

**Specifications for Operation of
HIBBING AREA TRANSIT
CITY OF HIBBING, MINNESOTA**

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HIBBING AREA TRANSIT

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ATTACHMENTS

ATTACHMENT 1

Route Brochure, Including Map
Hibbing Area Transit Operating Policy

ATTACHMENT 2

Drivers Daily Log
Inspection Report
Vehicle Maintenance Plan

ATTACHMENT 3

Disadvantaged Business Enterprises (DBE) Special Provisions

ATTACHMENT 4

Federal Contract Clauses
Debarment and Suspension Certification
Lobbying Certification
Organizational Conflict of Interest
Non-Collusion Declaration

ATTACHMENT 5

Financial Plan Workbook/Itemized Expenses
Proposal

SPECIFICATIONS FOR OPERATION OF HIBBING AREA TRANSIT

1.0 INSTRUCTIONS FOR PROPOSALS

1.1 General

The City Council of the City of Hibbing is inviting PROPOSALS for the operation of Hibbing Area Transit on behalf of the City of Hibbing, hereinafter referred to as the City of Hibbing. The Contract shall be in effect for a one-year period from July 1, 2024 to June 30, 2025. This Request for Proposals has provisions for proposers to provide for costs associated with three option years ending June 2026, June 2027, and June 2028. Please note when responding to this RFP, that the start date of July 1, 2024 could potentially be delayed. Start date will be determined at the time of negotiations and will be agreed upon by both parties. All proposals must provide for costs associated with each option year indicated. Three annual option years will be part of the evaluation process in selecting the successful proposal. The City of Hibbing will have a unilateral right in the contract by which they may elect to exercise their option year(s), after the contract is awarded. The City will notify the contractor by June 1 of the year preceding the option year of its intent to exercise the option for that year.

The City Council of the City of Hibbing reserves the right to select the most advantageous offer by evaluation and comparing factors in addition to cost or price such that a recipient may acquire technical superiority even if it must pay a premium price. A ‘premium’ is the difference between the prices of the lowest priced proposal and the one that the recipient believes offers the best value.

Proposers shall acquaint themselves with, and shall comply with, all applicable federal, state, and local statutes, rules, and ordinances. The City of Hibbing may also require the Proposer to modify their operations under the Contract if such modifications do not impose any additional costs to the Contractor.

The successful Proposer shall be required to enter into a Contract with the City of Hibbing on a form provided by the City of Hibbing. The contract shall consist of the Specifications and Attachments and the Proposal Form.

The FTA is or will be providing federal assistance for this project in an estimated expected amount of \$652,106.00; the Assistance Listing Number is 20.509.

Any questions that the Proposer may have in regard to the interpretation of the Specifications shall be submitted in writing (via regular mail or as an email) to Sheena Mulner, Finance Director/Treasurer of the City of Hibbing, sheenamulner@hibbingmn.gov, the address listed in the Notice to Proposer, prior to Friday, May 31, 2024.

1.2 DBE Language

Race/Gender Neutral Goal

The MnDOT Office of Civil Rights has assigned a Race/Gender Neutral Goal to this project. Responders are directed to read the DBE Provisions, as posted along with this RFQ Notice. The DBE Provisions explains how to comply with the DBE requirements. All responders are encouraged to include their anticipated DBE utilization for the contract in their proposals. **Each responder will still be required to submit a bidders list of all subcontractors and suppliers (both DBE and non-DBE) on projects with an RGN goal.** While DBE participation is encouraged on proposals with an RGN goal, responders are not required to submit GFE documentation specified in **Table A, other than a bidders list (parts D and E of Exhibit B, the GFE Consolidated form)**. Payment information described in **Table C** is required on all projects.

To view a listing of certified DBE's, please contact the MnDOT Office of Civil Rights at 651-366-3073, TTY 651-282-5799, or visit their website at <http://www.dot.state.mn.us/civilrights>

1.3 Proposal Instructions

The Proposer shall use the Proposal Form and the Financial Plan Workbook Form included herein. (Attachment 5)

The Base Proposal includes all identified components within the RFP to perform work necessary to operate Hibbing Area Transit for the Contract Period from July 1, 2024 to June 30, 2025, with Option Years ending June 2026, June 2027, and June 2028. Routes will be paid for by the hour. The contractor will only be paid for those actual hours in which the buses are operated in accordance with these Specifications.

Payment at the unit prices per hour listed in the Proposal shall be considered payment in full for all costs incidental to the operation of Hibbing Area Transit for the Contract Period, including but not limited to management, operation, safety inspections, interior and exterior cleaning of buses, insurance, training, dispatch, and all necessary labor, equipment, and materials required and agreed upon. Proposals must outline break and lunch policies. This RFP does not take into consideration lunch periods as actual reimbursable service hours.

The Proposer must complete the line items necessary, including narrative/comment section (detailed FTE's as well as complete description of personnel must be included), in the Financial Plan Workbook form (See Attachment 5). * This workbook covers all areas the Proposer deems necessary for the operations of the transit system and is contained within the proposal price.

*For Example: 2 FTE's drivers at 2,080 hours each x \$15/hour = \$62,400
1 .5 FTE dispatcher/scheduler at 1,040 hours x \$15/hour = \$15,600

Submit a completed original single-sided and one copy of the proposal, along with completed “Financial Plan Workbook” form and “Proposal” form provided, to the Hibbing City Clerk’s Office, Room 201, City Hall, 401 E. 21st St., Hibbing, MN 55746.

All bid proposals shall be sealed and addressed to Sheena Mulner, Finance Director/Treasurer, City of Hibbing, 401 E. 21st St. Hibbing, MN 55746.

1.4 **Additional Required Submittals**

The Proposer must submit the following information with the Proposal:

1. A detailed Management and Operations Plan. (components are not limited to)
 - a. Management approach and methodology
 - b. Driver supervision approach, including management of road supervision
 - c. Experience with FTA Uniform System of Accounts and monthly reporting
 - d. Relevant Fare Collection experience
 - e. Training Program for all personnel – specify program for each unit of personnel
 - f. Customer Service approach
 - g. Safety, Security and Risk Management Plan
 - h. Internal Communications Network, including methods of communicating instructions to supervisors and vehicle operators and the approach to routing/dispatching functions.
2. Qualifications of Proposed Agency and Personnel (components are not limited to)
 - a. Experience as a Public Transit service provider, including fleet management
 - b. Capacity to perform contract requirements
 - c. Qualifications and experience of all proposed Administrative, Supervisory, Management personnel
 - d. Recruitment, hiring and retraining program for Drivers and/or Dispatchers
 - e. Organizational Chart detailing organizational structure and reporting relationships
3. What office accommodations proposer will provide and the location (within the service area) thereof.
4. Maintenance and Equipment Plan

- a. Ability to schedule vehicle maintenance in accordance with the City of Hibbing's Vehicle Maintenance Plan (see attachment 2).
- b. Provide a proposed Bus Washing and Interior Cleaning schedule and process
- c. Provide Fleet Management process, procedures and reporting
- d. Provide Safety and Security Policy, procedures and safety record
- e. Creative ideas offered to improve maintenance, safety, equipment procedures.
- f. Road Call Management plan in the event of breakdowns.
- g. The City of Hibbing supplies heated garage space for all transit vehicles, an office, storage for all parts, equipment and supplies reasonably necessary for the operation of the transit system. The garage location is 1425 E. 23 St. in Hibbing.

The Proposer must also submit, along with the Proposal, a resume consisting of the following information:

1. Three (3) professional references.
2. Three (3) credit references, including a reference from a bank. It is understood that the City of Hibbing may contact each reference to solicit information regarding the character, credit, and other information concerning the Proposer.
3. Locations of residence during the past five (5) years.
4. Types of driving and operating licenses currently held. If no license is held, explain why.
5. Experience – at least three (3) years experience in or associated with the management of a bus, limousine or taxicab business is desired.

1.5 **Evaluation Process**

1. General

Proposals submitted in response to this RFP will be evaluated and scored by the Evaluation Committee established by the City of Hibbing, in accordance with the criteria outlined below.

The primary desire of the City of Hibbing for this procurement is to ensure an award will be made based on the highest quality of service that best matches the Hibbing Area Transit requirements using the Federal Transit Administration's (FTA C 4220.1F) "Best Value"

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methodology. Per FTA’s Third-Party Contracting Guidance, “Best Value” is defined as follows:

“Best Value” is a selection process in which proposals contain both price and qualitative components, and award is based upon a combination of price and qualitative considerations. Qualitative considerations may include technical design, technical approach, quality of proposed personnel, and/or management plan. The award selection is based upon consideration of a combination of technical and price factors to determine (or derive) the offer deemed most advantageous and of the greatest value to the procuring agency.

The Evaluation Committee will make a recommendation to award to the Council of the City of Hibbing based upon the Evaluation Committees’ determination of the responsible Offeror whose proposal is most advantageous to the City of Hibbing.

2. Evaluation Criteria Matrix

The following items make up the evaluation criteria (and their respective weights), which the City of Hibbing will use in evaluating proposals submitted in response to this RFP.

Evaluation Criteria	Weight Percentage
Technical	40%
Quality of Proposed Personnel	30%
Past Performance	20%
Ability to Conform to Management Plan	10%

3. Evaluation Criteria Considerations

Selected Evaluation Criteria within Content of Technical Proposal Technical (40%)

- **Qualifications (40%)** (Listed in order of importance)
 - Experience with providing Public Transit Service of similar size and scope.
 - Experience with operating and maintaining a fleet of similar size.
 - Capacity to perform contract requirements.
 - Creative ideas offered to improve service.
- **Transition Plan (10%)** (Listed in order of importance)
 - Mobilization plan and schedule
 - Facility move in plan
 - Recruitment/hiring plan
- **Proposed Management and Operations Plan (25%)** (Listed in order of importance)
 - Proposed Approach and Methodology
 - Organizational Chart detailing organizational structure and reporting relationships

- Proposed Road Supervision Approach (insurances to driver compliance)
- Proposed fare collection experience
- Proposed training program for vehicle operators, schedulers/dispatchers and supervisors
- Proposed Customer Service Approach
- Proposed Safety, Security and Risk Management Plan
- Proposed Internal Communications Network, including methods of communicating instructions to supervisors and vehicle operators and the approach to routing/dispatching functions.
- **Proposed Maintenance and Equipment Plan (25%)** (Listed in order of importance)
 - Proposed Vehicle Inspection Plan
 - Proposed Bus Wash Plan and Interior Cleaning Plan
 - Approach to Road Call Management
 - Experience with Fleet Management Software or proposed management procedures
 - Safety Record

- **Cost (Tradeoff Evaluation)**

The offerors cost proposal will be evaluated alongside the Technical merit offered by each proposer in a tradeoff fashion as per FTA “best value selection methodology” as detailed within the FTA Best Practices Procurement Manual. As required by the FTA Best Practices Procurement Manual, Chapter 4, Methods of Solicitation and Selection, the City of Hibbing declares the following: **all evaluation criteria factors other than cost, when combined, are significantly more important than cost alone.**

In the event that two or more proposals are considered by the Evaluation Committee to be basically equal in their technical merit, the evaluated cost or price becomes more important; in such a case, cost or price may ultimately be the deciding factor. Accordingly, the Evaluation Committee may not necessarily make a recommendation to award to the proposer with the highest technical ranking nor make a recommendation to award to the proposer with the lowest price proposal, if doing so would not be in the overall best interest of the City of Hibbing’s public transit program.

Selected Evaluation Criteria within Content of Quality of Proposed Personnel (30%)
(Listed in order of importance)

- Qualifications and Experience of proposed Operations Manager.
- Qualifications and Experience of proposed Dispatching Team.
- Proposal to comply with Labor Requirements, Experience with Collective Bargaining Agreements and Negotiations, and proposed Wage and Benefit Plan.

- Recruiting, hiring, training, and retraining program for Drivers and Dispatchers.

Selected Evaluation Criteria within Content of Past Performance (20%) (Listed in order of importance) **Reference Checks**

- Applicability of Past Performance Reference
- Overall services provided by the proposer
- Responsiveness of Proposer in addressing and correcting problems
- Management Staff's ability to meet the expectations and needs of the transit agency
- Proposer's customer service, as provided by current bus operator staff
- Would you choose to renew a contract with this Proposer?

Selected Evaluation Criteria within Content of Ability to Conform to Management Plan (10%) (Listed in order of importance)

1. Evaluation Committee could conduct interviews with the proposed management staff to determine their ability in understanding transit services and level of qualifications
2. Evaluation Committee could pull out specific areas within the proposal that will be evaluated in determining whether proposal provides enough detail of their capabilities.

4. Notification to Unsuccessful Proposals

Unsuccessful Proposers shall be notified of the City of Hibbing's Evaluation Committee's recommendation of award to the successful Proposer within seven (7) working days of said recommendation.

1.6 **Proposal Protest Procedure**

1. A formal letter of protest must be received at the City Clerk's Office, Room 201, 401 E. 21st. St., Hibbing, MN 55746 to the attention of Sheena Mulner, Finance Director/Treasurer, within ten (10) business days of the date of the award notification letter. The letter must state specifically the reason for the protest and include any documentation needed to substantiate the claim(s).
2. The City of Hibbing will have ten (10) business days from the date of receipt of the protest letter in which to make a written response. The City of Hibbing may extend the period for purposes of investigating the protest, if it is warranted, by notifying the complainant in writing of their intentions within the above-mentioned response time.
3. If the complainant, after receiving the final written response from the City of Hibbing's Finance Director/Treasurer, is not satisfied that the reason for protest has been sufficiently resolved, he/she may file a request for an appeal to be heard by the Hibbing City Council. Such request must be written and received within the (10) business days from the date of the response letter. The letter shall be made to the

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attention of the City Administrator, who will schedule the hearing for the next available Hibbing City Council meeting, and inform the complainant in writing of said date and time.

4. The City of Hibbing/Hibbing Area Transit will not receive any service or product described in the PROPOSAL document from the successful Proposer until the protest has been resolved.

2.0 **DESCRIPTION OF TRANSIT SERVICE**

2.1 **General**

Hibbing Area Transit is available to all potential users within the city proper area as evidenced in Attachment #1.

The available bus fleet consists of four medium-duty cut-away buses.

Hibbing Area Transit operates a route deviation and demand responsive service utilizing 3 buses. One bus is used on a regular route while two buses serve demand responsive customers. The City owns a fourth bus which is used as a back-up when a bus is out of operation due to maintenance.

The regular route makes four stops within an hour at three locations: Wal-Mart, Super One, and the Public Library. Between regular stops the bus will pick up demand-responsive passengers within the proximity of 1 mile of the regular route. The regular route operates between 9 a.m. and 8 p.m. Monday through Thursday, 9 a.m. and 6:30 p.m. Friday, and 9 a.m. to 4:30 p.m. Sat. and Sun.

The current demand responsive service operates with 2 buses available as needed on Monday through Thursday from 6 a.m. to 8 p.m. and 6 a.m. to 6:30 p.m. Friday. Weekend hours covered are 9 a.m. to 3 p.m. Saturday and Sunday.

The City Council of the City of Hibbing reserves the right to adjust the service hours and service area if, in the Council's opinion, the change serves the best interest of the City. There shall be no adjustment to the unit prices bid as a result of adjustments in service hours. A service design study is currently being conducted, the results of which may change routes, times, etc. The operator will be notified of any such changes.

If the transit budget is not approved to the full extent of the request submitted to MNDOT, the Hibbing City Council reserves the right to reduce the service hours. Holidays upon which bus service is not provided are: New Year's Day, Easter, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

2.2 Definition Of A Deviated Route Service

Transportation service from which a vehicle is operated on a standard route, from which it may deviate from time to time, in response to a demand for its service or to take a passenger to a destination, after which it returns to its standard route.

The standard route schedule shall include the arrival/departure time from drop-off/pick-up destinations, plus major intermediate stops. If the bus is ahead of schedule when arriving at an established stop/waypoint, the driver shall delay departure to the scheduled time. Between established stops/waypoints, the time the bus passes a particular location on the route may vary by as much as five minutes depending on the number of deviations.

2.3 Definition Of A Demand Response Service (a.k.a. Dial-a-Ride in the Brochure)

A transportation service characterized by flexible routing and scheduling to provide curb-to-curb or point-to-point transportation at the user's demand and is provided to patrons who request service by telephone, either on an ad hoc or subscription basis.

