



# Bis-Man Transit Board Meeting

October 26, 2023, 11:30 AM

<https://us02web.zoom.us/j/83609635296>

Call in: +1 312 626 6799; Meeting ID: 836 0963 5296

## Welcome & Introductions

## Approval of Agenda

## Consent Agenda

1. Previous Month's Minutes
  - a. Attachment A – 2023/9/28 Regular Meeting
2. Financial Report
  - a. Attachment B
3. Ride Stats
  - a. Attachment C

## Public Comment

## Unfinished Business

1. Transit Development Plan Final Presentation (*Bill Troe, SRF Consulting*)
  - a. Attachment D
2. Funding Update

## New Business

1. Procurement Policy Update
  - a. Attachment E

## Executive Director Report

1. Fall Projects
2. Ridership Update

## Operations Report

## Other Business

## Adjourn

- The next Board Meeting will be held on November 16, 2023, at 11:30 am. •



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**A**

Bis-Man Transit delivers valued public transportation, linking people, jobs and communities.

## **Bis-Man Transit Board Meeting**

September 28, 2023, 11:30 AM  
Via Zoom and In-Person at  
3750 E Rosser Ave. Bismarck, ND 58501

**Attending:**

**Lynn Wolf, President**

**DeNae Kautzmann, Secretary**

**Lacey Long, Vice President**

**Karel Sovak**

**Helen Baumgartner**

**Glenn Lauinger**

**Andrew Stromme**

**Steve Heydt**

**Royce Schultze**

**Commissioner Connelly**

**Commissioner Rohr**

**Staff:**

**Deidre Hughes**

**Mike Mundahl**

**Taylor Kitzan**

**Craig Thomas**

**Tom Reisenauer**

**Danae Thiery**

**Guests:**

**Trevor Vannett**

**Susan Dingle**

**Paulette Jacobsen**

**Rachel Lukaszewski**

**Jacey Enget**

**Meeting was called to order at 11:30 A.M.**

**Approval of Agenda:** Steve moved to approve the Agenda. Karel seconded the motion. Motion carried unanimously.

**Consent Agenda:** Karel moved to approve the Consent Agenda. DeNae seconded the motion. Motion carried unanimously.

**Public Comment:** Susan congratulated and thanked anyone who has been working with the Mandan City Commission to get the funding request put on their meeting agenda. Lynn thanked Susan for her monetary donation to Bis-Man Transit.

**Unfinished Business: N/A**

**New Business**

1. **Printing Contract Recommendation:** Deidre discussed that United Printing and Image Printing bid on the printing contract. United Printing came in lower in price. Staff recommends approval to award United Printing with the printing contract. DeNae commented that the Finance Committee also recommends to award the printing contract to United Printing. DeNae moved to award the printing contract to United Printing. Karel seconded the motion. Motion carried unanimously.
2. **West River Lease:** Deidre discussed that the West River Lease agreement expires at the end of this year. West River asked if their next Lease Agreement could be a three-year lease per their auditor's request. Staff recommends approval of the three-year West River Lease agreement with a 3% annual increase. DeNae commented that the Finance Committee also recommends to approve the West River Lease agreement for three years with the 3% annual increase. DeNae moved to approve the West River Lease agreement for three years with the 3% annual increase. Lacey seconded the motion. Motion carried unanimously.
3. **Bus Purchase Discussion:** Deidre explained that Transit has received 5310 funding to replace four 2017 paratransit buses that have exceeded useful life, but the funding awarded is now not enough to cover the full purchase. NDDOT is able to provide gap funding to cover the full federal amount for the purchase. Federal amount is \$520,540 and local match required is \$91,860. Staff recommends approval to purchase four new paratransit buses and to decommission and sell the old buses. Anticipated arrival of these buses would be Spring 2024. Andrew moved to approve the purchase for four new paratransit buses and to decommission and sell the old buses. DeNae seconded the motion. Motion carried unanimously.
4. **National Express Liquidated Damage Request:** Deidre discussed that Craig requested to waive September and October 2023 performance liquidated damages. Performance liquidated damages include on-time performance, excessive trip duration, and missed trips. Deidre explained that the background to this request that there has been an increase in trip



denials for paratransit rides. The operations team made a change to the software to increase capacity on the vehicles to allow more trips in a day, but this does not increase the number of drivers or fleet, causing higher trip duration and lower on-time performance. FTA sees trip denials as worse than trip duration or on-time performance. Deidre supports waiving September and October 2023 performance liquidated damages. DeNae commented that the Finance Committee also recommends the approval. DeNae moved to approve waiving September and October 2023 performance liquidated damages. Steve seconded the motion. Motion carried unanimously.

## Executive Director Report

1. Funding Update: Deidre discussed that she will be present at the October 3<sup>rd</sup> Mandan City Commission meeting with a funding request for non-ADA complimentary paratransit service on the agenda. Deidre asked any board members if they were able to attend the meeting and that if there are five or more board members, then it would have to be posted as a Special Meeting. Commissioner Connelly commented that Deidre can phrase the meeting as an announcement as well as a possible Special Meeting because all board members are invited. Commissioner Rohr commented that he does not see any opposition to the funding request and that he fully supports it. Lynn commented that he encourages members of the public to attend the meeting to speak on the need of public transportation.

Deidre discussed that Transit was awarded the ND Community Foundation grant for new CAT bus route signs. Most signs have been installed on-route in Bismarck and Mandan and old sign removal is still in the process. Deidre attended the Foundation dinner event and thanked them for the grant award. Deidre also mentioned American Legion and Susan Dingle made donations to Transit.

Advertising revenue is over \$91,000, with \$25,000 projected by the end of the year. The advertising goal was \$90,000 for this year. Deidre thanked Mike and Taylor for their efforts on exceeding this goal. Deidre mentioned that the FY2024 State Aid amount will be \$442,113 and is \$99,000 more than what was received last year. Andrew asked why there was an increase in State Aid funding. Deidre answered there was no explanation except that the State of North Dakota received more funding.

2. Transportation Training Grant: Deidre discussed that Transit was awarded the Transportation Training grant for training individuals with disabilities on paratransit and fixed route. The amount of the grant is \$5,560. The project begins on October 1<sup>st</sup>, 2023. Mike will champion the project and Deidre will act as support.
3. Transit Development Plan: Deidre discussed that the TDP is in the review phase. Deidre and Rachel from the MPO have reviewed the draft and made their comments. The final



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document should be received by October 20<sup>th</sup> and will be presented to the Board at the next meeting. Deidre commented that the financials were reviewed by Glenn and there were no concerns. Glenn commented that there is a surplus in the August 2023 financials and that both Transit and SRF Consulting projected a deficit by this time. Glenn thanked the staff for maximizing money in the budget and it would be a big accomplishment to carry this out to the end of the year. Glenn also thanked Taylor for transitioning the books from a cash basis to an accrual basis, as well as obtaining the FY20 Fuel Tax refund with interest by continually contacting the IRS. Lynn also thanked Taylor for her efforts in lining out Transit's finances.

4. Dakota Transit Association Conference Update: Mike and Deidre attended the DTA Conference in Minot last week. Mike was able to attend a marketing seminar that was beneficial to Transit marketing efforts. Deidre was able to attend a procurement presentation and benefitted from the information presented. Transit hosted a "Meet and Greet" at the facility for FTA, NDDOT, and City of Bismarck employees. FTA Region 8 advisor Cindy Terwilliger, recommended to reach out to Sioux Falls to visit with them about lack of funding support with agencies.

**Operations Report:** Danae updated that recruitment is the top priority for the Operations team. Eight drivers are needed and there are currently three new hires in training, with another training class starting on October 2<sup>nd</sup>. The biggest hiccup with hiring is applicants not showing up for their scheduled interviews. Since July 2023, 28 out of 39 interviews have no-showed and Job Service has been contacted. Continued recruitment efforts include two new hiring banners coming in early next week, social media ads for all open positions, cold-calling potential applicants from recruiting sites, \$2,000 full-time sign-on bonus, paid CDL training, and wage increases taking place in November. Craig has been in contact with Matt from United Tribes Technical College who has a class of students with CDL permits. Applicants from that class have the option to receive paid CDL licensing training through National Express to become fixed route drivers. The Operations team completed training for the new fixed route operating system, Passio. The target start date is October 16th, and more information will be posted on the Transit website soon.

**Other Business:** Commissioner Connelly shared that Andrew and himself were in a meeting with AARP yesterday and there is a strong concern for Missing Middle Housing and how to address the issue. It's highly expensive to expand transit services to center line roads between University of Mary, Lincoln, Bismarck, and Mandan, so it's important to increase the knowledge of services that are already in place for these locations. Commissioner Connelly discussed that there was a presentation given by the Regional Refugee Coordinator for the State of ND at the Bismarck City Commission meeting that asked for permission to apply for a grant that would create a coordinator position to work within the cities of Bismarck, Grand Forks, and Fargo. The position should be able to help refugees find jobs in the communities served. Commissioner Connelly commented that Transit should work with the colleges and education systems to see if students who use the system



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as it is today and as it evolves, are able to give their feedback to help the system grow into a greater asset in the community. Lynn thanked Commissioner Connelly for the information shared.

Karel moved to adjourn the meeting. DeNae seconded the motion. Motion carried unanimously.

**Meeting adjourned at 12:10 P.M.**



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# September 2023

## MONTHLY REPORT

	Month	YTD	PY Month	PY YTD	% INC/DEC OVR PYM	% INC/DEC OVR PYTD	
<b>RIDERSHIP</b>							
FIXED ROUTE	8,900	72,469	6,954	54,490	27.98%	33.00%	
PARATRANSIT	6,686	66,897	6,686	69,846	0.00%	-4.22%	
Total	15,586	139,366	13,640	124,336	14.27%	12.09%	
FR AVG. DAILY BOARDINGS	356.00						
DR AVG. DAILY BOARDINGS	222.87						
<b>Pass./Hour Pass./Hour Pass./Hour</b>							
<b>REVENUE HOURS</b>	<b>Month</b>	<b>YTD</b>	<b>Month</b>	<b>YTD</b>	<b>PY YTD</b>	<b>PY YTD</b>	<b>% INC/DEC OVR PYTD</b>
FIXED ROUTE	1,604.00	15,646.91	5.55	4.63	3.39	16,077.3	-2.68%
PARATRANSIT	2,344.72	23,649.64	2.85	2.83	3.04	22,994.2	2.85%
Total	3,948.72	39,296.55	3.95	3.55	3.2	39,071.5	
<b>Pass./Mile Pass./Mile</b>							
<b>REVENUE MILES</b>	<b>Month</b>	<b>YTD</b>	<b>Month</b>	<b>YTD</b>	<b>PY YTD</b>	<b>PY YTD</b>	<b>% INC/DEC OVR PYTD</b>
FIXED ROUTE	25,805	251,169	0.34	0.29	255,493		-1.69%
PARATRANSIT	34,706.38	327,645.64	0.19	0.20	326,960		0.21%
Total	60,511.48	578,814.74	0.54	0.49	582,453		-0.62%
<b>ON TIME PERFORMANCE</b>							
	<b>Month</b>	<b>YTD</b>	<b>PY Month</b>	<b>PY YTD</b>	<b>% INC/DEC OVR PYM</b>	<b>% INC/DEC OVR PYTD</b>	
FIXED ROUTE	NA	85.00%	81.00%	85.00%		0.00%	
PARATRANSIT	83.04%	92.44%	87.00%	92.78%	-4.55%	-0.37%	
<b>RIDERSHIP PER ROUTE</b>							
<b>ROUTE</b>	<b>Month</b>	<b>YTD</b>	<b>PY Month</b>	<b>PY YTD</b>	<b>% INC/DEC OVR PYM</b>	<b>% INC/DEC OVR PYTD</b>	
BLACK	1941	16950		1373		41.4%	
BLUE	530	6109		807		-34.3%	
GREEN	1968	14269		1515		29.9%	
RED	1010	8393		704		43.5%	
ORANGE	1950	15245		1500		30.0%	
PURPLE	1501	11503		1055		42.3%	
<b>RIDERSHIP BY DESTINATION</b>							
	<b>Month</b>	<b>YTD</b>	<b>PY Month</b>	<b>PY YTD</b>	<b>% INC/DEC OVR PYM</b>	<b>% INC/DEC OVR PYTD</b>	
(Included in 'Ridership Per Route' Numbers)	U-Mary	341	1902	230		48.3%	
	UTTC	95	569	59		61.0%	
	Bismarck Library	NA	*3666	327			
	Mandan Walmart	NA	*918	100			
	Mandan Dans	NA	*3012	320			
<b>ACCIDENTS</b>							
	<b>Month</b>	<b>Month at Fault</b>	<b>YTD</b>	<b>YTD at Fault</b>			
FIXED ROUTE	0	0	8	5			
PARATRANSIT	0	0	9	9			
SERVICE VEHICLE	0	0	0	0			
<b>COMPLAINTS</b>							
	<b>Month</b>	<b>YTD</b>					
FIXED ROUTE	3	17					
PARATRANSIT	2	15					
Office Staff	0	1					
<b>COMPLIMENTS</b>							
	<b>Month</b>	<b>YTD</b>					
FIXED ROUTE	0	0					
PARATRANSIT	2	10					
Office Staff	0	0					





# BISMARCK-MANDAN

## 2023 TRANSIT DEVELOPMENT PLAN

PREPARED FOR:



With  
Kimley Horn Associates



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# INTRODUCTION AND FINDINGS

# 1) Introduction

This document is the 2023 update to the Transportation Development Plan (TDP) of Bis-Man Transit in Bismarck, North Dakota. The TDP is updated every five years in a process that analyzes the current operations and governance of Bis-Man Transit, solicits community input, identifies opportunities for improvement, and outlines an implementation plan for those improvements deemed high priorities over the next five years.

The first chapter of the TDP shares findings from the update, most critically the financial analysis (page 15). The second chapter offers background on the agency's operations, fleet, facilities, and performance metrics, as well as the demographics of the communities it serves. It also summarizes the community engagement that took place throughout the TDP update process.

## a) Bis-Man Transit

Bis-Man Transit is the primary public transit service provider for the Bismarck-Mandan metropolitan area in North Dakota, serving the cities of Bismarck and Mandan as well as the city of Lincoln – a total service area of 56 square miles. Its services currently include a fixed-route service for the general public in Bismarck and Mandan, complemented by a demand-response service available for seniors and people with disabilities in Bismarck, Mandan, and Lincoln.

Its origin lies in volunteer advocacy for seniors and people with disabilities; when the Bis-Man Transit Board was first incorporated as a nonprofit organization in 1987, its purpose was "to identify, promote, coordinate, and establish transportation services for seniors and individuals with disabilities; to identify and meet transportation service needs of these individuals as it relates to employment, medical, recreational issues; to establish a transportation network serving elderly and handicapped individuals utilizing federal, state, county and local funding sources."

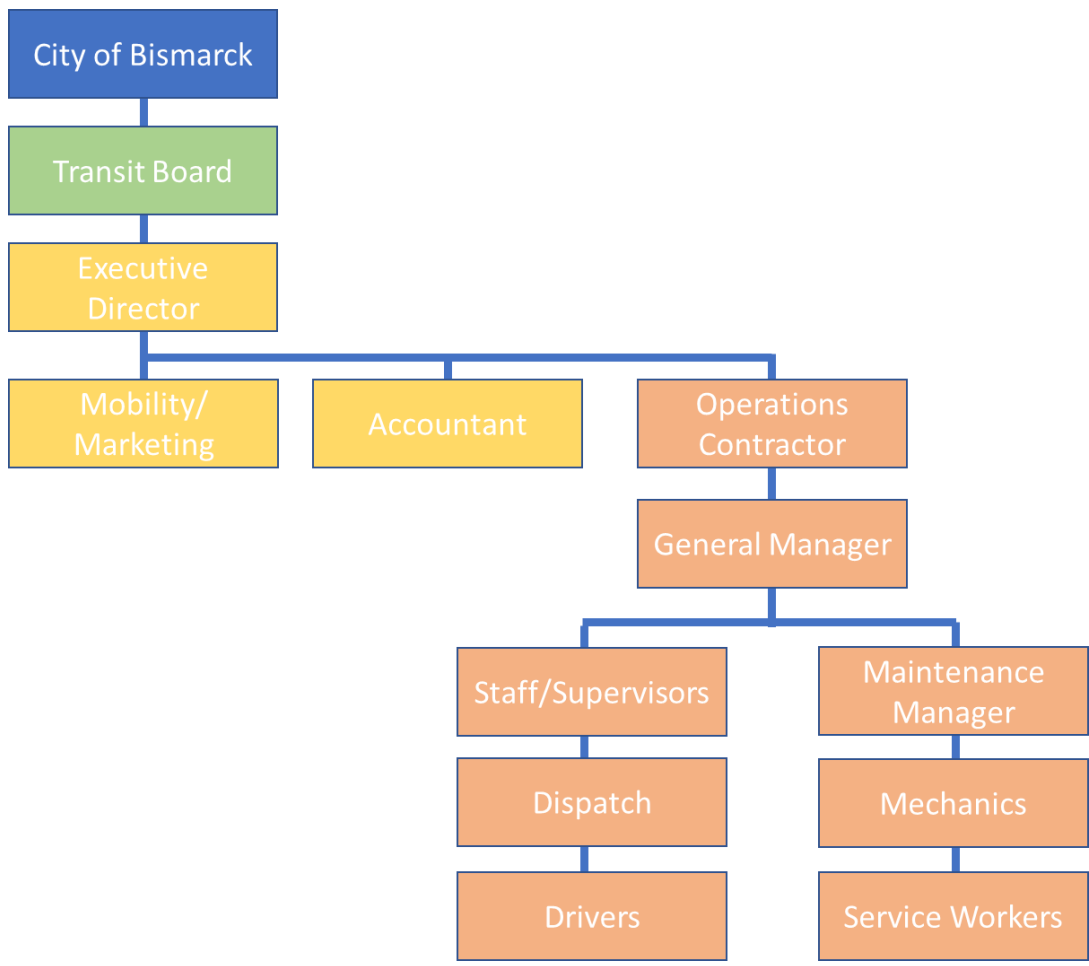
The board's initial funding was obtained through a combination of private fundraising, a grant from the North Dakota Council on Developmental Disabilities, and a 50 percent match from the Urban Mass Transit Authority (now the Federal Transit Administration). In its first formulation, the Transit Board contracted with Central NoDak Development Corporation for administration and Taxi 9000 for demand-response services. Later it expanded to fixed-route and paratransit service operated under a single third-party contract and administered by direct staff.

In the present day, the agency's nine-member volunteer board is responsible for overseeing transit operations. The service is managed by three direct staff (an executive director, a mobility and marketing specialist, and an accountant) and operated through a contracted service provider. The current contract is with National Express.

The Bismarck-Mandan Area Metropolitan Planning Organization (MPO) and the City of Bismarck both provide layers of oversight. Federal funding for transit is channeled through the City of Bismarck. Bis-Man Transit's organizational structure is shown in Figure 1.



Figure 1. Bis-Man Transit Organizational Structure



## b) Project Purpose and Scope

- The scope of this TDP update was defined to address the challenges and opportunities considered most relevant by Bis-Man Transit and the MPO. It includes the following elements:
- An analysis of existing operations
- A governance study identifying possible alternative structures for Bis-Man Transit
- A financial study examining projected revenues and expenditures over the next several years
- A fleet replacement schedule with cost estimates for the next decade

## c) Project Team

The project team included the Executive Director of Bis-Man Transit, the Executive Director of the MPO, and staff from SRF Consulting Group and Kimley-Horn Associates (KHA). Oversight and input were provided at regular intervals by the Bis-Man Transit Board, the MPO's Policy Board, and the MPO's Technical Advisory Committee.

## 2) Findings

### a) Overview

The 2023 TDP update focuses its findings on three elements. First, it reviews the organizational structure of Bis-Man Transit and identifies opportunities to reduce the inconveniences inherent in the agency's current structure. Second, it reviews the financial situation of Bis-Man Transit and identifies revenue and service alternatives to address a looming gap in funding. Finally, this section also lays out the fleet replacement plan. Facilities planning is a typical component of TDPs.

This plan does not recommend a course of action. Rather, it presents a range of alternatives. The consequences of each alternative are noted, as are community sentiments (where known).

### b) Governance Changes

#### i) Background

Bis-Man Transit's governance structure includes not just the Transit Board, but also the City of Bismarck and the MPO. A list of each entity's responsibilities is shown in Figure 2.

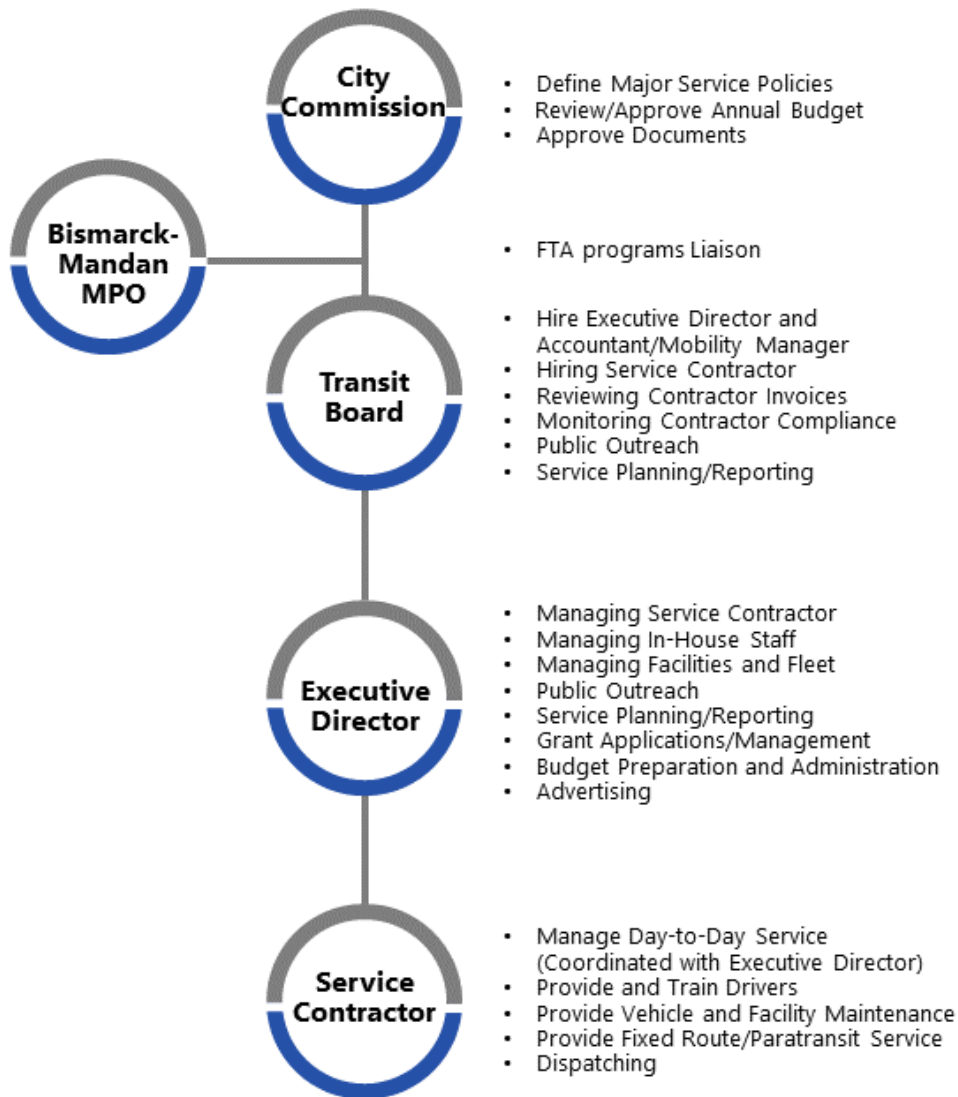
The Board does not have the final authority for most decisions; it presents its recommendations to the Bismarck City Commission to receive final approval. Items that need to go through the City Commission include grant applications, rolling stock and other major purchases, service changes, and policy changes.

- For the funding process, the Transit Board or its Executive Committee develop a budget that is presented to the Bismarck City Commission, followed by the MPO Technical Advisory Committee (TAC) and Policy Board.
- Service changes must be presented to the City Commission as well.

The current governance structure poses a number of challenges, including the following:

- The MPO spends substantial staff time on federal compliance tasks associated with transit.
- State and federal grant applications can be time sensitive. Bis-Man Transit staff needs support/approval from the Transit Board as well as the City Commission to pursue grants that often have tight timeframes between Notice of Funding Opportunities (NOFO) and deadlines. Valuable time is lost in the application window by preparing agenda items for two governing bodies. While critical deadlines have not been missed, the period for approvals makes the application process more rushed.
- As the City Commission oversees all aspects of the city and does not interact with transit on a day-to-day basis, the Commission will often adopt the Transit Board recommendations. However, efforts by the Board to bring service into line with its budget limits have met with hesitation from city commissioners. Commissioners are appropriately sensitive to the concerns of current riders but may not be as familiar with the transit budget impacts of their decisions or Federal Transit Administration requirements.

Figure 2. Transit Responsibilities



## ii) Alternatives

The plan does not recommend an alternative as a locally preferred solution to pursue, but rather provides decision-makers with a comprehensive list of considerations to make informed decisions for a path forward. Three possible structures are shown in Figure 3, alongside a simplified version of the status quo. These governance alternatives were discussed in detail with the Transit Board, as well as staff and commissioners from the Cities of Bismarck and Mandan. The implications of each alternative are shown as a side-by-side comparison in Table 1.

All alternatives retain the model in which bus operations (bus drivers, dispatchers, etc.) are contracted out; where they differ is in the employment of administrative staff who manage the contractor. Bringing all operations in-house was briefly evaluated, but found to be less cost-effective, as the overhead rate for

contracted labor is lower than for city staff. The transit board and staff, MPO staff, and city administration and commissioners prefer the status quo of contracted operations.

The alternatives include:

- Transit administration becomes a new city department.
- Transit administration moves into an existing city department.
- Transit migrates to a newly established transit authority that would be an independent political subdivision in the region.

Figure 3. Governance Structure Alternatives

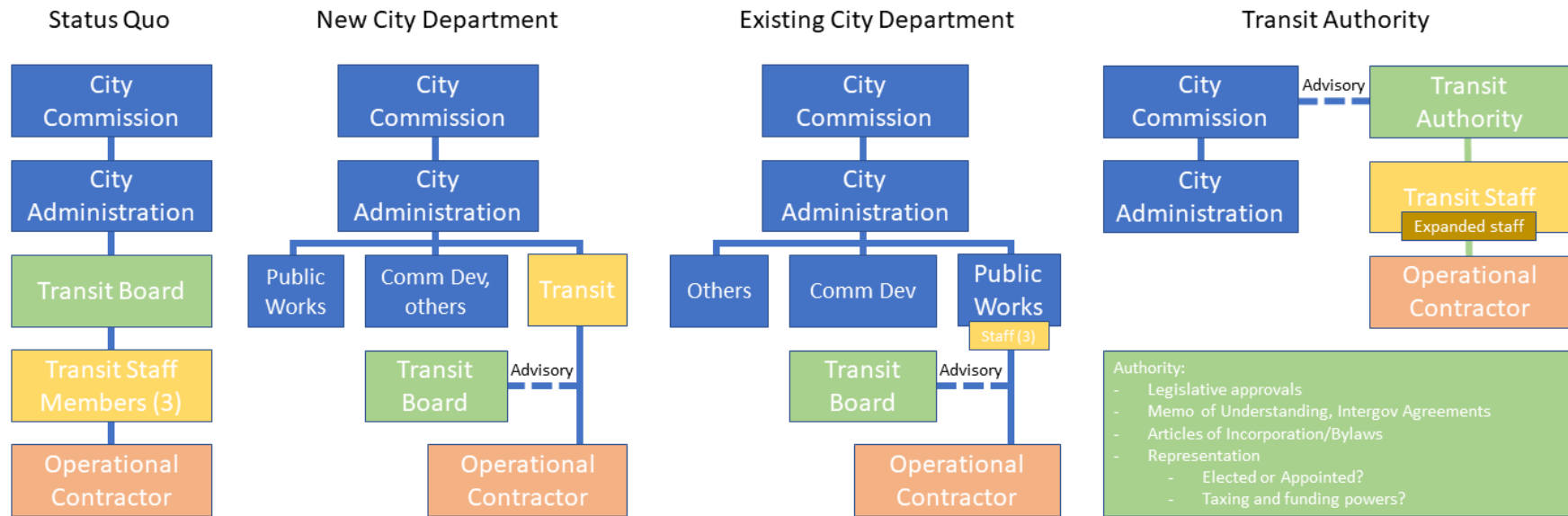




Table 1. Screening of Governance Structure Alternatives

Issue/Objective	Retain Current	Create City Department	Integrate into Current Department (Public Works/Planning/MPO)	Establish Authority
Level One Screening				
<b>Time Associated with Decisions</b>	Unchanged	Could be a marginal improvement as the Board would not discuss first and a city department director would be more involved in day-to-day, which may streamline mobilization of a new effort.	Could be a marginal improvement as Board would not discuss first. However, the department director would need to be informed by new transit staff in their department	Reduced – The concept assumes the reformulated Transit Board has authority to act/make final decisions on service, purchases, and budgeting.
<b>Transit Priority in Breadth of Responsibilities</b>	Commissioners still responsible for final decisions – one in each jurisdiction has transit in portfolio.	Little to no change from current	Similar to Create City Department	Substantially elevated – Transit is the only responsibility of the entity.
<b>Expertise in FTA Requirements (Financial/Legal)</b>	Unchanged – City staff provide the services needed, however, there are inefficiencies as transit is a minor part of their day-to-day effort. Keeping current potentially requires more effort to return than in other areas where investment into being current on requirements is reflected in use of learned processes/procedures.	Little to no change from current.	Similar to Create City Department	Implementing a transit authority assumes finance/legal/reporting would be brought “in-house”. Requests would no longer be made of city and MPO staff. MPO staff would still have coordination role, consistent with highway planning.
Level Two Screening				
<b>Impact on Customer Service</b>	Unchanged. Current paratransit capacity issues likely continue.	Somewhat depends on the degree to which the Board influences customer service relative to the Director. If Board influences more and with this option Board is more an advisory committee, could experience reduced customer service.	Similar to Create City Department	Would likely be more responsive to customers – transit is only focus for leadership/decision-makers.
<b>Ease of Implementation</b>	Already in place	Moderate effort. No real need to change garage location, service provision, and the city already owns assets. Need to address: <ul style="list-style-type: none"> <li>• Board changing role</li> <li>• Accounting</li> <li>• Reporting</li> <li>• Process of selecting of contractor</li> </ul> Adding a new department requires steps, financial review for staffing, documentation of roles and responsibilities.	Likely a little less effort than Create City Department as do not need to determine roles/responsibilities for Director to same level.	Substantial effort. Would need to address all items of a City Department, plus: <ul style="list-style-type: none"> <li>• Legislative approvals</li> <li>• Memo of Understanding, Intergovernmental Agreements</li> <li>• Articles of Incorporation/Bylaws</li> <li>• Representation elected or appointed?</li> <li>• Taxing and funding powers?</li> <li>• Transfer of staff</li> <li>• Transfer or lease of capital assets</li> </ul>

Issue/Objective	Retain Current	Create City Department	Integrate into Current Department (Public Works/Planning/MPO)	Establish Authority
<b>Decision Communication</b>	Decision steps that are seen as barriers to addressing quick turnaround decisions remain in place	Potential for some streamlining as a department head will be more aware of day-to-day.	Potential for some streamlining, but not as much as with Create City Department as transit manager is not a department head and likely has less direct interaction with City Administration.	Once established, it would speed up decision making, as transit is only focus for leadership/decision-makers. Potential for independent vision and decision-making  It would still require coordination with the MPO on including items in the TIP.
<b>Sustainability/Flexibility</b>	Unchanged. Current structure is not a threat.	Relatively unchanged from current.	Relatively unchanged from current.	Financial sustainability will depend on taxing and revenue sources the authority will be able to raise, and its ability to increase tax rates.  It would require additional staff to bring admin functions internal, establishing salaries and benefits
<b>Addressing FTA Compliance</b>	Unchanged. Support is provided through MPO and City staff.	Unchanged from current, unless the Transit Department adds staff to address needs. Likelihood of adding duplicative staff (accounting/legal/HR) to another city department is low.	Unchanged from current. Likelihood of adding duplicative staff (accounting/legal/HR) to another city department is low.	The authority would bring more staff and responsibilities in-house. The authority could become the designated subrecipient instead of the city, eliminating connection to oversight.

