Thus, a supplier of materials which will become an integral part of the construction is a "subcontractor" if the supplier fabricates or assembles the goods or materials in question specifically for the construction project and the work involved may be said to be construction activity. If the goods or materials in question are ordinarily sold to other customers from regular inventory, the supplier is not a "subcontractor." The requirements of this section do not apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

**33. BUY AMERICA:**

The Buy America requirements apply to the following types of contracts: Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$150,000). The Buy America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance. 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 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, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a percentage of domestic content that complies with FTAs current Buy America percentage requirement. When procuring rolling stock, which includes train control, communication, traction power equipment, and rolling stock prototypes, the cost of the components and subcomponents produced in the U.S. must be more than:

1. More than 60 percent for FY2016 and FY2017
2. More than 65 percent for FY2018 and FY2019
3. More than 70 percent for FY2020 and beyond

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

The certification may be attached hereto following these terms and conditions, but shall be deemed incorporated herein as if fully set forth.

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

*Certificate of Compliance with 49 U.S.C. 5323(j)(1)*

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 CFR Part 661.5.

Date

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Signature

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Company Name

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Title

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*Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)*

The bidder or offeror hereby certified that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date

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Signature

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Company Name

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Title

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**Certification requirement for procurement of buses, other rolling stock and associated equipment.**

*Certificate of Compliance with 49 U.S.C. 5323(j)(2)(C).*

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 C.F.R. Part 661.11.

Date

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Signature

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Company Name

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Title

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*Certificate of Non-Compliance with 49 U.S.C 5323(j)(2)(C)*

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11, but may qualify for an exception pursuant to 49 U.S.C 5323(j)(2)(A), 5323(j)(2)(B), or 4323(j)(2)(D), and 49 C.F.R. 661.7.

Date

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Signature

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Company Name

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Title

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**34. PRE-AWARD AND POST DELIVERY AUDITS REQUIREMENTS:**

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

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

Buy America certification is mandated under FTA regulations, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 C.F.R 663.13.

Specific language for the Buy America certification is mandated by FTA regulation, "Buy America Requirements—Surface Transportation Assistance Act of 1982, as amended, " 49 C.F.R. 661.12, but has been modified to include FTA's Buy America requirements codified at 49 U.S.C. A 5323(j).



## **A.6 Terms and Conditions for Transit Management or Operations Projects Associated with FTA Contracts:**

**The following terms and conditions are applicable for all transit management or operations projects:**

### **1. CHARTER SERVICE OPERATIONS:**

The Contractor agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and sub-recipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be “incidental” i.e., it must not interfere with or detract from the provision of mass transportation.

### **2. SCHOOL BUS OPERATIONS:**

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

**The following terms and conditions are applicable for all transit operations projects:**

### **1. TRANSIT EMPLOYEE PROTECTIVE ARRANGEMENTS:**

The Contractor agrees to comply with applicable transit employee protective requirements as follows:

#### **General Transit Employee Protective Requirements:**

To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from U.S. DOL to FTA applicable to the FTA Recipient’s project from which federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however do not apply to any contract financed with federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C Section 5310(a)(2), or for projects for non-urbanized areas authorized by 49 U.S.C. Section 5311. Alternative provisions for those projects are set forth in subsections (b) and (c) of this clause.

#### **Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C.:**

**Section 5310(a)(2) for Elderly Individuals and Individuals with Disabilities:** If the contract involves transit operations financed in whole or in part with federal assistance authorized by 49 U.S.C. Section 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. Section 5333(b) are necessary or appropriate for the State and the public

body sub-recipient for which work is performed on the underlying contract, the Contractor agrees to carry out the project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. Section 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter certification to FTA, the date of which is set forth in the grant agreement or cooperative agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

**Section 5311 in Non-urbanized Areas:** If the contract involves transit operations financed in whole or in part with federal assistance authorized by 49 U.S.C. Section 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Non-urbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

The Contractor also agrees to include any applicable requirements in each subcontract involving transit operations financed in whole or in part with federal assistance provided by the FTA.

## **2. DRUG AND ALCOHOL TESTING REQUIREMENTS:**

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR 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 the State of Indiana, the Northwestern Indiana Regional Planning Commission or the Consortium to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR 655, and to review the testing process. The Contractor further agrees to certify annually its compliance with before August 1st of each year and to submit the Management Information System (MIS) reports prior to March 15th of each year to the Consortium. 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.

## **3. BUS TESTING REQUIREMENTS:**

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

1. A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient at a point in the procurement process specified by the recipient which will be prior to the recipient's final acceptance of the first vehicle.
2. A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.
3. If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide

a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.

4. If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

**Appendix B: Sample Vendor Forms and Certifications:**

**B.1 Form P101 - Bid Proposal and Non-Collusion Affidavit:****BID, OFFER, OR PROPOSAL FOR SALE OR LEASE OF MATERIALS**

**Bidder** \_\_\_\_\_ **(First,** \_\_\_\_\_ **Last)**

**Address:**

**City/State:**

Pursuant to notices given, the undersigned offer(s)/bid(s) to the Northwestern Indiana Regional Planning Commission in accordance with the following attachment(s) which specify the class or item number or description, quantity, unit, unit price, and total amount. The award of this contract will be by classes or items in accordance with specifications. Any changes or alterations in the items specified will render such bid void as to that class or item. Bidder promises that he has not offered nor received a less price than the price stated in his bid for the materials included in said bid. Bidder further agrees that he will not withdraw his bid from the office in which it is filed. A certified check or bond shall be filed with each bid if required, and liability for breach shall be enforceable upon the contract, the bid or certified check or both as the case may be.