Patrons shall contact the dispatcher, by phone, at least two (2) hours in advance, to schedule a ride. The bus will be required to travel to the requested pick-up site within the service area (See Attachment #1), and follow the most direct route to the rider's destination. If the destination is located on a deviated route, the demand-responsive bus will transport the rider to the closest location adjacent to the deviated route, and the passenger will be required to transfer to the deviated route bus to complete the trip to their destination. Exceptions may be made due to mobility restrictions or timing of the two bus's schedules. The demand-responsive bus will provide direct transportation during the hours that the deviated route bus is not in operation.

2.4 Definition of A Special Route Guarantee

A demand response service addition (i.e. additional time or a route extension) provided specifically for the benefit of another organization for which a guaranteed revenue minimum has been established. Route must be open to the public and advertise as such. **Special Event or Episodic:** service that is provided occasionally but not on a regular basis. [possible occasional community events, such as Mines and Pines Art Festival]

2.5 Definition Of A Subscription/Standing Order

Demand responsive service in which routes and schedules are prearranged to meet the travel needs of specific riders who sign up for the service in advance. The passenger does not have to call to make an individual reservation. A maximum of two weeks is allowed for all subscription/standing orders, after the maximum, the passenger must re-commit to their travel needs. The bus will not go over 80% capacity used by regularly recurring trips by the same person or group of people.

2.6 Fleet and Equipment Inventory

The City of Hibbing will provide the following equipment:

FLEET INVENTORY									
<i>Local Unit #</i>	<i>VIN # (last 7)</i>	<i>Active/ Backup</i>	<i>Class</i>	<i>Fuel Type</i>	<i>Model Year</i>	<i>Model</i>	<i>Type of Lift</i>	<i># of A/B seats</i>	<i># of w/c</i>
153	DC26110	A	400	Gasoline	2019	Ford Glaval	Braun	19	4
152	DC52870	A	400	Gasoline	2017	Ford Glaval	Braun	15	8
155	EA99008	A	500	Gasoline	2014	Ford Goshen	Braun	16	2
149	EA24805	A	500	Gasoline	2013	Ford Goshen	Braun	16	5

The operator shall provide a centralized radio dispatch system for all transit vehicles. The expectation is that the operator will supply the radio equipment. The cost of providing a centralized radio system for dispatching needs shall be included in the Financial Plan Workbook and broken down within the cost proposal.

All City of Hibbing transit vehicles are equipped with locked fare boxes and vaults.

The City of Hibbing/Hibbing Area Transit fleet has an adequate spare vehicle inventory to ensure daily operations of the Demand Responsive and Route Deviated services.

2.7 Estimated Operating Hours

The approximate operating hours for each of the routes is as follows:

Service Hours				
<i>Route</i>	<i>Days of Week</i>	<i>Hours of Service</i>	<i># hours/day</i>	<i># hours/week</i>
Demand Responsive #1	Mon – Fri	6 a.m. – 9 a.m.	3 hrs./day	15 hrs./week
Demand Responsive #2	Mon – Fri	8 a.m. – 6 p.m.	10 hrs./day	50 hrs./week
Demand Responsive #3	Mon – Fri	10 a.m. – 5 p.m.	7 hrs./day	35 hrs./week
Deviated Route #1	Mon. – Thu. Fri.	9 a.m. – 8 p.m. 9 a.m. – 6:30 p.m.	11 hrs./day 9.5 hrs./day	44 hrs./week 9.5 hrs./week
Weekend Deviated Route	Sat – Sun	9 a.m. – 4:30 p.m.	7.5 hrs./day	15 hrs./week
Sat Demand Response	Sat	10 a.m. – 3 p.m.	5 hrs./day	5 hrs./week

Sun Demand Response	Sun	10 a.m. – 3 p.m.	5 hrs./day	5 hrs./week
Approx. 9,178 hours/year			Approx. 177 hours/week	

These service levels are approximate and are subject to the availability of necessary Federal, State, and local funding, as well as the needs of the community, and are subject to change. A service design study is currently being conducted, the results of which may change routes, times, etc. The operator will be notified of any such changes. Service hours calculated do not take into consideration the number of hours needed for safety inspections and driver lunch periods.

3.0 **GENERAL CONTRACT CONDITIONS**

3.1 **Duration**

The Contract shall be in effect from July 1, 2024 to June 30, 2025, with option years 2025-2026, 2026-2027, and 2027-2028. Please note when responding to this RFP, that the start date of July 1, 2024 could potentially be delayed. Start date will be determined at the time of negotiations and will be agreed upon by both parties. Should the City of Hibbing elect to exercise their option year(s), the City will enter into an Option Year Contract that reflects the agreed upon proposal information.

3.2 **Non-Discrimination**

Public transportation shall be available to all persons, regardless of race, creed, color, national origin, religion, age, sex or disability.

3.3 **Non-Performance**

The operator shall provide the City with prompt, reliable and quality transportation service. The City of Hibbing will require strict adherence to the terms and specifications of the contract to be awarded, including by not limited to all related schedules, maintenance of equipment, employment of qualified personnel, enforcement of all city policies and state and federal laws, rules, and regulation. Failure to provide this service shall be considered nonperformance under the contract. The following shall constitute nonperformance and the City shall be entitled to liquidating damages in the amount of \$75.00 per hour or actual damages.

A. Failure of operator to notify the City of vehicle breakdowns, accidents, injuries, or other unusual occurrences in a timely manner.

B. Failure of operator to comply with the procedures and the rules and regulations established by the City and all conditions of this contract.

- C. Failure of operator to provide necessary reports, information, or other required data relating to the public transit system.
- D. Failure of operator to track and preventive inspect vehicles adequately pursuant to the Maintenance Policy.
- E. Violations of any related city policies, operating procedures and/or State and Federal laws, rules, and regulation.
- F. Failure of operator to have an adequate number of properly trained drivers and dispatchers to cover the day's routes and service hours.
- G. Failure of operator to answer the dispatch telephone promptly and consistently.
- H. Inappropriate driver or operator behavior, language, or procedures in dealing with passengers, city staff, or the public.
- I. Failure to accurately enter every trip. Every ride requires a trip entered.

In event the City determines the operator has exhibited any of the above, the City shall notify the operator within one week of determining such occurrence. At the time of the notification, the operator will be given an opportunity to be heard regarding the incident of non-performance. The operator and city staff will meet and review the incident the operator's request. Appeals regarding non-performance items may be taken to the City Administrator or City Council. Notwithstanding anything to the contrary set forth in a provision, the remedy set forth in the first paragraph of this section shall not be the exclusive remedy of the City. The City reserves the right to pursue whatever other remedies may be available to it and in all events shall not be the exclusive or final remedy. Unreasonable and/or multiple violations of any terms, conditions or clauses included in this specification shall constitute a material breach of this contract.

3.4 **Termination**

If the Contractor is (1) adjudged to be bankrupt; (2) makes a general assignment for the benefit of creditors; (3) has a receiver on account of insolvency; (4) is guilty of substantial violation of any provision of the Contract; (5) fails to promptly pay employees or obligations incidental to proper performance of the Contract; or (6) persistently disregards or permits disregard by employees of laws, ordinances or instructions of the Hibbing City Council or its designated representative, then the City of Hibbing may, at its opinion, terminate the Contract without further obligation on the part of the City of Hibbing/Hibbing Area Transit to the Contractor except for the expenses incurred prior to the termination. If the City of Hibbing/Hibbing Area Transit or its designated representative believes any action or non-action of the Contractor represents an immediate threat to public safety, the City of Hibbing may suspend service for so long a period as they deem necessary.

3.5 **Assignment**

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This Contract or any part thereof may not be assigned by the Contractor without prior written consent of the City of Hibbing.

3.6 **Ownership**

Buses, fare boxes, fuel, and bus storage space will be furnished by the City of Hibbing and shall remain the property of the City of Hibbing. The Contractor shall maintain the buses in as good a condition as received, normal wear and tear expected.

Under no circumstances shall the city owned vehicles, equipment, or other materials associated with the public transit system be used for, or in conjunction with, any personal use or other business operations other than those services set forth in this contract.

To maintain program and transit system identity, the public transit vehicles shall not be used for charter or private purposes.

3.7 **Budgets, Routes, Schedules, Fares, Promotion**

The City of Hibbing retains the authority to establish and determine routes and schedules of service for public transportation in the transit area, the authority to fix and alter fares and any other charges to be collected in connection with the operation of the transportation system, and the authority to conduct a marketing and public relations program to promote the use of the transportation system. If requested by the City of Hibbing, the Contractor shall make recommendations to the City of Hibbing/Hibbing Area Transit relating to service extensions, route planning and service policies (See Attachment #1).

3.8 **Bonding**

All PROPOSALS shall be sealed and accompanied by a cash deposit, cashier's check, PROPOSAL bond, or certified check in the amount of five percent (5%) of the proposal amount, payable to City of Hibbing. Such amount shall be forfeited to the City of Hibbing as liquidated damages, if the PROPOSER, upon letting the agreement, shall fail to enter into the agreement so let.

4.0 **SERVICES TO BE PROVIDED BY THE CONTRACTOR**

4.1 **Management**

4.1.1 **General:** The Contractor shall provide the managerial services as are usual and customary for sound and effective operation of a public transportation system, and to provide but not be limited to the following services:

1. General Operations.

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2. Safety, driving, dispatching and public relations training.
3. Operations accounting and office management.
4. Fare box security/collection and weekly delivery of the fare box vaults to the City Clerk's Office, Room 201, 401 E. 21st St., Hibbing and on the last weekday of the month.
5. Daily interior cleaning and weekly washing of the buses; wash facility provided by City of Hibbing. Additional cleaning may be needed such as during a pandemic.
6. Office accommodations.
7. Dispatching services directly to/from bus drivers.
8. Resolving and recording of customer complaints. The Contractor will forward a breakdown of customer complaints to a designated representative from the City.
9. Labor/employee relations and personnel management.
10. Consultation assistance in scheduling, promotion, route planning and general operations.
11. Performance and recording of daily bus preventive (vehicle inspection) maintenance schedule (See Attachment #2 for Pre-Trip Inspection Form).
12. Adopt and comply with all FTA Drug and Alcohol regulations 49CFR Part 655 and 49 CFR Part 40, as amended.
13. Provide driver training in dealing with disabled passengers in accordance with established MnDOT Assisting Your Transit Passenger and Driving Professionally and Defensively guidelines, prior to driving. Training to be scheduled through an approved MnDOT Training Program.
14. Assist in customer complaints, questions, etc. beyond the normal transition between providers of the service, including participation in service start-up activities, promotions and advertisements.
15. Provide immediate reporting to the City of Hibbing of any Title VI complaints.

4.1.2 **Manager:** The Contractor shall act as or furnish a manager, at his/her own expense, who shall assume active management of the transit system for and on behalf of the City of Hibbing/Hibbing Area Transit. The Contractor shall submit its manager's qualifications (resume) as a part of their proposal.

4.1.3 Personnel: Contractor shall employ, train, supervise, and provide wages and workers compensation to qualified, licensed and responsible drivers and dispatch employees in a sufficient number to operate an efficient transit service as outlined in these specifications. Contractor shall maintain and provide documentation of current CDL, endorsements, FTA DOT physical, and FTA Drug and Alcohol tests before driver assumes duty of operating City owned equipment along with a certification letter provided with each monthly invoice in which ensures that all drivers provided by the Contractor are properly licensed and tested. The Contractor shall furnish qualified, licensed, and responsible drivers necessary for the safe operation of buses used in providing service and shall furnish other necessary personnel for continued operation of the service, including but not limited to; dispatching, cleaning and washing, operations and maintenance, accounting, legal, clerical, and managerial personnel, and will assume all labor and other contractual obligations thereto.

It is specifically understood that all personnel furnished by the Contractor in connection with the performance of service shall be and remain the employees of the Contractor. The Contractor shall pay all wages, salaries, fringe benefits, social security taxes, worker's compensation and unemployment compensation or other contributions as required by law. The Contractor shall be considered an "Independent Contractor" as the term is used under the laws of the State of Minnesota.

- The Contractor shall abide by all federal, state and local laws, rules, and ordinances with respect to its employees.
- The Contractor shall not discriminate against any employee or applicant for employment because of race, creed, color, religion, sex, age or national origin.
- The Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, creed, color, religion, sex, age or national origin. Such action shall include, but not be limited to the following:
 - Employment, upgrading, demotion or transfer, recruitment or recruitment advertising, lay-off or termination, rates of pay or other forms of compensation and selection for training.
- The Contractor shall post in conspicuous places available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this non-discrimination clause.

The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, sex, age or national origin.

The Contractor shall provide driving services required and as set forth below and elsewhere in the Specifications. Contractor shall submit a copy of driver job description and hiring qualifications with proposal. At minimum, drivers shall be required to:

Driver shall:

1. Hold a current Minnesota Commercial Driver's License appropriate for the size of the bus being driven.
2. Be able to read, write and speak the English Language.
3. Have knowledge of roads and major activity centers in the Hibbing area.
4. Have knowledge of and be trained in the use of handicapped lift and security devices.
5. Have knowledge and ability to perform inspection checks (See Attachment #2).
6. Keep simple records and make reports.
7. Be neat in appearance.
8. Cater to the special needs of senior citizens, persons with a handicap, etc.
9. Willingly assist public passengers.
10. Deal courteously and effectively with passengers and the public.
11. Be informed that they are responsible for the lives of the public passengers.
12. Have driven a motor vehicle or vehicles at least 10,000 miles prior to employment.
13. Pass a general physical examination paid for by the Contractor or driver (MnDOT FTA exam).
14. Have a police check and motor vehicle record check.
15. Be subject to random drug and alcohol testing throughout employment, in accordance with FTA 49 CFR Part 655 and 49 CFR Part 40, as amended.
16. Obey all traffic laws.

Anyone convicted within five (5) years prior to employment of (a) a crime involving harm to a person or (b) driving while under the influence of drugs or intoxicating liquor or non-intoxicating malt beverages or careless or reckless driving, shall not be considered for employment. The Contractor shall certify to the City of Hibbing that each driver has been properly trained and licensed, and is physically, mentally and legally qualified to operate the vehicle and to assist passengers. No person shall drive a transit vehicle without this certification. The manager shall not permit a driver to drive if the driver has consumed an intoxicating liquor or non-intoxicating liquor or non-intoxicating malt beverages or a drug within eight hours prior to the time he/she begins driving, or if the driver is intoxicated or is under the influence of a drug which would influence driving ability when he/she is to begin driving.

It is the expectation of the City of Hibbing/Hibbing Area Transit to uphold the safety of all City of Hibbing residents. Therefore, if a driver employed by the contractor, while driving a Hibbing Area Transit bus, is involved in any moving violation of the traffic laws of the State of Minnesota, or is found to bear the majority of responsibility for causing a traffic accident or collision of any description, that driver will be subject to discipline up to and/or including immediate termination and/or the following disciplinary steps:

1. First Offense: Verbal warning from the contracted Transit Manager, or Transportation Director.
2. Second Offense: Written warning from the contracted Transit Manager, or Transportation Director.
3. Third Offense: Driver's employment as contracted driver is terminated.

Schedulers/Dispatcher(s): The Contractor shall operate dispatching and passenger scheduling. Reservations shall be handled by the **Contractor's employee dispatcher** at a location approved by the City of Hibbing. The approximate number of dispatching hours is 84/week, or 4,550/year.

Dispatching Office: The Contractor shall furnish the necessary office space, equipment, and utilities, including telephone, as may be required in order to properly and efficiently perform the Dispatching services required under this proposal.

Schedulers/Dispatchers Shall:

1. Answer telephones quickly, pleasantly, and professionally. Deal courteously and effectively with passengers and the public.
2. Be thoroughly familiar of roads and major activity centers in the transit service area.
3. Accurately record data needed for bus transportation including names, addresses, pick up and destination information and billing information.
4. Computer knowledge including data base management, Microsoft Excel and Word and the ability to work with trip scheduling software.
5. Keep simple records and make reports. Ability to multi-task.
6. Have knowledge of vehicle capacities, handicapped lift and security devices usage including tie down and shoulder belts.
7. Be neat in appearance. Business casual dress required.
8. Willingness to assist and cater to the special needs of senior citizens, persons with disabilities, etc., including general knowledge of requirements under the ADA.
9. Act as first response to all public passenger inquiries/record complaints.

4.1.4 Office/Telephone: The Contractor shall furnish the necessary office space, equipment, and utilities, including telephone, as may be reasonably required in order to properly and efficiently perform the management services hereunder. Location of this office space shall be within the designated service area and is subject to approval by the City of Hibbing. The Contractor shall arrange for the transfer of the Hibbing Area Transit

Service telephone number to the operator's dispatching facility and shall provide additional rollover lines and TDD (Telecommunications Device for the Deaf) system or equally effective telecommunications system as may be required to effectively communicate with the public. Telephone system must provide for adequate access for all dispatching services needed to conduct business.