## **(1) New or Existing City Department**

Moving transit from being managed by the Transit Board into a new or existing City of Bismarck department could be a marginal improvement as transit would report to the City Administrator and City Commission. If a new department were to be created, the transit Executive Director would report directly to the City Administrator. If transit were integrated into public works or another department, the Executive Director would first report to a department head, prior to raising concerns with the City Administrator. The Board would transition into a more advisory role.

## **(2) Transit Authority**

Creating a Transit Authority with an independent governance board and potentially having taxing authority would require action by the state legislature to establish the organization. While that may appear time-consuming, there might be opportunities for coordination with other urban areas in North Dakota. MetroCOG in Fargo-Moorhead is exploring the possibility for its transit provider MATBUS to be part of a new transit authority with taxing powers.<sup>1</sup>

There are multiple ways for jurisdictions to interact with the authority for service, including:

- Each jurisdiction where there is service presently provided through Bis-Man Transit could be a member of the authority.
- One jurisdiction spearheads the authority and sells the desired level of transit service to other jurisdictions.

Each of the options provides the opportunity to invite Burleigh County and Morton County to either be a member or purchase some level of service from the authority should there be interest in extending service into the county.

As a separate political subdivision, the authority could have responsibilities for all areas that presently create the multi-step review process for service and funding actions. It is assumed the authority would be established with taxing authority to at least the same level as presently is identified in the Century Code. The direct decision-making powers and additional revenue from a potential transit levy would provide an opportunity to sustain the current level of transit service provided and explore the expansion of new routes and improved frequencies as the region's population grows.

An authority could have the ability to raise its own revenue. New or enhanced sources of operating revenue would need political support, and some might have implementation hurdles depending on local ordinances and state statutes. The main avenues for raising revenue would consist of property taxes or local sales taxes. Potential new or enhanced revenue sources would need to be capable of reliably funding both current service levels and potential further expansion of service in the future.

An authority would require the formation of a governing board. Most transit governing boards are appointed by the units of general-purpose government (e.g., city commission) or, sometimes, officers of the government (e.g., mayor or governor). Appointees of such boards are sometimes elected officials currently

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<sup>1</sup> MATBUS Transit Authority Study, June 2020. <https://www.fmmetrocog.org/projects-rfps/completed-projects/matbus-transit-authority-study>

holding office but are often members of the public who hold no elected office. Additionally, certain qualifications (CPA, transit rider, and others) are sometimes also considered. Board members may also be directly elected but this rarely happens in practice. The legislature would ultimately decide on criteria for board qualifications, whether the positions are appointed or elected, and whether board representation would be at-large or by jurisdiction (either as a set number per jurisdiction or according to funding share). This new Authority Board would replace the current Transit Board.

A challenge of this option is that it requires action by multiple levels of government, including the state legislature, for implementation, making it a medium-to-long-term option.

### **iii) Implementation Roadmap**

Upon establishing the preferred governance and financial alternatives, the alternatives must be implemented through adoption of the TDP and subsequent steps by the Bismarck City Commission, and the cities of Mandan and Lincoln. If an authority is preferred, state enabling legislation for the transit authority and its taxing powers must be established through the state legislature modifying the Century Code.

#### **(1) City Department**

Moving transit from the Transit Board to an existing city department would require a moderate level of effort. While there is no need to change garage location, service provision, or asset ownership, the transition would involve:

- Changing the role of the Transit Board
- Accounting
- Reporting
- Process of selecting of contractor

Adding a new department requires the steps above, as well as a financial review for staffing, documentation of roles and responsibilities.

#### **(2) Transit Authority**

A new North Dakota Transit Authority would require effort from the jurisdictions involved and concerted public engagement and support. The authority would provide independence, transparency and unity in decision-making. As a more standalone agency, it would likely add staff for accounting, legal, human resources and other areas. The authority may or may not participate in the city benefits program as current staff do. As most staff are currently in an established program, it should be the goal to continue existing salary and benefit packages for existing staff.

Initiation of a standalone authority would include requesting each of the jurisdictions interested in being a member to pass resolutions to enable the authority's formation. General experience is that this requires an individual champion of the legislation who enjoys enough public trust or influence to facilitate the momentum necessary; often, citizen committees or exploratory committees are also formed to build acceptance. Once finalized, discussions of contract service provision or board representation would follow. Some considerations before starting the transit authority process include:

- **Board Representation and Decision Equity:** Ultimately, board representation would be determined by the state legislature albeit with input from the general-purpose government units. Also, because board representation could be a point of conflict or disagreement among stakeholders, experience cautions against pre-mature discussions that could hinder the progress of passing state legislation. Ideally, the composition of the board should be held off until enough support is garnered for the effort. As previously stated, the final transit board should be formed to provide equity by reflecting the sources of local funding.
- **Transfer or Lease of Assets and Facility Ownership:** The City of Bismarck could lease or transfer the assets to the new authority. This includes vehicles, equipment and the facility. Details of the lease or transfer would be agreed upon by the city commission and stated in the intergovernmental agreement. The new authority could also charge back the capital cost as an element of the service contract to Mandan and Lincoln. Federal interests can be transferred to another or new grantee.
- **Funding:** With its own taxation powers, the authority would be provided with an opportunity to secure a stable source of long-term funding. A levy could be placed on either property or sales tax, or a utility fee. The authority could also be formed without authorizing a tax at the outset but would require start-up funding from the parties involved.

The Bis-Man Transit Executive Director and the MPO would need to provide the documentation and support for policy makers at the municipal and state levels to implement a transit authority. This would require leading policy development and engagement towards transit authority implementation. These policy development steps include the following local actions:

- 1) Drafting a transit authority strategic plan that will help identify objectives, consensus issues to be implemented during the establishment of the transit authority. It must also revisit funding splits for services provided, shared capital purchases and state of good repair investments relative to decision responsibility and benefits.
- 2) Drafting an operating agreement between Bismarck, Mandan, Lincoln, and the transit authority
  - a. Drafting a new operating contract between the authority and transit operations contractors for fixed route and paratransit services
- 3) Drafting asset lease or transfer agreements from the City of Bismarck to the authority, including clauses on insurance and liability.
- 4) Drafting an organizational structure and board composition.
  - a. Must decide on criteria for representation and qualifications, by jurisdiction, at-large, or funding share, and whether the positions are appointed or elected. Ultimately it will be up to the legislature.
  - b. Draft human resources, employment, compensation and benefits policies of transit authority staff. Provide grandfathered provisions for current staff to retain existing benefits.
- 5) Finalize a preferred financial implementation plan for revenue collection.

Once these local decisions were finalized, the transit and MPO staff would need to work with local stakeholders to draft enabling legislation for the North Dakota legislature. This might be an opportunity for coordination with other urban areas in North Dakota, especially Fargo as it is exploring establishing a transit authority for MATBUS. Timing and coordination are critical, as the North Dakota legislature only meets once



every two years. The legislation would need to address the governance structure and the (taxation) powers of the transit authority through the following items:

- Option to start with one political subdivision and have new members join over time.
- Ability to collect taxes to provide a sustainable, reliable and independent funding source with the opportunity to support future population growth.
- Ability to create an Authority Board for representation of multiple communities.
- Ability to construct, operate and maintain transit and transit assets.
- Ability to acquire or condemn property independently.
- Ability to accept gifts, grants, loans or other property.
- Ability to provide service outside of transit area by contractual agreement.
- Authority to issue negotiable revenue bonds independently.
- Ability to independently borrow money.

An example of recent transit authority legislation is [Nebraska Legislative Bill 492 \(PDF version\)](#), passed in 2019. This bill allows a metro area of a certain size to establish a regional metropolitan transit authority with its own property taxation powers and have elected boards. Cities within eligible metro areas can opt into (or also leave) the authority with a two-thirds vote of their city council. The bill also allows cities that opt not to join the authority to contract for transit services directly with the authority. The bill would keep the current board structure in place until new board members are elected.

The transit authority may not be a 'metropolitan area' authority, but an authority of a single municipality and would contract services with surrounding communities. In this case, the municipal staff would participate with the Transit Executive Director and MPO to facilitate the development and management of the Authority. Additionally, the Authority Board would act at the behest of the city commission. Select decisions may require Commission approval.

If and when the North Dakota legislature passes the enabling legislation, Bis-Man Transit and the MPO will lead the implementation of the draft policies and transfer management to the new transit authority. These steps include:

- 1) Organizing the authority and finalizing board composition.
- 2) Appoint/elect the transit authority board of directors.
- 3) Adoption of an authority strategic plan, operating agreement, and transit asset lease or transfer agreement.
- 4) Assign the transit authority as FTA subrecipient for the Bismarck metro area.
- 5) Board appoints a transit director (most likely the transit executive director, but subject to the new board's approval).
- 6) Start collecting authorized taxation (property tax levy/sales tax/utility fee)
- 7) Select a transit operating contractor.
- 8) Transfer assets from the city to the transit authority.
- 9) Transfer transit staff from the Transit Board to new authority.

- 10) Start operations under a new operating contract between the authority and the selected transit operations contractor.

The steps outlined in this authority implementation roadmap are subject to change and may need to be revisited as the process moves forward. Political leadership will be needed in the community and Bis-Man Transit and the MPO will need to provide policy development assistance to bring the process to the desired outcome.

#### iv) Sentiment

The stakeholders who reviewed and discussed the alternatives did not identify a clear favorite among the possible structures. The transit authority concept generated more questions and comments than city-based governance. Some of the questions and answers around the creation of a transit authority include:

- **Would the authority become an FTA grantee?** Not necessarily, but authorities often are. If not, City of Bismarck would continue to be a designated recipient.
- **Would a city-created authority have taxing power?** No, not without a change in state law. Given the timeline for the North Dakota legislature, if Bismarck decided to create an authority in 2023, a tax-funded budget could not be approved until 2027 at the earliest.
- **Would the authority lift a burden from city staff?** Yes, to a limited degree. Although a number of city staff contribute to transit in some way, transit is generally a small fraction of individual workloads. The largest impact is to Community Development, with staff time spent on transit at around half to three-quarters of a full-time equivalent (FTE). Legal and financial staff spend closer to one percent of their time on transit activities.
- **Would the authority hire its own employees to do the work currently carried out by city staff?** Yes, it would need to hire two to three FTEs. Based on current city salaries, that would equate to \$250,000 to \$300,000 annually.

Changing the governance structure of Bis-Man Transit would not directly address its financial challenges, which were caused by non-structural factors. For this reason, pursuing organizational change is a lower priority than addressing finances.

## c) Financial Alternatives

Bis-Man Transit is experiencing significant financial challenges. Since about 2017, the agency has continued to deliver service while working to address a growing deficit between revenue and expenses. Some of the actions taken to date include:

- Identifying additional federal and private grants to increase revenue from other (non-local) sources.
- Securing additional advertising revenue through more finding partners to fund bus advertising wraps and other visible sources.
- Creating a public transit working group with city staff to expand the understanding of service and discuss opportunities to close the gap and the local benefits of transit service.
- Conducting strategic planning sessions with the Board of Directors in which opportunities to address the gap are discussed.

The data show that more aggressive action is needed. An analysis of future income and expenses projects a deficit of approximately \$520,000 occurring in 2023 and growing to approximately \$2.4 million by 2029, reflecting operating costs increasing faster than revenue sources. The agency's cash reserve will hit zero by 2026.

For essential background, this section first describes Bis-Man Transit's existing revenue sources and the nature of its expenses. The financial projection is then detailed, followed by a presentation of alternatives to help close the gap.

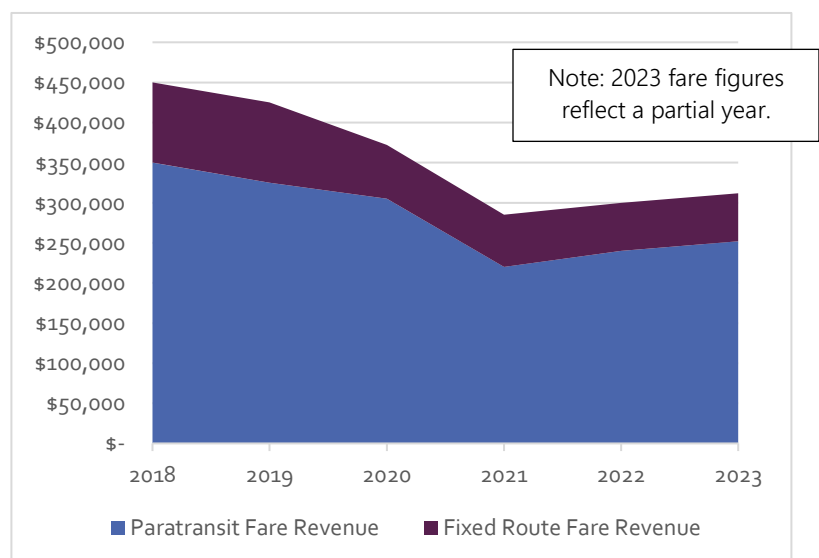
### i) Funding and Expenses

Historically, Bis-Man Transit has received revenue from two main sources: direct fare revenues and public contributions.

#### (1) Direct Revenue

Bis-Man Transit operates paratransit and fixed-route service and receives farebox revenue from both, as shown in Figure 4. Revenue from paratransit service outpaces fixed-route revenue at about 70 to 80 percent of total fare revenue, which is expected as daily ridership between the services is relatively similar and the cash fare for paratransit is set at twice the fixed route fare. Fare revenue has declined, dropping gradually in 2018 and 2019 and then more sharply in 2020 and 2021. This mirrors national trends in declining ridership and fare revenue during the beginning of the COVID-19 pandemic.

Figure 4. Fare Revenue from Fixed-Route and Paratransit



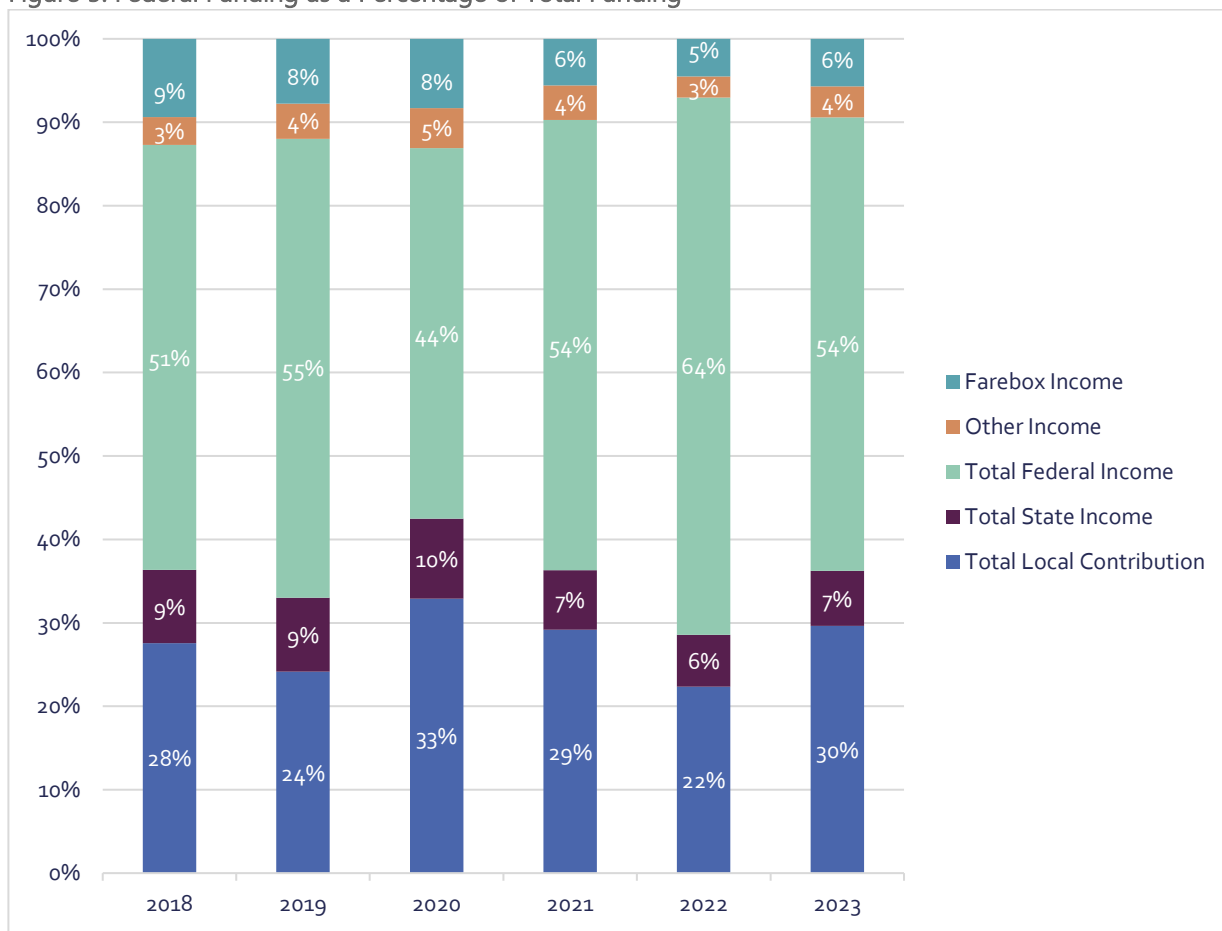
Source: Bis-Man Transit. 2023 data reflects a partial year.

Both fixed-route and paratransit revenues have rebounded slightly, but neither have returned to 2018 levels. In 2022, fixed-route farebox revenue was just 60 percent of its 2018 levels, and paratransit revenues were just 69 percent of 2018 levels. In 2018, farebox revenues accounted for just nine percent of all income, dropping to just six percent of all income in 2022.

## (2) Federal, state, and local funding

Federal, state, and local contributions are the system’s primary sources of funding for both capital and operations (see Figure 5). Federal funding constitutes the largest share of public funding and a majority of Bis-Man Transit’s overall income. These funds are primarily from the Federal Transit Administration (FTA) in the form of capital grants and operations and maintenance funding, and they require local match funds. In 2021 and 2022, federal funding increased with the provision of COVID-19 economic relief from the Coronavirus Aid, Relief, and Economic Security (CARES) Act and American Rescue Plan Act (ARPA) funds.

Figure 5. Federal Funding as a Percentage of Total Funding



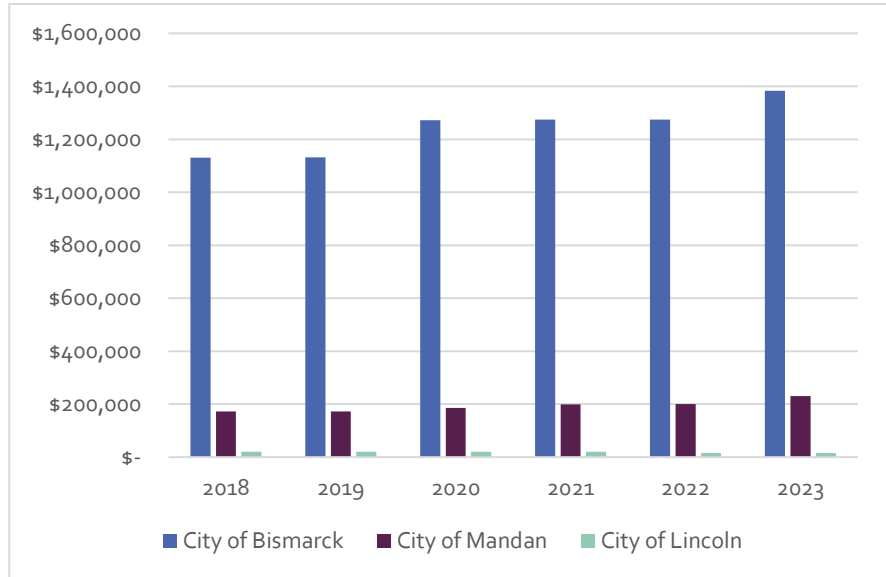
Source: KHA analysis of NTD and Bis-Man Transit data. Data for 2018-2022 are historical; 2023 values are based on the approved budget.

The local share of Bis-Man Transit’s funding comes from a contract with the City of Lincoln and property tax mill levies in the cities of Bismarck and Mandan (Figure 6). For most municipal service areas, mill levies are calculated by dividing the tax revenue needed to fund public budgets by the assessed property value in a jurisdiction and they are expressed in mills, where one mill is \$1 per \$1,000 of assessed property value. By state law, cities are allowed to levy up to five mills – or 0.5 percent – to fund public transit. Currently the City of Bismarck has a three-mill levy, while Mandan has a two-mill levy. While other municipal service areas may

adjust the mill levy annually to support the approved budget, the approved mill levels for transit have not been adjusted for a number of years and adjustment to them requires a public referendum vote in each jurisdiction. Thus, transit must adjust service and capital investment to reflect the revenue generation from the established mill levies.

Bismarck’s mill levy contributions total about 86 percent of total local funding, because of both the higher tax rate and the higher total taxable value. Contributions from both cities have slightly increased over the past five years, largely due to an increase in property values. Funding from the City of Lincoln for paratransit service has been \$15,000, which comes from the general fund.

Figure 6. Local Contributions



Source: KHA analysis of Bis-Man Transit data. 2023 reflects budgeted amounts.

State funding is provided by the North Dakota Department of Transportation through transit state aid and through state Medicaid funds for the operation of paratransit. This funding is the smallest share of the system’s primary operating contributions, at approximately \$362,000 in 2023, or about seven percent of the total revenue.

**ii) Expenses**

**(1) Operations**

Bis-Man Transit incurs most of its expenses via its operations contract. This contract covers the cost of operating both paratransit and fixed-route service, as well as partnering with Jefferson Lines to provide regional service connections. In 2022, the operations contract accounted for about 55 percent of total expenses. The operations contract is re-advertised every three to six years. Typically, hourly costs increase with each contract, but remain relatively steady in the interim years. The contract signed with National Express in May 2023 represented an increase of approximately 15 to 17 percent for the first year.

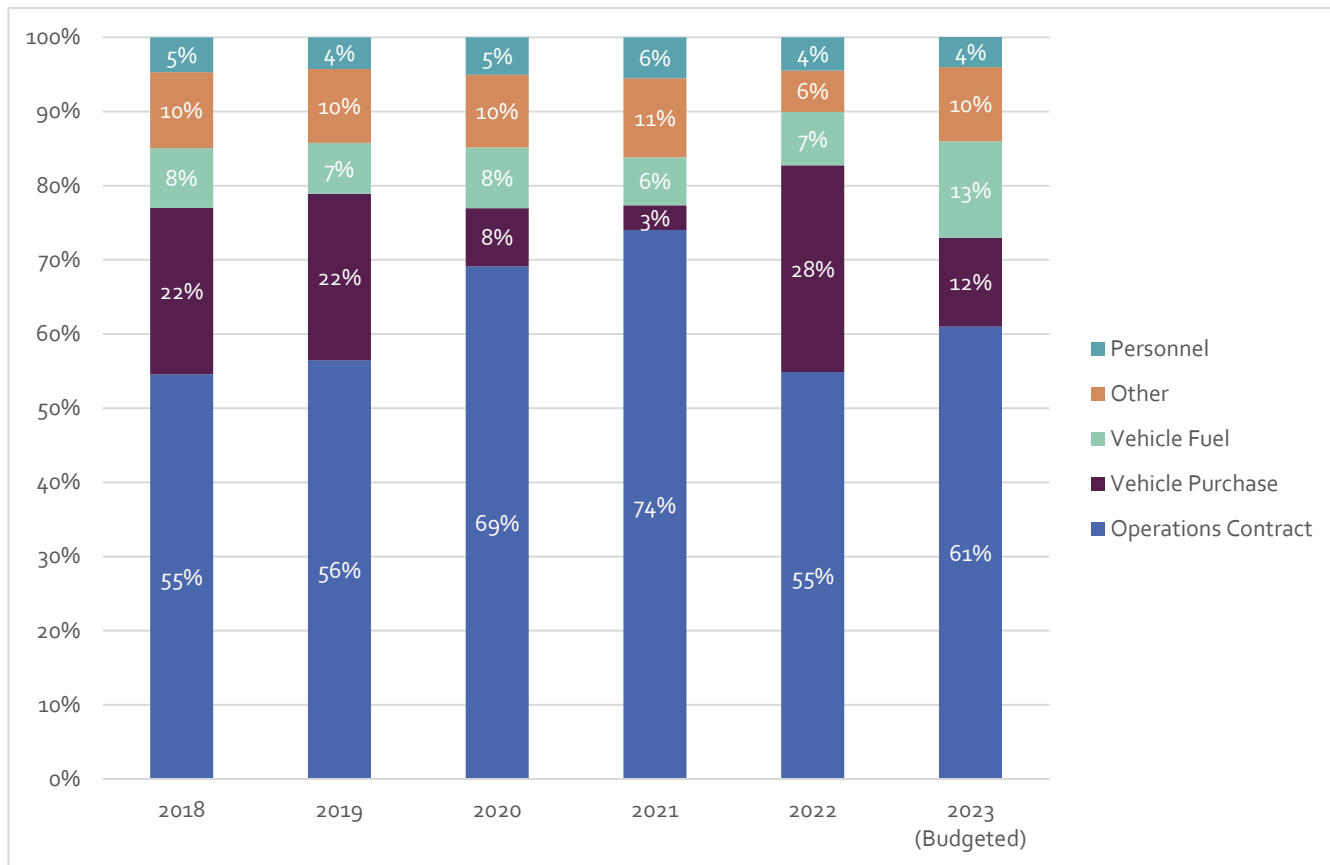
Other top operations expenditure categories include fuel and administration staff salaries. Vehicle fuel is highly volatile based on diesel and gas prices. Personnel costs remain relatively steady at four to five percent of total expenses. This number includes the executive director, marketing & mobility specialist, and accountant positions.

**(2) Capital Costs**

Capital costs vary widely from year to year based on need to replace an asset or required state of good repair activities in the garage. Bis-Man’s largest capital costs historically have been vehicle purchases.

Vehicle replacements fluctuate from year to year depending on needs, from a low of \$148,000 in 2021 (eight percent of total expenses) to \$1.8 million in 2022 (28 percent of total expenditures for the year). To maintain a reasonable replacement schedule for fixed route and paratransit vehicles, Bis-Man Transit typically assumes replacement of one fixed route bus each year and an average two paratransit vehicles per year. A detailed fleet replacement schedule is included later in the TDP (see page 25). Vehicle purchase prices have escalated significantly in the last few years.

Figure 7. Top Spending Categories



Source: KHA and SRF analysis of NTD and Bis-Man Transit data. Data for 2018-2022 are historical; 2023 reflects budget.

### iii) Operating Deficit

The fundamental challenge for Bis-Man Transit is that its costs are increasing at a higher rate than its revenues. In 2023, the deficit is projected to be \$533,585 (Table 2). A projection of future income and costs, based on known costs for 2024 and using conservative inflation factors,<sup>2</sup> shows the deficit growing yearly. The forecasted gap between revenue and expenses is displayed in Figure 8.