\_\_\_\_\_  
Signature of Bidder or Agent

**NON-COLLUSION AFFIDAVIT**

The undersigned bidder or agent, being duly sworn on oath, says that he has not, nor has any other member, representative, or agent of the firm, company, corporation or partnership represented by him, entered into any combination, collusion or agreement with any person from bidding not to induce anyone to refrain from bidding, and that this bid is made without reference to any other bid and without any agreement, understanding or combination with any other person in reference to such bidding. He further says that no person or persons, firms, or corporation has, have or will receive directly or indirectly, any rebate, fee, gift, commission or thing of value on account of such sale.

\_\_\_\_\_  
Bidder (Firm)

\_\_\_\_\_  
Signature of Bidder or Agent

## **B.2 Form P102 - Disbarment or Suspension:**

### **CERTIFICATION OF COMPLIANCE WITH GOVERNMENT-WIDE DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION PROVISIONS – LOWER TIER COVERED TRANSACTIONS**

**In regard to 2 CFR Part 180 and Executive Order 12549 and 12689**

**By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below in accordance with the following instructions:**

1. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Commission may pursue available remedies, including suspension and/or debarment.
2. The prospective lower tier participant shall provide immediate written notice to the Commission if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
3. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "lower tier covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact the Commission for assistance in obtaining a copy of those regulations.
4. The prospective lower tier participant agrees by submitting this proposal that should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by the Commission.
5. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
6. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.
7. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
8. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, the Commission may pursue available remedies including suspension and/or debarment.

**Pursuant to the above instructions:**

- (1) The prospective lower tier participant certifies, by submission of this bid or proposal, that neither it nor its "principals" [as defined at 2 C.F.R. Part 180] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.

\_\_\_\_\_ **Signature of Contractor's Authorized Official**

\_\_\_\_\_ **Name and Title of Contractor's Authorized Official**

\_\_\_\_\_ **Date**

**B.3 Form P103 - Certification of Warranty Provision:**

\_\_\_\_\_ (Bidder) certifies that it can and shall provide the warranty as specified in this Bid Solicitation Document.

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Title**

\_\_\_\_\_  
**Date**

Please list the main location(s) at which the warranty work under this contract shall be performed:

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

**Form P104**

**B.4 Form P104 - Certification of Compliance with DBE Requirements:**

**In regard to 49 CFR Part 26**

**Certification**

\_\_\_\_\_, hereby certifies that it has complied with \_\_\_\_\_, **(name of company)** all applicable requirements of Title 49, Code of Federal Regulations, Part 26, as stated in Part 3, General Terms and Conditions, Section 10.

**Signature:** \_\_\_\_\_  
**Signature of Contractor's Authorized Official:**

**Date:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Firm:** \_\_\_\_\_



## **B.5 Form P104 - DBE Program Compliance:**

### **DBE PROGRAM COMPLIANCE**

#### **49 CFR PART 26**

The following bid conditions apply to this United States Department of Transportation assisted contract. Submission of a proposal by a prospective Contractor shall constitute full acceptance of these bid conditions.

#### **REQUIRED CONTRACT CLAUSES (49 CFR 26.13)**

### **UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES**

Northwestern Indiana Regional Planning Commission will ensure that the following clauses are included in each DOT assisted contract and subcontract:

- I) Policy - It is the policy of the Northwestern Indiana Regional Planning Commission that Disadvantaged Business Enterprises shall have the maximum practicable opportunity to participate in the performance of contracts. Consequently, the DBE requirements of 49 CFR Part 26, do apply to this agreement. Bidders shall use sufficient and reasonably good faith efforts to carry out this policy in the award of their subcontracts to the fullest extent, consistent with the efficient performance of this contract.
- II) DBE Obligation - The contractor agrees to ensure that Disadvantaged Business Enterprises as defined in 49 CFR Part 26, Subpart D, have the maximum opportunity to participate in the performance of contracts and subcontracts. In this regard, all contractors shall take necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that Disadvantaged Business Enterprises have the maximum opportunity to compete for and perform contracts. Contractors shall not discriminate on the basis of race, color, national origin or sex.
- III) Compliance - All bidders, potential contractors, or sub-contractors for this contract are hereby notified that failure to carry out the policy and the DBE obligation, as set forth above, shall constitute a breach of contract which may result in non-selection; termination of the contract; or such other remedy as deemed appropriate by Northwestern Indiana Regional Planning Commission. Agreements between a bidder/proposer and a DBE, in which the DBE promises not to provide sub-contracting quotations to other BIDDERS/PROPOSERS, are prohibited.
- IV) Sub-contract Clauses - All bidders and potential contractors hereby assure that they will include the above clauses in all sub-contracts which offer further sub-contracting opportunities.
- V) Acceptable Good Faith Efforts - "Good faith efforts" means efforts to achieve a DBE goal or other requirements of the Northwestern Indiana Regional Planning Commission's DBE Program Plan which by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the goal program requirement. If any bidder fails to meet the DBE goals for this solicitation, the bidder shall submit, with the bid, proof of good faith efforts, using the guideline listed in Appendix A of 49 CFR 26, along with a written statement of efforts made and reasons for not meeting said goals.