4.1.5 **Garaging:** The City of Hibbing shall supply heated garage space for all transit vehicles, and storage for all parts, equipment and supplies reasonably necessary for the operation of the transit system. The garage location is 1425 E 23 St. in Hibbing.

4.1.6 **Collection of Revenue:** All revenues derived from the operation of the transit system shall be and remain from the initial receipt thereof, the absolute property of the City of Hibbing, and the treatment of such revenues including the banking and the accounting shall be as directed by the City of Hibbing.

The Contractor, on behalf of the City of Hibbing, shall receive, collect, and deliver all revenues from the transit operations directly to the office of the City Clerk. For security and deposit convenience, the Contractor shall leave all revenues in the fare box vaults and deliver the fare box vaults directly to the City Clerk's Office, Room 201, 401 E. 21st St., Hibbing, at least once weekly, and always on the last weekday of the month. The City of Hibbing will not provide money/change to the vehicle operators.

Fare Box Policy (Attachment #2)

- 1). The Transit Manager delivers the fare box vaults to the Clerk's Office located at the City Hall every Monday morning.
- 2). The fare box vault money is counted by at least 2 employees of the Clerk's Office.
- 3). A receipt is written, and the total amount of fare box vault money is documented in the Receipt Book located in the Clerk's Office.
- 4). The fare box vault money is then deposited in the bank by a Clerk's Office employee.

Agency Fare Rates – Current fares, subject change by City authorization.

In-Town travel with pre-purchased punch card ticket	\$1.00
In-Town travel without pre-purchased ticket	\$2.00

4.1.7 **Records and Reports:** The Contractor shall provide the City of Hibbing with the necessary information to be included in the previous month's report on or before the tenth (10th) day of the following month. The Contractor shall keep and maintain records on forms approved by the City of Hibbing (See Attachment #2). Information contained in these reports shall include, but not be limited to, the following items.

1. Customer complaints

2. Daily bus preventive maintenance
3. Daily and monthly patronage, including: Total passengers, elderly, adults, students, children, disabled and free ride passengers
4. Daily and monthly times of lift operation
5. Daily and monthly hours of bus operation
6. Daily and monthly miles of bus operation
7. Vehicle Inspection reports.
8. Dispatching logs (form provided by the City of Hibbing in Attachment #2).

4.1.8 **Accounting:** The Contractor shall keep and maintain the books and financial records correctly reflecting the operation of the public transit system. The Contractor shall use accounting and reporting procedures acceptable to the City of Hibbing and to MnDOT. These records shall be made available to the City of Hibbing for audit by the City of Hibbing, MNDOT or its representative at all reasonable times as directed.

4.1.9 **Billing:** The Contractor shall file all complete and comprehensive monthly reports on or before the tenth (10th) day of each month, and the City of Hibbing will pay the Contractor on or before the end of the month for the previous month. Failure to submit required paperwork from the Contractor may lead to the holding of payments.

4.1.10 **Pre and Post Trip Vehicle Inspection:** The drivers shall conduct daily vehicle inspections using provided checklist forms before the vehicle is used each shift, the cost for which should be included in the overhead which is built into the wheel-turning hourly rate. Safety checks (walk-through to be sure nothing is left behind) will be performed by the driver at the end of each shift. Vehicles will be cleaned inside and out prior to being placed into service each day. City staff shall perform maintenance and keep records as required by the City and other government entities and pursuant to manufacturer specifications.

4.2 **Dispatching and Communications**

The Contractor shall operate dispatching and passenger scheduling. Reservations shall be handled by the Contractor's transit system office. *See also 4.1.3 Personnel.*

4.3 **Driving**

The Contractor shall provide driving services required and as set forth elsewhere in the Specifications.

4.4 **Maintenance**

The City of Hibbing shall maintain buses, fare boxes, and vaults. The City of Hibbing shall use maintenance standards as recommended by the manufacturer and as set forth by the City of Hibbing; provided, however, that oil and oil filters in each bus be changed after every 3,500 miles of operation. The Contractor shall provide inspections (both daily and MnDOT required) of buses. All City of Hibbing owned buses shall be inspected and cleaned daily and the cost for the same reflected within the PROPOSAL. The contractor must track preventive maintenance in order to schedule vehicle maintenance with city staff (see Attachment #2 Vehicle Maintenance Plan.).

4.5 **Marketing**

The Contractor will provide assistance and feedback to the City of Hibbing in its marketing efforts. The Contractor shall propose and administer marketing activities approved by the City of Hibbing. Marketing activities shall be designed to attract a sufficient number of riders for the system to operate efficiently.

4.6 **Fuel**

The City of Hibbing will provide and pay for appropriate fuel for vehicles. The Contractor shall provide personnel to fuel the buses. Vehicles shall be fueled at the 1425 E. 23rd St., Hibbing facility. Pre-approved personnel only will be allowed to pump fuel into the buses after receiving appropriate instructions.

4.7 **Insurance**

1. Workers' Compensation Insurance.

During the term of this agreement, the third-party contractor is to provide workers' compensation insurance in accordance with the statutory requirements of the state of Minnesota, including Coverage B, Employer's Liability, at limits not less than:

- \$100,000.00 bodily injury by disease per employee;
- \$500,000.00 bodily injury by disease aggregate; and
- \$100,000.00 bodily injury by accident.

2. Commercial General Liability Insurance.

Contractor is required to maintain insurance protecting them from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services, as well as from claims for property damage, including loss of use which may arise from operations under this contract. Evidence of third-party contractor's insurance must be filed with the City of Hibbing.

Contractor must have minimum insurance coverage of \$2,000,000.00 per occurrence.

The following coverage's will be included:

- Premises and Operations Bodily Injury and Property Damage
- Personal and Advertising Injury
- Blanket Contractual Liability

- Products and Completed Operations Liability
- State of Minnesota and City of Hibbing named as an Additional Insured

3. Commercial Automobile Liability.

The City of Hibbing shall provide automobile physical damage and automobile liability coverage on all city-owned buses and other vehicles used to provide transportation services pursuant to this Agreement. The City shall provide the following coverages:

The City shall maintain automobile physical damage coverage on city-owned buses and vehicles in an amount to be determined by the City.

The City shall provide automobile liability coverage on the buses and other vehicles in the minimum amount of \$2,000,000 per occurrence for bodily injury and property damage. The following coverages shall be included: Owned, Hired, and Non-Owned Automobiles.

Contractor and its employees who operate the buses, with the City's permission, shall be included as covered parties for their acts or omissions under "Coverage C" of the City's automobile liability coverage through the League of Minnesota Cities Insurance Trust. The City's automobile coverage shall be primary and non-contributory to any other coverage available to Contractor. The availability of the City's automobile liability coverage shall not be construed to limit Contractor's liability or to limit Contractor's indemnification obligations.

Any liability in excess of the insurance proceeds available under the City's automobile liability coverage is the responsibility of Contractor. The City does not represent that the automobile liability insurance specified in this agreement, whether in scope of coverage or limits, is adequate or sufficient to protect Contractor's business interest. It is the sole responsibility of Contractor to determine the need for and to procure additional automobile liability coverage which may be needed.

The City does not waive any tort immunities or limits of liability it is entitled to under Minnesota Statutes, Chapter 466 as amended, or any other law.

4. Excess Insurance.

An Umbrella or Excess Liability Insurance Policy may be used to supplement contractor's policy limits to satisfy the full policy limits required by this Grant Contract. A- (minus); Financial Size Category (FSC) VII or better and must be authorized to do business in the state of Minnesota. The insurance company shall deliver to the designated City of Hibbing contact, certificates of all insurance required above with a 30-day notice of cancellation, non-renewal or material change provision included, signed by an authorized representative and stating that all provisions of the specified requirements are satisfied. The Contractor shall not perform any services under the contract for services with the City of Hibbing/Hibbing Area Transit until the insurance required by the document has been secured by the Proposer and approved by the City of Hibbing. The cost for said insurance shall be part of the hourly rate shown on the proposal sheet.

The Contractor is 100% liable for repairs to vehicles for damages or negligence for which the contractor is responsible, including the deductible.

The Contractor shall notify the City of Hibbing of all accidents involving buses listed on the fleet roster within 24 hours of the occurrence. Accidents involving physical injury shall be reported as soon as possible to the City of Hibbing. The Company shall submit the following reports to the City of Hibbing within two (2) business days.

1. Accident report from the driver.
2. Post-Accident Individual Drug and Alcohol Test Determination, completed by Supervisor.
3. Pictures and/or supportive materials to visualize scene and property

The Contractor shall submit the following reports to the City of Hibbing as soon as they are available.

4. Drug and Alcohol test results, if conducted/applicable
5. Accident report from local, county, and/or state police

4.8 **Independent Contractor**

It is expressly understood that the Contractor is an independent contractor for purposes of this agreement and all persons employed by Contractor in the performance of any work or services required or provided in this agreement shall not be considered employees of the City of Hibbing for any purposes whatsoever, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit, or any and all such claims shall in no way be the obligation or responsibility of the City of Hibbing.

4.9 **Liability**

A. Contractor shall indemnify, hold harmless and defend the City of Hibbing and Hibbing Area Transit, its officers, agents and employees from any and all claims, damages or liability of any kind arising out of any acts, errors or omissions of Contractor, its agents or employees, in furnishing services or performing work pursuant to this Agreement outside of those claims covered under the City of Hibbing's general liability insurance.

B. Notwithstanding section 4.8 A. and in consideration of the fact that the City of Hibbing does not hire, train or supervise Contractor's employees performing the services required by this Agreement, Contractor shall be solely responsible for any and all acts performed by its employees in the implementation of this Agreement. As such and without regard for the coverage provided by the City of Hibbing general liability insurance, Contractor shall indemnify,

hold harmless and defend the City of Hibbing, its officers, agents and employees from any and all claims, damages or liability of any kind arising out of any acts, errors or omissions of Contractor or its agents or employees in furnishing services or performing work pursuant to this agreement.

4.10 Regulatory Assurances

The Proposer by submission of his/her proposal assures the City of Hibbing that he/she shall comply with, and be bound by all applicable federal, state, and local laws, clauses, rules, and ordinances and shall complete all required reports and submit them to the City of Hibbing within ten (10) working days of the end of the reporting month.

4.11 FTA Drug and Alcohol Policy

Contractor shall furnish, within 30 days of contract award or prior to service commencing, their adopted Federal Transit Administration Drug and Alcohol Policy. Said policy must be in compliance with FTA Drug and Alcohol regulations 49 CFR Part 655 and 49 CFR Part 40, as amended.

4.12 Performance Measurements

Efficiency of the transit system shall be determined by the ratio of the number of passengers to the number of operating hours on a monthly basis. Complaints and commendations shall be taken and recorded by the Contractor. Communications which initially appear to be a complaint but are resolved through a clarification of the operating policy shall not be listed as a complaint. Complaints shall be grouped by category, i.e. timeliness, customer service, drivers, etc. The operator shall submit a monthly summary of complaints and commendations received along with the monthly invoice.

4.13 Termination of Contract

The City of Hibbing may terminate the Contract at any time, with or without cause, upon 30 days written notice to the Contractor. If the Contract is terminated, the City of Hibbing will pay Contractor on a pro rata basis for services satisfactorily performed or delivered. In the event the City of Hibbing cannot or does not obtain funding from the STATE or other funding source, or funding cannot be continued at a level sufficient to allow for the purchasing of the services or goods contained within the Contract, the Contract may be immediately canceled at the City of Hibbing's option, by written notice of cancellation delivered in person, by e-mail, or via facsimile to Contractor at the address specified within the Contract. The City of Hibbing will not be obligated to pay for any services or goods provided by the Contractor after such notice of cancellation.

RIDE THE BUS

HIBBING AREA TRANSIT
Heartland Express



263-7115

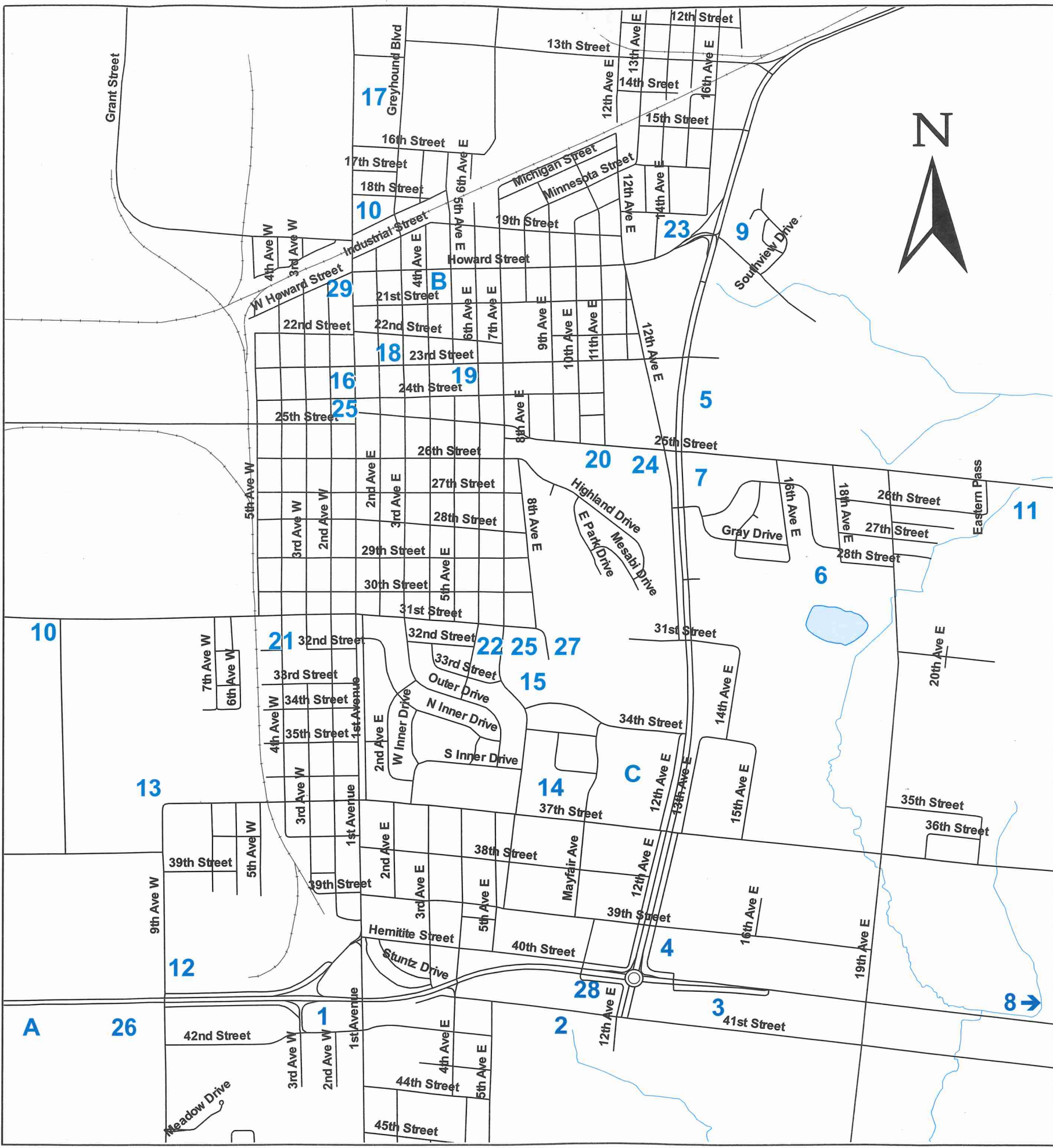
SEE MAP INSIDE

REGULAR STOPS

- A. WALMART:00 (Until 7 p.m. M-Th + Final pickup at 7:30 p.m.)
(until 5:30 Friday, Final pickup at 6:00 p.m.)
(until 4 p.m. Sat / Sun)
- B. HIBBING PUBLIC LIBRARY:30 (until 6:30 p.m. M-Th)
(until 5:00 p.m. Friday)
(until 3:30 p.m. Sat / Sun)
- C. SUPER ONE / MESABI MALL:15 (:45 until 3:45) (last stop 6:15 p.m. M-F)
WEST SIDE WHEN MALL IS OPEN(3:15 p.m. Sat / Sun)
BY LIQUOR STORE WHEN MALL IS CLOSED

NEED TO BE SCHEDULED IN ADVANCE
CALL TO SHCEDULE PICK UP

- 1 HIBBING CREDIT UNION
- 2 BIRCH LANE TRAILER PARK
- 3 HILLCREST TERRACE / SUITES
- 4 FAMILY RESOURCE CENTER / KIDDY KAROUSEL / MN WORKFORCE CENTER
- 5 MINNESOTA NORTH COLLEGE
- 6 GRAYSHERWOOD APARTMENTS (BY FIRE HYDRANT)
- 7 GRAYSHER SHOPPING CENTER
- 8 MDI, HWY 37
- 9 SOUTHVIEV APARTMENTS
- 10 MARSHVIEW APARTMENTS
- 11 FOREST HEIGHTS TRAILER PARK (PICK-UP POINT AT ROAD)
- 12 WESTGATE
- 13 MEADOWVIEW (FORMERLY PARK PLACE) APARTMENTS
- 14 HOSPITAL - EMERGENCY ROOM DOOR
FAIRVIEW MESABI CLINIC / HIBBING
HIBBING FAMILY MEDICAL CENTER
- 15 7TH AVENUE APARTMENTS
- 16 1ST AVENUE APARTMENTS
- 17 GUARDIAN ANGELS
- 18 HILLCREST ADAMS
- 19 MEMORIAL BUILDING
- 20 SOCIAL SECURITY OFFICE
- 21 PERPICH CENTER (4TH AVENUE WEST BY FIRE HYDRANT)
- 22 HRA / PROJECT CARE FREE CLINIC / GREENHAVEN APTS. BUS STOP
- 23 SOCIAL SERVICES ANNEX
- 24 FAIRVIEW PLAZA
- 25 WINSTON COURT
- 26 IRONGATE PLAZA
- 27 LEE CENTER
- 28 TIMBERLINE LODGE (BEAR DEN)
- 29 SALVATION ARMY



HIBBING AREA TRANSIT SERVICE

OPERATING POLICY

1.0 INTRODUCTION

This document outlines specific service standards for the operation and management of the Hibbing Area Transit Service. These standards have been developed through the review of previous service guidelines, present service capacities, previous experience with the provision of transportation services for persons with a disability, and the Americans With Disabilities Act of 1990 transportation final rule.