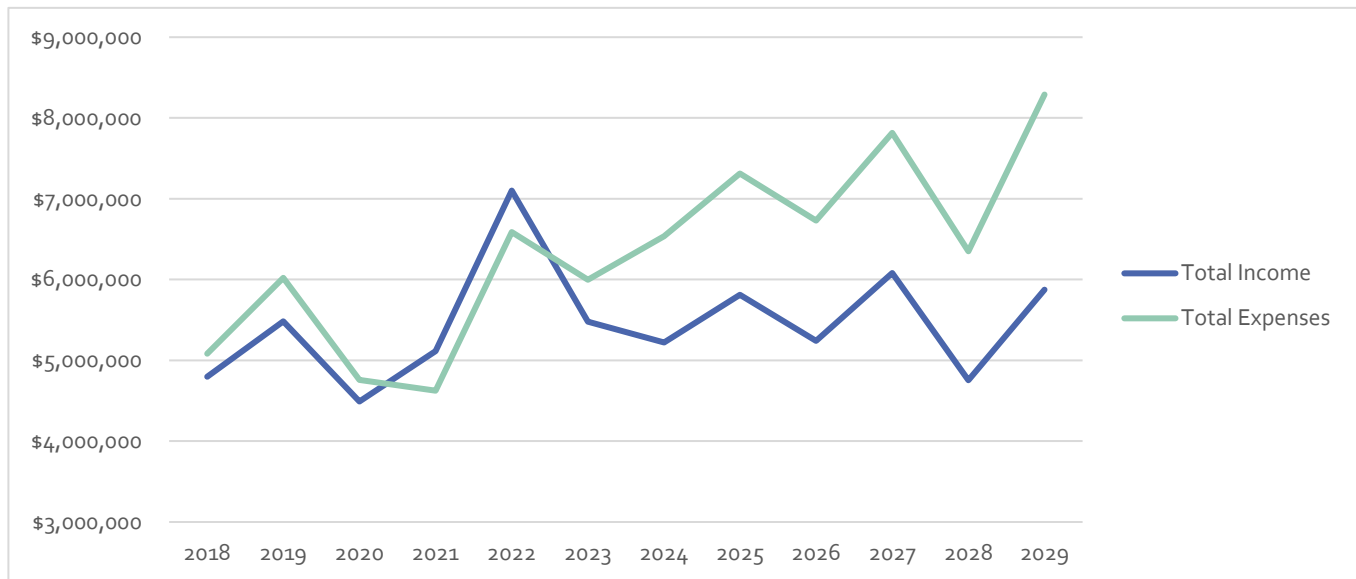
<sup>2</sup> A technical memorandum detailing assumptions used in the financial analysis is included in the Appendix.

**Table 2. Projected Operational Funding Deficits**

Year	Income	Costs	Total Deficit
2023	\$5,552,345	\$6,085,930	(\$533,585)
2024	\$5,324,342	\$6,657,008	(\$1,332,666)
2025	\$5,918,946	\$7,439,292	(\$1,520,346)
2026	\$5,403,210	\$6,920,651	(\$1,517,441)
2027	\$6,192,728	\$7,943,234	(\$1,750,505)
2028	\$4,752,589	\$6,348,606	(\$1,596,016)
2029	\$5,875,502	\$8,290,128	(\$2,414,626)

Source: KHA analysis of Bis-Man Transit data

**Figure 8. Future Trends in Income and Expenses Through 2029**



Source: KHA analysis of Bis-Man Transit data

**iv) Cash Flow**

Another important aspect of Bis-Man Transit’s future finances is adequate cash flow. The agency relies on its reserve fund like a checking account to continually pay operating and capital expenses. While many capital expenses are eligible for some federal reimbursement, the agency must cover all costs up front and often receive reimbursement many months later. Operations expenses can be similarly unpredictable, with bills arriving at various times throughout the year. The agency must keep a minimum balance in the reserve fund at all times to cover anticipated and unanticipated expenses.

The minimum reserve fund balance is equal to the year’s total expected vehicle replacement costs (since the agency must cover that cost up front) plus approximately six months of operating expenses to ensure enough cash flow in the case of lagging reimbursements. The minimum reserve fund for each year is shown in Table 3, based on these calculations.

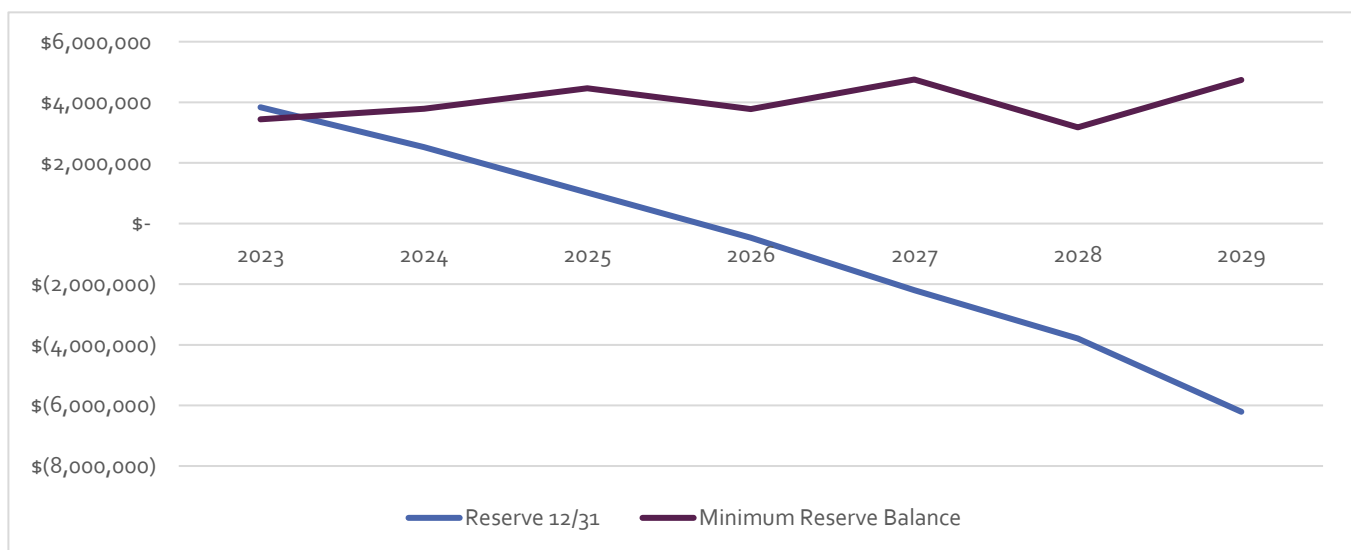
**Table 3. Future Cash Flow Analysis, 2023-2029**

Year	Vehicle Replacement Costs	Six Months Operating	Minimum Reserve
2023	\$962,000	\$2,561,965	\$3,523,965
2024	\$1,149,400	\$2,753,804	\$3,903,204
2025	\$1,734,200	\$2,852,546	\$4,586,746
2026	\$1,009,800	\$2,955,425	\$3,965,225
2027	\$1,818,000	\$3,062,617	\$4,880,617
2028	-	\$3,174,303	\$3,174,303
2029	\$1,194,200	\$3,547,964	\$4,742,164

Source: KHA analysis of Bis-Man Transit data

After calculating the annual minimum reserve balance, a cash flow analysis was completed. This involves projecting the year-end reserve balance based on the total operating deficit. For instance, if the reserve fund has a balance of \$1 million on January 1, with a deficit that year of \$500,000, the reserve fund on December 31 of that year would be expected to be \$500,000. The results of this cash flow analysis are shown below, based on a January 1, 2023 reserve fund balance of \$4,357,384.19.

**Figure 9. Projected Cash Flow and Reserve Fund Balance**



This analysis projects that the reserve fund will fall below the ideal minimum balance at some point in 2024, and continue falling due to continued deficits. If no major changes are identified, the fund balance is projected to be exhausted in 2026, and fall negative in future years. This implies a continued ongoing deficit that will jeopardize the ability of the agency to continue operating.

**v) Alternatives to Close the Gap**

Until now, Bis-Man Transit has had enough banked funds to fill the gap. Federal funding received through CARES and ARPA programs developed to address the impacts of COVID-19 bridged a critical period when, by Bis-Man Transit’s assumptions, its reserves would otherwise have been exhausted. The agency has now come to the end of its pandemic assistance and will need to find new strategies for closing the gap. Very likely, it will be necessary to work from both ends: raising additional revenue, while also finding ways to cut expenses.



The alternatives presented for further consideration include reducing capital costs, raising local revenue, and reducing service.

### **(1) Reducing Capital Costs**

The only major capital expense Bis-Man Transit anticipates over the next six years is the replacement of aged-out vehicles in its fleet. These replacements are necessary to maintain the system in good working condition. While purchasing smaller vehicles would mean a lower upfront cost, the service life of smaller vehicles is shorter, and as replacement would need to occur more often, the cost savings over time would be minimal. If the vehicles were small enough to be operated by drivers without a commercial driver's license, there might be indirect labor savings embedded in the next operating contract.

### **(2) Raising Local Revenues**

The cities of Bismarck, Mandan and Lincoln currently contribute to the agency on an annual basis. Increased local contributions would help to offset the projected deficit.

There are three potentially viable strategies for raising local revenue. The first would increase the rate of the property tax that currently funds transit. The second would create a new revenue source via a special sales tax. The third would call on support from the private entities that benefit most from transit service.

#### **Property Tax**

As explained earlier, Bismarck and Mandan are authorized by the State of North Dakota to levy up to five mills (0.5 percent of a property's taxable value) in order to fund transit service. At present, Bismarck is levying three mills (0.3 percent), and Mandan is levying only two mills (0.2 percent). This means that there is capacity to generate additional funding by raising the transit levy. At current property values, this could mean up to \$1.3 million annually.

This approach has the benefit of using an existing mechanism to fund transit. The disadvantage of this approach is that it may not find support among city commissioners. The current sentiment, both within city commissions and in the general public, is that existing property taxes are burdensome for ratepayers.

#### **Sales Tax**

The Bismarck City Commission can put a sales tax increase to the popular vote. As part of the funding analysis, an estimate of the sales tax rate required to partially or completely close the gap was developed. Based on 2022 retail sales, a rate of 0.1 percentage point would generate an estimated \$1.6 million annually. Currently, there is a \$0.05 sales tax dedicated to a specific group of transportation improvements. This tax is anticipated to sunset in 2028, and it is highly unlikely an additional amount would be levied before the sunset.

There has also been discussion of the use of a local option sales tax to fund need in other departments, including public safety and others, which means there is competition for this revenue option. Because a sales tax increase requires a vote by Bismarck residents, it is considered by some to be a more democratic method of fundraising than the property tax levy. On the other hand, it is also one of the more regressive forms of taxation, hitting low-income consumers the hardest. The voting public would need to be convinced that providing transit is in the social and economic interest of their community.

### Private Donations/Contracts

Before Bis-Man Transit assumed its present-day structure, local nonprofits played more of a role in funding transportation. Hospitals and social service organizations form a substantial proportion of ridership, especially paratransit ridership. In the current crisis, other stakeholders have urged Bis-Man Transit to pursue funding agreements with these organizations. This would likely have a small impact compared to more stable fundraising mechanisms; however, a demonstration of broad community support would help the agency make its case for tax support as well.

### **(3) Service Alternatives to Decrease Operating Expenses**

The final set of alternatives would reduce service, approaching the gap from the operations side. Reducing service is a tactic of last resort for any transit agency; for Bismarck-Mandan, any change would be drastic. As is detailed in the Transit System Overview (page 28), Bis-Man Transit is operating six hourly routes during limited times of day, six days a week. There is no redundancy in the route network. Moreover, given the extent of the funding gap, small reductions in service would have no meaningful impact.

### After-Hours Paratransit

One possible reduction has been an ongoing discussion: limiting demand-response service to what is strictly defined as paratransit. FTA requires ADA complementary paratransit for seniors and people with disabilities to match fixed-route hours. At present, Bis-Man Transit operates fixed route Monday through Saturday. Weekday service runs from 6:30 a.m. to 7:00 p.m. and Saturday service starts an hour later in the morning. However, Bis-Man Transit offers paratransit service from 5:30 a.m. until midnight on those days. It also offers paratransit from 7:30 a.m. to 2:30 p.m. on Sundays and holidays. To differentiate complementary paratransit from the additional hours/days of service for discussion, this plan uses the term “after-hours service” for early and late service hours on weekdays and Saturdays, as well as the and Sunday and holiday service offered only on paratransit.

The after-hours service is important to its users. For example, the main reason it begins at 5:30 a.m. six days a week is to serve dialysis patients with little control over their schedules. But this level of service is difficult to sustain for an agency with depleted resources. Bis-Man Transit annually applies for, and has historically received, an FTA Section 5310 grant that covers half the cost of operating service, but approximately \$270,000 a year remains the agency’s responsibility. The Bis-Man Transit Board has suggested reducing hours/days of after-hours service as a means of reducing cost and narrowing the revenue-expenditure gap; however, the Bismarck City Commission has elected to retain the service. Additional funding has traditionally not been allocated to accompany the service retention decision.

As part of the 2023 TDP process, Bis-Man Transit requested from the commission additional funding to support the cost of after-hours service. In July 2023, the Bismarck City Commission approved allocations in local budget to support continuation of after-hours through fiscal year 2024. This was a short-term measure intended to buy time while Bis-Man Transit pursued longer-term solutions.

### Range of Service Modification Alternatives

In the longer-term view, eliminating after-hours service is one of five alternatives presented for Bis-Man Transit’s further consideration (Table 4). The alternatives are as follows:

- **Current:** No change to service, funding gap remains. Included for comparison.
- **Fixed Route / Paratransit Only:** This scenario reduces service to the ADA complementary paratransit, eliminating after-hours. The alternative would result in eliminating Sunday and holiday service and an hours reduction to reflect fixed route service hours on weekdays and Saturdays.
- **Convert to Demand Response:** This alternative eliminates fixed-route service and converts paratransit to general public demand response service. All rides would need to be reserved a day in advance, the way paratransit rides are reserved now. There are three possible variations of this alternative:
  - **Operate 20 Vehicles for Current Paratransit Hours.** Paratransit would remain unchanged from its existing schedule, and the six fixed-route buses circulating today would be added to the paratransit pool. Demand-response capacity is lower than fixed-route capacity, so moving fixed-route passengers to paratransit would mean an estimated 95 riders a day would not be able to reserve their desired trips. They would need to postpone, cancel, or make non-transit accommodations for those trips.
  - **Operate 20 Vehicles for Current Fixed Route Hours.** This alternative eliminates both fixed-route service and after-hours service. All riders, both ADA-eligible and general public, would make their trips on a demand-response system within the current fixed-route service day. The six fixed-route buses would be added to the paratransit pool. An estimated 140 riders a day would not be able to reserve their desired trips.
  - **Operate 14 Vehicles for Current Fixed Route Hours and Days.** This is the only alternative that fully closes the funding gap. In addition to eliminating after-hours service, it also shrinks the total fleet. The fixed-route buses would be retired from the fleet and transit service would be operated with 14 vehicles, which is the number presently used daily to provide paratransit service. Requests for trips would significantly exceed capacity as current paratransit demand essentially requires at least 14 vehicles. The result of implementing this alternative is that each weekday and Saturday, approximately 300 fewer trips would be served than the estimated demand.
- **Elderly and Disabled Only (Operate 14 Paratransit Vehicles and Current Paratransit Hours).** This alternative takes the system back to its beginning: demand-response service only for seniors and people with disabilities. While eliminating service for the general public represents the greatest reduction in operating costs of all the alternatives, it would also result in a loss of federal funding. Without a general-public program, Bis-Man Transit is unlikely to continue receiving Urbanized Area Formula Funding under Section 5307.

## vi) Conclusion

All of the service reduction alternatives represent undesirable outcomes for transit in the Bismarck-Mandan region. They represent lost work, missed medical appointments, purchases not made in local stores, and an overall detriment to quality of life for current and potential transit users.

As scenarios were defined and refined over the course of 2023, participants in TDP discussions generally agreed that revenue increases should be prioritized over cutting service. This feeling is shared by members of the public who attended the April 2023 informational meetings as well as the transit board, city staff, and MPO staff.

Table 4. Service Alternatives to Decrease Operating Expenses

	Current (Fixed Route / Paratransit / Non-ADA Demand Response)	Fixed Route / Paratransit Only	Convert to Demand Response			Elderly and Disabled Only (Operate 14 Paratransit Vehicles and Current Paratransit Hours)
			Operate 20 Vehicles for Current Paratransit Hours	Operate 20 Vehicles for Current Fixed Route Hours	Operate 14 Vehicles for Current Fixed Route Hours and Days	
<b>Change Relative to Current Service</b>	Retain Current 6 Fixed Routes and Retain Current Paratransit/Non-ADA Service Levels	(7 AM to 7 PM Weekdays) (8 AM to 7 PM Saturdays) (No Sunday Service) (No Holiday Service)	Same number of Vehicles as Current (14 Paratransit+6 Fixed Route) All Riders need to Reserve Their Trip at least One Day In Advance Reservations are First Come, First Served	Same number of Vehicles as Current (14 Paratransit+6 Fixed Route) All Riders need to Reserve Their Trip at least One Day In Advance	Operate 14 Vehicles in Service All Riders need to Reserve Their Trip at least One Day In Advance	Elderly and Handicapped Only Reserve Trip at least One Day in Advance (Same Number of Paratransit Vehicles) (Same Paratransit Hours)
<b>Current Rider Impacts (Number of Daily Riders Impacted Reflects Average Daily First Half of 2023 Boarding Data)</b>	No change - 303 daily FR and 258 Para Riders Accommodated	35 riders Weekdays/Saturday 41 rides on Sunday 51 rides on Holidays Move Trip Time / Do Not Make Trip	95 Fixed Route / Paratransit Riders not Served (Daily)	140 Fixed Route / Paratransit Riders not Served Weekdays/Saturdays 41 rides on no Served Sunday 51 rides on not Served Holidays No Paratransit Priority for Service	300 Fixed Route / Paratransit Riders not Served Weekdays/Saturdays 41 rides not Served Sundays 51 rides not Served on Holidays No Paratransit Priority for Service Concept Fares Reflect Current Paratransit – Increase from Fixed Route	303 Fixed Route Riders Per Day not Served
<b>Eligible Federal Grants</b>	5307 / 5310 / 5339	5307 / 5310 / 5339	5307 / 5310 / 5339	5307 / 5310 / 5339	5307 / 5310 / 5339	5310 / 5339
<b>Annual Operating/Capital Cost</b>	\$7.1 Million (Average 2023-2029)	\$6.7 Million (Average 2023-2029)	\$7.4 Million (Average 2023-2029)	\$6.6 Million (Average 2023-2029)	\$5.3 Million (Average 2023-2029)	\$5.6 Million (Average 2023-2029)
<b>Funding Gap (Average 2023 through 2029)</b>	\$1.52 Million Operating Cash Account Depleted in 2026	\$1.15 Million Operating Cash Account Depleted in 2026	\$1.60 Million Operating Cash Account Depleted in 2026	\$1.05 Million Operating Cash Account Depleted in 2026/27	Closes the Gap	\$1.26 Million (Lose \$1.7 million in 5307) Operating Cash Depleted within 2 Years of Implementing

Source: SRF analysis of Bis-Man Transit data

### 3) Scheduled Fleet Replacement

Purchase of replacements for fixed route, paratransit and other service vehicles that have fulfilled their useful life is an ongoing priority. The current fleet includes 10 fixed-route buses, 16 small paratransit buses, and 2 paratransit vans.<sup>3</sup> Several of these vehicles were replaced, or were due for replacement, in 2023.

The replacement schedule is based on the NDDOT useful life benchmark for each vehicle type. Bis-Man Transit typically makes its purchase decisions by comparing recently released federal grant opportunities with the age and mileage of the existing fleet. For example, 5310 grants for FY2024 will be awarded around the time that four paratransit vehicles purchased in 2016 reach their useful life benchmark of eight years; therefore, the agency plans to order replacements for these vehicles for delivery in mid-2024.

Consistent turnover is another consideration. Spacing out fleet replacements helps to manage the process of integrating newly acquired vehicles, and it assists with budgeting by keeping annual costs relatively stable from year to year.

With both these considerations in mind, a proposed schedule for the next 10 years of vehicle replacement was developed. Table 5 lists each vehicle with its anticipated replacement year and estimated cost. The table includes any vehicles that were in service at the end of 2022. This replacement schedule is one of the inputs for the projected annual costs in the preceding section. It makes the following assumptions:

- Service will continue at current levels.
- Vehicle costs escalate at a rate of three percent over the previous year, starting from 2023 contract prices of \$154,000 for a small paratransit bus and \$500,000 for a fixed-route bus.
- A maximum of six vehicles will be purchased in any given year.
- The local matching contribution for each vehicle will be 15 percent of the total price, with the remaining 85 percent covered by federal grants under Section 5310 or Section 5339.

Table 5. Fleet Replacement Timing and Cost

Fleet #	Mode	Useful Life Benchmark	Age in 2023 (Years)	Replacement Year	Federal Share	Local Share	TOTAL
53	Paratransit	8 year	11	2023	\$130,900	\$23,100	\$154,000
54	Paratransit	8 year	11	2023	\$130,900	\$23,100	\$154,000
55	Paratransit	8 year	11	2023	\$130,900	\$23,100	\$154,000
401	Fixed Route	14 year	19	2023	\$425,000	\$75,000	\$500,000
2023 Total					\$817,700	\$144,300	\$962,000
1701	Paratransit	8 year	7	2024	\$134,810	\$23,790	\$158,600
1702	Paratransit	8 year	7	2024	\$134,810	\$23,790	\$158,600
1703	Paratransit	8 year	7	2024	\$134,810	\$23,790	\$158,600
1704	Paratransit	8 year	7	2024	\$134,810	\$23,790	\$158,600
1003	Fixed Route	14 year	13	2024	\$437,750	\$77,250	\$515,000
2024 Total					\$976,990	\$172,410	\$1,149,400

<sup>3</sup> The fleet size is larger than the number of circulating vehicles at peak service described in the preceding section. Spare vehicles are needed to maintain reliable service.

Fleet #	Mode	Useful Life Benchmark	Age in 2023 (Years)	Replacement Year	Federal Share	Local Share	TOTAL
1801	Paratransit	8 year	5	2025	\$143,055	\$25,245	\$168,300
1802	Paratransit	8 year	5	2025	\$143,055	\$25,245	\$168,300
1803	Paratransit	8 year	5	2025	\$143,055	\$25,245	\$168,300
1804	Paratransit	8 year	5	2025	\$143,055	\$25,245	\$168,300
1001	Fixed Route	14 year	13	2025	\$450,925	\$79,575	\$530,500
1002	Fixed Route	14 year	13	2025	\$450,925	\$79,575	\$530,500
2025 Total					\$1,474,070	\$260,130	\$1,734,200
1901	Paratransit	8 year	5	2026	\$143,055	\$25,245	\$168,300
1902	Paratransit	8 year	5	2026	\$143,055	\$25,245	\$168,300
1903	Paratransit	8 year	4	2026	\$143,055	\$25,245	\$168,300
1904	Paratransit	8 year	4	2026	\$143,055	\$25,245	\$168,300
1911	Paratransit	7 year	4	2026	\$143,055	\$25,245	\$168,300
1912	Paratransit	7 year	4	2026	\$143,055	\$25,245	\$168,300
2026 Total					\$858,330	\$151,470	\$1,009,800
1905	Paratransit	8 year	4	2027	\$147,305	\$25,995	\$173,300
1906	Paratransit	8 year	4	2027	\$147,305	\$25,995	\$173,300
1907	Paratransit	8 year	4	2027	\$147,305	\$25,995	\$173,300
1908	Paratransit	8 year	4	2027	\$147,305	\$25,995	\$173,300
1501	Fixed Route	14 year	8	2027	\$478,380	\$84,420	\$562,800
1502	Fixed Route	14 year	8	2027	\$478,380	\$84,420	\$562,800
2027 Total					\$1,545,980	\$272,820	\$1,818,800
1909	Fixed Route	14 year	4	2029	\$507,535	\$89,565	\$597,100
1910	Fixed Route	14 year	4	2029	\$507,535	\$89,565	\$597,100
2029 Total					\$1,015,070	\$179,130	\$1,194,200
2201	Fixed Route	14 year	1	2034	\$588,455	\$103,845	\$692,300
2202	Fixed Route	14 year	1	2034	\$588,455	\$103,845	\$692,300
2034 Total					\$1,176,910	\$207,690	\$1,384,600

# BACKGROUND

## 4) Transit System Overview

### a) Fixed-Route Service

Bis-Man Transit operates six regular fixed routes on weekdays and Saturdays. Weekday service runs from 6:30 a.m. to 7:00 p.m. and Saturday service starts an hour later at 7:30 a.m. Four of the routes operate on an hourly pulse schedule, with all buses arriving at the same time at a stop on Front Avenue and departing ten minutes later. The exceptions are:

- Purple Route to Mandan, which serves this stop every two hours.
- Red Route, which serves the north end of Bismarck. This is an hourly route, but it has a west endpoint at Bismarck State College (BSC) and east endpoint at North 14<sup>th</sup> Street/Mapleton Avenue. At BSC, the Red Route has a transfer point with the Blue Route and at the east end the route has a transfer point with the Black Route to provide connection to the remainder of the system.

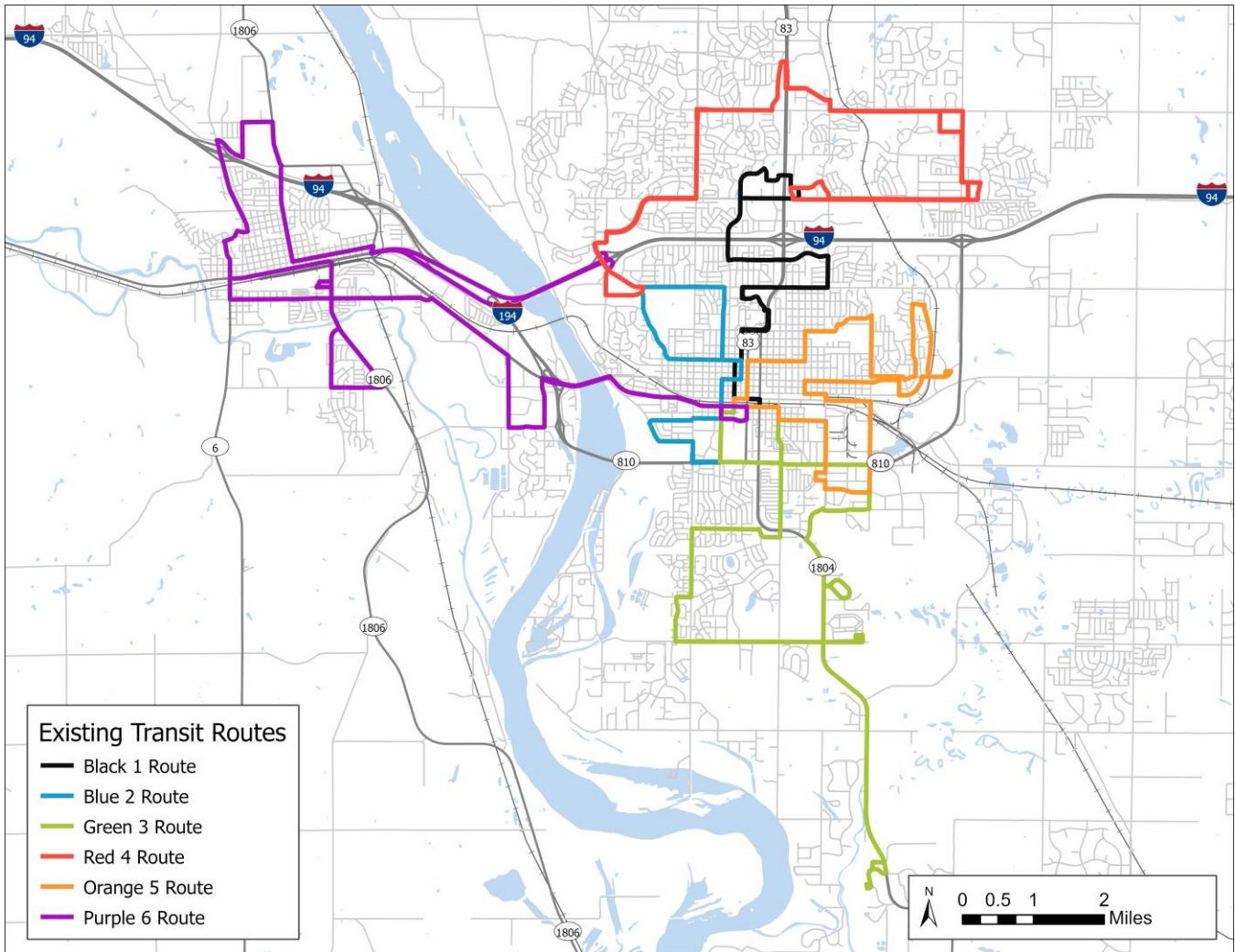
Each route is described below and illustrated in Figure 10.

Table 6. Description of Current Bis-Man Fixed-Route Service

Black-1	This route primarily travels north-south through central Bismarck between the Front Avenue stop and the Gateway Mall area on East Century Avenue. Major destinations along this route include Bismarck Public Library, the North Dakota State Capitol building, North Pizza Hut, and Dan's Supermarket North. The route loops back at the Mapleton Avenue Transfer Point.
Blue-2	Also departing from Front Avenue, this route serves major destinations such as Dan's Supermarket South, Bismarck Public Library, Tom O'Leary Tennis Courts, the BSC campus, and the YMCA before looping back toward downtown Bismarck.
Green-3	The third route converging at Front Avenue, this route serves the southernmost portion of Bismarck. Major destinations include Cashwise Foods, Sanford South Clinic, Tatley Place, the University of Mary (U-Mary), UTTC Wellness Center, Bismarck Airport, and South Super Walmart.
Red-4	The Red Route begins at BSC and travels northeast, serving major destinations such as Pinehurst Square, US Social Security Administration, North Super Walmart, and Dan's Supermarket East, before looping back at the Mapleton Avenue Transfer Point.
Orange-5	The Orange Route serves much of central Bismarck running east-west. It is the fourth route that stops at Front Avenue, and serves major destinations such as the Dream Center, South Super Walmart, Big Boy, Dakota Center for Independent Living, Bis-Man Transit Facility, Rita Murphy Elementary School, Simle Middle School, and Bismarck High School.
Purple-6	The Purple Route travels between BSC, Mandan, and Front Avenue. It is the only bus route serving Mandan. The route links major destinations such as the Bank of North Dakota, Raging Rivers Waterpark, Midway Lanes, Fort Lincoln Elementary School, Dan's Supermarket Mandan, Mandan High School, Mandan Walmart, and Sanford East Mandan.



Figure 10. Current Fixed-Route Network



### i) Fares

Bis-Man Transit offers a number of single-ride and unlimited ride passes for purchase online, on a bus, at the administrative office or at various points of sale in the metro. As they board, passengers can purchase (cash only) single ride, one-day, and 30-day passes by informing the operator of which pass they are purchasing before placing their money in the farebox.

Passes can also be purchased with credit/debit card or check at the administrative office on Rosser Avenue or Cashwise Foods (Bismarck) or Dan's Supermarket (Bismarck and Mandan). Bis-Man Transit also offers a mobile ticketing option through the Token Transit application, with accounts set up and reloaded via the app or a web portal.