**B.5.1 General DBE Forms Instructions:****IMPORTANT! READ CAREFULLY!**

All bidders/contractors shall complete and submit, with their bids, DBE Forms 1, 2, 3, 4, and 5.

Each subcontractor listed on DBE Form 2 shall complete and sign DBE Form 3 and DBE Form 4 as a DBE Subcontractor.

Business Contractors seeking to participate as DBEs must be certified at the time of bid submittal. Northwestern Indiana Regional Planning Commission does not certify DBEs. Please check with your state's DBE office.

Contractors may duplicate as many forms as needed. All DBE Program questions should be directed to the Northwestern Indiana Regional Planning Commission, the DBE Officer, Allen Hammond, 6100 Southport Road, Portage, Indiana 46368, 219-254-2500

***DBE Forms 1, 2, 3, 4, and 5 must be submitted with the bid in order to be eligible to receive a contract award. If there are sub-contractors listed, the sub-contractor must fill out DBE Form 4.***

***The Bidder must provide documentation and explanation as to why the DBE goal was not achieved by filling out DBE Form 5.***



**B.8 Form P104 - DBE Form 2 - Letter of Intent to Perform as a Subcontractor:**

**LETTER OF INTENT TO PERFORM AS A SUBCONTRACTOR**

TO: \_\_\_\_\_  
(Name of General Contractor Proposing)

PROJECT: **NAME OF PROJECT**

*The undersigned intends to perform work in connection with the above project.*

The status of the undersigned is confirmed on the attached DBE Contractor Identification (DBE FORM 4).

The undersigned is prepared to perform the following described work in connection with the above project:

\_\_\_\_\_  
(Specify in detail, work items or parts thereof to be performed)

\_\_\_\_\_

\_\_\_\_\_

at the following price: \$ \_\_\_\_\_.

The undersigned agrees to enter into a contract with you to perform the above work, if you are awarded the prime contract.

_____	_____	_____
(Date)	(Telephone No.)	(Name of DBE Subcontractor)
_____		By: _____
(Firm Address)		(Signature)
_____		Name: _____
(City and State)		(Typed)
		Title: _____

**If the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent shall be null and void**

**B.6 Form P104 - DBE Form 3 - Schedule of DBE Participation:****SCHEDULE OF DBE PARTICIPATION**

Name of Bidder: \_\_\_\_\_

Project: NAME OF PROJECT

Project No.: \_\_\_\_\_

Bid No: ##-##

Total Bid Amount: \_\_\_\_\_

NAME OF DBE SUBCONTRACTOR	ADDRESS (COUNTY, STATE)	TYPE OF WORK SUBCONTRACTED	DBE	SUBCONTRACT VALUE
				\$
				\$
				\$
				\$
				\$
				\$
				\$

DBE PARTICIPATION TOTAL VALUE \_\_\_\_\_ \$

The attainment of DBE participation goals for this contract will be measured as a percentage of the total dollar value of the contract.

**The undersigned will enter into a formal agreement with the DBE Subcontractors identified herein for work listed in this schedule conditioned upon execution of a contract with**

\_\_\_\_\_

**B.7 Form P104 - DBE Form 4 - DBE Subcontractor Identification:**

**DBE SUBCONTRACTOR IDENTIFICATION**

(Reproduce as necessary)

I HEREBY DECLARE AND AFFIRM THAT I AM THE

\_\_\_\_\_ (Title - Owner, President, etc.) and duly authorized

representative of \_\_\_\_\_ (Name of Firm) and

I hereby declare and affirm that I am a certified DBE.

\_\_\_\_\_  
(signed)

\_\_\_\_\_  
(printed)

This firm has current DBE certification from the following agencies and/or state(s):

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

A copy of the current certification letter notifying the firm that it has been DBE certified must be attached to this form.

**B.9 Form P104 - DBE Form 5 - DBE Unavailability Certification:**

**DBE UNAVAILABILITY CERTIFICATION**

I, \_\_\_\_\_, \_\_\_\_\_  
of \_\_\_\_\_, certify that on the dates below,

I invited the following DBE Subcontractor(s) to bid work items to be performed:

<u>DATE OF REQUEST</u>	<u>DBE</u>	<u>NAME OF SUBCONTRACTOR</u>	<u>ITEMS SOUGHT</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

The following Subcontractors submitted bids, which were not the low responsible bid:

_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

**End of DBE Forms**

**B.10 Form P105 - Transit Vehicle Manufacturer's (TVM) Certification of Compliance with DBE Requirements:**

**TRANSIT VEHICLE MANUFACTURER'S CERTIFICATION OF COMPLIANCE WITH DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS**

**In regard to 49 CFR Part 26**

\_\_\_\_\_, a Transit Vehicle Manufacturer, hereby certifies \_\_\_\_\_ (name of firm) that it has complied with the requirements of Section 26.49 of Title 49, Code of Federal Regulations, Part 26, Sub-Part C by submitting a current annual DBE goal to the Federal Transit Administration (FTA). The goals apply to Federal Fiscal Year (October 1, 20 \_\_\_\_ to September 30, 20 \_\_\_\_ ) and have been approved or not disapproved by FTA.