2.0 SERVICE STANDARDS

2.1 GENERAL INFORMATION

The Hibbing Area Transit Service operates a route deviation and demand-responsive (dial-a-ride) service.

- 2.1.1 Service Availability - Hibbing Area Transit Service operating hours are from 6:00 A.M. to 8:00 P.M. (all riders to their final destinations by 7 P.M.), Monday through Thursday, 6:00 A.M. to 6:30 P.M. Fridays, and 9:00 A.M. to 4:30 P.M. Saturdays and Sundays. There shall be no service on New Year's Day, Easter, Memorial Day, July 4th, Labor Day, Thanksgiving Day, and Christmas Day.

2.1.1.1 Suspension of service due to weather conditions or natural disasters will be announced via local radio stations.

- 2.1.2 Service Area - The operator shall provide service within that area commonly referred to as former Hibbing prior to annexation, with extended service to Irongate Mall/Wal-Mart. Population in the service area is approximately 14,000.

- 2.1.3 Fares - One-way fares are fixed at \$2.00 per ride. Exceptions to this are fares charged Community Workshop employees, who are charged \$1.00 per trip. In cooperation with the hospital social department, half-fare discount passes are provided to handicapped and elderly persons receiving outpatient therapy treatments on a need basis. Special permits and passes are being utilized for frequent riders, as follows:

- (a) 15 rides/\$15.00 for Frequent Rider Punch Card.
- (b) \$15.00/Month - Unlimited rides for the month for senior citizens (62 years or older).

Children 12 years of age and under ride free when accompanied by an adult. Limit of two (2) per adult.

- 2.1.3.1 Except through the purchase of a ride ticket or by approved agreement, fares cannot be paid in advance.

- 2.1.3.2 Ride Tickets may be obtained at City Hall and other locations throughout the City.

2.1.3.3 It is the responsibility of the passenger or passenger's companion to properly pay each one-way trip fare by means of cash or ride ticket. Failure to properly adhere to the fare requirements may result in denial of a ride.

2.1.3.4 Minnesota Statute 609.855, Subdivision 1. Unlawfully obtaining transit services states that whoever intentionally obtains or attempts to obtain service from a provider of transit service as defined in Section 174.22, Subdivision 8, without making the required fare deposit or otherwise obtaining the consent of the transit operator or other authorized transit representative is guilty of unlawfully obtaining services and may be sentenced as provided in Subdivision 4.

2.1.3.5 It is the responsibility of the service provider to assure that ALL passengers adhere to the fare requirements.

- 2.1.4 Pets - No pets are allowed on transit service buses unless they are contained in a pet carrier or otherwise restrained by the owner to prevent pet interaction with other passengers and other pets. Certified assistive animals are exempt from this provision.

2.2 TRIP RESERVATION PROCEDURES (For Demand Responsive, Dial-A-Ride Service)

- 2.2.1 Hibbing Area Transit Service Telephone Number – 218-263-7115. When requesting service, give the dispatcher your origin address, destination address, desired pick-up times, and other details related to the ride.

2.2.1.1 If the passenger requests, the driver will reserve the return trip with the dispatcher and confirm the pick up time with the passenger prior to the passenger disembarking.

- 2.2.2 Shared-Ride System - Hibbing Area Transit Service operates on a “shared-ride” basis. Shared-Ride means that all trips will be coordinated to carry as many passengers as possible as inexpensively as possible, e.g.: As many as ten people (or more) could be included in one tour, depending on the pick-up and drop-off points.

2.2.2.1 When the reservation call is made, the dispatcher will attempt to fit the desired pick-up time into an existing tour. If there is a similar trip origin/destination at an earlier or later time, the dispatcher will offer an alternate pick-up time to the person, at a maximum of 20 minutes earlier or later than the pick-up time requested. All attempts shall be made to provide service within a period of 40 minutes of the time use is requested.

2.2.2.2 The caller will be provided with a scheduled pick-up time. All passengers should be ready 10 minutes prior to their scheduled pick-up time and allow 15 minutes to pass beyond their pick-up time before calling the dispatcher to inquire about their ride.

- 2.2.3 Scheduling Limitations - Every effort will be made to schedule trip requests at the specific time desired. However, due to system capacity and limitations, or for other reasons, it may not always be possible to meet all trip requests. In such cases, everything possible to arrange an alternative travel time which is acceptable to the passenger will be done. Only in the event that a suitable travel time cannot be arranged will a trip request be denied.

- 2.2.4 Groups - Whenever transportation is being scheduled for more than three (3) persons to be picked up at the same location or traveling to the same location, it will be defined as a group. When scheduling service for a group, the dispatcher must be given the status of each passenger, i.e. wheelchair or ambulatory. This information is vital for vehicle capacity purposes.

2.3 PICK-UP AND TRAVEL PROCEDURES

- 2.3.1 Passenger Preparedness - Passengers must be readily prepared (load on, packages together, in the lobby, etc.) to leave at the scheduled pick-up time.

2.3.1.1 Hibbing Area Transit Service reserves the right to deny entrance into a vehicle if the passenger appears disorderly or leads the driver to conclude that the passenger will exhibit disruptive behavior that would pose a safety threat not only to the driver, but also the passengers.

2.3.1.2 Intoxicated Passengers - No person who is noticeably intoxicated shall be permitted to board vehicle nor shall any person be allowed to drink intoxicating liquor while on a transit service bus. If an intoxicated person succeeds in boarding a vehicle without having been noticed and is able to take care of themselves and at no time annoys passengers, he/she shall be permitted to ride, but if he/she is unable to take care of themselves or annoys passengers or becomes obnoxious, the driver shall turn the passenger over to the first police officer that arrives. In no circumstance shall an intoxicated passenger be ejected unless turned over to a police officer. If a police officer is not available, the driver will radio the Dispatcher and arrangements will be made to have a police officer meet the vehicle at a specified location or he/she may be delivered to the police station.

2.3.1.3 Disruptive Passengers - Minnesota Statute 609.855, Subdivision 2, states that whoever intentionally commits an act that unreasonably interferes with or obstructs the operation of a transit vehicle is guilty of unlawful interference and may be prosecuted as provided in Subdivision 4.

Subd. 3. states that whoever while riding in a vehicle providing transit service:

- (1) operates a radio, television, tape player, electronic musical instrument, or other electronic device, other than a watch, which amplifies music, unless the sound emanates only from earphones or headphones and except that vehicle operators may operate electronic equipment for official business;
- (2) smokes or carries lighted smoking paraphernalia;
- (3) consumes food or beverages, except when authorized by the operator or other official of the transit system;
- (4) throws or deposits litter; or
- (5) acts in any other manner which disturbs the peace and quiet of another person is guilty of disruptive behavior and may be prosecuted as provided in Subdivision 4.

Subd.4. **Penalty.** Whoever violates Subdivision 1, 2, or 3 may be sentenced as follows:

- (1) To imprisonment for not more than one year or to payment of a fine of not more than \$5,000.00, or both, if the violation was not accompanied by force or violence or a communication of a threat of force or violence; or
- (2) To imprisonment for not more than 90 days or to payment of a fine of not more than \$1,000.00, or both, if the violation was not accompanied by force or violence or a communication of a threat of force or violence.

2.3.1.4 Hibbing Area Transit expects that passengers will show respect towards others, and will have appropriate hygiene. Failure to adhere to these operating policies may result in a temporary suspension of service.

2.3.2 Driver Assistance – Passenger service is typically curb-to-curb. Special door-to-door circumstances will be considered upon passenger's request. Any exception to the above driver assistance guidelines shall be first presented and approved by the operator and the City.

2.3.2.1 Passengers who are unable to independently conduct themselves inside an origin/destination building lobby must have a personal care attendant/companion present to assist the passenger. The driver, after first receiving approval from the Dispatcher, shall have authority to deny the passenger the scheduled trip if a personal care attendant is not present and is required. Personal care attendants may ride for free while acting in a PCA capacity by requesting a special PCA pass at City Hall.

2.3.2.2 Passengers/companions are expected to assist the passenger with packages.

2.3.2.3 Drivers are not allowed to accept tips for passenger assistance or under any other circumstance.

2.3.2.4 Hibbing Area Transit Service reserves the right to require a personal care attendant or assistant when transporting a passenger that has a documented medical or documented behavioral condition that could pose an unsafe situation for either the driver or any of the other passengers.

2.3.3 Use of Wheelchair Lift and Securement Inside Bus - The driver will always operate the wheelchair lift and will keep the passenger under surveillance at all times. Passengers who use a lift should be able to assist themselves in getting their chair or scooter on or off the lift.

2.3.3.1 All passengers must be secured by means of seatbelts at all times while in the bus. For those riding in wheelchairs, the drivers will secure the wheelchair devices and engage separate seat belts. Drivers will ensure that the passengers using seats will use the seat belts at all times. Drivers will assist in depositing the fare if needed.

2.3.4 Route Changes - Hibbing Area Transit Service drivers shall take the most time efficient route to the destination. The driver cannot change a route or make detours upon passenger request without first informing the Dispatcher and receiving authorization.

- 2.3.5 Canceled Trip Notification Requirement - A scheduled trip will be considered canceled if notice is given prior to the trip being dispatched to allow the vehicle to be rerouted for another rider. A cancellation made after the ride has been dispatched will be considered a no-show as described in Section 2.3.6 below.
- 2.3.6 No-Show Policy - A no-show occurs when an individual misses his or her scheduled pick-up time or does not give sufficient cancellation notice (see Section 2.3.5 above) such that it does not allow the vehicle to be rerouted. Events beyond the individual's control (i.e. the transit service being more than 45 minutes late, the transit service bus being early, or other event which make it impossible for the individual to be ready for their pick-up at their scheduled time) will not be considered a no-show. After three (3) no-shows in a period of six (6) months from the date of the first no-show, the individual will be suspended from the service for thirty (30) days.

2.3.6.1 Appealing a No-Show Procedure - If an individual receives a no-show and feels it was not justified, the no-show may be appealed. The City of Hibbing provides administrative due process to any individual who wishes to appeal a no-show.

- (1) For each no-show, the individual will receive written notice from the operator explaining that a no-show has been given.
- (2) The individual receiving a no-show has ten (10) days from receipt of the written notice to notify the operator that they wish to appeal the no-show. The appeal may be in writing or in person to the operator. The operator will reply to the individual within thirty (30) days of receipt of the appeal notice to make a determination of the validity of the no-show and respond to the individual in writing.
- (3) If the decision of the operator is not satisfactory, it may be appealed to the City Clerk/Treasurer in writing or in person at the Hibbing City Hall.
- (4) The City Clerk/Treasurer will either overturn the suspension or forward the suspension appeal to the Hibbing City Council at the Council's next regular meeting date, at which time the Council will make a determination on the validity of the suspension.
- (5) A person appealing a no-show which would result in a suspension will be allowed to continue the use of the transit service pending the outcome of the appeal process. All decisions of the City Council are final.

HEARTLAND EXPRESS - HIBBING AREA TRANSIT

DATE: _____ DRIVER: _____ BUS# _____ START ODEMETER: _____

[illegible]

BUS DRIVER'S VEHICLE INSPECTION REPORT

COMPANY: _____

ODOMETER READING: _____ BUS NO.: _____

END MILEAGE: _____ DATE: _____

START MILEAGE: _____ TIME: _____ ☐ AM ☐ PM

TOTAL MILEAGE: _____ LOCATION: _____

INSPECT ITEMS LISTED - IF DEFECTIVE, NUMBER AND DESCRIBE IN "REMARKS"

- | | |
|---|--|
| <input type="checkbox"/> FLUID LEAKS UNDER BUS | <input type="checkbox"/> EMERGENCY DOOR & BUZZER |
| <input type="checkbox"/> LOOSE WIRES, HOSE CONNECTIONS OR | <input type="checkbox"/> HEADLIGHTS, FLASHERS & 4-WAY FLASHERS |
| <input type="checkbox"/> BELTS IN ENGINE COMPARTMENT | <input type="checkbox"/> RIGHT FRONT TIRE & WHEEL |
| <input type="checkbox"/> OIL LEVEL | <input type="checkbox"/> FRONT OF BUS - WINDSHIELD |
| <input type="checkbox"/> RADIATOR COOLANT LEVEL | <input type="checkbox"/> LEFT FRONT TIRE & WHEEL |
| <input type="checkbox"/> BATTERY | <input type="checkbox"/> STOP ARM (SCHOOL BUS) |
| <input type="checkbox"/> TRANSMISSION | <input type="checkbox"/> EXHAUST SYSTEM |
| <input type="checkbox"/> UNUSUAL ENGINE NOISE | <input type="checkbox"/> LEFT SIDE OF BUS - WINDOWS & LIGHTS |
| <input type="checkbox"/> GAUGES & WARNING LIGHTS | <input type="checkbox"/> LEFT REAR TIRES & WHEELS |
| <input type="checkbox"/> SWITCHES | <input type="checkbox"/> REAR OF BUS - WINDOWS & LIGHTS |
| <input type="checkbox"/> HORN | <input type="checkbox"/> TAIL PIPE |
| <input type="checkbox"/> FANS & DEFROSTERS | <input type="checkbox"/> RIGHT REAR TIRES & WHEELS |
| <input type="checkbox"/> WIPERS & WASHERS | <input type="checkbox"/> RIGHT SIDE OF BUS - WINDOWS & LIGHTS |
| <input type="checkbox"/> STOP ARM CONTROL (WARNING CONTROL) | <input type="checkbox"/> DRIVER'S SEAT & BELT |
| <input type="checkbox"/> INSIDE & OUTSIDE MIRRORS | <input type="checkbox"/> DIRECTIONAL LIGHTS |
| <input type="checkbox"/> BRAKE PEDAL & WARNING LIGHT | <input type="checkbox"/> PARKING BRAKE OR SERVICE BRAKE |
| <input type="checkbox"/> OPERATION OF SERVICE DOOR | <input type="checkbox"/> CLUTCH |
| <input type="checkbox"/> EMERGENCY EQUIPMENT | <input type="checkbox"/> STEERING |
| <input type="checkbox"/> FIRST AID KIT | <input type="checkbox"/> WHEELCHAIR LIFT |
| <input type="checkbox"/> ENTRANCE STEPS | _____ |
| <input type="checkbox"/> CLEANLINESS OF INTERIOR | _____ |
| <input type="checkbox"/> CONDITION OF FLOOR | _____ |

REMARKS: _____

CONDITION OF ABOVE VEHICLE IS: ☐ SATISFACTORY ☐ UNSATISFACTORY

DRIVER'S SIGNATURE: _____

- ☐ ABOVE DEFECTS CORRECTED
☐ ABOVE DEFECTS NEED NOT BE CORRECTED FOR SAFE OPERATION OF VEHICLE

MECHANIC'S SIGNATURE: _____ DATE: _____

DRIVER REVIEWING REPAIRS: SIGNATURE: _____ DATE: _____

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ORIGINAL

(5/11)

CITY OF HIBBING

Public Transit Vehicles Maintenance Policies and Procedures

(HIBBING AREA TRANSIT)



June, 2017

Revised March 2022

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FACILITY MAINTENANCE

INTRODUCTION

All bus maintenance is performed at the Public Works Maintenance Facility. The buses owned by the City of Hibbing Area Transit are maintained by the City of Hibbing Public Works Department and under direct contract with a 3rd party contractor for management of operations and routes.