Reduced fares are available for veterans, Medicare card holders, and all students (including both K-12 and higher education). Operators will ask for verification of the rider's qualifying status before granting the discounted rate. Additionally, both seniors aged 65 and older and paratransit customers ride free with a valid ID. A full breakdown of the CAT fare structure is located below in Table 7.

Table 7. Fare Structure

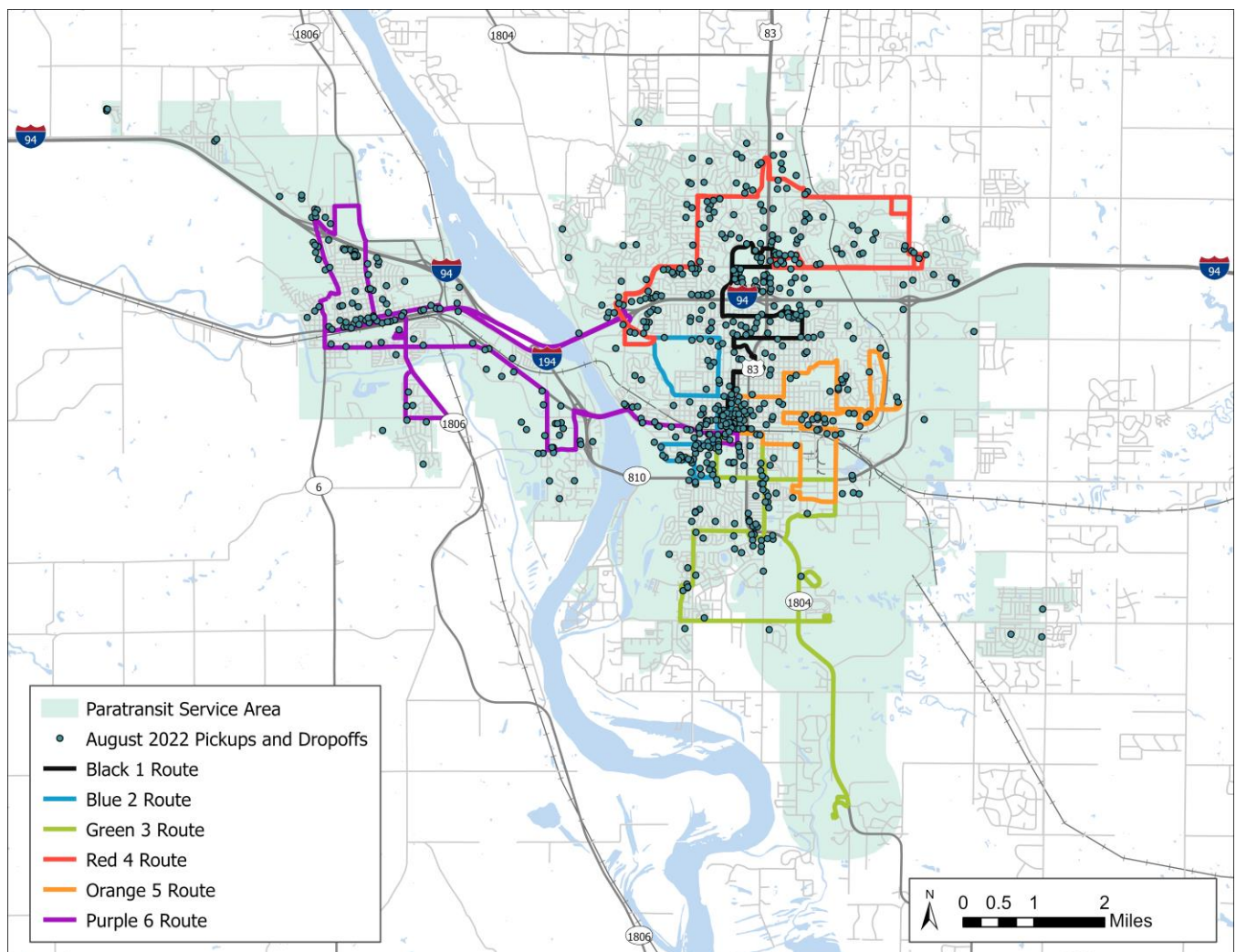
Description	Regular Fare	Reduced Fare
Single-ride	\$1.50	\$0.75
1-day pass	\$6.00	\$3.00
30-day pass	\$36.00	\$24.00

Source: Bis-Man Transit

## b) Paratransit Service

Paratransit door-to-door services are available to senior citizens 70 years of age or older and to individuals with any type of certifiable disability. This service operates within the city limits of Bismarck, Mandan, and Lincoln; on the U-Mary campus; and within three-quarters of a mile from fixed-route service. Figure 11 shows a current map of the paratransit service area, as well as the pickup and drop-off locations of the 8,000-plus paratransit trips conducted in August of 2022.

Figure 11. Current Paratransit Service



Reservations can be scheduled for a specific pickup time (such as for a commute home from work), drop-off time (such as for a commute to work or an appointment), or for “will-calls,” which send the first

available bus for pickup using only approximate time windows. All one-way trips are \$3.00, and can be paid with exact change, prepaid punch cards loaded in increments of \$12.00, over the phone, or with a personal diminishing balance account.

ADA-eligible individuals who are visiting the communities served are able to utilize the system at the same price of \$3.00 per ride and are not required to be registered in the agency's transit database.

## **c) Fleet**

As of September 2023, Bis-Man Transit operates 10 heavy-duty buses to provide service on its six fixed routes. The fleet also includes 18 medium- and light-duty cutaway buses and two vans for paratransit service.

## **d) Facilities**

All CAT routes except the Red 4 Route depart from and return to the bus shelter at 500 Front Avenue. A second transfer point with a shelter is located at Bismarck State College. Of all locations served by CAT routes, the Bis-Man Transit Facility (served by the Orange 5 Route) is the only site with additional amenities, such as restrooms, vending machines, and bus pass purchase options. The Bis-Man Transit Board holds regular monthly meetings in this building, and the facility also serves as the agency's bus depot. Connections and ticket purchase options for other transit services are available, including Jefferson Lines, West River Transit, Standing Rock Transit, and intercity bus service to Minot provided by Souris Basin Transportation.

## 5) Policy Guidance

Transit service in the area is informed by preceding policies and plans created by Bis-Man Transit and the Metropolitan Planning Organization (MPO). Table 8 summarizes key policies from complementary documents.

Table 8. Previous Plans and Policies

Policy Document	Description	Themes & Connection to Transit
<a href="#">Bis-Man Transit Development Plan 2019</a>	Bis-Man Transit completed its most recent TDP in 2019, covering the same basic categories as this plan.	Identifies needs, gaps, and goals and objectives from 2019 onward. Recommends service reductions and estimates the dollar savings of several possible reduction strategies.
<a href="#">Coordinated Public Transit – Human Services Transportation Plan 2022</a>	Consistent with requirements for Section 5310 recipients, Bis-Man Transit updated its coordination with organizations that provide transportation to senior, disabled, low-income, or veteran clients. Identifies services, transportation needs, opportunities to fill gap between services and needs, and implementation priorities.	<p>Provides overview of organizations; summarizes input from organizations and their clients. Identifies a primary objective as moving capable individuals using paratransit to the fixed-route system.</p> <p>Outreach included a survey of the general public. Out of 54 responses, the top priorities included unserved service areas, earlier morning hours, later evening hours, Sunday availability, greater reliability.</p> <p>A five-year action plan identifies seven strategies: create positive relationships with service providers, continue to pursue funding, increase ridership on CAT, investigate demand response service for CAT riders, reach out to employers, create a student-specific training program, and increase CAT signage.</p>
<a href="#">Bis-Man Transit Management Alternatives Study (2011)</a>	The MPO commissioned this study to evaluate alternatives to its contracting model.	Provides historical context for present decisions. Previously the City of Bismarck contracted with a nonprofit, No-Dak Development Corporation, to administer transit service. The study recommended continuing with this model but, if a suitable candidate failed to appear on next bid renewal, creating a city department for transit.
<a href="#">Bismarck-Mandan Metropolitan Transportation Plan (2020)</a>	As a condition of federal transportation funding, the MPO prepared this plan to guide its transportation planning through 2045. THE MTP is updated every five years.	Goal 5: Alternative Transportation Modes to Automobile Travel highlights the importance of public transportation and sets a desired target of increasing fixed-route transit ridership. Objective 5A is to consider coordination with transit agencies to improve transit route efficiency, system productivity, and community awareness by implementing transportation investments that support the transit system. Objective 5B is to improve transit and rideshare opportunities for travelers commuting into Bismarck-Mandan from outside the urban area. The MTP also sets goals and objectives for environmental sustainability, transit fleet maintenance, and multimodal connections.
<a href="#">2023-2026 Transportation Improvement Program (TIP)</a>	The TIP lists significant transportation system improvements to be implemented in the MPO planning area during the next four years. It is prepared annually by the MPO.	A transit improvement project list is included on page 18. A <a href="#">December 2022 amendment</a> updated Bis-Man Transit’s Transit Asset Management (TAM) report to reflect its November 2022 fleet inventory.

## 6)Market and Needs

Analyzing trends and patterns in Bismarck-Mandan is a critical task in assessing the community's transportation needs. The following section uses socioeconomic data to develop a baseline understanding of community demographics. Cumulatively, this information is used to:

- Identify locations that can potentially generate the highest levels of transit use
- Gauge the extent to which existing fixed-route service meets potential demand
- Inform what type of transit service is best suited for an area

### a) Transit-Supportive Areas

Several factors are often correlated with and suggest the need for public transit service. Among the most important are job locations, density of job locations, and density of housing.

Figure 12 identifies census blocks that are transit-supportive (Transit-Supportive Areas, or TSAs) on the basis of their housing density, their job density, or both. For this purpose, a TSA is defined as having residential density of at least three households per acre or employment density of at least four jobs per acre. This service planning rule of thumb assumes low service frequency (approximately 60 minutes) and partial farebox recovery.<sup>4</sup>

The TSAs are shown in green if they are within a quarter mile of a fixed route segment with pickup and drop-off service. They are shown in gold if they are more than a quarter mile from service. As the dominant color in the map suggests, 90 percent of the transit-supportive acreage in Bis-Man Transit's service area is served by a fixed route.

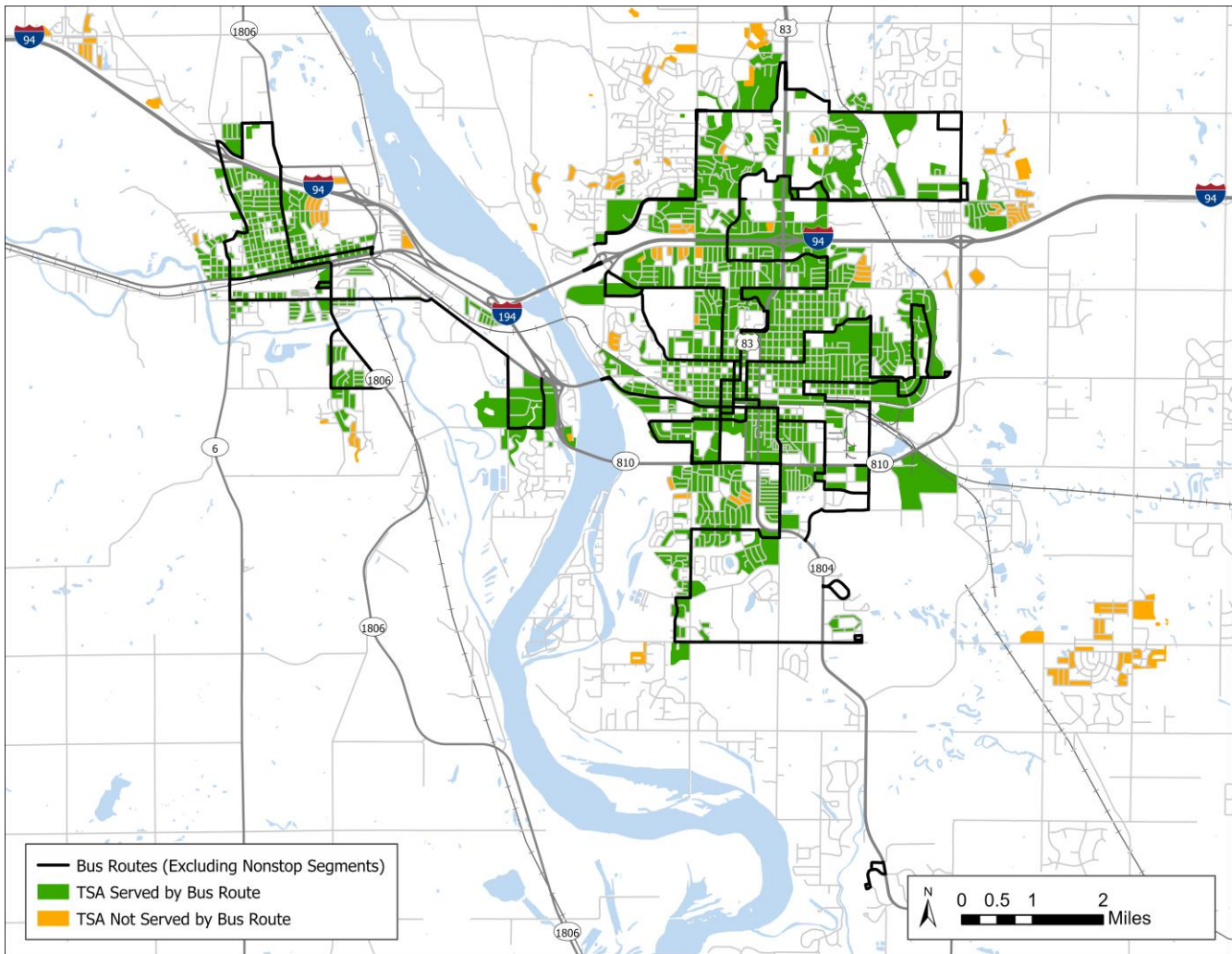
There are TSAs in both Bismarck and Mandan without service. These would be expansion areas to consider if Bis-Man Transit were to add service in the future. However, given the extent of its coverage, the agency does not have a compelling reason to prioritize expansion.

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<sup>4</sup>For more detailed discussion, see TCRP Report 165, Transit Capacity and Quality of Service Manual, Third Edition, pp. 3-19 to 3-20.



Figure 12. Transit-Supportive Areas



## b) Demographics

Two of the top demographic factors correlated with transit demand are income and vehicle ownership. People with lower incomes are more likely to ride public transit, as are those whose households do not have access to a vehicle.

The age of residents can also be a predictor of transit use. Children and older adults may benefit from access to transit, and it is typical for young adults of student age to use transit at a higher rate than other groups.

Additionally, it is critical to consider racial equity in the allocation of transit service. Looking at the spatial distribution of race, ethnicity, and English proficiency in relationship to existing transit routes can identify potential equity gaps in service. These characteristics are used to define protected classes under Title VI of the 1964 Civil Rights Act.

Figure 13 through Figure 19 show choropleth maps of the demographic groups in Bismarck-Mandan overlaid with the existing CAT network. These figures use data gathered from the 2016-2020 American Community Survey.

Figure 13 shows the percentage of low-income individuals in each block group, defined as those whose annual income falls below the federal poverty level (FPL). In 2022, the FPL was set at \$13,590 for an individual and \$27,750 for a family of four.

Generally, the outermost neighborhoods have smaller low-income concentrations, while block groups closer to central Bismarck have higher percentages of low-income individuals, with some nearing 50 percent. These neighborhoods in the urban core are located near a major transfer point on Front Ave, where residents have access to five of the six bus routes. However, some residents of these neighborhoods are not within a quarter-mile walkshed of existing bus service and may not be able to easily access this major transfer point.

Figure 13. Low-Income Population by Block Group

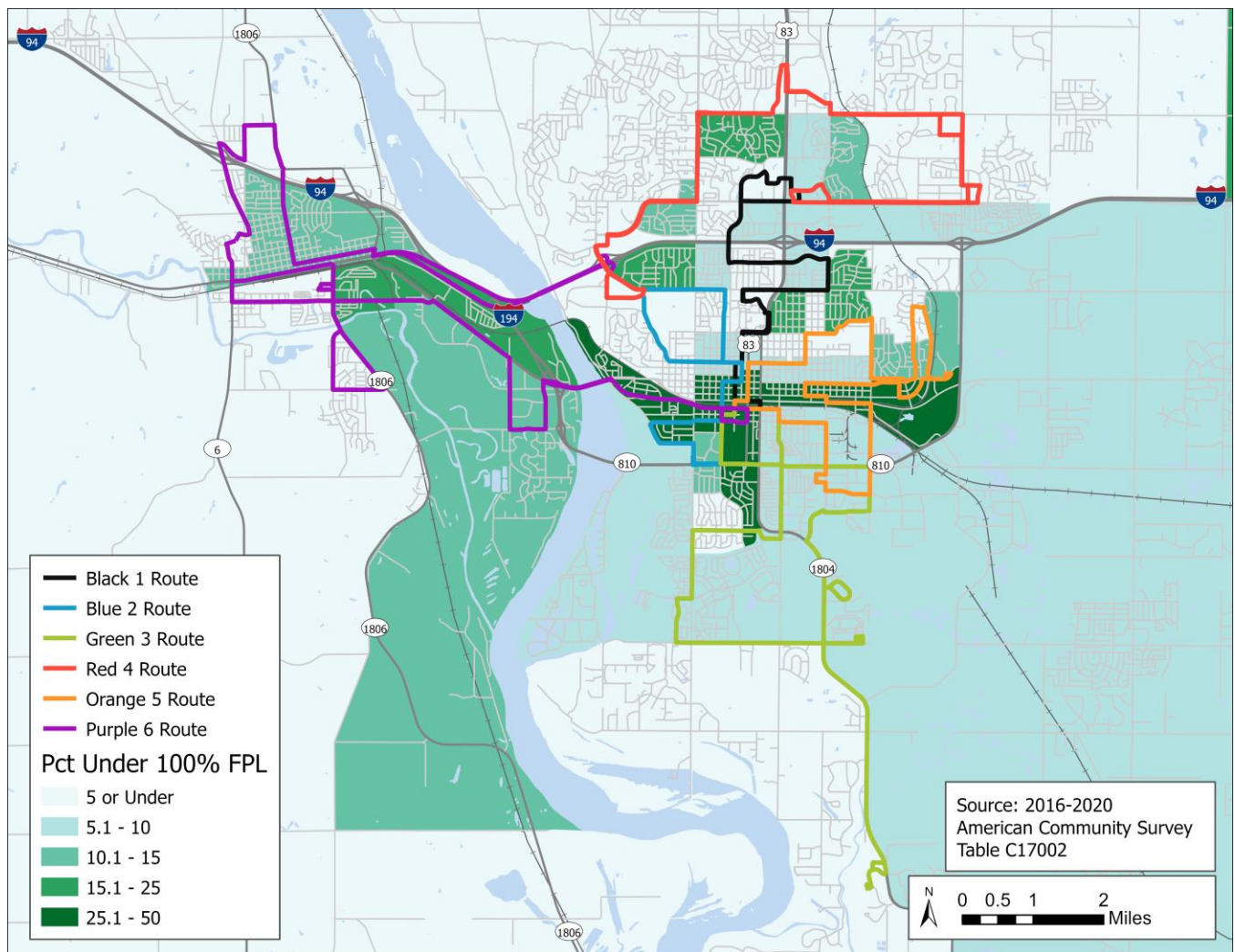


Figure 14 shows the percentage of households in each block group that reported possessing no functioning vehicles. In several block groups, more than 20 percent of households are zero-vehicle. Although many of these block groups are well-served by the CAT network, some households north of



Century Avenue and east of the Dakota Missouri Valley & Western Railroad fall outside a quarter-mile walkshed of the Red Route. Additionally, households along the eastern side of the Missouri River near I-94 fall outside a quarter-mile walkshed of the Purple Route.

Figure 14. Zero-Vehicle Households by Block Group

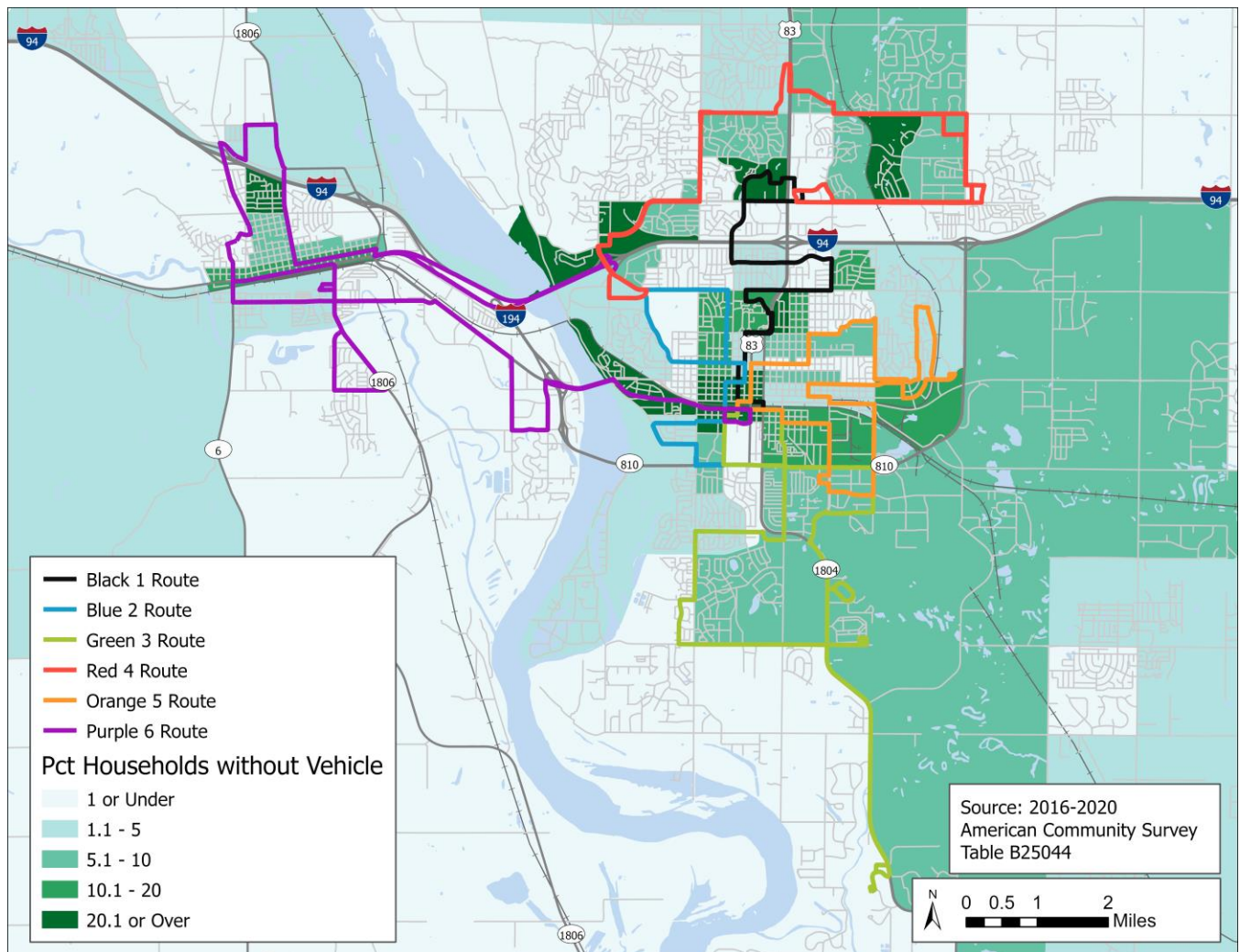
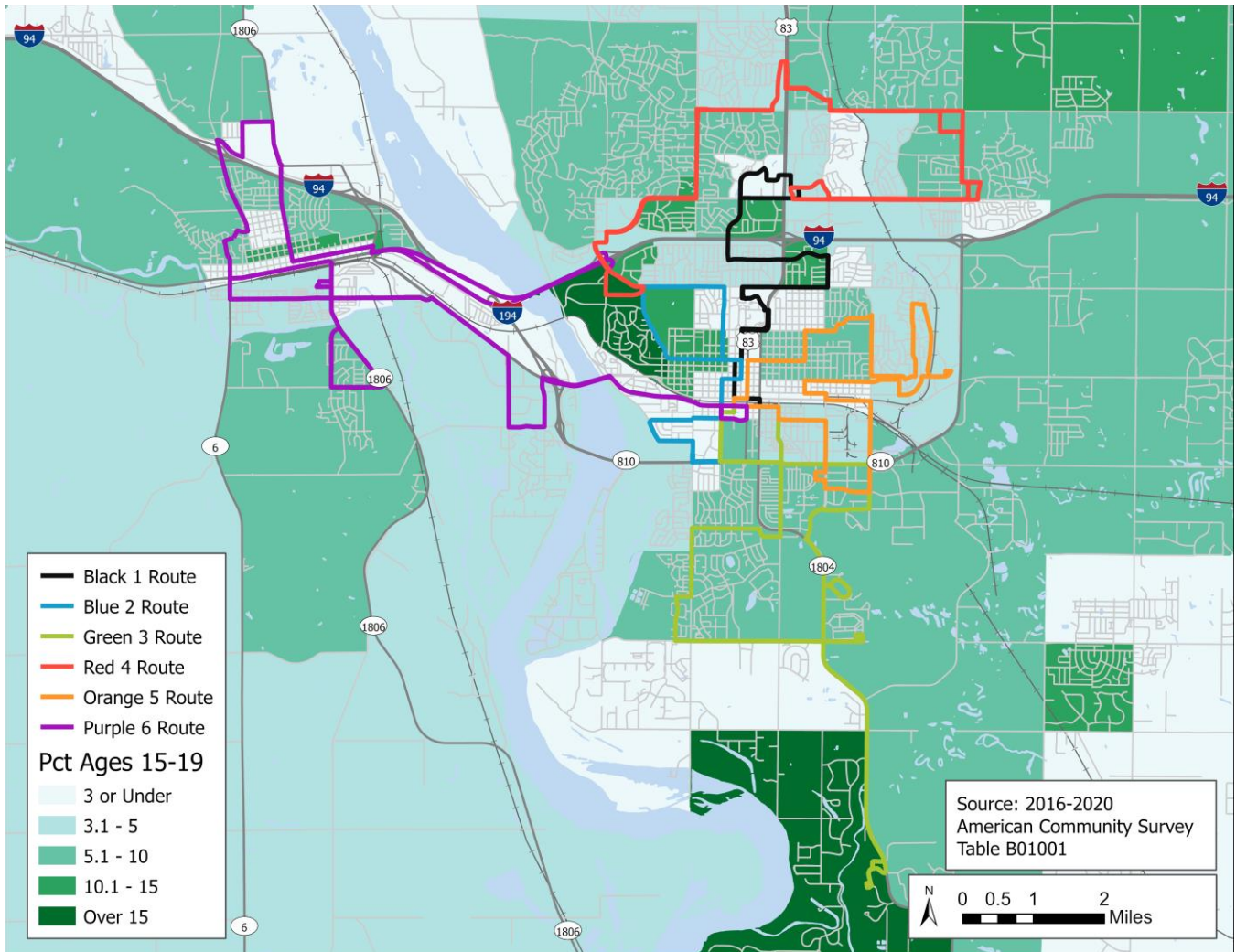


Figure 15 shows each block group’s population of children and youth between the ages of 15 and 19. At 10 percent or fewer in most block groups, the map suggests that adolescents and young adults in this age range are relatively evenly distributed throughout the city and surrounding areas. However, in some block groups in Bismarck and Mandan’s urban cores, as well as in Lincoln, this age group composes up to 15 percent of the population. Outliers include the block groups containing the main campuses of both University of Mary and Bismarck State College, which likely both house many 17-to-19-year-olds. These campuses are both served by the CAT system, but the best-served areas in the metro area have comparatively low youth populations.



Figure 15. Population Ages 15-19 by Block Group



The distribution of adults 65 or older (Figure 16) is less even, with block groups ranging from under five percent to over 30 percent. While the older adult populations in the Bismarck urban core are well-served by the CAT network, some neighborhoods along the Missouri River with higher concentrations of this age group are underserved. Some of these block groups have high rates of vehicle ownership, specifically in southeast Mandan and southwest Bismarck, but others may have concentrated pockets of non-driving seniors who are more reliant on alternatives to fixed-route bus service. Both the block group north of Century Avenue and east of the Dakota Missouri Valley & Western Railroad and the block group east of the Missouri River and north of I-94 are notable for their high senior populations and high rates of zero-car households.