\_\_\_\_\_, hereby certifies that the manufacturer of \_\_\_\_\_ (Name of firm)

the transit vehicle to be supplied by \_\_\_\_\_ has complied with the above

\_\_\_\_\_ (Name of manufacturer) referenced requirement of Section 26.49 of Title 49, Code of Federal Regulations, Part 26, Sub-Part C.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

Firm: \_\_\_\_\_



**B.11 Form P106 - Bus Testing Certification:****CERTIFICATION OF COMPLIANCE WITH FTA'S BUS TESTING REQUIREMENTS****In regard to 49 CFR Parts 29, 31 and 665**

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

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

\_\_\_\_\_ The vehicle being bid has been tested and a copy of the test report is attached.

\_\_\_\_\_ The vehicle being bid is exempt from testing.

**Date:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Company Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

Note: If more than one type of vehicle is being bid, please make copies and complete the form for each vehicle type.

**B.12 Form P107 - Buy America Certification:**

**CERTIFICATION OF COMPLIANCE WITH FTA BUY AMERICA REQUIREMENTS FOR BUSES, OTHER ROLLING STOCK, OR ASSOCIATED EQUIPMENT**

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

**Certificate of Compliance**

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

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Company Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Certificate of Non-Compliance**

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

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Company Name: \_\_\_\_\_

Title: \_\_\_\_\_

**B.13 Form P108 - FMVSS Certification:**

**CERTIFICATION OF COMPLIANCE WITH FEDERAL MOTOR VEHICLE SAFETY STANDARDS**

**In regard to 49 CFR Part 571**

The undersigned [Contractor/Manufacturer] certifies that this vehicle meets all applicable Federal Motor Vehicle Safety Standards, as designed by the National Highway Traffic Safety Administration in Part 571 of 49 CFR.

\_\_\_\_\_ The vehicle being bid has been tested and a copy of the test report is attached.

\_\_\_\_\_ The vehicle being bid is exempt from testing.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Company Name: \_\_\_\_\_

Title: \_\_\_\_\_

Note: If more than one type of vehicle is being bid, please make copies and complete the form for each vehicle type.

**B.14 Form P109 - Certification Regarding Lobbying:**  
**2 CFR Part 200 - Appendix II**  
**Certification For Contracts, Grants, Loans, And Cooperative Agreements**

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

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

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for 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.

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 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.

\_\_\_\_\_  
Signature of Contractor's Authorized Official

\_\_\_\_\_  
Name and Title of Contractor's Authorized Official

\_\_\_\_\_  
Date

**B.15 Form P110 - FTA Terms:  
CERTIFICATION OF COMPLIANCE WITH GENERAL FTA TERMS AND  
CONDITIONS**

\_\_\_\_\_ (Bidder) certifies that it can comply with the general FTA terms and conditions as attached to this document..

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Title**

\_\_\_\_\_  
**Date**

**B.16 Form P111- Cargo Preference:**

**CERTIFICATION OF CARGO PREFERENCE**

Use of United States-Flag Vessels

49 USC. Section 1241

46 CFR Part 381

The undersigned Responder agrees:

- a) to use privately owned United States-Flag commercial vessels to ship at least 50 percent of 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 leading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-landing 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 Contract Vendor in the case of a lower tier participating subcontractor's bill-of-landing); and
- c) to include these requirements in all lower tier participating subcontracts issued pursuant to the Contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Company Name: \_\_\_\_\_

Title: \_\_\_\_\_

**B.17 Form P112 - Vehicle ADA:**  
**Certification of Compliance with the Americans with Disabilities Act of 1990**

The manufacturer hereby certifies that it shall comply with all requirements relating to vehicle design or special equipment design as required by the Americans with Disabilities Act of 1990 and any other federal accessibility regulations and subsequent amendments thereto that may be applicable to this procurement.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Company Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Appendix C: Sample Commission Forms and Certifications:**



**C.1 Form P201-1 - FTA Procurement Purchase Order Requisition:**

<p><b>NORTHWESTERN INDIANA REGIONAL PLANNING COMMISSION</b></p> <p><b>Form P201: FTA Procurement Purchase Order Requisition</b></p>			
<p><b>Vendor:</b> _____</p> <p><b>Address:</b> _____</p> <p><b>Phone:</b> _____</p>		<p><b>Date Requested:</b> _____</p> <p><b>Requested By:</b> _____</p> <p><b>Local Agency:</b> _____</p> <p><b>Other:</b> _____</p>	
<p><b>Description of Service and Itemized Costs</b></p>			
Quantity	Description	Unit Price	Total
	<p><b>Grant #:</b> _____</p> <p><b>Federal Share:</b>     \$       _____ -</p> <p><b>Local Share:</b>       \$       _____ -</p> <p><b>Total Cost:</b>         \$       _____ -</p>		
		<b>Total</b>	\$ -