The bus fleet consists of 4 class 500 vehicles: 4 gasoline

All buses are handicap accessible.

Buses are operated and housed from a City-owned warm storage facility in Hibbing, MN. The Hibbing Area Transit is responsible for 23.6% of all related costs for the building, and the warm storage building is equipped with a wash bay for the buses.

GOALS AND OBJECTIVES

GOALS:

Promote a safe and secure transit system.

To meet or exceed all manufacturer's maintenance requirements on equipment.

To maintain all equipment to the highest standards.

To purchase all quality OEM or equal parts at the best pricing.

OBJECTIVES: The Public Works Superintendent and Lead Mechanic will ensure that the maintenance performed will support efficient and effective transit service on a daily basis while seeking to maximize the following:

Vehicle reliability.

Vehicle operating efficiency.

Optimum available number of vehicles daily to meet service demands.

These objectives must be achieved with proper balance of vehicle care and fiscal constraints. It is recognized that preventative maintenance has significant cost implications and that both facility and equipment resources are a significant public investment and must be protected.

PREVENTATIVE MAINTENANCE

Preventative maintenance is performed before each shift or trip and at prescribed intervals.

PRE-TRIP:

All pre-trip functions are performed by the operator and are part of his/her pre-trip inspection. After performing the pre-trip inspection, the operator presents the pre-trip inspection report to a qualified City mechanic to be signed off on before beginning his/her shift. Pre-trip functions include fuel and all fluid level checks (engine oil, transmission oil, engine coolant, and power steering), tire check, wheel nuts observed, exterior and interior lights, interior and exterior vehicle check for cleanliness and damage.

In summer months, air conditioning is checked when bus is serviced. In the fall all heating systems are checked so systems will perform with little or no problems.

Wheelchair lifts are cycled daily by the operators as part of their pre-trip inspection to make sure they are in operating condition.

INTERVALS:

All (4) buses – gasoline – are serviced every 3,500 miles. At this interval, engine oil and all filters are changed. Grease fittings are lubricated, brakes and steering inspected. All lights, heating and air conditioning systems, safety equipment, and wheelchair lifts are checked for proper operation. Transmissions on all buses are serviced every 30,000 miles.

REPAIR PROCEDURES:

All repairs other than interval servicing or route breakdowns are scheduled off of the operator's daily pre-trip report forms turned in by the operators each time prior to starting their shifts. A City of Hibbing mechanic must sign off on their pre-trip report and fix any repair issues before the bus is allowed into service.

PROCUREMENT PROCEDURES:

City mechanics are authorized to purchase parts needed for routine maintenance. A complete set of tires is kept in stock at all times so that they are readily available. The PW Superintendent signs the invoices, writes the bus number(s), and codes it to the appropriate Transit account. The invoices are given to Accounts Payable to be paid. PW Superintendent will inform Transit Manager of any work that needs to be done outside of routine maintenance and repairs. Any items over

\$1,000 are signed off by the City Administrator. Items over \$5,000 go to City Council for approval to purchase.

City mechanics complete the Bus Maintenance/Service Report when any repair or maintenance is performed on a bus. Bus number, date, mileage and labor hours are logged. A listing of parts used is recorded, including the invoice number, vendor, part number, part description, and price. The mechanic(s) name and time spent are listed as well. This report is turned in to Payroll where those hours are expensed to Transit.

EMERGENCY PROCEDURES:

All emergency issues are sent through the operator's bus route coordinator and forwarded to our Public Works Service Department Lead Mechanic to address. A City Staff Person is on call for off-duty issues that might arise after hours. In the event of an emergency or breakdown, the driver should call 911 and ask that the *City of Hibbing On-Call Staff* be contacted.

RECORD KEEPING:

Vehicle records are kept on each vehicle. Records contain all maintenance tasks performed, vehicle miles and vehicle maintenance costs. Currently records are maintained manually. All records, including daily and state inspection sheets, are kept on file at the City of Hibbing Public Works Maintenance Shop.

**DISADVANTAGED BUSINESS ENTERPRISE (DBE) SPECIAL
PROVISIONS**

Federal Transit Administration (FTA)

Goods and Services

RACE/GENDER NEUTRAL GOAL

Project Information	
MnDOT Grant Agreement Number:	This contract uses the following project delivery method: <input type="checkbox"/> For the procurement of Goods <input type="checkbox"/> For the procurement of Services <input type="checkbox"/> For the procurement of Third Party Operations/Services OR <input type="checkbox"/> For the procurement of Professional Services
This contract will be solicited and administered by: <input type="checkbox"/> A subrecipient of Federal FTA Funds (governments or non-profit agency)	

Introduction

Federal Regulations Govern. Some or all of the funds for this contract will come from the U.S. Department of Transportation (USDOT). Therefore, the federal Disadvantaged Business Enterprise (DBE) program described at Title 49, Part 26 of the Code of Federal Regulations (CFR) applies to this contract. The responder is responsible for understanding and following the requirements of 49 CFR Part 26.

Purpose. These special provisions (1) outline the responder's obligations under the federal DBE program, (2) explain the process MnDOT Office of Civil Rights (OCR) will follow to evaluate the responder's compliance with DBE program requirements, and (3) identify sanctions for failing to comply with DBE program requirements. These provisions apply *in addition to* any other requirements applicable to award of this contract.

Policy Statement. MnDOT must ensure nondiscrimination in the award and administration of contracts funded in whole or in parts with federal funds. The DBE program seeks to:

- Create a level playing field on which DBEs can compete fairly for federally funded projects,
- Ensure that the DBE program is narrowly tailored,
- Ensure that only eligible firms are permitted to participate as DBEs,
- Help remove barriers to the participation of DBEs in federally funded projects, and
- Provide flexibility in establishing and providing opportunities for DBEs.

Contract Assurance. The USDOT requires MnDOT, as a recipient of federal funds, to include the following paragraph in contracts for federally funded projects. It applies to the responder, and the responder must also include it in subcontracts the responder executes for this project.

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to, (1) withholding monthly progress payments, (2) assessing sanctions, (3) liquidated damages, and/or (4) disqualifying the contractor from future bidding as non-responsible.

Application and Interpretation. Terms must be interpreted as follows:

- "Responder" refers to the bidder, apparent low bidder, proposer, or apparent successful proposer.
- "Proposal" includes a bid, proposal or price proposal.

RACE/GENDER NEUTRAL GOAL

If the DBE goal is Race/Gender Neutral (RGN), all responders are encouraged to include their anticipated DBE utilization for the contract in their proposals. **Each responder will still be required to submit a bidders list (Part D) of all subcontractors and suppliers (both DBE and non-DBE) on projects with an RGN goal.** While DBE participation is encouraged on proposals with an RGN goal, responders who are able to meet DBE participation are to **complete and submit the Contractors Payment Form and DBE Total Payment Affidavit**).

ADDITIONAL SUBCONTRACTORS, SUPPLIERS AND SERVICE PROVIDERS

Whenever an additional subcontractor, supplier or service provider is selected, and this information has not been previously reported to the Mn/DOT Office of Civil Rights, the Contractor or its designated OCR Officer shall promptly provide Mn/DOT OCR with the following information regarding the subcontract:

- a) The name of the subcontractor; supplier or service provider;
- b) The total dollar amount of the subcontract;
- c) The specific work items covered by the subcontract;
- d) Estimated quantities of each work item; and
- e) Individual unit prices (if applicable).

SUBMITTAL OF DOCUMENTATION

Upon award of the contract, the Contractor shall submit on the attached Bidders List, a complete list of all subcontractors, service providers, suppliers and consultants that submitted bids, and shall indicate the successful quotes that will be used on the contract.

Additionally, during the life of the contract, the Contractor shall submit progress payment reports on the attached Contractor Payment Form regarding the payments made to its subcontractors, suppliers, service providers and sub-consultants. In accordance with federal regulations and Minnesota's Prompt Payment law, Contractors are required to pay their subcontractors within ten

(10) days of receiving progress payments from Mn/DOT. Contractors are also required to submit to the Project Engineer and the Mn/DOT OCR the Contractor Payment Forms no later than ten

(10) days after receiving payment from Mn/DOT. PROMPT

PAYMENT

The prime contractor agrees to pay each subcontractor under this prime contract within ten days of the prime contractor's receipt of payment from the state for undisputed services provided by the subcontractor. The prime contractor must pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The prime contractor agrees further to return retainage payments to each subcontractor within ten days after the subcontractor's work is satisfactorily completed. This clause applies to both DBE and non-DBE subcontractors. Any contractor making payments to subcontractors must complete and submit the attached Contractor Payment form.

FINAL PAYMENT AFFIDAVIT

Pursuant to Mn/DOT Standard Specifications for Construction Sec. 1908, "Unless a Contractor has presented an Affidavit showing the total dollar amounts of works performed by disadvantaged business enterprise (DBE), final payment may be withheld." The DBE Total Payment Affidavit shall be executed by the Prime Contractor after all work has been performed by DBE(s) on the project.

This Race/Gender Neutral Goal Language is an addendum to the Mn/DOT DBE Special Provisions.

Contractor:

PART D – BIDDERS LIST – NON-DBE and DBE QUOTES SUBMITTED

DBE COMMITMENTS List all DBE firms who provided quotes or bid proposals. Indicate whether the quotes were accepted. Please include a copy of their quote(s).					DBE Goal Submitted? Description of Work	Dollar Amount Of Bid/Proposal.	Will Firm Be Used?
DBE Contractor Information							
1.	DBE Contractor Name						Yes <input type="checkbox"/> No <input type="checkbox"/>
	Contact Name						
	Address						
	Federal Tax #	E-mail					
	Phone	Fax:					
2.	DBE Contractor Name						Yes <input type="checkbox"/> No <input type="checkbox"/>
	Contact Name						
	Address						
	Federal Tax #	E-mail					
	Phone	Fax					
3.	DBE Contractor Name						Yes <input type="checkbox"/> No <input type="checkbox"/>
	Contact Name						
	Address						
	Federal Tax #	E-mail					
	Phone	Fax					
4.	DBE Contractor Name						Yes No
	Contact Name						
	Address:						
	Federal Tax #	E-mail					
	Phone	Fax					

Make additional copies of this page as necessary

Minnesota Department of Transportation
Office of Civil Rights

Contractor Payment Form

State Project Number _____ Prime Contractor: _____ 1st Tier Sub-Contractor: _____

Payment Reporting Period: From: _____ To: _____



Instructions: All Contractors making payments to Contractors/Subcontractors/Suppliers/Service Providers, regardless of their tier or DBE status, are required to complete and submit this form to the Mn/DOT Office of Civil Rights (OCR), each time payments are made to sub-contractors until final payment is made. Failure to comply with this form and Minnesota's prompt payment law may cause progress payments to be withheld. Submit one copy of this form to the Mn/DOT OCR and one copy to the Project Engineer, no later than ten (10) days after receiving payment from Mn/DOT.

Contractor Information		Original Contract Amount	Committed DBE %	Actual DBE % to Date
Name:				
Address:				
Phone:				
Name of Subcontractor/Supplier	DBE? (Check if Yes)	Description of Work	Subcontract Amount	
1.	<input type="checkbox"/>	1.	1.	
2.	<input type="checkbox"/>	2.	2.	
3.	<input type="checkbox"/>	3.	3.	
4.	<input type="checkbox"/>	4.	4.	
5.	<input type="checkbox"/>	5.	5.	
6.	<input type="checkbox"/>	6.	6.	
Amount of Current Payment	Total Sub-Contractor Payment-To-Date	% Paid to date	Final Payment? Yes/No	
1.	1.	1.	1.	
2.	2.	2.	2.	
3.	3.	3.	3.	
4.	4.	4.	4.	
5.	5.	5.	5.	
6.	6.	6.	6.	
Company Officials Signature & Title		Date Signed	Name & Title of Individual Completing Report (Type or Print Clearly)	
Title:		Title:		
Phone:	Fax:	Phone:	Fax:	

Contractor Payment Form Instructions

All Contractors making payments to Contractors/Subcontractors/Suppliers/Service Providers, regardless of their tier or DBE status, are required to complete and submit this form to the Mn/DOT Office of Civil Rights (OCR), each time payments are made to sub-contractors until final payment is made. Failure to comply with this form and Minnesota's prompt payment law may cause progress payments to be withheld. Submit one copy of this form to the Mn/DOT OCR and one copy to the Project Engineer, no later than ten (10) days after receiving payment from Mn/DOT.

State Project Number: As identified by Mn/DOT

Prime Contractor: The contractor who was awarded the project.

1st Tier Sub-Contractor: If there is an instance of a sub who has a subcontractor, list the 1st tier sub here and then list all of the 2nd tier Subcontractor(s) in the Name of Subcontractor/Supplier area. *All areas should be filled in regarding the prime as well.*

Payment Reporting Period: This should reflect the current payment period.

Contractor Information: Contractor's information who is making the payments. Should be filled out completely.

Original Contract Amount: Prime contractor's contract dollar amount.

Committed DBE%: The DBE requirement as certified by the prime in the proposal that is the minimum percentage to be met.

Actual DBE % to Date: The percent met to date.

Name of Subcontractor/Supplier: Company who is working for the prime contractor on this project.
(If a sub was contracted for more than one contract, list each contract separately.)

DBE?: Check this box if the subcontractor is a certified DBE in Minnesota. You can find a listing of the DBE firms certified in Minnesota at <http://www.dot.state.mn.us/eeocm/ucpdirectory.html> .

Description of Work: The type of work the subcontractor was contracted for.

Subcontract Amount: The dollar amount the subcontractor was contracted for.

Amount of Current Payment: The current dollar amount being paid to the sub.

Total Sub-Contractor Payment-to-Date: Total dollar amount paid to the sub including the current payment.

% Paid to Date: Percentage of total payments made in comparison to the prime's award amount.

Final Payment?: Indicate weather this is the final payment being made to the sub.

Company Officials Signature & Title: Self explanatory

Name & Title of Individual Completing Report: Self explanatory

If you have questions on completing the form, call the Office of Civil Rights at (651) 366-3073.

DBE Total Payment Affidavit

Pursuant to Mn/DOT Standard Specifications for Construction, Section 1908, the following DBE Total Payment Affidavit shall be executed by the Prime Contractor after all work has been performed by a DBE on this project. If the dollar value of the DBE firm's total work is less than the DBE's original subcontract, please explain. Attach additional sheets if necessary.

State Project Number: _____

STATE OF MINNESOTA
COUNTY OF _____

I, _____, being first duly sworn, do depose and say that:

1. I am the authorized representative of _____
(Name of Individual, Company, Partnership or Corporation)
and I have the authority to make this Affidavit for and on behalf of said Prime Contractor.

2. The following DBE Subcontractors/Suppliers/Service Providers/Sub-Consultants have preformed work on this contract/project with a total dollar value of:

	Name of DBE Firm	Dollar Amount of Subcontract	Total Dollar Amount
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			

3. I have fully informed myself regarding the accuracy of the statements made in this Affidavit.

Signed: _____
(Prime Contractor or Authorized Representative)

Subscribed and sworn to before me
This _____ day of _____, 20____

(Notary Public)

My commission expires _____, 20____

Prepare Affidavit in duplicate. Submit one original to the
Project Engineer, and one original to:

Mn/DOT's Office of Civil Rights
395 John Ireland Blvd., MS 170
St. Paul, MN 55155

No. 1908 – Standard Specifications for Construction

Unless the Contractor has presented an Affidavit showing the total dollar amounts of work performed by Disadvantaged Business Enterprises (DBE), final payment may be withheld.