Figure 16. Population Ages 65+ by Block Group

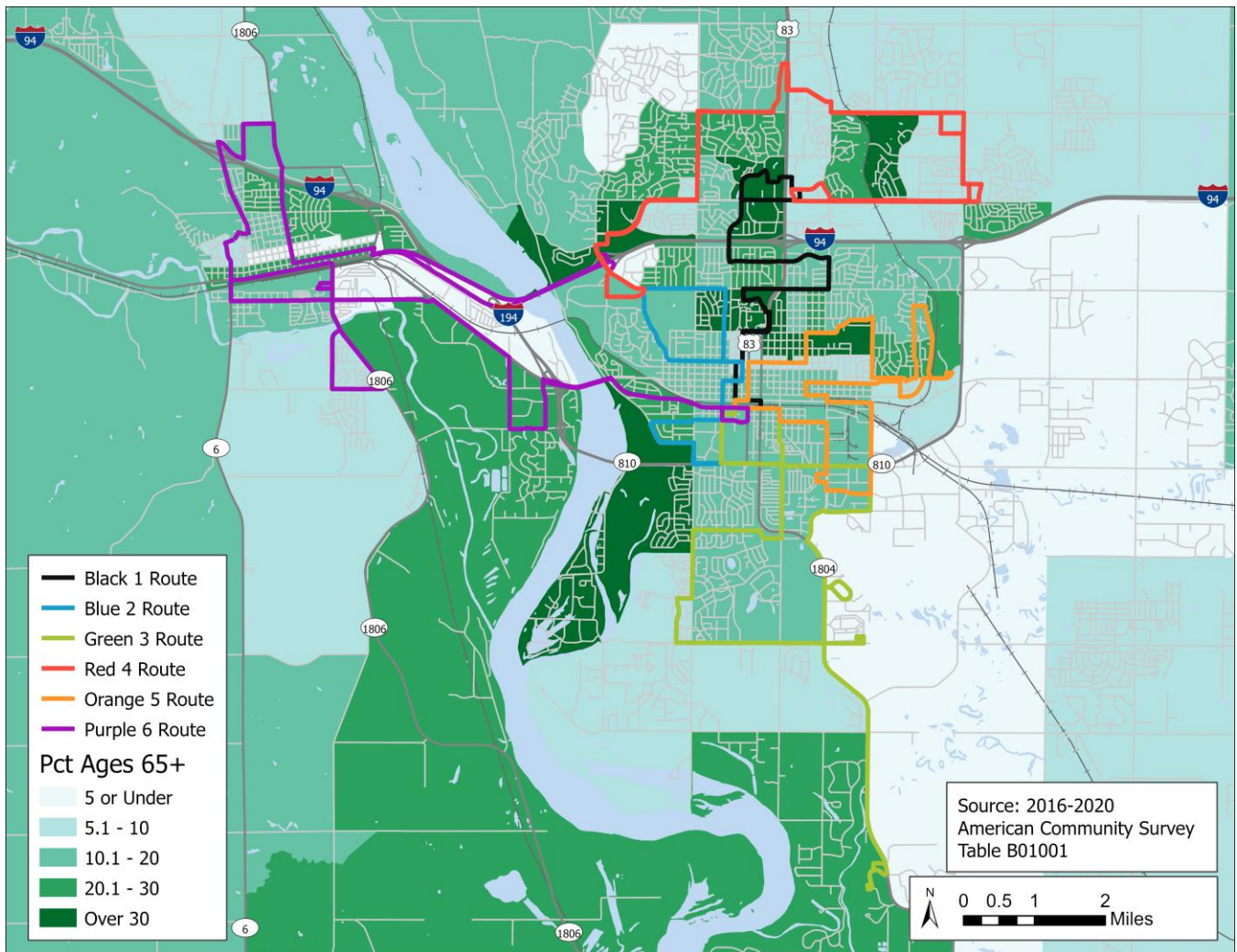




Figure 17 shows the percentage of each block group’s residents who are people of color, here defined as those who self-identified in the 2016-2020 American Community Survey as a race other than White Alone. It therefore includes all racial minorities and mixed-race residents. Though there is a concentration of people of color in Bismarck’s city center, these populations are distributed throughout the metro area. Overall, there are fewer service gaps in neighborhoods with higher percentages of people of color.

Figure 17. Population of Color by Block Group

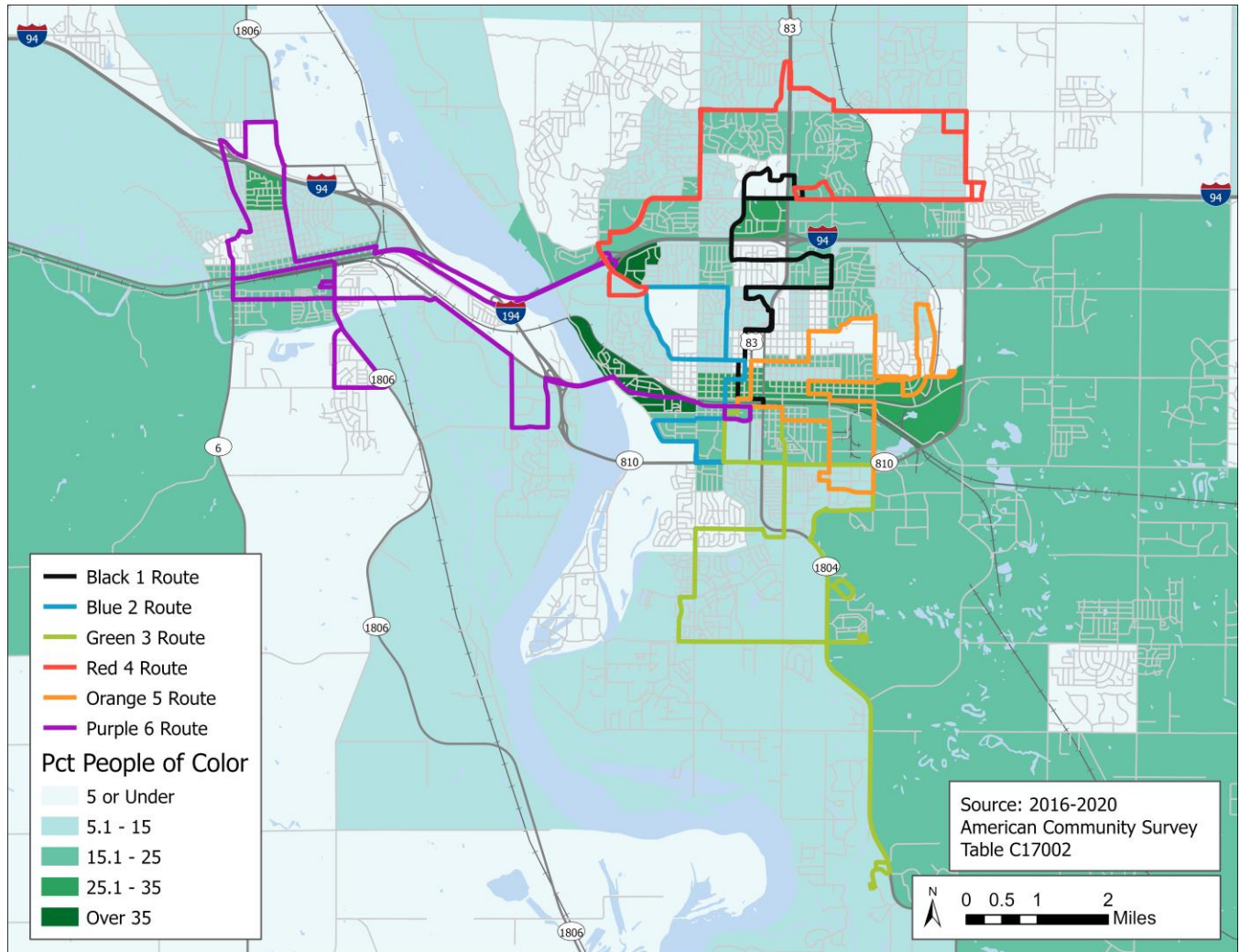


Figure 18 shows the percentage of each block group with Hispanic or Latino origin. This comprises people of all races (or combinations of races), including people of color and those who consider themselves both white and Hispanic or Latino. Some block groups have no Hispanic or Latino residents at all, while most other block groups' populations are under five percent. However, there are higher concentrations of Hispanic and Latino residents in Mandan's urban core, some neighborhoods of Bismarck's urban core, and its easternmost neighborhoods, which contain relatively few total households. The Purple Route is less frequent than the other five routes, so there is some evidence that this population is underserved by the CAT network.

Figure 18. Hispanic/Latino Population by Block Group

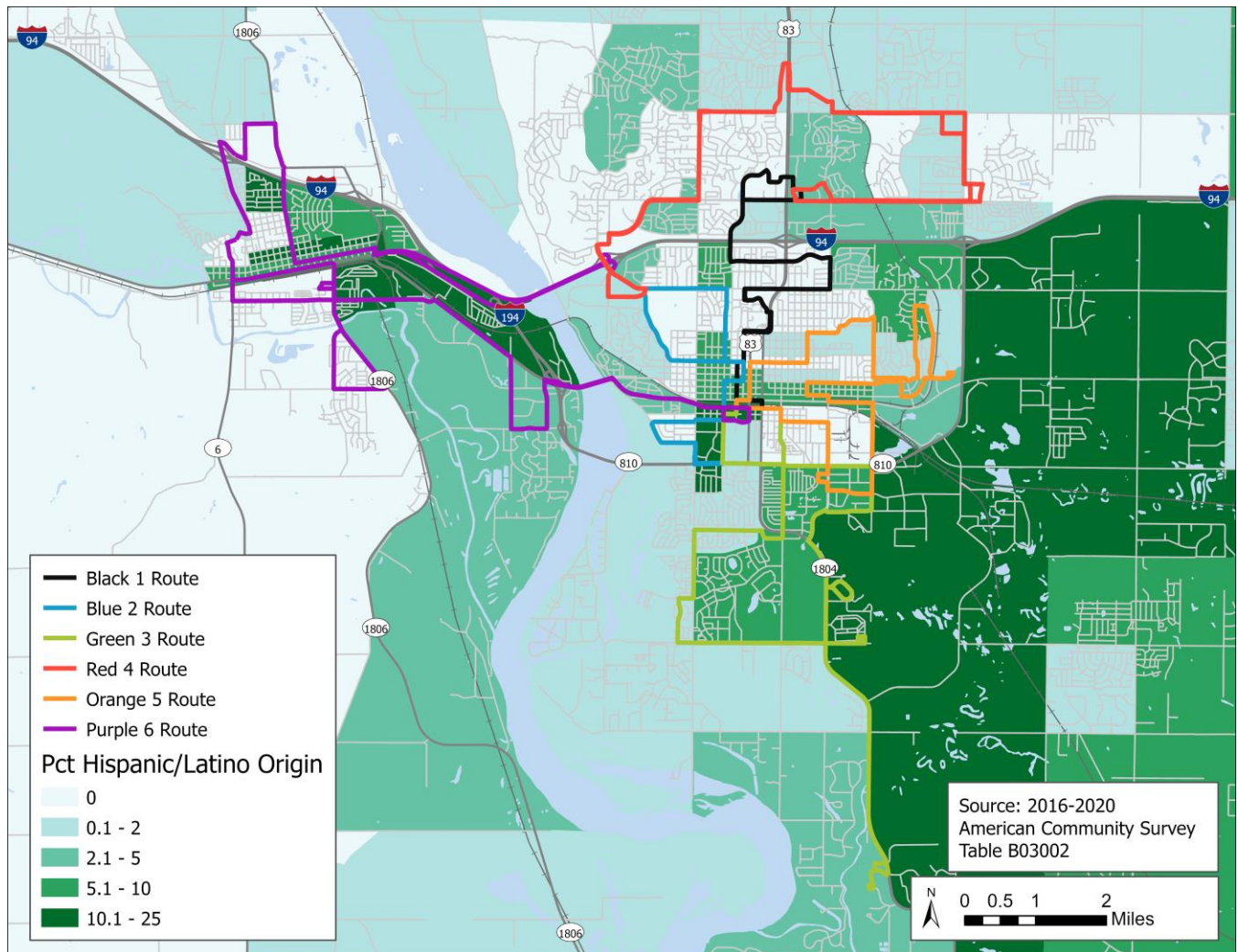
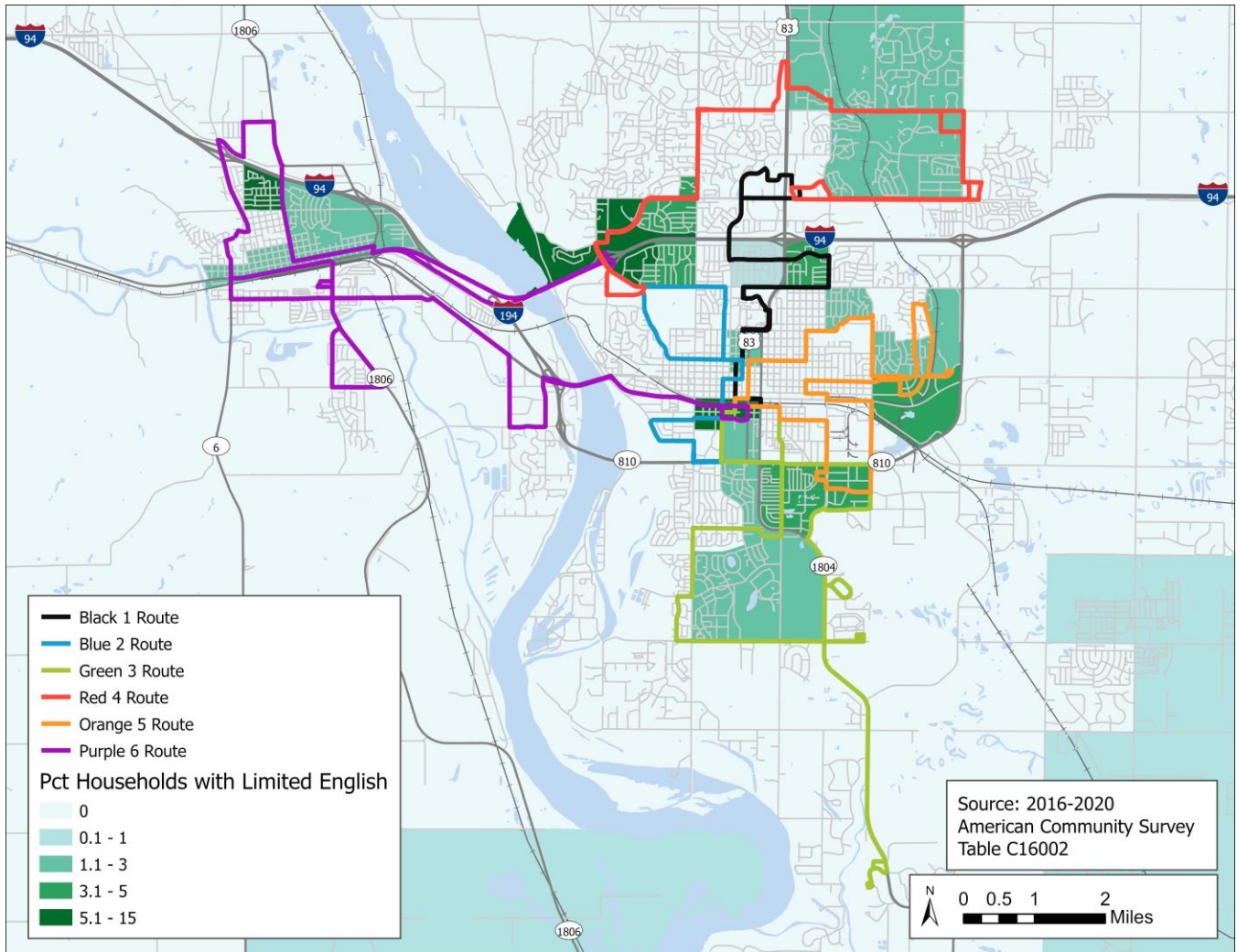


Figure 19 shows the percentage of households with limited English proficiency (LEP). Overall, there is a very low number of LEP households, with most block groups containing none at all, but a few spots of higher concentration exist in central areas in both Bismarck and Mandan.

Figure 19. Limited English Proficiency by Block Group





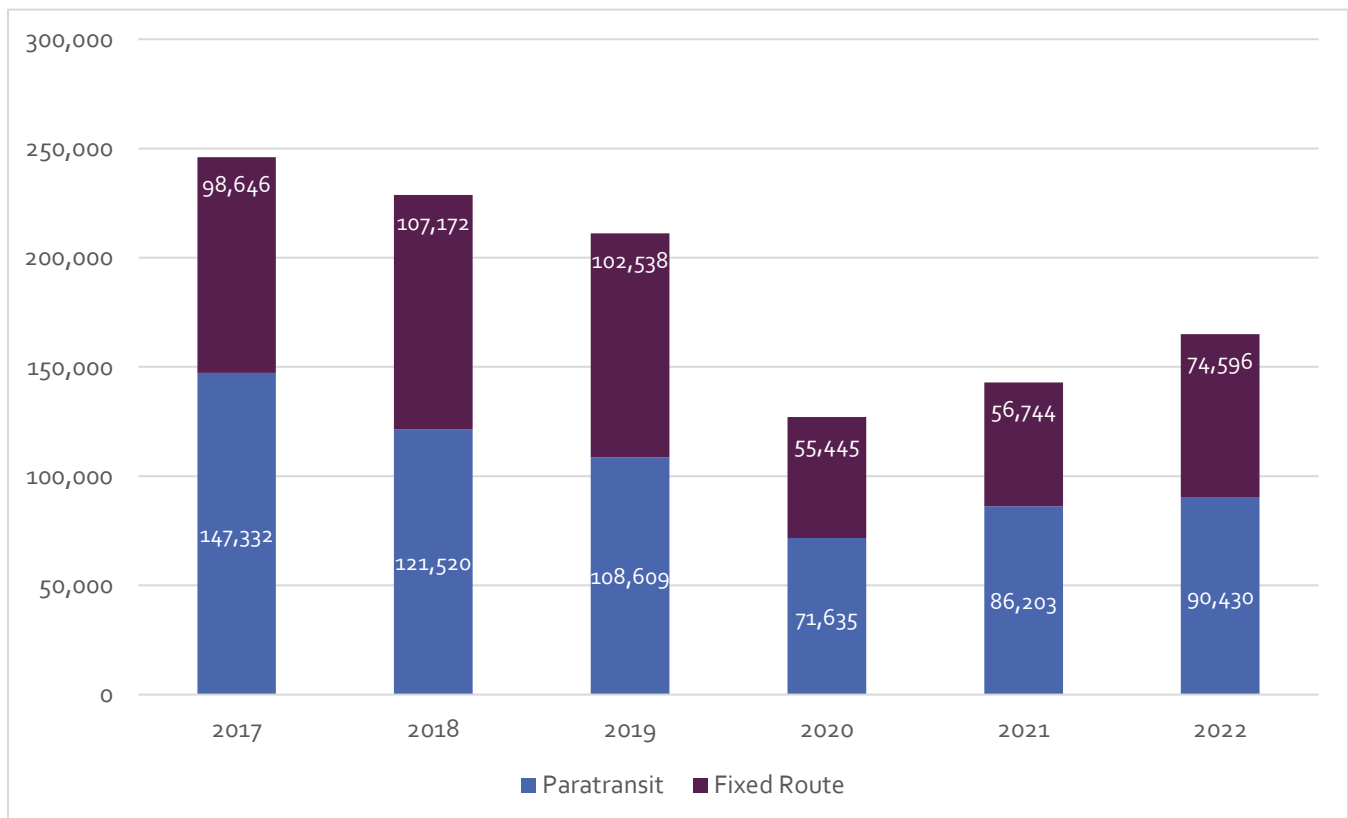
## 7) Existing Service Review

### a) Systemwide

Figure 20 shows five years of historical ridership in terms of total boardings per year. Both fixed-route and paratransit ridership followed the same pattern: gradually declining from 2017 to 2019, falling sharply in 2020 due to the COVID-19 pandemic, and recovering slightly over the course of 2021-2022.

Paratransit consistently generated more than half of each year's total boardings. With that said, fixed-route ridership showed better recovery in 2022, narrowing the gap between the two modes.

Figure 20. Ridership by Mode, 2017-2022



Source: National Transit Database

### b) Fixed Route

#### i) Standard Performance Metrics

Every transit agency reports certain operating statistics annually to the FTA National Transit Database. This standardized data source allows comparison across years, modes, and transit agencies. Table 9 shows several key operating statistics reported by Bis-Man Transit for its fixed-route service over five years. Both revenue hours and passenger trips dipped in 2020. Revenue hours recovered to pre-pandemic levels, while passenger trips did not.

**Table 9. Fixed-Route Operating Statistics over 5-Year Period**

Operating Statistic	2017	2018	2019	2020	2021
Revenue Hours	24,146	21,340	20,811	18,400	21,707
Passenger Trips	98,646	107,172	102,538	55,445	56,744
Operating Expenses	\$1,610,875	\$1,574,148	\$1,558,069	\$1,420,374	\$1,699,835
Passenger Revenue	\$66,516	\$78,141	\$74,006	\$51,884	\$50,929

Source: National Transit Database

Although reporting is standardized by FTA, performance metrics are not. It is up to the transit agency to identify which objectives and accompanying metrics are most relevant to them. The performance metrics chosen for Bis-Man Transit are described below and summarized in Table 10.

- Cost effectiveness addresses transit use in relation to the level of resources expended. The primary measure for comparison in this category is operating cost per passenger trip. The lower the cost per passenger trip, the more cost effective the service.
- Cost efficiency examines the amount of service produced in relation to the amount of resources expended. Operating cost per revenue hour is often a primary measure of a service’s cost efficiency.
- Service effectiveness is a measure of the consumption of public transportation service in relation to the amount of service available. Passenger trips per revenue hour is the measure used to assess service effectiveness.
- Passenger revenue effectiveness is measured with three metrics in this analysis: passenger revenue per passenger trip, operating ratio, and net expense (subsidy) per passenger trip.
  - Passenger revenue per passenger trip, or average fare per passenger trip, measures the amount each passenger is paying to use the service. The higher the average fare, the more cost is being borne by the passenger.
  - A system’s operating ratio is the ratio of revenues to operating expenses and measures the level of operating expenses that are recovered through passenger fare payment. This measure is also referred to as the operating ratio or farebox recovery. It is expressed as a percentage to represent what percent of operation expenses are recovered through fare revenue.
  - Net expense (subsidy) per passenger trip is used to measure the cost of each passenger trip that is paid for by public operating subsidy. Subsidy per passenger trip is calculated by subtracting passenger revenues from total operating expenses and dividing by total trips. The higher the operating subsidy, the more local, state, and federal resources are required to cover expenses.

**Table 10. Performance Objectives and Metrics**

Performance Objective	Performance Measure
Cost Effectiveness	Operating Expenses Per Passenger Trip
Cost Efficiency	Operating Expenses Per Revenue Hour
Service Effectiveness	Passenger Trips Per Revenue Hour
Passenger Revenue Effectiveness	Average Fare Per Passenger Trip
	Operating Ratio (Passenger Revenues Per Operating Expenses)
	Subsidy Per Passenger Trip

Table 11 shows these performance statistics for Bis-Man Transit from 2017 to 2021. Relative to the number of trips taken, expenses rose and fare revenue fell over this period.

Table 11. Fixed-Route Performance Statistics over 5-Year Period

Performance Measure	2017	2018	2019	2020	2021
Operating Expense Per Passenger Trip	\$16.33	\$14.69	\$15.20	\$25.62	\$29.96
Operating Expense Per Revenue Hour	\$66.71	\$73.77	\$74.87	\$77.19	\$78.31
Passenger Trips Per Revenue Hour	4.09	5.02	4.93	3.01	2.61
Average Fare Per Passenger Trip	\$0.67	\$0.73	\$0.72	\$0.94	\$0.90
Operating Ratio	4%	5%	5%	4%	3%
Subsidy Per Passenger Trip	\$15.66	\$13.96	\$14.47	\$24.68	\$29.06

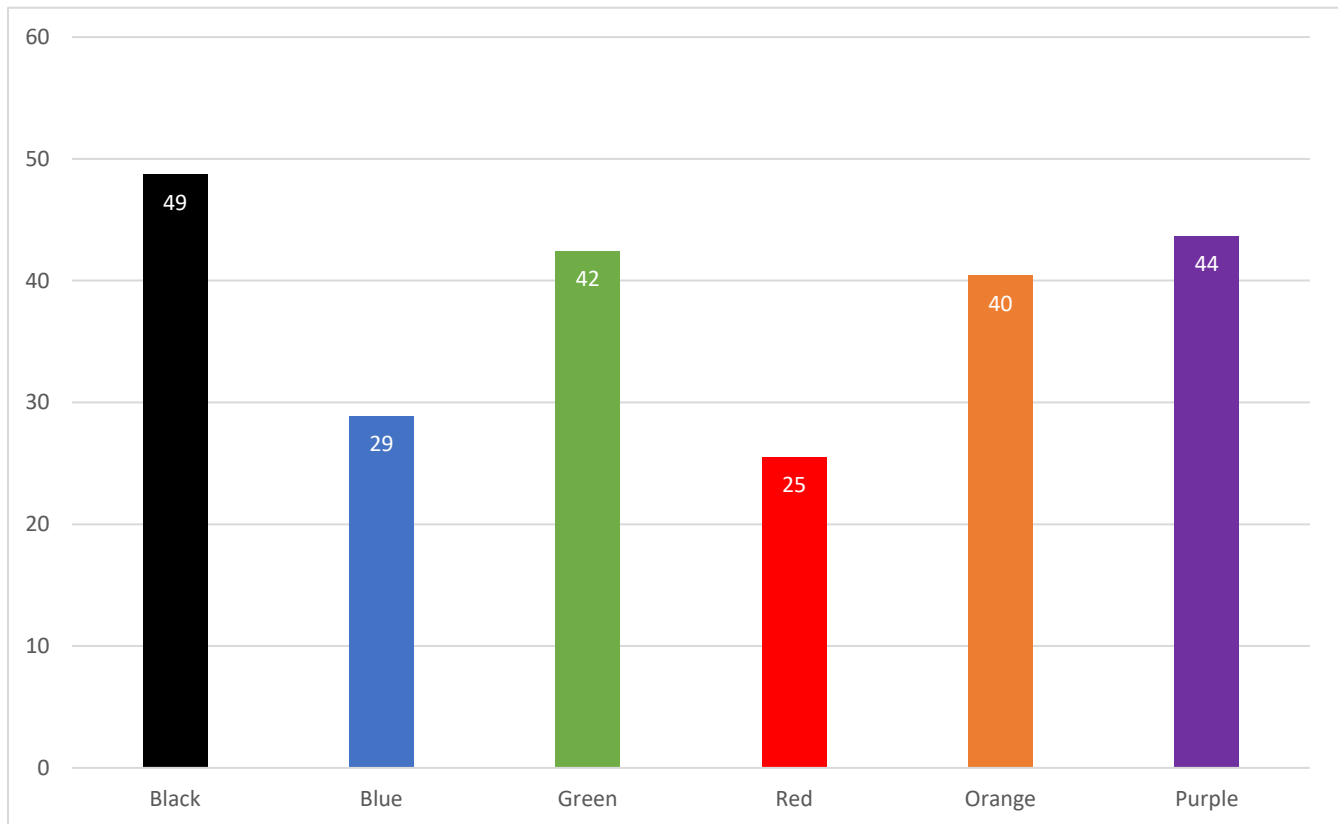
Source: National Transit Database

## ii) Route-Level Analysis

The following section summarizes existing fixed-route performance at the route level. As Figure 21 shows, ridership varies by route. The Black 1 Route has the highest ridership in the system, with 49 boardings on an average weekday. The Red 4 Route has only about half that ridership, at 25 average boardings.

Of note is that the second-highest weekday ridership on the system is seen on the Purple 6 Route, despite its limited schedule.

Figure 21. Average Weekday Boardings by Route (August 2021 – July 2022)

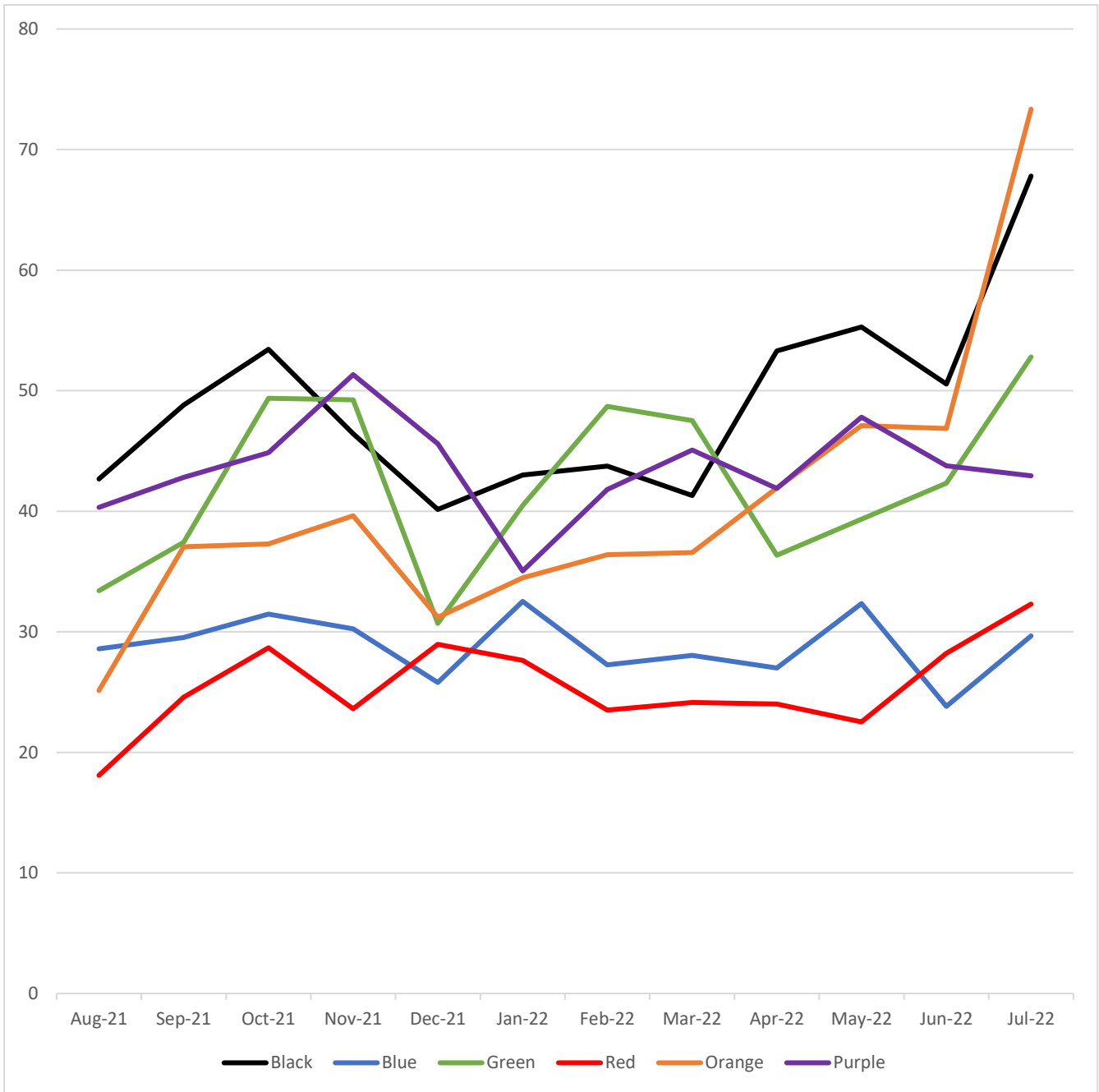


Source: SRF analysis of Bis-Man Transit data

Figure 22 displays the fluctuation of average boardings by route over the course of a year. Ridership on the Green 3 Route dropped in December, likely due to winter break at U-Mary. Ridership on most routes jumped upward between June and July of 2022.