Approved By: \_\_\_\_\_  
Contracting Officer

Date: \_\_\_\_\_

**C.2 Form P202-1 - FTA Procurement Change Order Form:**

<p><b>NORTHWESTERN INDIANA REGIONAL PLANNING COMMISSION</b></p> <p><b>Form P202-1: FTA Procurements Change Order Form</b></p>			
<p><b>Vendor:</b> _____</p> <p><b>Address:</b> _____</p> <p>_____</p> <p><b>Phone:</b> _____</p>	<p><b>Date Requested:</b> _____</p> <p><b>Requested By:</b> _____</p> <p><b>Local Agency:</b> _____</p> <p><b>Purchase Order:</b> _____</p> <p><b>Change Order No.:</b> _____</p>		
<p><b>Description of Change</b></p>			
Quantity	Description	Unit Price	Total
	<p><b>Grant #:</b> _____</p> <p><b>Revised Federal Share:</b> _____ <b>\$0.00</b></p> <p><b>Revised Local Share:</b> _____ <b>\$0.00</b></p> <p><b>Revised Total Cost:</b> _____ <b>\$0.00</b></p>	<p><b>Original Total:</b> _____</p> <p><b>Changes:</b> _____</p>	<p><b>Revised Total:</b> <b>\$0.00</b></p>

**Approved By:** \_\_\_\_\_  
**Contracting Officer**

**Date:** \_\_\_\_\_

**C.3 Form P203 - Pre-Award Buy America Certifications:**

**NORTHWESTERN INDIANA REGIONAL PLANNING COMMISSION**

**Form P203: Pre-Award Buy America Certifications**

**If applicable and no waiver is obtained:**

As required by Title 49 of the CFR, Part 663-Subpart B, I hereby certify on behalf of the Northwestern Indiana Regional Planning Commission that it is satisfied that the vehicles to be purchased, as described below, from \_\_\_\_\_, meet the requirements of Section 165(B)(3) of the Surface Transportation Assistance Act of 1982, as amended. I further certify that I have reviewed documentation provided by the manufacturer, which lists (1) the proposed component and subcomponent parts of the vehicles identified by the manufacturer, country of origin, and cost; and (2) the proposed location of the final assembly point for the buses, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name and Title of Official)

\_\_\_\_\_  
(Date)

**If applicable and a waiver is obtained:**

As required by Title 49 of the CFR, Part 663-Subpart C, I hereby certify on behalf of the Northwestern Indiana Regional Planning Commission that there is a letter from FTA which grants a waiver applicable to the vehicles identified below from the Buy America requirements under Section 165(b)(1), (b)(2), or (b)(4) of the Surface Transportation Assistance Act of 1982, as amended.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name and Title of Official)

\_\_\_\_\_  
(Date)

**Vehicles to be Procured:**

<i>Make</i>	<i>Model</i>	<i>Year</i>	<i>Quantity</i>	<i>Bid #</i>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

### C.4 Form P204 - Pre-Award Purchaser's Requirements Certification:

#### NORTHWESTERN INDIANA REGIONAL PLANNING COMMISSION

#### Form P204: Pre-Award Purchaser's Requirements Certifications

**If On-site Inspection is required:**

As required by Title 49 of the CFR, Part 663-Subpart B, I hereby certify on behalf of the Northwestern Indiana Regional Planning Commission that the vehicles to be purchased from \_\_\_\_\_ are the same product described in the solicitation specification we issued and that the proposed manufacturer is a responsible manufacturer with the capability to produce a vehicle that meets the specifications.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name of Official)

\_\_\_\_\_  
(Date)

**Vehicles to be Procured:**

<i>Make</i>	<i>Model</i>	<i>Year</i>	<i>Quantity</i>	<i>Bid #</i>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

**C.5 Form P205 - Pre-Award FMVSS Compliance Certification:**

**NORTHWESTERN INDIANA REGIONAL PLANNING COMMISSION**

**Form P205: Pre-Award FMVSS Compliance Certifications**

**If no exemption is obtained:**

As required by Title 49 of the CFR, Part 663-Subpart D, I hereby certify on behalf of the Northwestern Indiana Regional Planning Commission that it received, at the pre-award stage, a copy of \_\_\_\_\_'s self-certification information stating that the vehicles described below will comply with the relevant Federal Motor Vehicle Safety Standards the issued by the National Highway Traffic Safety Administration in Title 49 Code of Federal Regulations, Part 571.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name and Title of Official)

\_\_\_\_\_  
(Date)

**If exemption is obtained:**

As required by Title 49 of the CFR, Part 663-Subpart D, I hereby certify on behalf of the Northwestern Indiana Regional Planning Commission that it received, at the pre-award stage, a statement from \_\_\_\_\_, indicating that the vehicles described below will not be subject to the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in Title 49 Code of Federal Regulations, Part 571.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name and Title of Official)

\_\_\_\_\_  
(Date)

**Vehicles to be Procured:**

<i>Make</i>	<i>Model</i>	<i>Year</i>	<i>Quantity</i>	<i>Bid #</i>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

**C.6 Form P206 - Post-Delivery Buy America Certifications:**

**NORTHWESTERN INDIANA REGIONAL PLANNING COMMISSION**

**Form P206: Post Delivery Buy America Certifications**

**If applicable and no waiver is obtained:**

As required by Title 49 of the CFR, Part 663-Subpart C, I hereby certify on behalf of the Northwestern Indiana Regional Planning Commission that it is satisfied that the vehicles described below and manufactured by \_\_\_\_\_, meet the requirements of Section 165(B)(3) of the Surface Transportation Assistance Act of 1982, as amended. I further certify that I have reviewed documentation provided by the manufacturer, which lists (1) the actual component and subcomponent parts of the vehicles identified by the manufacturer, country of origin, and cost; and (2) the actual location of the final assembly point for the buses, including a description of the activities that took place at the final assembly point and the cost of final assembly.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name and Title of Official)