**CERTIFICATION OF PRIMARY PARTICIPANT REGARDING
DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY
MATTERS**

The Primary Participant (applicant for an FTA grant or cooperative agreement, or potential contractor for a major third party contract) _____ certifies to the best of its knowledge and belief, that it and its principals:

- 1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- 2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or Local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- 3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (2) or this certification; and
- 4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or Local) terminated for cause or default.

If the primary participant (applicant for an FTA grant or cooperative agreement, or potential third party contractor) is unable to certify to any of the statements in this certification, the participant shall attach an explanation of this certification.

The Primary Participant (applicant for an FTA grant or cooperative agreement, or potential contractor for a major third party contract), _____ certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. Sections 3801 et seq. are applicable thereto.

Signature and Title of Authorized Official

The undersigned chief legal counsel for _____ hereby certifies that _____ has authority under State and local law to comply with the subject assurances and that the certification above has been legally made.

Signature of Applicant's Attorney

Date



MnDOT Agreement No. 1035585

and Cooperative Agreements (C&A). When the FTA publishes the updated C&A for the current federal fiscal year the STATE will forward the C&A to RECIPIENT for signature. The signed certification and assurances will become incorporated and apart of STATE's contract file for RECIPIENT. RECIPIENT must sign and return the completed C&A to STATE no later than 60 days after receipt of the updated C&A.

18. FEDERAL CONTRACT CLAUSES

RECIPIENT agrees to abide by the following federal requirements and agrees to bind third party contractors and subcontractors to the same, as applicable.

A. ACCESS TO RECORDS AND REPORTS

49 U.S.C. § 5325(g); 2 C.F.R. § 200.333; 49 C.F.R. part 633

Applicability to Contracts

The record keeping and access requirements apply to all contracts funded in whole or in part with FTA funds. Under 49 U.S.C. § 5325(g), FTA has the right to examine and inspect all records, documents, and papers, including contracts, related to any FTA project financed with Federal assistance authorized by 49 U.S.C. Chapter 53.

Flow Down

The record keeping and access requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

Model Clause/Language

There is no required language for record keeping and access requirements. Recipients can draw on the following language for inclusion in their federally funded procurements.

Access to Records and Reports

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

B. CHARTER SERVICE



MnDOT Agreement No. 1035585

49 U.S.C. 5323(d) and (r); 49 C.F.R. part 604

Applicability to Contracts

The Charter Bus requirements apply to contracts for operating public transportation service.

Flow Down Requirements

The Charter Bus requirements flow down from FTA recipients and subrecipients to first tier service contractors.

Model Clause/Language

The relevant statutes and regulations do not mandate any specific clause or language.

Recipients can draw on the following language for inclusion in their federally funded procurements.

Charter Service

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

1. Federal transit laws, specifically 49 U.S.C. § 5323(d);
2. FTA regulations, “Charter Service,” 49 C.F.R. part 604;
3. Any other federal Charter Service regulations; or
4. Federal guidance, except as FTA determines otherwise in writing.

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

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

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

C. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

42 U.S.C. §§ 7401 – 7671q; 33 U.S.C. §§ 1251-1387; 2 C.F.R. part 200, Appendix II (G)

Applicability to Contracts

The Clean Air and Clean Water Act requirements apply to each contract and subcontract exceeding \$150,000. Each contract and subcontract must contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251– 1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).



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Flow Down

The Clean Air Act and Federal Water Pollution Control Act requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

Model Clause/Language

Recipients can draw on the following language for inclusion in their federally funded procurements.

The Contractor agrees:

- 1) It will not use any violating facilities;
- 2) It will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities;"
- 3) It will report violations of use of prohibited facilities to FTA; and
- 4) It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

D. CIVIL RIGHTS LAWS AND REGULATIONS**Applicability to Contracts**

The following Federal Civil Rights laws and regulations apply to all contracts.

1. **Federal Equal Employment Opportunity (EEO) Requirements.** These include, but are not limited to:
 - a. **Nondiscrimination in Federal Public Transportation Programs.** 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity.
 - b. **Prohibition against Employment Discrimination.** Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order No. 11246, "Equal Employment Opportunity," September 24, 1965, as amended, prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.
2. **Nondiscrimination on the Basis of Sex.** Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 *et seq.* and implementing Federal regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25 prohibit discrimination on the basis of sex.
3. **Nondiscrimination on the Basis of Age.** The "Age Discrimination Act of 1975," as amended, 42 U.S.C. § 6101 *et seq.*, and Department of Health and Human Services implementing regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 *et seq.*, and Equal Employment Opportunity Commission (EEOC) implementing regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, also prohibit employment discrimination against individuals age 40 and over on the basis of age.
4. **Federal Protections for Individuals with Disabilities.** The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 *et seq.*, prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.



Flow Down

The Civil Rights requirements flow down to all third party contractors and their contracts at every tier.

Model Clause/Language

Every federally funded contract must include an Equal Opportunity clause. Recipients can draw on the following language for inclusion in their federally funded procurements.

Civil Rights and Equal Opportunity

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

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

1. **Nondiscrimination.** In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
2. **Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e *et seq.*, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
3. **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.
4. **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.



E. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

49 C.F.R. part 26

Background and Applicability

The Disadvantaged Business Enterprise (DBE) program applies to FTA recipients receiving planning, capital and/or operating assistance that will award prime contracts (excluding transit vehicle purchases) exceeding \$250,000 in FTA funds in a Federal fiscal year. All FTA recipients above this threshold must submit a DBE program and overall triennial goal for DBE participation. The overall goal reflects the anticipated amount of DBE participation on DOT-assisted contracts. As part of its DBE program, FTA recipients must require that each transit vehicle manufacturer (TVM), as a condition of being authorized to bid or propose on FTA assisted transit vehicle procurements, certify that it has complied with the requirements of 49 C.F.R. § 26.49. Only those transit vehicle manufacturers listed on FTA's certified list of Transit Vehicle Manufacturers, or that have submitted a goal methodology to FTA that has been approved or has not been disapproved at the time of solicitation, are eligible to bid.

FTA recipients must meet the maximum feasible portion of their overall goal using race-neutral methods. Where appropriate, however, recipients are responsible for establishing DBE contract goals on individual DOT-assisted contracts. FTA recipients may use contract goals only on those DOT-assisted contracts that have subcontracting responsibilities. *See* 49 C.F.R. § 26.51(e). Furthermore, while FTA recipients are not required to set a contract goal on every DOT-assisted contract, they are responsible for achieving their overall program goals by administering their DBE program in good faith.

FTA recipients and third party contractors can obtain information about the DBE program at the following website locations:

[Federal Transit Administration website Disadvantaged Business Enterprise page click here](#)

[Department of Transportation website Disadvantaged Business Enterprise Program click here](#)

Flow Down

The DBE contracting requirements flow down to all third party contractors and their contracts at every tier. It is the recipient's and prime contractor's responsibility to ensure the DBE requirements are applied across the board to all subrecipients/contractors/subcontractors. Should a subcontractor fail to comply with the DBE regulations, FTA would look to the recipient to make sure it intervenes to monitor compliance. The onus for compliance is on the recipient.

Clause Language

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

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

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;



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(3) Liquidated damages; and/or

(4) Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

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

As an additional resource, recipients can draw on the following language for inclusion in their federally funded procurements.

Overview

It is the policy of the AGENCY and the United States Department of Transportation ("DOT") that Disadvantaged Business Enterprises ("DBE's"), as defined herein and in the Federal regulations published at 49 C.F.R. part 26, shall have an equal opportunity to participate in DOT-assisted contracts. It is also the policy of the AGENCY to:

1. Ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. Create a level playing field on which DBE's can compete fairly for DOT-assisted contracts;
3. Ensure that the DBE program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet 49 C.F.R. part 26 eligibility standards are permitted to participate as DBE's;
5. Help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To promote the use of DBEs in all types of federally assisted contracts and procurement activities; and
7. Assist in the development of firms that can compete successfully in the marketplace outside the DBE program.

This Contract is subject to 49 C.F.R. part 26. Therefore, the Contractor must satisfy the requirements for DBE participation as set forth herein. These requirements are in addition to all other equal opportunity employment requirements of this Contract. The AGENCY shall make all determinations with regard to whether or not a Bidder/Offeror is in compliance with the requirements stated herein. In assessing compliance, the AGENCY may consider during its review of the Bidder/Offeror's submission package, the Bidder/Offeror's documented history of non-compliance with DBE requirements on previous contracts with the AGENCY.

Contract Assurance

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

DBE Participation

For the purpose of this Contract, the AGENCY will accept only DBE's who are:



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1. Certified, at the time of bid opening or proposal evaluation, by the [*certifying agency or the Unified Certification Program (UCP)*]; or
2. An out-of-state firm who has been certified by either a local government, state government or Federal government entity authorized to certify DBE status or an agency whose DBE certification process has received FTA approval; or
3. Certified by another agency approved by the AGENCY.

DBE Participation Goal

The DBE participation goal for this Contract is set at _____%. This goal represents those elements of work under this Contract performed by qualified Disadvantaged Business Enterprises for amounts totaling **not less than** _____% of the total Contract price. Failure to meet the stated goal at the time of proposal submission **may** render the Bidder/Offeree non-responsive.

Proposed Submission

Each Bidder/Offeree, as part of its submission, shall supply the following information:

1. A completed **DBE Utilization Form** (see below) that indicates the percentage and dollar value of the total bid/contract amount to be supplied by Disadvantaged Business Enterprises under this Contract.
2. A list of those qualified DBE's with whom the Bidder/Offeree intends to contract for the performance of portions of the work under the Contract, the agreed price to be paid to each DBE for work, the Contract items or parts to be performed by each DBE, a proposed timetable for the performance or delivery of the Contract item, and other information as required by the **DBE Participation Schedule** (see below). No work shall be included in the Schedule that the Bidder/Offeree has reason to believe the listed DBE will subcontract, at any tier, to other than another DBE. If awarded the Contract, the Bidder/Offeree may not deviate from the DBE Participation Schedule submitted in response to the bid. Any subsequent changes and/or substitutions of DBE firms will require review and written approval by the AGENCY.
3. An original **DBE Letter of Intent** (see below) from each DBE listed in the **DBE Participation Schedule**.
4. An original **DBE Affidavit** (see below) from each DBE stating that there has not been any change in its status since the date of its last certification.

Good Faith Efforts

If the Bidder/Offeree is unable to meet the goal set forth above (DBE Participation Goal), the AGENCY will consider the Bidder/Offeree's documented good faith efforts to meet the goal in determining responsiveness. The types of actions that the AGENCY will consider as part of the Bidder/Offeree's good faith efforts include, but are not limited to, the following:

1. Documented communication with the AGENCY's DBE Coordinator (questions of IFB or RFP requirements, subcontracting opportunities, appropriate certification, will be addressed in a timely fashion);
2. Pre-bid meeting attendance. At the pre-bid meeting, the AGENCY generally informs potential Bidder/Offeree's of DBE subcontracting opportunities;
3. The Bidder/Offeree's own solicitations to obtain DBE involvement in general circulation media, trade association publication, minority-focus media and other reasonable and available means within sufficient time to allow DBEs to respond to the solicitation;
4. Written notification to DBE's encouraging participation in the proposed Contract; and



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5. Efforts made to identify specific portions of the work that might be performed by DBE's.

The Bidder/Offeror shall provide the following details, at a minimum, of the specific efforts it made to negotiate in good faith with DBE's for elements of the Contract:

1. The names, addresses, and telephone numbers of DBE's that were contacted;
2. A description of the information provided to targeted DBE's regarding the specifications and bid proposals for portions of the work;
3. Efforts made to assist DBE's contacted in obtaining bonding or insurance required by the Bidder or the Authority.

Further, the documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted when a non-DBE subcontractor was selected over a DBE for work on the contract. 49 C.F.R. § 26.53(b) (2) (VI). In determining whether a Bidder has made good faith efforts, the Authority may take into account the performance of other Bidders in meeting the Contract goals. For example, if the apparent successful Bidder failed to meet the goal, but meets or exceeds the average DBE participation obtained by other Bidders, the Authority may view this as evidence of the Bidder having made good faith efforts.

Administrative Reconsideration

Within five (5) business days of being informed by the AGENCY that it is not responsive or responsible because it has not documented sufficient good faith efforts, the Bidder/Offeror may request administrative reconsideration. The Bidder should make this request in writing to the AGENCY's [Contact Name]. The [Contact Name] will forward the Bidder/Offeror's request to a reconsideration official who will not have played any role in the original determination that the Bidder/Offeror did not document sufficient good faith efforts.

As part of this reconsideration, the Bidder/Offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The Bidder/Offeror will have the opportunity to meet in person with the assigned reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The AGENCY will send the Bidder/Offeror a written decision on its reconsideration, explaining the basis for finding that the Bidder/Offeror did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

Termination of DBE Subcontractor

The Contractor shall not terminate the DBE subcontractor(s) listed in the **DBE Participation Schedule** (see below) without the AGENCY's prior written consent. The AGENCY may provide such written consent only if the Contractor has good cause to terminate the DBE firm. Before transmitting a request to terminate, the Contractor shall give notice in writing to the DBE subcontractor of its intent to terminate and the reason for the request. The Contractor shall give the DBE five days to respond to the notice and advise of the reasons why it objects to the proposed termination. When a DBE subcontractor is terminated or fails to complete its work on the Contract for any reason, the Contractor shall make good faith efforts to find another DBE subcontractor to substitute for the original DBE and immediately notify the AGENCY in writing of its efforts to replace the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the Contract as the DBE that was terminated, to the extent needed to meet the Contract goal established for this procurement. Failure to comply with these requirements will be in accordance with Section 8 below (Sanctions for Violations).

Continued Compliance

The AGENCY shall monitor the Contractor's DBE compliance during the life of the Contract. In the event this procurement exceeds ninety (90) days, **it will be the responsibility of the Contractor to submit quarterly written reports to the AGENCY that** summarize the total DBE value for this Contract. These reports shall provide the following details:



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- DBE utilization established for the Contract;
- Total value of expenditures with DBE firms for the quarter;
- The value of expenditures with each DBE firm for the quarter by race and gender;
- Total value of expenditures with DBE firms from inception of the Contract; and
- The value of expenditures with each DBE firm from the inception of the Contract by race and gender.

Reports and other correspondence must be submitted to the DBE Coordinator with copies provided to the [Agency Name1] and [Agency Name2]. Reports shall continue to be submitted quarterly until final payment is issued or until DBE participation is completed.

The successful Bidder/Offeror shall permit:

- The AGENCY to have access to necessary records to examine information as the AGENCY deems appropriate for the purpose of investigating and determining compliance with this provision, including, but not limited to, records of expenditures, invoices, and contract between the successful Bidder/Offeror and other DBE parties entered into during the life of the Contract.
- The authorized representative(s) of the AGENCY, the U.S. Department of Transportation, the Comptroller General of the United States, to inspect and audit all data and record of the Contractor relating to its performance under the Disadvantaged Business Enterprise Participation provision of this Contract.
- All data/record(s) pertaining to DBE shall be maintained as stated in Section [insert reference to record keeping requirements for the Project.]

Sanctions for Violations

If at any time the AGENCY has reason to believe that the Contractor is in violation of its obligations under this Agreement or has otherwise failed to comply with terms of this Section, the AGENCY may, in addition to pursuing any other available legal remedy, commence proceedings, which may include but are not limited to, the following:

- Suspension of any payment or part due the Contractor until such time as the issues concerning the Contractor's compliance are resolved; and
- Termination or cancellation of the Contract, in whole or in part, unless the successful Contractor is able to demonstrate within a reasonable time that it is in compliance with the DBE terms stated herein.

DBE UTILIZATION FORM

The undersigned Bidder/Offeror has satisfied the requirements of the solicitation in the following manner (please check the appropriate space):

_____The Bidder/Offer is committed to a minimum of _____% DBE utilization on this contract.

___The Bidder/Offeror (if unable to meet the DBE goal of _____%) is committed to a minimum of _____% DBE utilization on this contract and submits documentation demonstrating good faith efforts.



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DBE PARTICIPATION SCHEDULE

The Bidder/Offeror shall complete the following information for all DBE's participating in the contract that comprises the DBE Utilization percent stated in the DBE Utilization Form. The Bidder/Offeror shall also furnish the name and telephone number of the appropriate contact person should the Authority have any questions in relation to the information furnished herein.