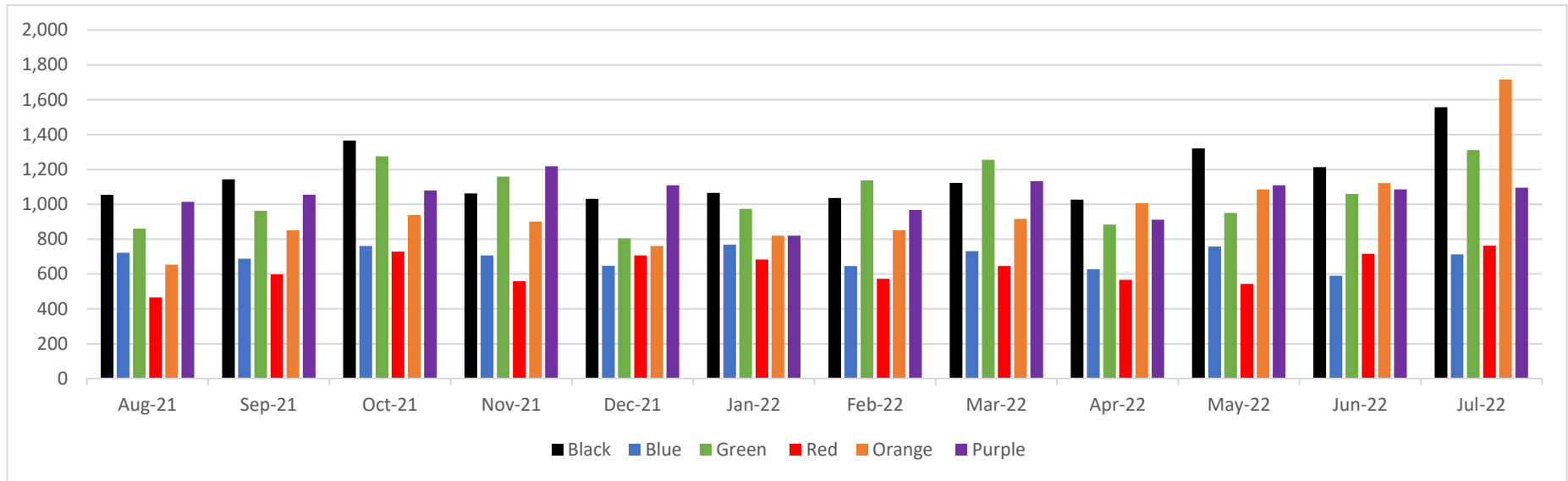
Figure 22. Average Weekday Boardings by Route and Month



Source: SRF analysis of Bis-Man Transit data

Figure 23 shows the total ridership by route from August 2021 to July 2022, including both weekdays and Saturdays. The highest-ridership month was July 2022. A total of 1,716 boardings were made on the Orange Route, and 1,557 on the Black Route. On the Black Route, the lowest-ridership month was April 2022 with 1,026. From month to month, the Blue and Red Routes were trading off for last place.

Figure 23. Total Boardings by Route and Month



### iii) February 2021 Route Change

In February of 2021, CAT underwent a major route redesign. The changes expanded the service boundary eastward, from 26<sup>th</sup> to Centennial Road and Bis-Man Transit’s headquarters. In summary, the changes were as follows.

- Previously there had been two routes serving Mandan, 5-Brown and 6-Purple. These routes were consolidated into one Purple route serving both areas. At the same time, frequency of the Purple route was halved.
- 4-Red, which had previously run a zigzag route from its northernmost point at the Skyline Boulevard Walmart down to the Front Avenue transfer stop and the Bismarck Event Center, was shifted east to add service to 43<sup>rd</sup>, Centennial Road, and Century. It no longer serves Front Avenue. Frequency was doubled from a trip every two hours to a trip every hour.
- Some of the neighborhoods south of Century that had been served by the Red route are now served by the newly created 4-Orange route. In addition, the Orange route adds service to the Transit Center via Rosser.
- 2-Blue was changed from bidirectional service to a loop, and its south end (previously serving Reno) was truncated by two blocks (now ending at the Bismarck Expressway).
- 3-Green was extended southwest on Burleigh and Washington.
- 1-Black saw only small changes to its alignment.
- Table 12 shows the average on-time performance (OTP) of fixed-route buses before the route change and in more recent months.

Table 12. On-Time Performance (CAT)

Time Period	Average % On-Time
Before Route Change (2019)	80.3
Since Route Change (July 2021-August 2022)	85.6

Source: SRF analysis of Bis-Man Transit data. CAT OTP is not available for Jan -June 2021.

### c) Paratransit

Table 13 shows key operating statistics for paratransit during the period between 2017 and 2021.

Table 13. Paratransit Operating Statistics over 5-Year Period

Operating Statistic	2017	2018	2019	2020	2021
Revenue Hours	45,012	40,047	38,615	28,715	28,950
Passenger Trips	147,332	121,520	108,609	71,635	86,203
Operating Expenses	\$2,151,561	\$2,288,926	\$2,537,027	\$2,070,486	\$2,111,094
Passenger Revenue	\$443,872	\$331,958	\$303,168	\$168,945	\$249,680

Source: National Transit Database

Table 14 shows paratransit performance measures. The operating ratio is higher than with fixed-route transit. That is partly because paratransit charges a higher fare, but it is also because paratransit service is

driven by demand. This means that as demand fluctuates over time, operating expenses track the number of trips more closely than is the case with fixed-route service.

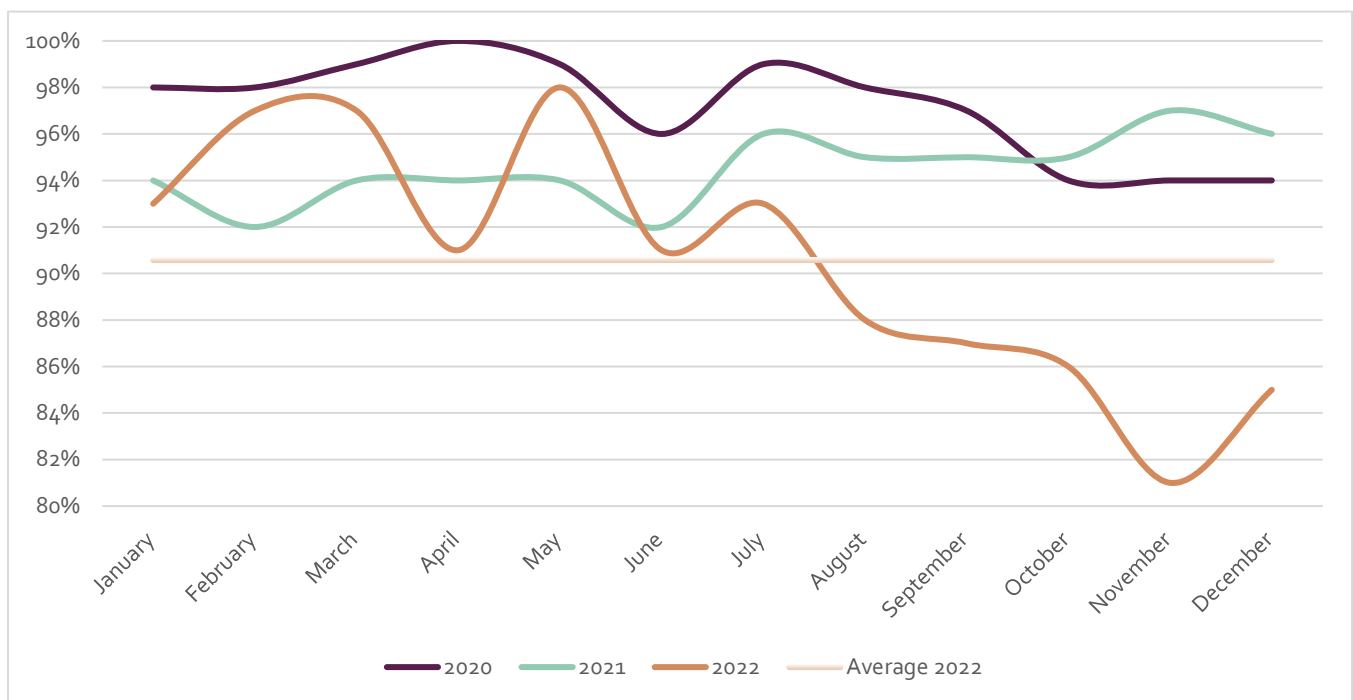
**Table 14. Paratransit Performance Statistics over 5-Year Period**

Performance Measure	2017	2018	2019	2020	2021
Operating Expense Per Passenger Trip	\$14.60	\$18.84	\$23.36	\$28.90	\$24.49
Operating Expense Per Revenue Hour	\$47.80	\$57.16	\$65.70	\$72.10	\$72.92
Passenger Trips Per Revenue Hour	3.27	3.03	2.81	2.49	2.98
Average Fare Per Passenger Trip	\$3.01	\$2.73	\$2.79	\$2.36	\$2.90
Operating Ratio	21%	15%	12%	8%	12%
Subsidy Per Passenger Trip	\$11.59	\$16.10	\$20.57	\$26.54	\$21.59

Source: National Transit Database

However, paratransit service can only meet demand if it has the resources to do so. As Figure 24 shows, on-time performance for paratransit has averaged lower each year since 2020. Until recently it remained consistently higher than fixed-route; however, OTP fell sharply in summer of 2022. The primary reason was that Bis-Man Transit began to experience serious staffing issues; however, loss of alternative service contributed, as explained in the following section.

**Figure 24. On-Time Performance (Paratransit)**



**i) Taxi 9000 Closure**

Demand for paratransit services rose in 2022, after one of the region’s three taxi services shut down. Taxi 9000 first announced its closure in April, while waiting on a site inspection by the Medicaid program. It reopened within days of that announcement; however, by September 2022 the company had permanently ended operations.

Paratransit dispatchers reported an immediate flood of enquiries from Taxi 9000 customers. Table 15 illustrates a rise in call volumes over the year, from 9,900 in March to 16,706 in October (an increase of 69 percent).

**Table 15. Paratransit Call Volumes 2022**

Month	Inbound Calls	Inbound Answered	% Answered	Avg Waiting Time	% Answered < 10 Seconds
Mar-22	9,900	9,386	95%	0:00:11	81.8%
Apr-22	15,542	13,936	90%	0:00:17	74.4%
Aug-22	16,149	14,971	93%	0:00:18	75.3%
Oct-22	16,706	15,174	91%	0:00:22	72%

Source: Bis-Man Transit

In January 2023, Bis-Man Transit was able to bring its on-time performance for paratransit service back up to 95 percent. However, the agency does not have the capacity to meet all potential demand for paratransit services. It has had difficulty in hiring new drivers and that situation is likely to continue, as driver shortages are a problem throughout the country.

## 8) Public Engagement

During 2022-2023, a series of activities solicited input from community members to help guide priorities for the project and acquire feedback on proposed alternatives. The activities are outlined in Table 16 below.

Table 16. Public Engagement Schedule

Date	Description
Sep 17, 2022	Booth at Bismarck Street Fair
Sep 24-27, 2022	Ridealong conversations on the bus
Oct-Nov, 2022	Community survey
Dec 6, 2022	Open houses at Bismarck library and Mandan city hall meeting room
April 10, 2023	Open houses at Bismarck and Mandan libraries
June 27, 2023	Structure and financial discussion with city staff, commissioner liaisons, transit board members
July 25, 2023	Open houses at Bismarck and Mandan libraries
Ongoing	A dedicated webpage offered updates and requested input by email

### a) Ridealongs

In September 2022, members of the consulting team rode all of the fixed routes in Bis-Man's system and struck up conversations with passengers structured around the following questions:

- What is working well? (What do you like about the route we're on right now?)
- What is *not* working well? (What would you change about the route you're on right now?)
- Are there places you can't reach by transit?
- Have you previously shared your thoughts with Bis-Man Transit? (If yes – how?) (If not – why not?)
- If paratransit service were opened up to the general public, would you use it?

About 25 passengers engaged in conversation. They had positive remarks about the fact that the service exists as an alternative to driving, and several commented that the system met all their needs. On the other hand, many commented that the hours could be extended into the evening and on weekends.

Although not every conversation touched on the final three questions, those who did offer their thoughts were almost uniform in their responses. These passengers felt they could reach everywhere they really needed on transit, although for two there is a long walk involved. Only one had previously shared his thoughts with the organization, and he had not seen his input make a difference. Many passengers commented that they would be interested in using the demand-response service if it were opened up to the general public. For some, this followed previous comments about the lack of evening hours; a few people arranged their work schedules/social lives around the bus schedule and found it limiting. They said they would use an option that extended transit service later in the day.



## b) Survey

A community survey was conducted online from October 24 to November 14, 2022. The survey was directed toward a broad audience and asked questions about the use and perception of transit, potential improvements, and demographics. Outreach for the survey included posts on the websites and social media channels of Bis-Man Transit and the MPO and its member jurisdictions. A link to the survey was also sent by email to a list of stakeholder organizations for wider distribution. On Facebook, the survey post was boosted twice to reach more users with local zip codes.

A total of 172 people completed the survey, although the number of responses for any given question was closer to 100. Their responses can be summarized as follows:

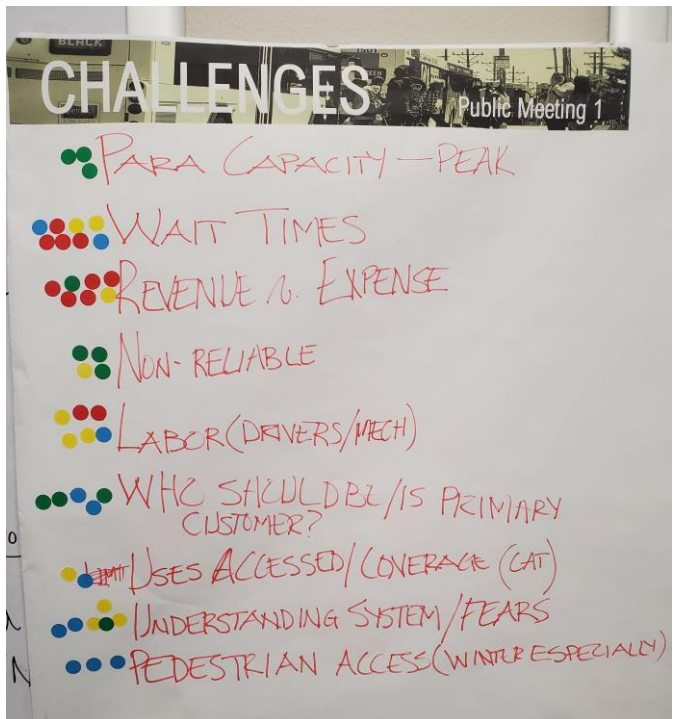
- There are diverse trip purposes among those who use transit.
- Hours of service were the number one reason for not using transit.
- A majority of respondents agree that transit is important for the community, but only a minority say that it meets their daily travel needs.
- Later weekday hours, Sunday service, and new service areas top the list of priorities for fixed route.

The full survey results were shared with Bis-Man Transit in a separate memo.

## c) Public Information Meeting #1

Meetings with the public were held in both Bismarck (Public Library) and Mandan (City Hall) in December 2022, with the purpose of:

- Introducing the transit development plan process to the community.
- Providing people (riders and non-riders) with an opportunity to provide input regarding their experience with service and/or input on why they do not use the service.
- Discussing challenges riders, people that are not currently riding and the agency observe today. Attendees were asked to rank the importance of each of the identified challenges. From the poll, the most important to address are wait times for fixed route and paratransit, the current condition of expenditures outpacing revenue and labor shortages within the agency.



Challenges recorded at December 2022 public meetings

- The background presentation was recorded and uploaded to the Bis-Man Transit website to support community-wide access for people who could not make the meeting. The recorded presentation provided information as to how viewers could connect with the study and provided methods of providing comments through email and/or text.

## d) Public Meeting #2 – April 10, 2023

A second round of public meetings (one in Mandan and one in Bismarck) was held on April 10, 2023. The focus of the second round was presenting and discussing ideas to address the current and anticipated on-going funding gap. Each of the public meetings started off with a presentation on the primary subject areas of the second round, including:

- An update on the overall status of updating the transit plan.
- Introduction of the current and projected Bis-Man Transit financials.
- Alternatives to address the gap, including both service modification (reduction) options and potential sources of increased funding to fill the gap.

The presentation informed participants that the current and projected funding-to-expenditure gap had been an ongoing condition since about 2017. Until recently, Bis-Man Transit had had enough banked funds to fill the gap. Federal funding received through CARES



and ARPA programs developed to address the impacts of Covid bridged a critical period when, by Bis-Man Transit's assumptions, its reserves would otherwise have been exhausted. By mid-2023 these 100 percent federal funding dollars (no non-federal match required to receive the funds) would be spent. Thus, future funding-to-expenditure gaps would result in a draw down from Bis-Man Transit banked funds.

Participants heard that over this period, Bis-Man Transit had discussed and/or implemented a number of measures to reduce or close the gap before considering requesting an increase in local funding to help fill the gap. Ideas considered or implemented include:




- Identifying additional federal and private grants to increase revenue from other (non-local) sources.
- Securing additional advertising revenue through more aggressively finding partners to fund bus advertising wraps and other visible sources.
- Created a public transit working group with city staff to expand the understanding of service, discuss opportunities to close the gap and the local benefits of transit service.
- Conduct strategic planning sessions with the Board of Directors in which opportunities to address the gap are discussed.

In the meeting, three reduced service concepts that could result in reduced operating costs were presented. It was emphasized that each of the alternatives has negative impacts on current system users, including fixed route riders and paratransit riders. Thus, while most of the alternatives have a lower operating cost, from the perspective of current users, none of the alternatives were acceptable. Meeting attendees were asked, through a raised-hand vote, to provide input as to whether they supported or opposed the concept, using the color scale below:

- Green light – Support the concept
- Yellow light – Tempered support, but also some concern about the negatives
- Red light – Do not support/Oppose

Table 17 highlights the alternatives and the resulting preference voting across the two public meetings.

Table 17. Alternative Service Concepts Discussed at April 2023 Public Meeting

Service Alternative	Description	Preferences Expressed at Public Meetings
Fixed Route with Same Hours Paratransit	Retain fixed route service at current level. Reduce non-ADA service (paratransit outside fixed route hours and days) to be the same as fixed route.	 Some support of the alternative relative to others.
Convert Fixed Route to Demand Response – Co-mingle all riders	Eliminate fixed route service. Use vehicles (or more appropriate replacements) and paratransit vehicles to provide demand response service (no certified paratransit user preference).	 Not supported – Capacity is substantially less than demand – Fewer rides supported each day.
Provide Elderly and Disabled Service Only	Eliminate fixed route service. Provide demand response service to only seniors and persons with disabilities.	 Not supported. Concept does not close the funding gap (even as it costs less money) because Section 5307 funding would likely be lost.

In addition to discussing the alternative service concepts, preliminary ideas for increasing funding were introduced. The intent of introducing the alternative funding concepts was to get ideas in the open that would be reviewed in greater detail going forward in the transit planning study. Alternatives introduced were:

- Increase the current property tax levy. Both primary service communities have reserve capacity in the allowable five mill property tax levy (Bismarck is presently at three mills and Mandan is at two mills). Increasing the mill levy requires a referendum vote in either community.
- Establish a local retail sales tax dedicated to transit operations. Presently, Bismarck has a one-half cent tax on retail sales to fund specific transportation improvements. A concept similar to this was discussed as a means of closing the funding-to-expenditure gap.

The meeting presentation was recorded and along with the displays and presentation slides, were made available for download on the Bis-Man Transit website.

## e) Public Meeting #3

The final public meeting series on July 25, 2023, covered funding and a summary of a review of alternative structures for managing transit service in the Bismarck-Mandan region. As with the first and second rounds, meetings were held in Mandan and in Bismarck, with consistent material covered in each meeting. The meeting presentation provided information on the following:

- An update on the overall status of updating the transit plan.
- Review of the current Bis-Man Transit organizational structure and potential alternatives.
- More detailed discussion of the funding gap and alternatives to address the gap.

Participants heard that the current gap between revenue from all sources and expenditures is anticipated to result in exhausting the operating and capital fund by approximately 2026. Work completed as part of the transit plan identified:

- The current and anticipated funding gap going forward.
- Alternative revenue enhancement concepts for discussion.
- Pros and cons of the revenue enhancement alternatives.

A review of the current organizational structure has included alternatives that would relocate transit into a department of the City of Bismarck and an alternative that would establish a standalone transit authority. The positive and negatives of each alternative were discussed at the public meeting and input from attendees was collected. Key to the review was, what are the impacts to fixed route and paratransit riders. Whether the current organizational structure remains the same as today or would change to any of the alternatives reviewed, users would not really see a change from the current. A contractor would still provide daily service, which is the primary interface with passengers. The intent of the organizational review in the transit plan is to document any issues or concerns there are with the current structure, review options and narrow the range to ideas that could be reviewed in more detail in the future. No decisions regarding a change are to be made as part of the transit plan update.

From the second round of public meetings the primary takeaway was that service reductions should be a last resort, with the first path to closing the gap being requesting additional local funding for transit. Presented and discussed at the meetings were the alternatives addressed in the financial analysis and initial reactions received from discussions with Board members and city staff. The direction received from conversations was a sales tax likely has a better potential for implementation than asking for an increase in the property tax levy. While no final decisions have been made, opportunities for a sales tax continue to be discussed with city staff and decision-makers.

The meeting presentation was recorded and along with the displays and presentation slides, were made available for download on the Bis-Man Transit website.



# APPENDIX

# Technical Memorandum: Future Funding Projections



## Bismarck-Mandan Transit Future Funding Projections

This technical memo follows the financial existing conditions and provides a look into the agency's future funding and cost projections. While future costs and funding are inherently uncertain, the projections included in this memo utilize data from previous years of operations (2018-2022) as well as historic trends and insights into industry trends to develop the best-available analysis.

### FUTURE INCOME ASSUMPTIONS

As noted in the existing conditions memo, BisMan Transit's income is derived from four primary sources: direct revenue (including farebox revenues), and federal, state and local contributions. Future projections for 2024-2029 for these sources were based on the following assumptions:

- **Direct Revenues** were escalated at 2% per year from 2023 levels, based on conservative industry trends. Notably, local historic trends are difficult to interpret due to revenue loss during the COVID-19 pandemic. However, this rate of escalation is considered quite conservative since revenues would still be below pre-pandemic levels by 2029.
- **Federal funding** is divided between operations and capital funding. Operations funding (FTA 5307 formula funding) was escalated at 2% per year from 2023 levels. This is in line with the recent increase in funding levels from 2022 to 2023, and reflects a conservative estimate that federal funding will remain essentially flat for the next five years. Capital funding is assumed to cover 85% of that year's vehicle replacement costs, per federal policy. Other federal funding in recent years include pandemic relief funds, which are not anticipated to be continued in the future.
- **State funding** is assumed to be continue at 2023 levels in future years, based on recent historic trends that show state funding slightly fluctuating each year, but not meaningfully increasing.
- **Local funding** comes in the form of contributions from the Cities of Bismarck, Mandan and Lincoln. Bismarck and Mandan each contribute through a property tax mill levy. The mill levies are not anticipated to increase, and funding has escalated at 3% each year to reflect rising property values. The City of Lincoln provides a lump sum each year which was held consistent (\$15,000 per year) with no change in funding assumed.

Previous funding (2018-2022) and future projections (2023-2029) using the noted assumptions are as follows:

	Previous Years				
	2018	2019	2020	2021	2022
Federal Operation Funding	\$1,437,271	\$1,822,290	\$1,577,888	\$1,384,082	\$1,711,464
Federal Capital Funding	\$1,008,200	\$1,193,673	\$417,568	\$334,512	\$1,688,543
Other Federal Funding	\$-	\$-	\$-	\$1,041,611	\$1,332,896
Total State Funding	\$421,500	\$487,000	\$430,940	\$365,000	\$411,593
Total Local Contributions	\$1,322,556	\$1,323,856	\$1,477,666	\$1,492,386	\$1,488,736
Direct Income	\$609,602	\$656,617	\$587,371	\$496,601	\$468,301
<b>Total Income</b>	<b>\$4,799,129</b>	<b>\$5,483,436</b>	<b>\$4,491,433</b>	<b>\$5,114,193</b>	<b>\$7,101,533</b>

Table 1: Previous Funding Data, 2018-2022

	Current Year	Future Projections					
	2023	2024	2025	2026	2027	2028	2029
Federal Operation Funding	\$1,744,938	\$1,779,837	\$1,815,433	\$1,851,742	\$1,888,777	\$1,926,553	\$1,965,084
Federal Capital Funding	\$817,700	\$976,990	\$1,474,070	\$858,330	\$1,545,300	\$-	\$1,015,070
Other Federal Funding	\$482,400	\$-	\$-	\$-	\$-	\$-	\$-
Total State Funding	\$362,177	\$362,177	\$362,177	\$362,177	\$362,177	\$362,177	\$362,177
Total Local Contributions	\$1,628,095	\$1,676,938	\$1,727,246	\$1,779,063	\$1,832,435	\$1,887,408	\$1,944,031
Direct Income	\$517,035	\$528,401	\$540,020	\$551,897	\$564,039	\$576,451	\$589,140
<b>Total Income</b>	<b>\$5,552,345</b>	<b>\$5,324,342</b>	<b>\$5,918,946</b>	<b>\$5,403,210</b>	<b>\$6,192,728</b>	<b>\$4,752,589</b>	<b>\$5,875,502</b>

Table 2: Future Income Projections, 2023-2029

## FUTURE COST ASSUMPTIONS

Future costs are anticipated to come from four major categories: operations, personnel, vehicle replacement and capital costs, and other expenses. Future projections for 2024-2029 for these categories were based on the following assumptions:

- Operations costs** primarily include the agency’s contract with a third-party agency. This contract represents the most significant cost for the agency each year. The current operations contract with expire at the end of 2023, resulting in a new negotiated contract. The last time the contract was re-negotiated (2019) operations costs that year increased 22% from the previous year, and then remained relatively steady throughout the contract period. Because of this, operations costs are assumed to increase 17% in 2024, and then increase a nominal 4% each year during the remainder of the contract period (2025-2028). Costs are also anticipated to increase by 17% in 2029, the next year the contract will be re-negotiated.
- Personnel** expenses are not anticipated to substantially change, other than yearly adjustments due to the cost of living and insurance. Personnel costs are assumed to increase 5% each year.

- **Vehicle purchase** costs are based on the agency’s fleet management spreadsheet, which is used to plan out bus purchases for both fixed route and paratransit vehicles. The total cost varies each year depending on the amount of vehicles purchased, from a low of \$0 (no vehicles purchased) in 2028 and a high of \$1.8 million in 2027 (6 vehicles purchased). No other major capital expenses are anticipated during the 5-year horizon of these projections.
- **Other expenses** include vehicle fuel, supplies, insurance costs, security, and other miscellaneous costs. These are anticipated to rise 5% per year based on a 2022 baseline (2023 fuel cost estimates were artificially inflated due to high fuel costs assumptions at the time the budget was created, so is not considered a good baseline estimate). This escalation factor is based on historic and industry trends in inflation.

Historic cost data (2018-2022) and future cost projections (2023-2029) using the noted assumptions are as follows:

	Previous Years				
	2018	2019	2020	2021	2022
Operations Contract	\$2,761,105	\$3,375,383	\$3,248,142	\$3,279,328	\$3,560,657
Personnel	\$237,919	\$255,083	\$237,276	\$243,713	\$291,770
Vehicle Purchase	\$1,136,800	\$1,338,082	\$368,050	\$148,158	\$1,810,120
Fuel and Other Expenses	\$947,029	\$1,053,668	\$906,086	\$953,753	\$925,046
<b>Total Income</b>	<b>\$5,082,853</b>	<b>\$6,022,216</b>	<b>\$4,759,554</b>	<b>\$4,624,952</b>	<b>\$6,587,594</b>

Table 3: Historic Cost data, 2018-2022

	Current Year	Future Projections					
	2023	2024	2025	2026	2027	2028	2029
Operations Contract	\$3,417,761	\$3,998,780	\$4,158,732	\$4,325,081	\$4,498,084	\$4,678,007	\$5,379,709
Personnel	\$247,275	\$259,639	\$272,621	\$286,252	\$300,564	\$315,593	\$331,372
Vehicle Purchase	\$962,000	\$1,149,400	\$1,734,200	\$1,009,800	\$1,818,000	\$-	\$1,194,200
Fuel and Other Expenses	\$1,458,894	\$1,249,189	\$1,273,740	\$1,299,518	\$1,326,585	\$1,355,006	\$1,384,847
<b>Total Costs</b>	<b>\$6,085,930</b>	<b>\$6,657,008</b>	<b>\$7,439,292</b>	<b>\$6,920,651</b>	<b>\$7,943,234</b>	<b>\$6,348,606</b>	<b>\$8,290,128</b>

Table 4: Future Cost Projections, 2023-2029

### FUTURE FUNDING ANALYSIS

Using the revenue and cost projections detailed above, the total annual projected operating deficit for each year was calculated. This number simply represents the expected revenues minus the expected costs for each calendar yet (note that not all costs occur within a single

calendar year and some funding sources operate on varying fiscal years, but costs and revenues were treated as occurring within a single year for the sake of this analysis).

The results below show a projected deficit occurring in 2023 and continuing each year throughout the short-term future. The operating deficit begins at approximately \$533,000 in 2023, and grows to approximately \$2.4 million by 2029, reflecting operating and capital costs increasing faster than revenue sources.

	Current Year	Future Projections					
	2023	2024	2025	2026	2027	2028	2029
Projected Income	\$5,552,345	\$5,324,342	\$5,918,946	\$5,403,210	\$6,192,728	\$4,752,589	\$5,875,502
Projected Costs	\$6,085,930	\$6,657,008	\$7,439,292	\$6,920,651	\$7,943,234	\$6,348,606	\$8,290,128
<b>Total deficit</b>	<b>\$(533,585.00)</b>	<b>\$(1,332,665.95)</b>	<b>\$(1,520,346.18)</b>	<b>\$(1,517,441.21)</b>	<b>\$(1,750,505.45)</b>	<b>\$(1,596,016.46)</b>	<b>\$(2,414,626.36)</b>

Table 5 Future Operational Deficit Projections, 2023-2029

These projected deficits follow a few years of operating surplus due to temporarily increased revenue from pandemic relief funding. Those funding sources are not anticipated to be provided in the future. Overall, the deficit is expected to increase moving forward as costs continue to escalate faster than revenues grow, with the overall trend shown below.