\_\_\_\_\_  
(Date)

**If applicable and a waiver is obtained:**

As required by Title 49 of the CFR, Part 663-Subpart C, I hereby certify on behalf of the Northwestern Indiana Regional Planning Commission that there is a letter from FTA which grants a waiver applicable to the vehicles identified below from the Buy America requirements under Section 165(b)(1), (b)(2), or (b)(4) of the Surface Transportation Assistance Act of 1982, as amended.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name and Title of Official)

\_\_\_\_\_  
(Date)

**Vehicles Delivered:**

<i>Make</i>	<i>Model</i>	<i>Year</i>	<i>Quantity</i>	<i>Bid #</i>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____



**C.8 Form P208 - Post-Delivery FMVSS Compliance Certifications:**

**NORTHWESTERN INDIANA REGIONAL PLANNING COMMISSION**

**Form P208: Post-Delivery FMVSS Compliance Certifications**

**If no exemption is obtained:**

As required by Title 49 of the CFR, Part 663-Subpart D, I hereby certify on behalf of the Northwestern Indiana Regional Planning Commission that it has received, at the post-delivery stage \_\_\_\_\_ self-certification information stating that the vehicles described below comply with the relevant Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in Title 49 Code of Federal Regulations, Part 571.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name and Title of Official)

\_\_\_\_\_  
(Date)

**If exemption is obtained:**

As required by Title 49 of the CFR, Part 663-Subpart D, I hereby certify on behalf of the Northwestern Indiana Regional Planning Commission that it received, at the post-delivery stage, a statement from \_\_\_\_\_, that the vehicles described below are not subject to the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in Title 49 Code of Federal Regulations, Part 571.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name and Title of Official)

\_\_\_\_\_  
(Date)

**Vehicles Delivered:**

<i>Make</i>	<i>Model</i>	<i>Year</i>	<i>Quantity</i>	<i>Bid #</i>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____



## C.9 Form P209 - Post-Delivery Safety Inspection Form:

### NORTHWESTERN INDIANA REGIONAL PLANNING COMMISSION

#### Form P209: Post Delivery Safety Inspection of Vehicles

Subgrantee:			Inventory #:
Inspector:	Inspection Date:	Serial #:	Licence #:
Make:	Model:	Year:	Mileage:
<b>A. FLUIDS</b>	<b>K. DRIVERS SEAT</b>	Odometer	
Engine oil level	Firmly mounted	<b>Q. BRAKES</b>	
Radiator/washer fluid	Adjusts & catches	Parking brakes	
Battery	Seat belt works properly	Low brake pedal	
Brake fluid level	<b>L. HEATER/DEFROSTER</b>	Pulling	
Transmission/power steering fluid	Fans operate F/R	<b>R. TRANSMISSION-DRIVE TRAIN</b>	
<b>B. GENERAL CONDITION</b>	Heater operates F/R	Noise	
Body, bumpers, trim	Defroster operates F/R	Holds in park position	
<b>C. TIRES</b>	Air conditioner operates	Doesn't start in gear	
Tread wear	<b>M. LIGHTS</b>	U-Joints	
Tire pressure	Stepwell	Differential	
Lug nuts	Passenger area	<b>S. STEERING</b>	
Type, season	High beam	Free plan	
<b>D. DOORS</b>	Low beam	Steering force	
Open & close properly	High beam indicators	Pulls in either direction	
Won't open accidentally	Dimmer switch	Power steering pump	
Latches, handles, hinges	Directional lights	Steering gear box	
Seals out exhaust	Directional indicators	Linkage & ball joints	
<b>E. FLOOR/STEPS</b>	Emergency flashers	<b>T. SUSPENSION F/R</b>	
Clean & free of debris	Emergency indicators	Shocks/mounts/bushings	
Safe from tripping	Running lights	Springs	
Tread covers not loose	Reflectors	Spring clamps	
<b>F. SEATS</b>	Brake lights	Spring shackles	
Sharp edges/exposed metal	Tail lights	<b>U. EXHAUST SYSTEM</b>	
Upholstery/springs	License plates	Exhaust pipe	
Firm mountings	Backup lights	Muffler	
<b>G. GRAB RAIL STANCHIONS</b>	Backup alarm	Tail pipe	
Padded properly	Horn	Hangers	
Firmly mounted	<b>N. WIPER/WASHER</b>	<b>V. FUEL SYSTEM</b>	
Other padding	Arm tension	Leaks	
<b>H. WINDOWS</b>	Blade condition	Fumes in vehicle	
Safety glass	Washer switch	Tank mounts	
Vision obstruction	Washer aim	Tank mounts	
Operation	<b>O. MIRRORS</b>	<b>W. LIFT/WHEELCHAIR</b>	
Sun visors	Mounted firmly	Remote control	
<b>I. EMERGENCY EXITS</b>	Interior view	Wheelchair stop	
Doors work properly	Exterior view	Speed adjustable	
Latched properly	Convex	Restraints operable	
Other exits open properly	<b>P. ENGINE OPERATIONS</b>	Tie down operable	
Labeled properly	Starting	Padding adequate	
No obstruction to exits	Excessive smoking		
Door ajar warning alarm	Instrument warning lights		
<b>J. SAFETY EQUIPMENT</b>	AMP/volt gauge		
Flares/reflector triangles	AMP gauge		
First aid kit	Temperature gauge		
5 lb. ABC fire extinguisher	Speedometer		