DBE IDENTIFICATION AND INFORMATION FORM

Name and Address	Contact Name and Telephone Number	Participation Percent (Of Total Contract Value)	Description Of Work To Be Performed	Race and Gender of Firm

F. EMPLOYEE PROTECTIONS

49 U.S.C. § 5333(a); 40 U.S.C. §§ 3141 – 3148; 29 C.F.R. part 5; 18 U.S.C. § 874; 29 C.F.R. part 3; 40 U.S.C. §§3701-3708; 29 C.F.R. part 1926

Applicability to Contracts

Certain employee protections apply to all FTA funded contracts with particular emphasis on construction related projects. The recipient will ensure that each third party contractor complies with all federal laws, regulations, and requirements, including:

1. **Prevailing Wage Requirements**
 - a. Federal transit laws, specifically 49 U.S.C. § 5333(a), (FTA's "Davis-Bacon Related Act");
 - b. The Davis-Bacon Act, 40 U.S.C. §§ 3141 – 3144, 3146, and 3147; and
 - c. U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5.
2. **"Anti-Kickback" Prohibitions**
 - a. Section 1 of the Copeland "Anti-Kickback" Act, as amended, 18 U.S.C. § 874;



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- b. Section 2 of the Copeland “Anti-Kickback” Act, as amended, 40 U.S.C. § 3145; and
 - c. U.S. DOL regulations, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States,” 29 C.F.R. part 3.
3. Contract Work Hours and Safety Standards
- a. Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701-3708; and supplemented by Department of Labor (DOL) regulations, 29 C.F.R. part 5; and
 - b. U.S. DOL regulations, “Safety and Health Regulations for Construction,” 29 C.F.R. part 1926.

Flow Down

These requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier. The Davis-Bacon Act and the Copeland “Anti- Kickback” Act apply to all prime construction, alteration or repair contracts in excess of \$2,000. The Contract Work Hours and Safety Standards Act apply to all FTA funded contracts in excess of \$100,000 that involve the employment of mechanics or laborers.

Model Clause/Language

The recipient must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. In addition, recipients can draw on the following language for inclusion in their federally funded procurements.

Prevailing Wage and Anti-Kickback

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

Contract Work Hours and Safety Standards

For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, the Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701- 3708), as supplemented by the DOL regulations at 29 C.F.R. part 5. Under 40 U.S.C. § 3702 of the Act, the Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40

U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.

In the event of any violation of the clause set forth herein, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District



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or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by this clause.

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

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this agreement.

Contract Work Hours and Safety Standards for Awards Not Involving Construction

The Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 *et seq.*, and

U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5.

The Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

Such records maintained under this paragraph shall be made available by the Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and the Contractor will permit such representatives to interview employees during working hours on the job.

The contractor shall require the inclusion of the language of this clause within subcontracts of all tiers.

G. ENERGY CONSERVATION

42 U.S.C. 6321 *et seq.*; 49 C.F.R. part 622, subpart C

Applicability to Contracts

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

Flow Down

These requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

Model Clause/Language

No specific clause is recommended in the regulations because the Energy Conservation requirements are so dependent on the state energy conservation plan. Recipients can draw on the following language for inclusion in



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their federally funded procurements.

Energy Conservation

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.

H. FEDERAL CHANGES

FTA C 4220.1f

Applicability to Contracts

The Federal Changes to requirement applies to all contracts.

Flow Down

The Federal Changes requirement flows down appropriately to each applicable changed requirement.

Model Clause/Language

No specific language is mandated. The following language has been developed by FTA.

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

I. FLY AMERICA

49 U.S.C. § 40118; 41 C.F.R. part 301-10; 48 C.F.R. part 47.4

Applicability to Contracts

The Fly America requirements apply to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation. Transportation on a foreign air carrier is permissible when provided by a foreign air carrier under a code share agreement when the ticket identifies the U.S. air carrier's designator code and flight number. Transportation by a foreign air carrier is also permissible if there is a bilateral or multilateral air transportation agreement to which the U.S. Government and a foreign government are parties and which the U.S. DOT has determined meets the requirements of the Fly America Act.

Flow Down Requirements

The Fly 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.

Model Clause/Language

The relevant statutes and regulations do not require any specific clause or language that recipients use in their third party contracts. A sample clause is provided for Federal contracts at 48 C.F.R. 52.247-63. Recipients can draw on the following language for inclusion in their federally funded procurements.

FTA proposes the following language, modified from the Federal clause.

Fly America Requirements

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

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



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outside the United States.

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

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

- b) When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, recipients, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.
- c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.
- d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

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

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

(End of statement)

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

(End of Clause)

J. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION

2 C.F.R. part 180; 2 C.F.R part 1200; 2 C.F.R. § 200.213; 2 C.F.R. part 200 Appendix II (I); Executive Order 12549; Executive Order 12689

Background and Applicability

A contract award (of any tier) in an amount expected to equal or exceed \$25,000 or a contract award at any tier for a federally required audit (irrespective of the contract amount) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. part 180. The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Recipients, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) with which they propose to contract or subcontract is not excluded or disqualified. This is done by: (a) checking the SAM exclusions; (b) collecting a certification from that person; or (c) adding a clause or condition to the contract or subcontract.



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Recipients, contractors, and subcontractors who enter into covered transactions with a participant at the next lower level, must require that participant to: (a) comply with subpart C of 2 C.F.R. part 180, as supplemented by 2 C.F.R. part 1200; and (b) pass the requirement to comply with subpart C of 2 C.F.R. part 180 to each person with whom the participant enters into a covered transaction at the next lower tier.

Model Clause/Language

There is no required language for the Debarment and Suspension clause. Recipients can draw on the following language for inclusion in their federally funded procurements.

Debarment, Suspension, Ineligibility and Voluntary Exclusion

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

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

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

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

K. INCORPORATION OF FTA (FTA) TERMS

FTA C 4220.1f

Applicability to Contracts

The incorporation of FTA terms applies to all contracts.

Flow Down

The incorporation of FTA terms has unlimited flow down.

Model Clause/Language

FTA has developed the following incorporation of term language:



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

L. LOBBYING RESTRICTIONS

31 U.S.C. § 1352; 2 C.F.R. § 200.450; 2 C.F.R. part 200 appendix II (J); 49 C.F.R. part 20

Applicability to Contracts

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

Flow Down

The lobbying requirements mandate the maximum flow down pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5).

Model Clause/Language

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

Lobbying Restrictions

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 sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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



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\$100,000 for each such failure.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

M. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

Applicability to Contracts

The No Obligation clause applies to all third party contracts that are federally funded.

Flow Down

The No Obligation clause extends to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

Model Clause/Language

There is no required language for the No Obligations clause. Recipients can draw on the following language for inclusion in their federally funded procurements.

No Federal Government Obligation to Third Parties.

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

N. PRIVACY ACT

5 U.S.C. § 552

Applicability to Contracts

When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts.

Flow Down

The Federal Privacy Act requirements flow down to each third party contractors and their contracts at every tier.

Model Clause/Language

The text of the following clause has not been mandated by statute or specific regulation, but has been developed by FTA.

Contracts Involving Federal Privacy Action Requirements – The following requirements apply to the Contractor



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and its employees that administer any system of records on behalf of the federal government under any contract:

- (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 the 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.

O. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

49 U.S.C. § 5323(l) (1); 31 U.S.C. §§ 3801-3812; 18 U.S.C. § 1001; 49 C.F.R. part 31

Applicability to Contracts

The Program Fraud clause applies to all third party contracts that are federally funded.

Flow Down

The Program Fraud clause extends to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier. These requirements flow down to contractors and subcontractors who make, present, or submit covered claims and statements.

Model Clause/Language

There is no required language for the Program Fraud clause. Recipients can draw on the following language for inclusion in their federally funded procurements.

Program Fraud and False or Fraudulent Statements or 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. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on 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.



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P. PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS

49 U.S.C. § 5333(b) (“13(c)”; 29 C.F.R. part 215

Applicability to Contracts

The Public Transportation Employee Protective Arrangements apply to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator.

Flow Down

The employee protective arrangements clause flows down to all third party contractors and their contracts at every tier.

Model Clause/Language

There is no required language for the Public Transportation Employee Protective Arrangements clause. Recipients can draw on the following language for inclusion in their federally funded procurements.

Public Transportation Employee Protective Arrangements

The Contractor agrees to comply with the following employee protective arrangements of 49

U.S.C. § 5333(b):

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

Q. RECYCLED PRODUCTS

42 U.S.C. § 6962; 40 C.F.R. part 247; 2 C.F.R. part § 200.322

Applicability to Contracts

The Resource Conservation and Recovery Act, as amended, (42 U.S.C. § 6962 *et seq.*), requires States and local governmental authorities to provide a competitive preference to products and services that conserve natural resources, protect the environment, and are energy efficient. Recipients are required to procure only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000.

Flow Down

These requirements extend to all third party contractors and their contracts at every tier and subrecipients and



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their subcontracts at every tier where the value of an EPA designated item exceeds \$10,000.

Model Clause/Language

There is no required language for preference for recycled products. Recipients can draw on the following language for inclusion in their federally funded procurements.

Recovered Materials

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

R. SAFE OPERATION OF MOTOR VEHICLES

23 U.S.C. part 402; Executive Order No. 13043; Executive Order No. 13513; U.S. DOT Order No. 3902.10

Applicability to Contracts

The Safe Operation of Motor Vehicles requirements apply to all federally funded third party contracts. In compliance with Federal Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. Section 402 note, FTA encourages each third party contractor to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company owned, rented, or personally operated vehicles, and to include this provision in each third party subcontract involving the project. Additionally, recipients are required by FTA to include a Distracted Driving clause that addresses distracted driving, including text messaging in each of its third party agreements supported with Federal assistance.

Flow Down Requirements

The Safe Operation of Motor Vehicles requirements flow down to all third party contractors at every tier.

Model Clause/Language

There is no required language for the Safe Operation of Motor Vehicles clause. Recipients can draw on the following language for inclusion in their federally funded procurements.

Safe Operation of Motor Vehicles

Seat Belt Use

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

Distracted Driving

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



S. SCHOOL BUS OPERATIONS

49 U.S.C. 5323(f); 49 C.F.R. part 605

Applicability to Contracts

The School Bus requirements apply to contracts for operating public transportation service.

Flow Down Requirements

The School Bus requirements flow down from FTA recipients and subrecipients to first tier service contractors.

Model Clause/Language

The relevant statutes and regulations do not mandate any specific clause or language.

Recipients can draw on the following language for inclusion in their federally funded procurements.

School Bus Operations

The contractor agrees to comply with 49 U.S.C. 5323(f), and 49 C.F.R. part 604, and not engage in school bus operations using federally funded equipment or facilities in competition with private operators of school buses, except as permitted under:

1. Federal transit laws, specifically 49 U.S.C. § 5323(f);
2. FTA regulations, "School Bus Operations," 49 C.F.R. part 605;
3. Any other Federal School Bus regulations; or
4. Federal guidance, except as FTA determines otherwise in writing. If Contractor violates this School Bus Agreement, FTA may:

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

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

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

T. SUBSTANCE ABUSE REQUIREMENTS

49 U.S.C. § 5331; 49 C.F.R. part 655; 49 C.F.R. part 40

Applicability to Contracts

Third party contractors who perform *safety-sensitive functions* must comply with FTA's substance abuse management program under 49 C.F.R. part 655, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations." Under 49 C.F.R. § 655.4, *Safety-sensitive function* means any of the following duties, when performed by employees of recipients, subrecipients, operators, or contractors:

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



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2. Operating a nonrevenue service vehicle, when required to be operated by a holder of a Commercial Driver's License;
3. Controlling dispatch or movement of a revenue service vehicle;
4. Maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service. This section does not apply to the following: an employer who receives funding under 49 U.S.C. § 5307 or § 5309, is in an area less than 200,000 in population, and contracts out such services; or an employer who receives funding under 49 U.S.C. § 5311 and contracts out such services;
5. Carrying a firearm for security purposes.

Additionally, third party contractors providing testing services involving the performance of safety sensitive activities must also comply with 49 C.F.R. part 40, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs."

Flow Down Requirements

The Substance Abuse requirements flow down to all third party contractors at every tier who perform a safety-sensitive function for the recipient or subrecipient.

Model Clause/Language

FTA's drug and alcohol rules, 49 C.F.R. part 655, are unique among the regulations issued by FTA. First, they require recipients to ensure that any entity performing a safety-sensitive function on the recipient's behalf (usually subrecipients and/or contractors) implement a complex drug and alcohol testing program that complies with part 655. Second, the rules condition the receipt of certain kinds of FTA funding on the recipient's compliance with the rules; thus, the recipient is not in compliance with the rules unless every entity that performs a safety-sensitive function on the recipient's behalf is in compliance with the rules. Third, the rules do not specify how a recipient ensures that its subrecipients and/or contractors comply with them.

How a recipient does so depends on several factors, including whether the contractor is covered independently by the drug and alcohol rules of another Department of Transportation operating administration, the nature of the relationship that the recipient has with the contractor, and the financial resources available to the recipient to oversee the contractor's drug and alcohol testing program. In short, there are a variety of ways a recipient can ensure that its subrecipients and contractors comply with the rules.

FTA has developed three model contract provisions for recipients to use "as is" or to modify to fit their particular situations.

Explanation of Model Contract Clauses

Option 1

The recipient ensures the contractor's compliance with the rules by requiring the contractor to participate in a drug and alcohol program administered by the recipient. The advantages of doing this are obvious: the recipient maintains total control over its compliance with 49 C.F.R. part 655. The disadvantage is that the recipient, which may not directly employ any safety-sensitive employees, has to implement a complex testing program. Therefore, this may be a practical option for only those recipients that have a testing program for their employees, and can add the contractor's safety-sensitive employees to that program.

Option 2

The recipient relies on the contractor to implement a drug and alcohol testing program that complies with 49 C.F.R. part 655, but retains the ability to monitor the contractor's testing program; thus, the recipient has less control over its compliance with the drug and alcohol testing rules than it does under Option 1. The advantage of this approach is that it places the responsibility for complying with the rules on the entity that is actually performing the safety-sensitive function. Moreover, it reserves to the recipient the power to ensure that the contractor complies with the program. The disadvantage of Option 2 is that, without adequate monitoring



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of the contractor's program, the recipient may find itself out of compliance with the rules.

Option 3

The recipient specifies some or all of the specific features of a contractor's drug and alcohol compliance program. Thus, it requires the recipient to decide what it wants to do and how it wants to do it. The advantage of this option is that the recipient has more control over the contractor's drug and alcohol testing program, yet it is not actually administering the testing program. The disadvantage is that the recipient has to specify and understand clearly what it wants to do and why.

SUBSTANCE ABUSE TESTING

Option 1

The Contractor agrees to participate in AGENCY's drug and alcohol program established in compliance with 49 C.F.R. part 655.

SUBSTANCE ABUSE TESTING

Option 2

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. parts 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 [name of State], or AGENCY, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. part 655 and review the testing process. The Contractor agrees further to certify annually its compliance with parts 655 before [insert date] and to submit the Management Information System (MIS) reports before [insert date before March 15] to [insert title and address of person responsible for receiving information]. 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*.

SUBSTANCE ABUSE TESTING

Option 3

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. part 655, produce any documentation necessary to establish its compliance with part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of [name of State], or AGENCY, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. part 655 and review the testing process. The Contractor agrees further to certify annually its compliance with parts 655 before [insert date] and to submit the Management Information System (MIS) reports before [insert date before March 15] to [insert title and address of person responsible for receiving information]. 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*. The Contractor agrees further to [Select a, b, or c] (a) submit before [insert date or upon request] a copy of the Policy Statement developed to implement its drug and alcohol testing program; OR (b) adopt [insert title of the Policy Statement the recipient wishes the contractor to use] as its policy statement as required under 49 C.F.R. part 655; OR (c) submit for review and approval before [insert date or upon request] a copy of its Policy Statement developed to implement its drug and alcohol testing program. In addition, the Contractor agrees to: [to be determined by the recipient, but may address areas such as: the selection of the certified laboratory, substance abuse professional, or Medical Review Officer, or the use of a consortium].

U. TERMINATION



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2 C.F.R. § 200.339; 2 C.F.R. part 200, Appendix II (B)

Applicability to Contracts

All contracts in excess of \$10,000 must address termination for cause and for convenience, including the manner by which it will be effected and the basis for settlement.

Flow Down

For all contracts in excess of \$10,000, the Termination clause extends to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

Model Clause/Language

There is no required language for the Terminations clause. Recipients can draw on the following language for inclusion in their federally funded procurements.