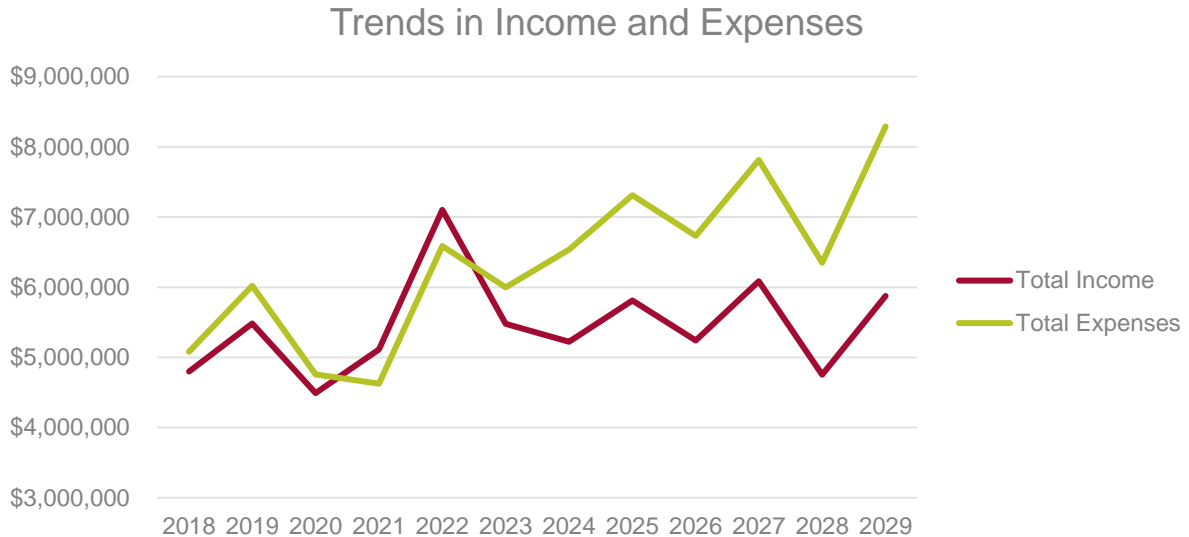


Figure 1 Future Trends in Income and Expenses through 2029

**CASH FLOW ANALYSIS**

Another major aspect of BisMan Transit’s future finances is adequate cash flow. The agency relies on its reserve fund like a checking account to continually pay operating and capital

expenses. While many capital expenses are eligible for federal reimbursement, the agency must cover all costs up front and often receive reimbursement many months later. Operations expenses can be similarly unpredictable, with bills arriving at various times throughout the year. As such, the agency must keep a minimum balance in the reserve fund to cover anticipated and unanticipated expenses throughout the year.

The minimum reserve fund balance is equal to the year’s total expected vehicle replacement costs (since the agency must cover that cost up front) plus approximately 6 months of operating expenses to ensure enough cash flow in the case of lagging reimbursements. The minimum reserve fund for each year is shown below, based on these calculations.

	Current Year	Future Projections					
	2023	2024	2025	2026	2027	2028	2029
Vehicle Replacement Costs	\$962,000	\$1,149,400	\$1,734,200	\$1,009,800	\$1,818,000		\$1,194,200
Six months operating	\$2,561,965	\$2,753,804	\$2,852,546	\$2,955,425	\$3,062,617	\$3,174,303	\$3,547,964
<b>Minimum Reserve Balance</b>	<b>\$3,523,965</b>	<b>\$3,903,204</b>	<b>\$4,586,746</b>	<b>\$3,965,225</b>	<b>\$4,880,617</b>	<b>\$3,174,303</b>	<b>\$4,742,164</b>

Table 6 Future Cash Flow Analysis, 2023-2029

After calculating the annual minimum reserve balance, a cash flow analysis was completed. This involves projecting the year-end reserve balance based the total operating deficit. For instance, if the reserve fund has a balance of \$1 million on January 1, with a deficit that year of \$500,000, the reserve fund on December 31 of that year would be expected to be \$500,000. The results of this cash flow analysis are shown below, based on a January 1, 2023 reserve fund balance of \$4,357,384.19

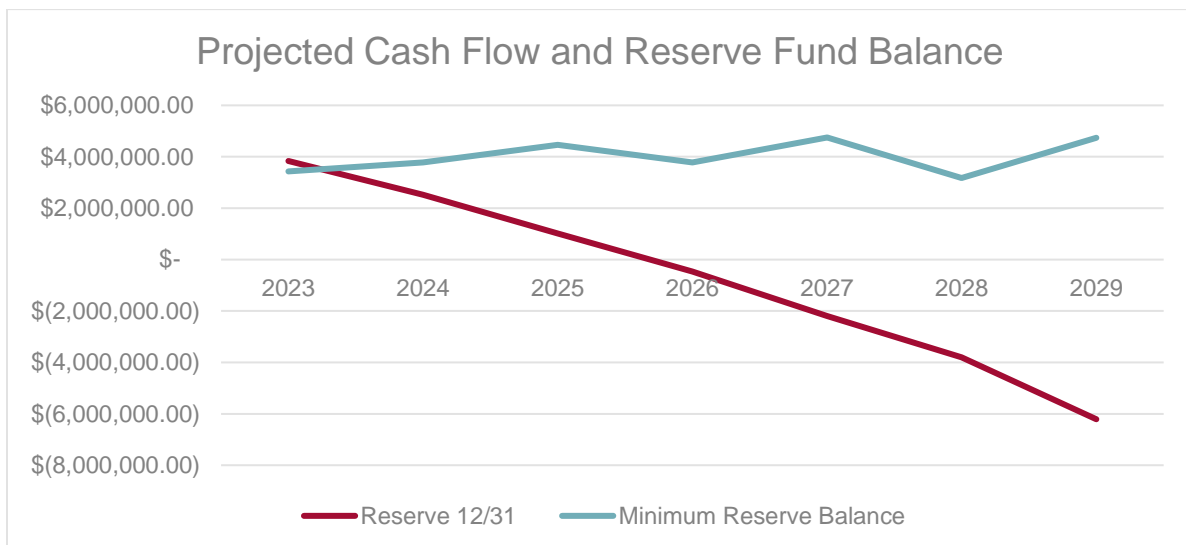


Figure 2 Future Cash Flow Analysis, 2023-2029

This analysis projects that the reserve fund will fall below the ideal minimum balance at some point in 2024 and continue falling due to continued deficits. If no major changes are identified, the fund balance is projected to hit \$0 in 2026 and fall negative in future years. This implies a continued ongoing deficit that will jeopardize the ability of the agency to continue operating.

## **FUTURE OPTIONS**

As the gap between income and costs are anticipated to increase in the coming years, BisMan Transit will need to explore possible ways to bridge that gap. Notably, the agency will need to find ways to either cut expenses or raise additional revenue in order to remain soluble. Likely, both strategies will be necessary. Potential ideas include:

- **Raising local revenues:** The cities of Bismarck, Mandan and Lincoln currently contribute to the agency on an annual basis. Increased local contributions, either through the property tax mill levy or increased lump sum contributions, would help raise overall revenues to offset some of the projected deficit. Additional state revenues may also be an option, and federal revenues may be increased when the results of the 2020 census are finalized, since federal formula funding is based on population formulas.
- **Decreased operating expenses:** The current projected operating costs assume a 17% increase in contract expenses in 2024, based on historic trends. The transit agency only has so much control over this factor since contract rates are set based on a competitive bidding process. Reducing service hours or routes may be another factor to decrease future costs, though it comes at the expense of eliminating service riders may rely on.
- **Reduce capital costs:** BisMan Transit already has no major projected capital expenses besides vehicle replacements over the next 6 years. Vehicle replacements are necessary to maintain the system in good working condition. Some savings may be possible by purchasing smaller vehicles or extending the service life of all vehicles another additional year. However, extending the life of existing vehicles is likely to incur higher maintenance costs, and the overall savings from this strategy are anticipated to be minimal.

## Presentation: Public Meeting #2





# BIS-MAN TRANSIT – TRANSIT DEVELOPMENT PLAN

PUBLIC MEETING #2

APRIL 10, 2023



# BIS-MAN TRANSIT PLAN

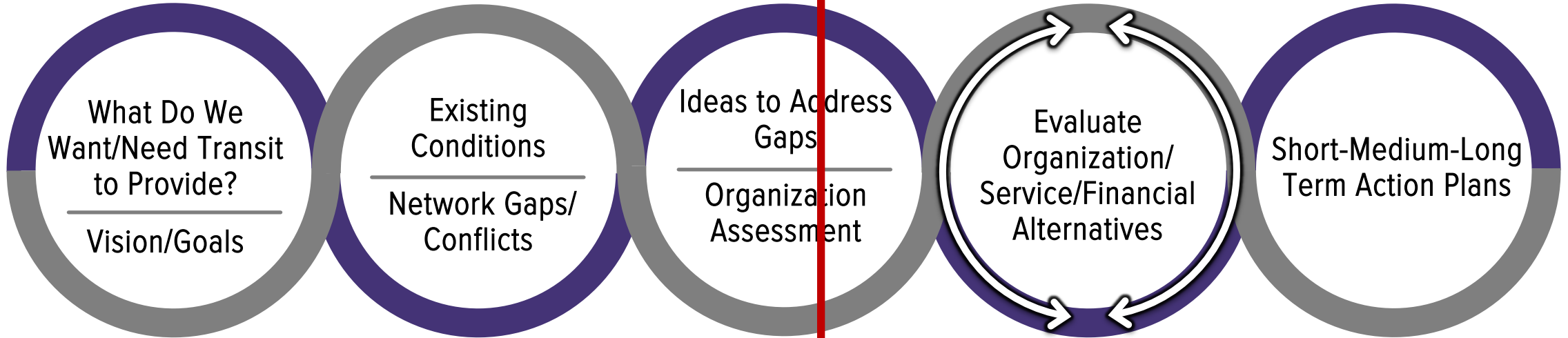


# Public Meeting Overview

- Introductions
- Overview of the Plan Update:
  - Steps
  - Key Areas of Focus
- Current and Projected Financials
- Addressing the Gap:
  - Service Options to Address Gap
  - Financial Options to Address Gap
- Wrap-up/Discussion

# Work Plan for Updating the Transit Plan

Public Engagement In Each Step



Gaps/Conflict:

- Too Few Hours
- Not Enough Coverage
- Capacity Versus Desired Trip Time
- Fare Relative to Ability to Pay
- Operating/Capital Cost Relative to Funding



# Financial Conditions

## Where Are We Today?

- Budget Issues of 2018/19 Have not been Resolved:
  - Costs Exceed Revenue
- CARES/ARPA Funding has Helped During Challenging Period
- Funds have been Exhausted

## What is the Future?

### NO ACTION/STATUS QUO

- Currently Account is at Operating Minimum
- 2024 Estimate \$1.3 Million Below Operating Minimum
- By 2026 Operating Account is Exhausted

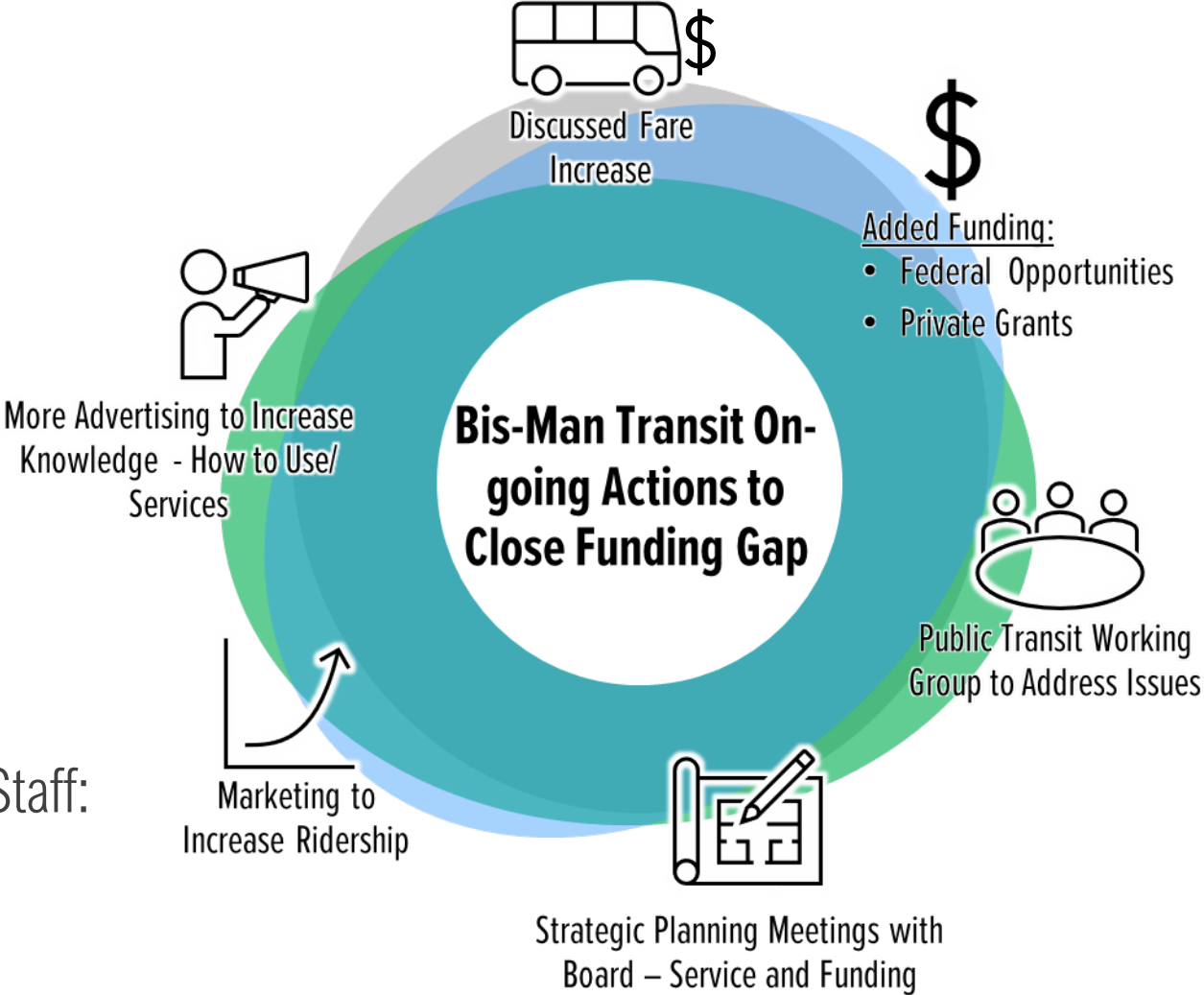


Average Annual Operating Deficit  
(2023-2029)  
\$1.35 Million

2023-2029 Range  
\$520,000 to \$2.1 Million

# Bis-Man Transit Actions to Steady Financial Conditions

- Federal and Private Grant Opportunities
- Expanding Outreach:
  - Advertising
  - Marketing to Gain Ridership
- Discussed Fare Increases
- Strategic Planning Sessions:
  - Service Needs
  - Funding
- Public Transit Working Group with City Staff:
  - Service Issues/Needs
  - Funding



# Financial Conditions

## Adjustments Needed

- Annual Costs by \$1.35 Million
- Revenue by \$1.35 Million
- Share Responsibility to Close the Gap

## What We are Reviewing

- Options to SAVE Money, While Retaining Service:
  - Are there more cost-effective service options?
  - Adjust hours
- Options to Increase Revenue:
  - After Hours service: Fund from non-transit levy source
  - Increase transit levy
  - Others?



- What are User Impacts?
  - Who is Impacted?
  - How Much is Saved?
  - How Much is Gap Reduced?
- 
- What Benefits Does Transit Provide?

# Service Options Being Reviewed

Characteristics of Option	Service Alternative			
	Current – Fixed Route / Paratransit / After Hours	Fixed Route / Paratransit	General Public Demand Response (Same Total Vehicle Number as Current)	Elderly and Disabled Only (Same Number of Paratransit Vehicles)
Change Relative to Current Service	None	(7 AM to 7 PM Weekdays) (8 AM to 7 PM Saturdays) (No Sunday Service)	All Riders need to Reserve Their Trip at least One Day In Advance Option A: Same as Current Paratransit Hours Option B: Same as Current Fixed Route Hours	Elderly and Handicapped Only Reserve Trip at least One Day in Advance (Same Number of Paratransit Vehicles) (Same Paratransit Hours)
Current Rider Impacts	None	<b>13,300 riders on After Hours – Move Trip Time / Do Not Make Trip</b>	Assuming Reservations are First Come, First Served, about <b>Option A: 30,700 Fixed Route/ Paratransit Riders not Served</b> <b>Option B: 44,000 Fixed Route/ Paratransit Riders not Served</b>	<b>80,000 Fixed Route Riders not Served</b>
Eligible Federal Grants	5307 / 5310 / 5339	5307 / 5310 / 5339	5307 / 5310 / 5339	5310 / 5339
Annual Operating/Capital Cost	\$6.8 Million (Average 2023-2029)	\$6.3 Million (Average 2023-2029)	\$6.2 to \$6.7 Million (Average 2023-2029)	\$3.5 Million to \$4.0 Million
Funding Gap	\$1.35 Million	\$1.0 Million	\$0.9 to \$1.34 Million	\$0.5 to \$1 Million





# Funding Grants and Uses

## Current Service

## Elderly/Disabled Service Only

**FTA  
5307**

- Fixed Route and Paratransit Operations
- Short and Long Term Planning
- Capital/Fleet Improvements

**\$1.7  
Million**

**FTA  
5310**

- Capital/Fleet Improvements
- Elderly/Handicapped Operations

**\$0.14  
Million**

**FTA  
5310**

- Capital/Fleet Improvements
- Elderly/Handicapped Operations

**\$0.14  
Million**

**FTA  
5339**

- Capital/Fleet Improvements

**\$0.7  
Million**

**FTA  
5339**

- Capital/Fleet Improvements

**\$0.7  
Million**

**State  
Funds**

- Operations
- Short and Long Term Planning
- Capital/Fleet Improvements

**\$0.4  
Million**

**State  
Funds**

- Fixed Route and Paratransit Operations
- Short and Long Term Planning
- Capital/Fleet Improvements

**\$0.4  
Million**



# Alternate Funding Increase Sources

- Property Tax – Capacity Exists in Transit Levy (Reserve in Bismarck – 2 Mills; Mandan – 3 Mills: Maxing out Levy would Generate \$1.3 Million annually)
- Sales Tax – Small Increment (0.10% would Generate \$1.6 Million Annually)
- Utility Fee - Add to Water/Sewer/Gas/Electric Bill (Dismissed)
- Lodging Fee (Dismissed)

# Funding Comparison for Fixed Route – North Dakota Cities

City	Fixed Route Funding	2020 Urban Area Population	Transit Investment /Capita
Bismarck-Mandan	\$1,669,835	98,198	\$17.00
Minot	\$1,142,740	50,925	\$22.44
Fargo	\$9,947,128	216,214	\$46.01
Grand Forks	\$2,696,389	68,160	\$39.56

# Funding Comparison for Paratransit – North Dakota Cities

City	Paratransit Operating Expenses	2020 Urban Area Population	Transit Investment /Capita
Bismarck-Mandan	\$1,964,234	98,198	\$20.00
Minot	\$2,111,094	50,925	\$41.45
Fargo	\$2,101,230	216,214	\$9.72
Grand Forks	\$1,409,485	68,160	\$20.68

# Capital Investment Options

- Rather than Heavy Duty Buses, Convert Fleet to Smaller/Light Duty Vehicles:
  - Lower Capital Cost per Vehicle (\$125,000 versus \$500,000 – 2023 Estimates)
  - Light Duty has Shorter Useful Life (8 versus 14 years)
  - Local Responsibility (15% of total)
- Looking Forward Two Heavy Duty Bus Replacement Cycles - Saves about \$100,000/Year in Local Funds
- Light Duty Vehicle - Eliminate Need for CDL - Does not Substantially Lower Operating Cost, but Broadens Employee Pool

# Evaluating the Local Transit Investment



## BENEFITS

- Lower Out of Pocket Transportation Costs:
  - Vehicle costs
  - Fuel costs
  - Parking costs
  - Taxi costs
  - Costs friends/family incur to provide ride
- Negative Impacts of Trips Not Made:
  - Lower wages – Work trips not made
  - Higher medical cost – Missed routine trips can become emergency room trips

## COSTS

- Annual Transit Operating Costs
- Annualized Capital Costs:
  - Buses
  - Building Improvements
  - Shelters
  - Equipment

## BENEFITS

- Jobs Supported by Transit (Jobs people get/keep because they have reliable transportation)
- Jobs Created at Transit Agency
- Income Spent in Community from Transit Jobs





# BIS-MAN TRANSIT – TRANSIT DEVELOPMENT PLAN

PUBLIC MEETING #2

APRIL 10, 2023





E

Bis-Man Transit delivers valued public transportation, linking people, jobs and communities.

October 26, 2023

**TO:** Bis-Man Transit Board of Directors

**FROM:** Deidre Hughes, Executive Director

**SUBJECT:** Procurement Policy Revision

**RECOMMENDATION:** Staff recommends approval of this Procurement Policy revision as written.

**BACKGROUND:** The current Procurement Policy was drafted due to recommendations from a procurement training session at the Dakota Transit Association conference in September

**DISCUSSION:** Minor changes to the policy include the addition of relevant procurement forms used to maintain compliance with the Federal Transit Administration compliance.

No changes to the content of the policy were made.

**FINANCIAL IMPACT:** None.



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2023

Bis-Man Transit Board

# ***Procurement Policy and Procedures***

EFFECTIVE OCTOBER 26, 2023

DEIDRE HUGHES

BIS-MAN TRANSIT BOARD | 3750 East Rosser Ave, Bismarck, ND

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**\*Duties and responsibilities attributed to departments and positions not currently utilized by Bis-Man Transit will be the responsibility of the Executive Director or designee.**

## 1.0 PURPOSE AND INTRODUCTION

### Objective

The purpose of this Bis-Man Transit Board (hereinafter “Bis-Man Transit”) Procurement Manual is to define the basic policies and procedures for the procurement of, accounting for, and disposal of Bis-Man Transit materials, equipment, buses, other vehicles, and facilities; and the procurement and administration of professional services and other services required by Bis-Man Transit. The Procurement Manual specifies policy and procedure for all Bis-Man Transit individuals involved in the procurement process.

Bis-Man Transit policies and procedures are established in order to:

1. Maximize the value received for Bis-Man Transit expenditure of public funds,
2. Protect assets purchased with public funds and ensure their application in Bis-Man Transit interest,
3. Provide a timely, efficient, and cost-effective flow of resources necessary to support Bis-Man Transit’s provision of service, and
4. Protect the integrity of Bis-Man Transit procurement process and protect the reputations of Bis-Man Transit, its officers, and its employees.

### 1.1 General Procurement Standards

### 1.2 Competition

It is the policy of Bis-Man Transit all procurement transactions be conducted in a manner intended to maximize full and open competition. Bis-Man Transit will only make awards to responsive and responsible bidders. A responsive offer is one that complies with all material requirements of the solicitation. A responsible bidder is one possessing the technical, physical, financial and ethical capacity to successfully perform a specific contract.

In implementing this standard, staff members are expected to be aggressive in identifying potential vendors for each procurement. If appropriate, each procurement expected to cost above the small purchase threshold shall be advertised in local, and, as appropriate, regional, national and trade publications, and known vendors will be directly informed of the project and encouraged to respond to the solicitation. In addition, each competitive procurement above the small purchase threshold shall be posted on the Bis-Man Transit website. The advertisement and notice shall provide the solicitation number and title, the date of any pre-bid or pre-proposal conference, and the date and time for receipt of responses to the solicitation.

Advertisements and notices shall be issued at the beginning of the solicitation period or as soon thereafter as practicable (e.g. to accommodate the advertising schedules of publications). For procurements below the small purchase threshold, formal advertising is not required, but may be used if appropriate.

1.3 Standards of Conduct

Bis-Man Transit shall maintain this written standard of conduct governing the performance of employees, officers, agents related to the solicitation, award and administration of contracts, conforming to applicable laws and regulations, including but not limited to FTA Circular 4220.1F, as they may be amended from time to time.

1.4 Economic Purchasing

Proposed procurements will be reviewed to avoid duplicative or repetitive purchases to the greatest extent feasible and consistent with good procurement practices. Consideration should be given to consolidating or breaking out procurements to obtain more economic pricing. Where appropriate, analysis will be made of lease versus purchase alternatives or any other appropriate methodology to determine the most economical approach.

1.5 Specifications

All solicitations shall incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such descriptions shall not, in competitive procurements, contain features that unduly restrict competition. The description may include a statement of the qualitative nature of the material, product, or service to be acquired. Whenever practical, requirements will be described in terms of functions to be performed or level of performance required, including the range of acceptable characteristics or minimum acceptable standards. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance; however, when this method is used, the specification must set forth the salient characteristics that the product must meet, and vendors will be allowed to offer "equal" products meeting the salient characteristics. Specifications for bid solicitations, whether by small purchase or formal procurement, shall be sufficiently detailed to ensure that bidders may submit pricing on an "apples to apples" basis. Specifications or scopes of services for negotiated procurements may be more general and accommodate the possibility of alternative solutions or products.

1.6 Contract Administration

Bis-Man Transit will maintain a contract administration system designed to ensure conformance by all parties with the terms, conditions, and specifications of their contracts.

1.7 Records

Bis-Man Transit shall maintain records detailing the history of procurement in a manner consistent with the size, complexity and cost of the contract.

At a minimum, these records shall include:

- (a) The rationale for the method of the procurement
- (b) Selection of the contract type
- (c) Reasons for contractor selection or rejection



- (d) The basis for the contract price
- (e) Independent Cost Estimate

1.8 Contract Period

The period of contract performance for rolling stock and replacement parts shall not exceed five years, inclusive of options, as defined in FTA C 4220.1F. The length of all other contracts shall be based upon sound business judgment, including consideration of issues such as the nature of the item being purchased, the need to afford the contractor a reasonable opportunity to recapture any start-up costs, the need to afford competing vendors the opportunity to do business with Bis-Man Transit, and the relative benefit to Bis-Man Transit of a longer or shorter contract term.

1.9 Use of Existing Contracts

1.9.1 Federal and State Contracts

Bis-Man Transit may consider and pursue, in the interest of economy and efficiency, the use of Federal, State and local intergovernmental agreements for procurements, agreements for the use of common goods and services, or the use of federal or state excess and surplus property, when it is in the interest of Bis-Man to do so and complies with Federal Transit Administration and North Dakota Department of Transportation requirements and guidelines.

1.9.2 Exercising Options in Other Agency Contracts

The term “piggybacking” is often used to describe one transit agency using the existing contract of another transit agency when the awarding agency contract did not originally envision its use by the piggybacking agency. A number of FTA requirements must be met before such a contract may be used. FTA requires the existing contract contain an assignability clause and all required FTA contract clauses and certifications; these clauses cannot be added by Bis-Man Transit as part of its use of the existing contract. All quantities acquired by assigned contract rights must be within the original contract quantities (including options) and acquired within the term of the existing contract. Bis-Man Transit must determine the agency with the contract complied with all FTA requirements relating to competition and performance of a cost or price analysis. Bis-Man must also perform its own cost or price analysis to determine the prices it will pay are fair and reasonable. Bis-Man Transit Staff will obtain all appropriate documentation from the original awarding agency are retained in the procurement file for each acquisition. Piggybacking should not be confused with a joint acquisition, where Bis-Man is a named party in the original solicitation.

1.9.3 Types of Options

Generally, there are three types of options which may be included in a solicitation:

- (a) Options for additional quantities may be utilized when Bis-Man Transit anticipates that quantities of the same goods or services beyond those specified may be

required within the time period of the contract, conditioned upon unsecured funding or potential future events. The additional quantities should be clearly specified and, to the extent reasonably feasible, the time frame identified. Cost factors such as escalation or quantity discounts should be considered in evaluating the price reasonableness of such options.

- (b) Options for additional time periods are often used in annual service contracts, where Bis-Man Transit desires the ability to continue with a contract beyond the base term of the contract, conditioned upon satisfactory performance by the contractor. The total of the option periods should not exceed a reasonable period for the services required, and options cannot be used to perpetuate a contract with one contractor to the detriment of reasonable competition. Factors such as escalation and the economic value of prior experience should be considered in evaluating the price reasonableness of such options.
- (c) Options for additional or alternative types of goods or services may be used where Bis-Man Transit wishes items beyond its estimated capacity to fund the contract (such as a higher quality of product) or where a future set of services may be needed depending upon the results of the initial contract scope (such as in preliminary feasibility or design contracts).

In developing options for a solicitation, Bis-Man Transit and the technical participants must consider the benefits and drawbacks of a new solicitation for the optional items, the impact on competition, and the feasibility of obtaining reasonably accurate pricing.

## 1.10 Protests

### 1.10.1 Policy

Bis-Man Transit policy requires all prospective contractors be accorded fair and equal consideration in the solicitation and award of contracts. To that end, any interested party shall have the right to protest alleged inequities in the procurement process and to have its issues heard, evaluated and resolved administratively. "Interested party" is defined as an actual or prospective bidder whose direct economic interest would be affected by the award of a contract or by failure to award a contract.

### 1.10.2 Submittal Procedures

An interested party wishing to protest a matter involving a proposed procurement or contract award shall file a written submission with Bis-Man Transit by certified mail or other delivery method by which receipt can be verified. Electronic submission of protests will not be accepted.