Remarks: \_\_\_\_\_

Acceptance Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name & Title: \_\_\_\_\_

**C.10 Form P210 - Post-Delivery Vehicle Inspection Form:**

**NORTHWESTERN INDIANA REGIONAL PLANNING COMMISSION**

**Form P210: New Vehicle Road Test**

<b>DATE:</b>	<b>TYPE OF VEHICLE:</b>	<b>AGENCY ID:</b>
<b>VENDOR:</b>	<b>GENERAL COMMENTS:</b>	<b>SERIAL:</b>
		<b>BID NO:</b>
<b>PERSON CONDUCTING TEST:</b>	<b>ACCEPTABLE?</b>	<b>COMMENTS:</b>
	<b>YES      NO</b>	
<b>PRE-TRIP CONDITION:</b>		
Fuel, Oil & Water Levels		
Engine Start-up		
Normal Instrument Readings		
Required Safety Equipment		
From the inside		
Windshield		
Windows		
Wipers		
Mirrors		
<b>START-UP:</b>		
Emergency Brake Engagement		
Engine Start-up		
Normal Instrument Readings		
<b>BRAKES:</b>		
Emergency Brake Release		
Brake Application		
<b>CLUTCH &amp; TRANSMISSION:</b>		
Clutch Engagement		
Transmission Engagement		
Transmission Shift		
Transmission Reverse Engagement		
<b>LIGHTS:</b>		
Instrument Panel		
Dash High Beam		
Dash Left Turn		
Dash Right Turn		
Emergency Flashers Dash		
<b>VEHICLE MOVEMENT:</b>		
Steering: Response		
Steering: Absence of Pull		
Acceleration		
Deceleration		
Speedometer Response		
Odometer Response		
Trip Meter Response		
<b>SLOWING &amp; STOPPING:</b>		
Brake Pedal Movement		
Vehicle Response to Braking		

**Remarks:** \_\_\_\_\_

**Acceptance Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Printed Name & Title:** \_\_\_\_\_

**C.11 Form P211-1 - FTA Acceptance Form:**

**NORTHWESTERN INDIANA REGIONAL PLANNING COMMISSION  
FORM P211-1 - FTA PRODUCT ACCEPTANCE & PAYMENT AUTHORIZATION FORM**

*Part A - To Be Completed by NIRPC*

Date: \_\_\_\_\_  
 Project Number: \_\_\_\_\_  
 Purchase Order #: \_\_\_\_\_  
 Grant #: \_\_\_\_\_  
 Sub-Grantee Name: \_\_\_\_\_  
 Product/Equipment Description: \_\_\_\_\_  
 \_\_\_\_\_  
 Vendor Name: \_\_\_\_\_  
 Vendor Address: \_\_\_\_\_  
 Vendor Phone #: \_\_\_\_\_  
 Vendor Fax #: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

*Part B-To Be Completed by Subgrantee's Authorizing Agent*

**Product Acceptance Questions**

1. Does this product meet your specifications?      Yes \_\_\_\_\_ No \_\_\_\_\_
2. Does this product perform as anticipated?      Yes \_\_\_\_\_ No \_\_\_\_\_
3. Would you purchase future products from this vendor?      Yes \_\_\_\_\_ No \_\_\_\_\_

**Please check the following:**

- ..      I **ACCEPT** this product/equipment as is and recommend that NIRPC pay the vendor.
- ..      I **DO NOT ACCEPT** this product/equipment as is and do not recommend that NIRPC pay the vendor.

\_\_\_\_\_  
**Signature: Subgrantee Authorizing Agent**

**Please return your completed form to David Gutowsky, NIRPC Procurement Coordinator, within 7 days of receipt. Failure to return the form will delay vendor payment and may result in the inability to return faulty equipment.**

*Part C -To be Completed by NIRPC - Authorization for Payment to Vendor*

- ..      Check the box if product has been inventoried.

Inventory #: \_\_\_\_\_

If not, please explain. \_\_\_\_\_

\_\_\_\_\_  
**Signature: NIRPC Procurement Coordinator**

**CC: Copy to Procurement File  
 CC: Copy to Accounting File**

**C.12 Form P212 - Quote Tally Sheet:**

**Form P212**

**QUOTE TALLY SHEET**

Date \_\_\_\_\_

Bid # \_\_\_\_\_

Project Name \_\_\_\_\_

VENDOR	QUANTITY	UNIT COST	TOTAL COST	DATE/TIME CALLED

**C.13 Form P301 - Procurement File Summary Sheet:****PROJECT BID/QUOTE NUMBER:**

<b><u>Grant:</u></b>
<b><u>Equipment:</u></b>
<b><u>Method of Procurement:</u></b>
<b><u>Method of Advertisement:</u></b>
<b><u>Certifications:</u></b>
<b><u>Evaluation of Proposals:</u></b>
<b><u>Offer:</u></b>
<b><u>Vendor:</u></b>
<b><u>Type of Contract:</u></b>
<b><u>Change Orders:</u></b>
<b><u>Delivery Confirmation:</u></b>
<b>FINAL TOTAL COST:</b>