Termination for Convenience (General Provision)

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

Termination for Default [Breach or Cause] (General Provision)

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

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

Opportunity to Cure (General Provision)

The AGENCY, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions

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

Waiver of Remedies for any Breach

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



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Termination for Convenience (Professional or Transit Service Contracts)

The AGENCY, by written notice, may terminate this contract, in whole or in part, when it is in the AGENCY's interest. If this contract is terminated, the AGENCY shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

Termination for Default (Supplies and Service)

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

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

Termination for Default (Transportation Services)

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

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

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

Termination for Default (Construction)

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

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

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



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to appeal under the Disputes clause(s) of this contract.

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

Termination for Convenience or Default (Architect and Engineering)

The AGENCY may terminate this contract in whole or in part, for the AGENCY's convenience or because of the failure of the Contractor to fulfill the contract obligations. The AGENCY 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 AGENCY's Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. AGENCY has a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, all such data, drawings, specifications, reports, estimates, summaries, and other information and materials.

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

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

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

Termination for Convenience or Default (Cost-Type Contracts)

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

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

If, after serving a Notice of Termination for Default, the AGENCY determines that the Contractor has an excusable reason for not performing, the AGENCY, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

V. VIOLATION AND BREACH OF CONTRACT

2 C.F.R. § 200.326; 2 C.F.R. part 200, Appendix II (A)



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Applicability to Contracts

All contracts in excess of the Simplified Acquisition Threshold (currently set at \$150,000) shall contain administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

Flow Down

The Violations and Breach of Contracts clause flow down to all third party contractors and their contracts at every tier.

Model Clauses/Language

FTA does not prescribe the form or content of such provisions. The provisions developed will depend on the circumstances and the type of contract. Recipients should consult legal counsel in developing appropriate clauses. The following clauses are examples of provisions from various FTA third party contracts. Recipients can draw on these examples for inclusion in their federally funded procurements.

Rights and Remedies of the AGENCY

The AGENCY shall have the following rights in the event that the AGENCY deems the Contractor guilty of a breach of any term under the Contract.

1. The right to take over and complete the work or any part thereof as agency for and at the expense of the Contractor, either directly or through other contractors;
2. The right to cancel this Contract as to any or all of the work yet to be performed;
3. The right to specific performance, an injunction or any other appropriate equitable remedy; and
4. The right to money damages.

For purposes of this Contract, breach shall include [AGENCY to define].

Rights and Remedies of Contractor

Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Contract, which may be committed by the AGENCY, the Contractor expressly agrees that no default, act or omission of the AGENCY shall constitute a material breach of this Contract, entitling Contractor to cancel or rescind the Contract (unless the AGENCY directs Contractor to do so) or to suspend or abandon performance.

Remedies

Substantial failure of the Contractor to complete the Project in accordance with the terms of this Agreement will be a default of this Agreement. In the event of a default, the AGENCY will have all remedies in law and equity, including the right to specific performance, without further assistance, and the rights to termination or suspension as provided herein. The Contractor recognizes that in the event of a breach of this Agreement by the Contractor before the AGENCY takes action contemplated herein, the AGENCY will provide the Contractor with sixty (60) days written notice that the AGENCY considers that such a breach has occurred and will provide the Contractor a reasonable period of time to respond and to take necessary corrective action.

Disputes

- **Example 1:** Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by the authorized representative of AGENCY's [title of employee]. This decision shall be final and conclusive unless within [10] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. 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 [title of employee] shall be binding upon the Contractor and the



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Contractor shall abide by the decision.

- **Example 2:** The AGENCY and the Contractor intend to resolve all disputes under this Agreement to the best of their abilities in an informal manner. To accomplish this end, the parties will use an Alternative Dispute Resolution process to resolve disputes in a manner designed to avoid litigation. In general, the parties contemplate that the Alternative Dispute Resolution process will include, at a minimum, an attempt to resolve disputes through communications between their staffs, and, if resolution is not reached at that level, a procedure for review and action on such disputes by appropriate management level officials within the AGENCY and the Contractor's organization.

In the event that a resolution of the dispute is not mutually agreed upon, the parties can agree to mediate the dispute or proceed with litigation. Notwithstanding any provision of this section, or any other provision of this Contract, it is expressly agreed and understood that any court proceeding arising out of a dispute under the Contract shall be heard by a Court de novo and the court shall not be limited in such proceeding to the issue of whether the Authority acted in an arbitrary, capricious or grossly erroneous manner.

Pending final settlement of any dispute, the parties shall proceed diligently with the performance of the Contract, and in accordance with the AGENCY's direction or decisions made thereof.

Performance during Dispute

Unless otherwise directed by AGENCY, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages

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

Remedies

Unless this Contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the AGENCY 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 in which the AGENCY is located.

Rights and Remedies

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

APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

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

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

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

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

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

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

NON-COLLUSION DECLARATION

The following Non-Collusion Declaration shall be executed by the offeror:

Operation Of

State of Minnesota

County Of

I, _____, do state under penalty
(name of person signing this declaration)

of perjury under 28 U.S.C. 1746 of the laws of the United States:

(1) that I am the authorized representative of _____

(name of person, partnership, or corporation submitting this proposal)

and that I have the authority to make this declaration for and on behalf of said proposer;

(2) that, in connection with this proposal, the said offeror has not either directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding;

(3) that, to the best of my knowledge and belief, the contents of this proposal have not been communicated by the offeror or by any of his/her employees or agents to any person who is not an employee or agent of the offeror or of the surety on any bond furnished with the proposal and will not be communicated to any person who is not an employee or agent of the offeror or of said surety prior to the official opening of the proposal, and

(4) that I have fully informed myself regarding the accuracy of the statements made in this declaration.

Signed: _____
(proposer or his authorized representative)

Dated: _____

ORGANIZATIONAL CONFLICT OF INTEREST (SPECIFICATION PREPARATION)

- (a) This contract, in whole or in part, provides for the Contractor to draft and/or furnish specifications in support of _____ [*Contracting officer identify system or program*]. Further, this contract may task the Contractor to prepare or assist in preparing work statements that directly, predictably and without delay are used in future competitive acquisitions in support of _____ [*Contracting officer identify program*]. The parties recognize that by the Contractor providing this support a potential conflict of interest arises as defined by FAR 9.505-2.
- (b) During the term of this contract and for a period of _____ [*Contracting officer insert period of time after contract completion that contractor will not be allowed to supply time*] after completion of this contract, the Contractor agrees that it will not supply as a prime contractor, subcontractor at any tier, or consultant to a supplier to the Department of Commerce, any product, item or major component of an item or product, which was the subject of the specifications and/or work statements furnished under this contract. The contractor shall, within 15 days after the effective date of this contract, provide, in writing, to the Contracting Officer, a representation that all employees, agents and subcontractors involved in the performance of this contract have been informed of the provisions of this clause. Any subcontractor that performs any work relative to this contract shall be subject to this clause. The Contractor agrees to place in each subcontract affected by these provisions the necessary language contained in this clause.
- (c) For the purposes of this clause, the term “contractor” means the contractor, its subsidiaries and affiliates, joint ventures involving the contractor, and entity with which the contractor may hereafter merge or affiliate and any other successor or assignee of the contractor.
- (d) The Contractor acknowledges the full force and effect of this clause. It agrees to be bound by its terms and conditions and understands that violation of this clause may, in the judgment of the Contracting Officer, be cause for Termination for Default under FAR 52.249-6. The Contractor also acknowledges that this does not represent the sole and exclusive remedy available to the Government in the event the Contractor breaches this or any other Organization Conflict of Interest clause.

Contracting System Name

Contractor Agency Name

Contracting System Representative

Contractor Representative

PUBLIC TRANSIT THIRD PARTY OPERATING BUDGET

FOR HIBBING AREA TRANSIT				
	7/01/2024-6/30/2025	Option Year 1 2025-2026	Option Year 2 2026-2027	Option Year 3 2027-2028
Personnel Services				
1010 Administrative, Management and Supervisory Services (include breakdown of employees in description) Description:				
Sub Total	\$0.00	\$0.00	\$0.00	\$0.00
1020 Driver's Wages (include breakdown of employees in description) Description:				
Sub Total	\$0.00	\$0.00	\$0.00	\$0.00
1040 General Office Support Wages (include breakdown of employees in description) Description:				
Sub Total	\$0.00	\$0.00	\$0.00	\$0.00
1050 Dispatcher/Scheduler's Wages (include breakdown of employees in description) Description:				
Sub Total	\$0.00	\$0.00	\$0.00	\$0.00
1060 Fringe Benefits (include breakdown of employees in description) Description:				
Sub Total	\$0.00	\$0.00	\$0.00	\$0.00
1000 TOTAL PERSONNEL EXPENSES ADD LINES 1010 THROUGH 1060	\$0.00	\$0.00	\$0.00	\$0.00
Administrative Charges				
1110 Management Fees Description:				
Sub Total	\$0.00	\$0.00	\$0.00	\$0.00
1120 Drug and Alcohol Testing and Administration Expenses Description:				
Sub Total	\$0.00	\$0.00	\$0.00	\$0.00
1150 Staff Development Costs (Incentives, Paid Trainings, etc) Description:				
Sub Total	\$0.00	\$0.00	\$0.00	\$0.00
1160 Office Supplies Description:				
Sub Total	\$0.00	\$0.00	\$0.00	\$0.00
1170 Leases and Rentals - Administrative Facilities (if separate from garage &within proposal requirements) Description:				
Sub Total	\$0.00	\$0.00	\$0.00	\$0.00
1180 Utilities Description:				
Sub Total	\$0.00	\$0.00	\$0.00	\$0.00
1190 Other Direct Administrative Charges (uniforms, DOT Physicals, etc) Description:				
Sub Total	\$0.00	\$0.00	\$0.00	\$0.00
1100 TOTAL ADMINISTRATIVE EXPENSES ADD LINES 1110 THROUGH 1090	\$0.00	\$0.00	\$0.00	\$0.00
1600 TOTAL OPERATING EXPENSES ADD LINES 1000, 1100, 1200, 1300, 1400 AND 1500	\$0.00	\$0.00	\$0.00	\$0.00
Expense Analysis - % Increase		% increase over Year 1 estimated year end	#DIV/0!	
		% increase over Year 2 year end actual	#DIV/0!	
		% increase over Year 3 year end actual	#DIV/0!	

HIBBING AREA TRANSIT ITEMZIED EXPENSES				
	2024-2025	Option Year 1 2025-2026	Option Year 2 2026-2027	Option Year 3 2027-2028
MONTHLY OVERHEAD				
1 Administrative Services	\$ -	\$ -	\$ -	\$ -
Description:				
2 Office Support	\$ -	\$ -	\$ -	\$ -
Description:				
3 Office Supplies/Phone	\$ -	\$ -	\$ -	\$ -
Description:				
4 Utilities	\$ -	\$ -	\$ -	\$ -
Description:				
5 Office Rent	\$ -	\$ -	\$ -	\$ -
Description:				
6 Bus Cleaning	\$ -	\$ -	\$ -	\$ -
Description:				
7 Misc.	\$ -	\$ -	\$ -	\$ -
Description:				
Total Monthly Overhead				
	\$ -	\$ -	\$ -	\$ -
Months				
	12	12	12	12
Total Annual Overhead				
	\$ -	\$ -	\$ -	\$ -
WHEEL TURNING HOURS				
Driver's Wages	\$ -	\$ -	\$ -	\$ -
Description:				
Estimated Hours	9178	9178	9178	9178
Total Vehicle operations cost per year	\$ -	\$ -	\$ -	\$ -
DISPATCH HOURS				
Dispatch Wages	\$ -	\$ -	\$ -	\$ -
Description:				
Dispatch Hours	4550	4550	4550	4550
Total Dispatch operations cost per year	\$ -	\$ -	\$ -	\$ -
TOTAL BID				
	-	-	-	-

**PROPOSAL FOR THE
OPERATION OF HIBBING AREA TRANSIT**

Proposal of (Name) _____

Street Address _____

City, State, Zip _____

Phone: _____ Fax: _____

E-mail: _____

To do and perform and work in accordance with the Contract and Specifications for the operation of Hibbing Area Transit, with service commencing on July 1, 2024, for a period of one year, with option years 2025, 2026, and 2027.

To the City of Hibbing, St. Louis County, Minnesota:

In accordance with the advertisement inviting proposals for the project hereinbefore named, and in conformity with the contract and specifications pertaining thereto:

(I) (We) hereby certify that (I am) (we are) the only person(s) interested in this proposal as principal _____ that this proposal is made and submitted without fraud or collusion with any other person, firm, or corporation whatsoever; that an examination has been made of the site of the work and the Contract form, together with the Specifications pertaining thereto.

(I) (We) understand that the quantities of work shown herein are approximate only and are subject to increase or decrease; that all quantities of work, whether increased or decreased, are to be performed at the unit prices shown on the proposal.

(I) (We) propose to furnish all necessary equipment, tools, labor, and other means in the manner and at the time prescribed in accordance with the terms of the Contract and Specifications.

(I) (We) further propose to guarantee all work performed under this Contract to be done in accordance with the Specifications.

(I) (We) agree to all the provisions of Minnesota Statutes, Section 181.59.

BASE PROPOSAL SCHEDULE: One Year July 1, 2024 to June 30, 2025

Line Number	Item	Unit	Estimated Quantity	Unit Price	Amount
1	Drivers/Vehicle Operations	Hour	9,178	\$ _____	\$ _____
2	Dispatcher/Dispatching Services	Hour	4,550	\$ _____	\$ _____
3	Management/Overhead	Monthly	12	\$ _____	\$ _____

BASE PROPOSAL (YEAR ONE): \$ _____

OPTION YEARS PROPOSAL SCHEDULE

OPTION YEAR ONE, July 1, 2025 to June 30, 2026

Line Number	Item	Unit	Estimated Quantity	Unit Price	Amount
1	Drivers/Vehicle Operations	Hour	9,178	\$ _____	\$ _____
2	Dispatcher/Dispatching Services	Hour	4,550	\$ _____	\$ _____
3	Management/Overhead	Monthly	12	\$ _____	\$ _____

BASE PROPOSAL (OPTION YEAR ONE): \$ _____

OPTION YEAR TWO, July 1, 2026 to June 30, 2027

Line Number	Item	Unit	Estimated Quantity	Unit Price	Amount
1	Drivers/Vehicle Operations	Hour	9,178	\$ _____	\$ _____
2	Dispatcher/Dispatching Services	Hour	4,550	\$ _____	\$ _____
3	Management/Overhead	Monthly	12	\$ _____	\$ _____

BASE PROPOSAL (OPTION YEAR TWO): \$ _____

OPTION YEAR THREE, July 1, 2027 to June 30, 2028

Line Number	Item	Unit	Estimated Quantity	Unit Price	Amount
1	Drivers/Vehicle Operations	Hour	9,178	\$ _____	\$ _____
2	Dispatcher/Dispatching Services	Hour	4,550	\$ _____	\$ _____
3	Management/Overhead	Monthly	12	\$ _____	\$ _____

BASE PROPOSAL (OPTION YEAR THREE): \$ _____

GRAND TOTAL (YEAR ONE WITH 3 OPTION YEARS): \$ _____

FINANCIAL PLAN WORKBOOK: Our firm agrees to attach to this proposal a completed Financial Plan Workbook, outlining the costs associated with our unit price proposed. All line items may not be completed; however, any line item entered will have a narrative explaining the costs.

PROPOSAL GUARANTY: 5% (See page 16 of Specifications)

The MnDOT Office of EEO/Contract Management has assigned a Race/Gender Neutral DBE goal to this project. Offerors are directed to read the Disadvantaged Business Enterprise (DBE) Special Provision race/gender neutral goal.

NON-COLLUSION AFFIDAVIT: A Non-Collusion Affidavit is found in these Specifications, which must be signed by each bidder.

RECEIPT OF ADDENDA:

The undersigned hereby acknowledges receipt of and has considered:

Addendum No. _____ Dated _____ Addendum No. _____ Dated _____

Addendum No. _____ Dated _____ Addendum No. _____ Dated _____

Signed _____

EXECUTION OF PROPOSAL:

This proposal dated the _____ day of _____, _____

Signed: _____, P.O. Address _____ as an individual.

Signed: _____, P.O. Address _____ as an individual.

Doing business under the name and style of _____

Signed: _____, for _____ a partnership

Name _____ Business Address _____

Name _____ Business Address _____

Name _____ Business Address _____

Signed: _____, for _____ a corporation.

Incorporated under the laws of the State of _____.

Name of President _____ Business Address _____

Name of Vice-President _____ Business Address _____

Name of Secretary _____ Business Address _____

Name of Treasurer _____ Business Address _____