**C.14 Form P302 - Transit Vehicle Delivery Checklist:**

**NORTHWESTERN INDIANA REGIONAL PLANNING  
COMMISSION**

**Form P302: Vehicle Delivery Checklist**

**Date** \_\_\_\_\_

**Agency** \_\_\_\_\_

**Agency ID** \_\_\_\_\_

**VIN:**

- \_\_\_\_\_ **Keys**
- \_\_\_\_\_ **Odometer Statement**
- \_\_\_\_\_ **Certificate of Origin**
- \_\_\_\_\_ **Tax Exempt Certificate**
- \_\_\_\_\_ **Delivery Receipt**
- \_\_\_\_\_ **Invoice**
- \_\_\_\_\_ **MFG. Inspection Checklist**

**C.15 Form P303 - Piggybacking Worksheet:**

<b>NORTHWESTERN INDIANA REGIONAL PLANNING COMMISSION</b>		
<b>Form P303: Piggyback Checklist</b>		
<b>INFORMATION</b>		
<b>NIRPC Procurement Number:</b>		
<b>NIRPC Procurement Title:</b>		
<b>Piggybacking Contract Vendor:</b>		
<b>Piggybacking Issuing Agency:</b>		
<b>Piggybacking Contract Effective Dates:</b>		
<b>CHECKLIST ITEMS</b>	<b>Yes</b>	<b>No</b>
<b>Is a copy of the piggyback contract available?</b>		
<b>Is there a copy of the piggyback contract in the files?</b>		
<b>Do we have a copy a complete copy of the solicitation with all terms, conditions, pricing, and approval of the piggyback from the Piggybacking Agency?</b>		
<b>Do we have a copy of the original Cost/Price Analysis from the Piggybacking Agency for the Piggyback Contract?</b>		
<b>Have we filled out P304 - Contract Clause Checklist to make sure all applicable FTA regulations and clauses were included in the solicitation?</b>		
<b>Date:</b>		
<b>Name:</b>		
<b>Signature:</b>		





**C.17 Form P305 - Responsibility Determination:**

NORTHWESTERN INDIANA REGIONAL PLANNING COMMISSION		
Form P305: Responsibility Determination		
<b>INFORMATION</b>		
<b>NIRPC Procurement Number:</b>		
<b>NIRPC Procurement Title:</b>		
<b>Vendor Name</b>		
<b>Vendor Phone #</b>		
<b>Vendor Contact Name</b>		
<b>QUESTIONARE ITEMS</b>	<b>Yes</b>	<b>No</b>
<b>Have we bought from this vendor before?</b>		
<b>Did the vendor have any seriously deficiencies in recent or past contract performance to where you could presume the vendor to be nonresponsible, unless you have determined that the circumstances were properly beyond the vendor's control, or that the vendor has taken appropriate corrective action?</b>		
<b>Is there any reason why we should not contract with this vendor for this procurement?</b>		
<b>If 'Yes', what is the reason?</b>		
<b>Is the vendor willing to perform/deliver the goods/services at the price/cost proposed and with proposed delivered times?</b>		
<b>Do you think the vendor is responsive and responsible for the goods/services being proposed judging from your interactions with the company due to past performances or some other source?</b>		
<b>Date:</b>		
<b>Name:</b>		
<b>Signature:</b>		

**C.18 Form P306 - Independent Cost Estimate:**

<b>NORTHWESTERN INDIANA REGIONAL PLANNING COMMISSION</b>			
<b>Form P306: Independent Cost Estimate</b>			
<b>INFORMATION</b>			
<b>NIRPC Procurement Number:</b>	_____		
<b>NIRPC Procurement Title:</b>	_____		
<b>What is the method for this Independent Cost Estimate:</b>	_____		
<b>Independent Cost Estimate Information</b>			
<b>Date:</b> _____			
<b>Name:</b> _____			
<b>Signature:</b> _____			

**C.19 Contracting Officer Appointment Document:**

In accordance with Federal Third Party Contracting guidelines, Circular 4220, I hereby appoint Katherine J. Luther as Contracting Officer of the Northwestern Indiana Regional Planning Commission, effective the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

Responsibilities include representing the Commission in contractual arrangements. The Contracting Officer will be the Commissioner's point of contact for the contractor. The Contracting Officer will be responsible for business relationships with the contractor. Responsibilities include negotiations, authorization of changes in contractual obligations of both the Commission and the contractor, entry in to any new agreements during the course of the contract, and the settlement of any disputes. The Contracting Officer will prepare recommendations for the Executive Board. The Contracting Officer may affect or make changes in contracts. Should a dispute arise, the Contracting Officer will be the one with responsibility for facilitating a resolution. The Contracting Officer will be responsible for appointing the Commission's Procurement Coordinator. The Contracting Officer will report the Executive Director.

---

Tyson R. Warner  
Executive Director

END OF DOCUMENT