The protest shall include, at a minimum:

- (a) The name and address of the protesting party and its relationship to the procurement sufficient to establish the protest is being filed by an interested party;

- (b) Identity of the contact person for the protestor, including name, title, address, telephone, fax and email addresses. If the contact point is a third party representing the protester, the same information must be provided, plus a statement defining the relationship between the protester and the third party.
- (c) Identification of the procurement;
- (d) A description of the nature of the protest, referencing the portion(s) of the solicitation involved;
- (e) Identification of the provision(s) of any law, regulation, or other governance upon which the protest is based;
- (f) A complete discussion of the basis for the protest, including all supporting facts, documents or data; and
- (g) A statement of the specific relief requested.
- (h) A notarized affirmation by the protestor (if an individual) or by an owner or officer of the protestor (if not an individual) as to the truth and accuracy of the statements made in the protest submittal.

The protestor is solely responsible for the completeness and validity of the information provided. Any documents relevant to the protest should be attached to the written submission. Documents which are readily available on the Internet may be referenced to an appropriate link.

Protests shall be submitted in accordance with the requirements of this chapter and any directions included in the solicitation, and shall be addressed to Bis-Man Transit. Bis-Man Transit may decide a protest solely upon the written submission. The protest submission should therefore include all materials necessary to support the protester's position. Additional or supplemental materials may only be submitted at the request of, or with the permission of, Bis-Man Transit. If the procurement uses federal funds, an informal notice of receipt of a protest must be given to the appropriate regional office of the Federal Transit Administration (FTA). The form of notice may be specified by the regional office.

### 1.10.3 Protests of the Solicitation Process

A protest related to the technical scope or specification, terms, conditions, or form of a solicitation must be received no later than ten (10) working days prior to the date established for opening of bids or receipt of proposals; if the protest addresses an amendment to the solicitation, it must be received no later than ten (10) working days prior to the date established for opening bids or receipt of proposals or five (5) working days after the date of issuance of the amendment, whichever is later; in no event, however, may a protest of this nature be submitted after bids or proposals are received. The protest must conform in all respects to the requirements set forth in Section 1.10.2 above. Upon receipt of such a protest, Bis-Man Transit shall notify all prospective procurement bidders and other known interested parties of the receipt and nature of the

protest, and shall post a notice of the protest on Bis-Man Transit web page. Unless Bis-Man Transit determines that delay will be prejudicial to the interest of Bis-Man Transit or that the protest patently lacks substantial merit, the solicitation process will be extended pending resolution of the protest. Protests will be considered and either denied or sustained, in part or in whole, by Bis-Man Transit in writing. A written decision specifying the grounds for sustaining all or part of or denying the protest will be transmitted to the protestor prior to the receipt of bids or proposals in a manner that provides verification of receipt. A notice of the decision shall be provided to all parties given notice of the protest, and posted to Bis-Man Transit's procurement web page. Should the protest be upheld in whole or in substantial part, the contracting officer may either (1) amend the solicitation to correct the document or process accordingly; or (2) cancel the solicitation in its entirety. If the solicitation is amended, the time for receipt of bids or proposals shall be equitably extended to permit all participants to revise their bids or proposals to reflect the decision. If the protest is denied, the solicitation shall proceed as if the protest had not been filed, unless the protester pursues its protest with the Federal Transit Administration (FTA) as defined below, or otherwise appeals the decision of Bis-Man Transit, as defined below. Protests received by Bis-Man Transit after the time periods specified above shall be considered untimely and may be denied on that basis unless Bis-Man Transit concludes that the issue(s) raised by the protest involves substantial prejudice to the integrity of the procurement process.

#### 1.10.4 Protests of the Evaluation Process

All bidders/proposers will be notified of the recommended award, upon a determination by Bis-Man Transit staff of a recommendation to be made to the Board of Directors, as appropriate. This notice will be transmitted to each proposer at the address contained in its proposal form, and shall be posted on the procurement page of the Bis-Man Transit website. Transmittal may be by electronic means or by hard copy. Any proposer whose proposal is valid at the time of the staff determination may protest the recommended award on one or more of the following grounds:

- (a) That the recommended award does not meet the requirements of the solicitation;
- (b) That the bid or proposal recommended for acceptance does not meet the criteria of the solicitation for award;
- (c) That the evaluation process conducted by Bis-Man Transit is improper, illegal, or the decision to recommend award is arbitrary and capricious. The protest must be received by Bis-Man Transit at the address specified in the solicitation, no later than five (5) working days after the date such notification is publicly posted or sent to the bidder or proposer, whichever is earlier. A written decision stating the grounds for allowing or denying the protest will be transmitted to the protestor and the proposer recommended for award in a manner that provides verification of receipt. Such decision shall be final, except as provided in § 1.10.5 below or by applicable law or regulation. Upon receipt of a protest of this type, Bis-Man Transit shall notify all bidders and any other known interested parties of the receipt and nature of the protest and request an extension of the validity period of

their offers, if appropriate. Unless the Executive Director determines that delay will be prejudicial to the interest of Bis-Man Transit or that the protest lacks substantial merit, award will be withheld pending disposition of the protest. Should one or more bidders refuse a requested extension of the validity of an offer, Bis-Man Transit may reject such proposal unless it is determined that the protest can reasonably be resolved and the award process continued without need for such extension. Delay in an award shall be considered prejudicial to Bis-Man if:

1. The equipment, supplies or services are urgently required; or
2. Failure to make a prompt award will economically or operationally damage Bis-Man Transit. Should the protest be upheld in whole or in substantial part, Bis-Man Transit may either (1) revise the evaluation process to correct the matter protested; or (2) cancel the solicitation in its entirety. In the event that Bis-Man Transit proceeds with an award for one of the reasons stated above, and the protest is subsequently upheld, Bis-Man Transit shall determine whether the performance of the contract will reasonably permit its termination in order to correct the protested matter. Such termination shall be for the convenience of Bis-Man Transit.

#### 1.10.5 Evaluation of Protests

A protest decision should ordinarily be written and published within ten (10) working days of receipt of the protest. Bis-Man Transit may extend the response period if additional time is required to gather and evaluate information necessary for the decision or for other good cause.

Upon receipt of a protest, Bis-Man Transit shall notify parties involved in the procurement as identified above, and such Bis-Man personnel or others as may be appropriate or necessary to determine the validity of the protest. A notice of the receipt of a protest should be sent to the FTA regional office, per FTA Circular 4220.1F, Chapter VII, Sec. 1.a(2). Copies of the protest submittal, or portions thereof, may be provided to the notified parties as appropriate. Bis-Man Transit may request additional written information from the protestor or other parties, as necessary to determine the validity of the protest. A formal or informal hearing may be held. If a formal hearing is held, testimony shall be given under oath and a transcript or electronic recording of the proceeding shall be made; the transcript or recording shall be provided to the protestor and made part of the protest record. Bis-Man Transit shall redact from any submission under the protest process information which has been identified as proprietary, and which, in his/her judgment, is protected from disclosure under the North Dakota state law.

#### 1.10.6 Protest Appeal

Appeals Decisions of Bis-Man Transit may be appealed to the Board of Directors by the protestor within five (5) working days after the decision is issued to the protestor. The appeal shall be in writing, addressed to the Bis-Man Transit Board of Directors with a copy to the Executive Director, and shall state with specificity

the basis for the appeal. The Executive Director shall review the written record of the protest and may conduct such further investigation as is deemed necessary or appropriate to reach a decision. The decision of the Executive Director and Bis-Man Transit Board of Directors will ordinarily be issued within fifteen (15) working days of receipt of the appeal; this time period may be extended if necessary to complete an investigation. The decision of the Executive Director and Board of Directors shall be final and conclusive, except for such remedies as state or federal law or regulation may provide.

#### 1.10.7 Protests Filed with FTA

A protestor may file a protest with FTA only after exhausting all administrative remedies provided by the Bis-Man, on the basis described in FTA Circular 4220.1F, Chapter VII, Sec. 1.b. FTA review of protests will generally be limited to allegations (1) Bis-Man Transit does not have or fails to follow its protest procedures; (2) Bis-Man Transit failed to review a complaint or protest; or (3) the issue involves violations of Federal law or regulation. The FTA is not obligated to review any protest. Protests addressing the Bis-Man Transit DBE program may be submitted to the U.S. Department of Transportation, Office of Small and Disadvantaged Business Utilization, in accordance with 49 CFR Part 26 and guidance issued there under.

## 2.0 **POLICIES**

### 2.1 Ethics

#### 2.1.1 Relationships

In all procurement matters relating to Bis-Man Transit, no Bis-Man Transit employee, officer, board member, legal counsel or other agent, including any member of an evaluation committee for a Bis-Man Transit project, or any member of his/her immediate family, or his/her partner, or any organization employing or about to employ any of the above, shall participate in the selection, award, administration, or performance of a Bis-Man Transit contract if a conflict of interest, real or apparent, would exist. Such a conflict would exist when an employee, officer, or agent of Bis-Man Transit or any member of his/her immediate family, or his/her partner, or an organization employing or about to employ any of the above, has a material financial or other interest in a firm selected for award of a contract. Any interest as owner or stockholder of one percent (1%) or less in such a firm shall not be deemed to be a material financial interest, but serving as Director, officer, consultant, or employee of such an organization would be deemed a material interest.

#### 2.1.2 Gifts and Gratuities

It is Bis-Man Transit policy no employee, officer, or agent of Bis-Man Transit shall solicit or accept, directly or indirectly, any gift or gratuity, favor, entertainment, transportation, lodging, loan or other thing of value from a contractor, potential contractor, or subcontractor which is of such a character as to manifest a substantial and improper

influence upon him/her with respect to assigned duties, or that would give the appearance of such an influence. Unsolicited gifts of nominal intrinsic value shall not be deemed to manifest a substantial and improper influence.

### 2.1.3 Violations

Violation of this Standard of Conduct/Ethics Policy by any employee shall subject the individual to disciplinary action up to and including discharge as determined by the Executive Director of Bis-Man Transit. Violation of this policy by the Executive Director, officer or agent of Bis-Man Transit shall subject the individual to disciplinary action or sanction as determined by the Bis-Man Transit Board. Violation of this policy by contractors or their agents may be considered a breach of contract and shall subject such contractor or agent to action up to and including cancellation of contract and suspension and debarment from contracting with Bis-Man Transit. Violation of this policy by bidders or potential contractors may be considered to make such bidder or bidder ineligible to bid or render a bid or proposal non-responsive.

### 2.2 Organizational Conflict of Interest

It shall be Bis-Man Transit policy in soliciting and contracting for goods and services to prevent any real or apparent organizational conflict of interest which would arise when the nature of work to be performed under the proposed contract would result in an unfair competitive advantage to the contractor in the award of future work. No Bis-Man Transit employee will be allowed to bid on any potential contract to avoid the potential for bias in the process. It shall not be a bid or proposal requirement that a prospective vendor or contractor have prior contracts with Bis-Man Transit.

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

- (a) Lack of impartiality or impaired objectivity. When the contractor is unable, or potentially unable to provide impartial and objective assistance or advice to the grantee due to other activities, relationships, contracts, or circumstances.
- (b) Unequal access to information. The contractor has unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier contract.
- (c) Biased ground rules. During the conduct on an earlier procurement, the contractor has established the ground rules for a future procurement developing specifications, evaluation factors, or similar documents.

Bis-Man Transit is required to analyze potential organizational conflicts at the "requisition" stage and certify on the requisition form that potential organizational conflicts have been analyzed, and document the findings on the Fair and Reasonable Price Form. These forms will be approved by the authorized purchasing personnel.



## 2.3 Centralized Purchasing Authority

- 2.3.1 The authority and responsibility for the procurement and disposal of all material, equipment, vehicles, property and services for Bis-Man Transit rests with the Executive Director. Occasionally, certain authority or responsibility may be delegated to other staff for a limited period of purpose and always subject to the review by Bis-Man Transit Board of Directors.
- 2.3.2 All purchases of goods and services shall be initiated by a user department through use of a purchase requisition, except where noted herein.
- 2.3.3 Staff is responsible for early involvement of the purchasing process in planning for procurements in order that full and open competition is maximized. This early notification and involvement will range from 90 to 120 days before contract initiation for annual bids for routine materials procurements, to one year or more for major capital purchases.
- 2.3.4 Staff is responsible for providing, in a manner as thorough and complete as possible, Scope of Work or technical specifications for their requirements for Bis-Man Transit. Bis-Man Transit shall assist user departments to define their requirements when requested.
- 2.3.5 Staff may consult with vendors concerning details of their products.
- 2.3.6 All correspondence with a supplier regarding a matter of its contract with Bis-Man Transit, whether relating to the scope of work, specifications, quality of work, delivery, payment, etc., shall be by or through Bis-Man Transit staff.
- 2.3.7 Staff shall be responsible for the conduct of all negotiations with bidders, prospective contractors, or contractors with assistance from the Executive Director and legal counsel.
- 2.3.8 Bis-Man Transit has full authority to question the quantity, kind, and quality of material or services requisitioned, in order to avoid purchase of unnecessary or duplicative items or items of questionable value to Bis-Man Transit, and to consider consolidating or breaking out procurements to obtain economical purchases.
- 2.3.9 Bis-Man Transit may consider and pursue, in the interest of economy and efficiency, the use of Federal, State and local intergovernmental agreements for procurements, agreements for the use of common goods and services, or the use of federal or state excess and surplus property, when it is in the interest of Bis-Man Transit to do so and complies with Federal Transit Administration (FTA)/North Dakota Department of Transportation (NDDOT) requirements and guidelines.

- 2.3.10 It is Bis-Man Transit’s responsibility to ensure that awards are made only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. To that end, it will consider such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources in determining whether a potential contractor is responsible.
- 2.3.11 It is Bis-Man Transit’s responsibility to maintain records sufficient to detail the significant history of procurement, including, but not limited to: rationale for method of procurement, selection of contract type, selection or rejection of contractors, basis for contract price, contract amendments or change orders, and contract close-out.
- 2.3.12 The Executive Director shall be responsible for the settlement of all contractual and administrative issues arising out of procurements, including source evaluation, protests, disputes and claims. In dealing with protests, Bis-Man Transit shall follow Bis-Man Transit’s written protest procedure (see Section 1.10).
- 2.3.13 Bis-Man Transit shall conduct procurements in a manner that prohibits statutorily or administratively imposed in-state or geographical preferences in evaluation of bids or proposals, except where federal statutes expressly mandate geographic preference.

2.4 Approval Levels for Purchases

The following represent Bis-Man Transit required approval levels for procurement requisitions. Approvals must be obtained before committing Bis-Man Transit funds. The purchasing authority listed below shall be further limited by the approved and adopted Bis-Man Transit fiscal year budget. Any purchase which is not included in the approved and adopted Bis-Man Transit fiscal year budget shall be approved by the Board.

<u>Amount</u>	<u>Approval Required</u>
Up to \$10,000.00	Executive Director
Over \$10,000.00	Bis-Man Transit Board, City of Bismarck Liaison
Over \$25,000.00	Bismarck City Commission (for new equipment)

2.4.1 Emergency Purchases

An emergency is defined as a real and present threat to Bis-Man Transit property, employee welfare, or the provision of transit service that cannot be reasonably alleviated without the purchase in question. In all cases, the Executive Director will be involved.

During normal business hours, the requirement will be addressed to the approval level and the Executive Director, who will coordinate necessary pricing and may issue a purchase order.

After normal business hours, Executive Director will determine whether the matter may be resolved during the next business day. If not, an attempt will be made to secure price quotations from two or more reputable sources, and a purchase made. A requisition will be prepared the next business day and fully documented as to the nature of the emergency, and approval signatures will be obtained

## 2.5 Disadvantaged Business Enterprises

### 2.5.1 Program

Federal Transit Administration law requires a certain percentage of the goods and services (exclusive of rolling stock) purchased with federal funds by grant recipients must be dedicated to Disadvantaged Business Enterprises (DBEs). A DBE firm is a small business concern that is at least 51% owned and controlled by one or more socially and economically disadvantaged individuals. A “socially and economically disadvantaged individual” is defined by the federal government as a citizen of the United States who is female and/or African American, Hispanic American, Native American, Asian-Pacific American, or Asian-Indian American.

### 2.5.2 Policy

It is the policy of Bis-Man Transit to actively encourage and assist DBEs to participate competitively in Bis-Man Transit procurement actions. The Executive Director is Bis-Man Transit’s DBE Liaison Officer (DBELO). The DBELO is responsible for DBE program coordination and enforcement and works closely with the other Bis-Man Transit staff in day-to-day implementation of the program.

The DBE goals are established triennially based on projected expenditures for construction, professional services, materials and supplies, and equipment, and anticipated opportunities to use DBE vendors to fulfill those requirements.

The Executive Director, working as the DBELO, shall take affirmative steps to establish maximum participation of DBE vendors in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26.

### 2.5.3 Award Procedures

All Bids, Proposals, and quotes should be reviewed to ensure that minimum acceptable specifications for those goods and/or services are met. When making purchases, Bis-Man Transit employees who are responsible for purchase decisions should consult the Certification Process list of DBE approved vendors. If such a vendor is identified, the potential contractor should be notified that Bis-Man Transit is considering an expenditure that the DBE firm may be in a position to satisfy. Bis-Man Transit employees should employ all reasonable means of identifying DBE vendors. If no DBE vendor can be found, the Executive Director should document the steps taken on the purchase requisition form.

## 2.6 Audits/Inventory of Assets

### 2.6.1 Real Property Acquisition and Management

Bis-Man Transit shall follow the requirements for acquisition and management of real property specified in Federal Transit Administration Circular 5010.1D, Management of Real Property, Equipment and Supplies. Concurrent with its biennial equipment certification, Bis-Man will review all real property acquired with FTA assistance and certify to FTA what property continues to be needed for project purposes. If excess real property exists, an excess real property utilization plan or plan for disposal shall be prepared and submitted.

### 2.6.2 Equipment Management Standards

Bis-Man Transit shall follow the requirements for management of equipment purchased with federal funds specified in FTA Circular 5010.1D, Management of Real Property, Equipment and Supplies. At least once every year, Bis-Man Transit will conduct a physical inventory and account for all equipment and other capital assets. The property record maintained for each item shall include:

- (a) Description,
- (b) Identification number,
- (c) Procurement source, (grant number and percent of federal participation)
- (d) Purchase date,
- (e) Purchase cost,
- (f) Use and condition
- (g) Location,
- (h) Date of disposal, if disposed, and
- (i) Sale price or method used for determining fair market value
- (j) Documentation regarding who holds title to the equipment

In connection with the physical inventory of assets, a Certification will be prepared regarding the existence, current use, and continued need for FTA/NDDOT funded equipment. For those items identified as surplus staff will be responsible for developing a plan for disposal for approval by the Executive Director.

### 2.6.3 Parts and Supplies Inventory

Bis-Man Transit will conduct an annual inventory of parts and supplies (or other method such as cycle counting) to reconcile items in stock versus record of those on hand. The accountant shall prepare a variance report identifying discrepancies and their value.

## 2.7 Disposition of Surplus Equipment and Supplies/Scrap

### 2.7.1 Identification of Surplus/Obsolete Materials, Supplies, Equipment and Scrap –

The identification of surplus equipment, material, or scrap shall be the responsibility of Bis-Man Transit staff. Equipment shall be surplus to Bis-Man Transit when it becomes

obsolete to Bis-Man Transit because it has been replaced by newer equipment or because the equipment no longer supports the Bis-Man Transit mission. Equipment shall be scrapped only when it is non-functional and non-repairable, and has little or no value unless functional.

Parts are surplus when the part is no longer applicable to the Bis-Man Transit fleet or when stock on hand exceeds the maximum established by the usage history of the item for a period of over one (1) year.

**All items identified as surplus or obsolete with a value under \$5,000 must be sold at fair and reasonable prices. All reasonable offers made will be reviewed and approved by Bis-Man Transit Executive Director. Items that the City of Bismarck have an interest in, require approval for disposal of from the City Commission.**

#### 2.7.2 Disposition Before End of Service Life

Any disposition of rolling stock before the end of its service life requires prior FTA/NDDOT approval. FTA/NDDOT is reimbursed its share of the proceeds from disposition. If revenue rolling stock is being removed from service before the end of its useful life, the return to FTA/NDDOT is the greater of the FTA/NDDOT share of the unamortized value of the remaining service life per unit, based on straight line depreciation of the original purchase price, or the Federal share of the sales price (even though the unamortized value is \$5,000 or less).

#### 2.7.3 Retain and Use Elsewhere

When original or replacement equipment is no longer needed for the original project or program, it may be used by Bis-Man Transit for other projects or programs. FTA/NDDOT prior approval of this alternative is required. FTA/NDDOT retains its interest if the fair market value of the project property is over \$5,000.

#### 2.7.4 Value Over \$5,000

After the service life of equipment is reached, equipment with a current market value exceeding \$5,000.00 per unit, may be retained or sold, with reimbursement to FTA/NDDOT of an amount calculated by multiplying the total aggregate fair market value at the time of disposition, or the net sales proceeds, by the percentage of FTA/NDDOT participation in the original grant. A Bis-Man Transit transmittal letter should state whether the equipment will be retained or sold.

#### 2.7.5 Less than \$5,000 value

Equipment with a unit market value of \$5,000.00 or less, or supplies with a total aggregate market value of \$5,000.00 or less, may be retained, sold or otherwise disposed of with no obligation to reimburse FTA/NDDOT, providing useful service life requirements have been met. Records of this action must be retained.

#### 2.7.6 Like-Kind Trade-In or Offset Exchange

With prior FTA approval, Bis-Man Transit may elect to use the trade-in value or the sales proceeds to offset the cost of a replacement bus, applying 100 percent of the net proceeds to acquisition of the replacement vehicle/s. (See 49 *CFR*, Part 18.32; and *Federal Register* pp. 39328/39329, dated August 28, 1992). Remaining cost differences, if more than the proceeds, are to be met by Bis-Man Transit. Excess proceeds, if any, are returned to FTA minus a deduction for pro rata local share.

#### 2.7.7 Transfer to Public Agency for Non-Transit Use

With prior FTA approval, Bis-Man Transit may follow procedures for publication in the *Federal Register* to transfer property (including land or equipment) to a public agency with no repayment to FTA. These procedures are available from the regional FTA office. [49 *U.S.C.* 5334(g)(1)]

#### 2.7.8 Sell and Use Proceeds for Other Capital Projects

With prior FTA approval, Bis-Man Transit may sell equipment or supplies and use the proceeds to reduce the gross project cost of other FTA eligible capital transit projects. [49 *U.S.C.*, 5334(g)(4)] Bis-Man Transit will record the receipt of the proceeds in its accounting system, showing that the funds are restricted for use in a subsequent capital project, and reduce the liability as the proceeds are applied to one or more FTA approved capital projects. Bis-Man Transit will show on subsequent grant applications that the gross project cost has been reduced with the proceeds from the earlier transaction.

#### 2.7.9 Unused Supplies

Disposition of unused supplies before the end of the industry standard life expectancy is determined in total aggregate fair market value and if found to exceed \$5,000, Bis-Man Transit (or a sub recipient) shall compensate FTA for its share; or transfer the sales proceeds to reduce gross project cost of other capital project(s). [49 *U.S.C.* 5334(g)(4)].

#### 2.7.10 Disposal of Scrap

Materials, parts, or equipment identified as scrap and having recovery value shall be sold to the highest of three scrap dealers willing to make quotations. The disposition of scrap must be approved by the Executive Director prior to disposition. All sales shall be by cashier's check or cash, unless otherwise approved by the Executive Director.

### **3.0 RESPONSIBILITIES**

#### 3.1 General

The authority to award contracts exceeding \$10,000 rests with Bis-Man Transit Board. This authority is delegated, in part, to the Bis-Man Executive Director who has further delegated responsibilities to subordinates to carry out daily operations.



Bis-Man Transit procurement functions are the responsibility of Bis-Man Transit Staff. The Executive Director is in charge of daily operations and serves as the Bis-Man Transit Contracting Officer By centralizing authority for purchasing, Bis-Man assures close control of the procurement process and consistent application of Bis-Man policies. The responsibilities of persons involved in the procurement process are described in the following paragraphs.

### 3.2 Bis-Man Transit Board

- (a) Contracting authority for purchases exceeding \$10,000 spanning total life of contract.
- (b) Establishes agency operating budget and capital plan and budget based on recommendations of Executive Director and staff.
- (c) Approves all purchases over \$10,000.00 resulting from advertised bids, based on Staff's recommendation.
- (d) Authorizes disposal of capital items, with an aggregate fair market value of more than \$5,000.00.
- (e) Sets annual DBE goals based upon recommendation of Bis-Man Transit Executive Director and staff.
- (f) Approves Procurement Policy.

### 3.3 Executive Director

- (a) Approves all purchases up to \$10,000 and reviews all purchases subject to approval by the Board prior to submittal to the Board.
- (b) May sign any contract with a total cost up to \$10,000 on behalf of Bis-Man Transit. May sign any contract exceeding \$10,000 upon Board approval.
- (c) Approves disposal of surplus materials, supplies, and equipment, with an aggregate fair market value of less than \$5,000.00.
- (d) Approves any changes to internal purchasing procedures and assures compliance with Bis-Man Transit purchasing policies.
- (e) Assures that 49 CFR Part 26 and other federal, state and local regulations are adhered to by Bis-Man Transit. Please refer to the Bis-Man Transit DBE Policy for further duties and responsibilities.

3.4 Accountant

Authorizes payments to vendors upon Executive Director verification of receipt.

3.5 Disadvantaged Business Enterprise Liaison Officer (Executive Director)

Assures that 49 *CFR* Part 26 and other federal, state and local regulations are adhered to by Bis-Man Transit. Please refer to the Bis-Man Transit DBE Policy for further duties and responsibilities.

**4.0 ACQUISITION PLANNING**

4.1 General

Bis-Man Transit recognizes advance procurement planning is a significant factor in providing and enabling full and open competition. Such planning for large or complex procurements will involve the efforts of all personnel responsible for a procurement to coordinate in planning the funding, technical specifications/scope of work, solicitation of award, contract administration, and other matters far enough in advance to assure adequate time to solicit maximum participation by prospective vendors in meeting the requirement. Generally, planning for large or complex non-inventory procurements will begin with the annual budgeting and capital planning process. However, very complex procurements may require advance procurement planning to begin before the annual budget cycle in order to properly identify a project scope and budget.

4.2 Staff Responsibilities

Staff initiating the purchase requisition form are responsible for providing the procurement staff with technical specifications and any necessary drawings for equipment or materials contracts, or a Scope of Work and suggested evaluation criteria for the procurement. Technical specifications or the Scope of Work will set forth the minimum essential characteristics or standards and will not include any features unduly restricting competition. "Brand name or equal" specifications will only be used when it is impractical to provide a clear and accurate technical description of the product, and will to the extent possible describe the relevant functional characteristics of the items to be purchased.

In addition to a purchase requisition, the following must be furnished prior (if appropriate to the purchase):

- (a) Product/service description,
- (b) Desired delivery schedule,
- (c) Technical evaluation criteria in order of merit,

- (d) Special terms and conditions for contract,
- (e) Progress reporting requirements, and
- (f) List of potential vendors (contact name, address and phone number) if response list is incomplete.
- (g) Fair and Reasonable determination on the Purchase Order

Early coordination regarding staff requirements with Executive Director will enable any required assistance to be given in developing the above information in a timely manner. The Executive Director subsequently requires time to develop, advertise, and issue a solicitation, and the proper amount of time must also be given to evaluation and award, including Board approval, before the requirement is needed.

**Finally, FTA Circular 4220.1F requires that an independent cost estimate for all purchases of materials, equipment or services be provided before soliciting quotations, bids, or proposals. Staff initiating projects are responsible for providing an independent cost estimate to the Executive Director for the contract file prior to solicitation.**

#### 4.3 Planning Major Procurements

In order to provide for a smooth flow of major procurement work, staff will annually convene one or more meetings regarding the annual budget approval process for the purpose of advance procurement planning for the year. The expected result of such meeting(s) will be agreement as to responsibilities for and the general timing of procurement effort for major projects in order that consistency of procurement activity is achieved and timely solicitations are made.

#### 4.4 Planning Routine Procurements

Periodically, but no less often than every six months, the Executive Director will issue to staff an advance schedule of contract expirations and requirements for re-bid for the coming twelve-month period. This schedule will list the contract and its expiration date, person responsible for specifications/scope of work and due date. Planning routine procurements in such a manner enables the Executive Director maximum opportunity to properly schedule non-routine procurement activity.

### 5.0 **METHODS OF PROCUREMENT – BELOW FORMAL BIDDING THRESHOLD**

#### 5.1 General

The Executive Director will work with staff to determine the most appropriate method of procurement for their requirements. Purchases will be made by the following methods:

- (a) Micro-purchases
- (b) Small purchase procedures
- (c) Emergency purchases
- (d) Check request/direct pay items
- (e) Invitation for Bids (hereinafter IFB)
- (f) Request for Proposals (hereinafter RFP) or
- (g) Non-competitive procurements

A significant portion of Bis-Man Transit purchasing activity involves purchases of materials or services under the threshold for formal advertising and bidding, generally termed small purchases. Small purchase procedures are covered in this section.

Completion of a purchase requisition is required and the necessary approvals secured prior to the commitment of Bis-Man Transit funds. The only exceptions to this rule are:

- (a) Micro purchases within limits,
- (b) Emergency purchases coordinated through the Executive Director, and
- (c) Direct pay items under existing contracts or with proper prior approvals or authority for expenditure.

## 5.2 Micro-Purchases

Bis-Man Transit may acquire small-dollar value non-inventory items, property and services valued at less than \$10,000 without obtaining competitive quotes but shall provide for competition whenever practicable. This threshold is below FTA regulations contained in FTA Circular 4220.1F defining small-purchases. Such purchases are exempt from Buy America requirements. There should be equitable distribution among qualified suppliers (in the local area) and no splitting of procurements to avoid competition. The Davis-Bacon Act (40 U.S.C. §3141 et seq.) applies to construction contracts greater than \$2,000. The minimum documentation required is the determination that the price is fair and reasonable and how that determination was derived. The determination of price reasonableness will be recorded on preprinted forms on the receipt or purchase order. The documentation shall employ terminology similar to the following: "The price(s) paid for items hereunder are determined to be fair and reasonable, based on the following:

- (a) Adequate competition (three or more quotes received and award made to lowest)
- (b) Current price lists or off-the-shelf pricing
- (c) Catalog price
- (d) Prices found reasonable on recent previous purchases
- (e) Advertisements
- (f) Similar items in a related industry
- (g) Independent price estimate (attach documentation)

(h) Other (cite basis)

### 5.3 Small Purchases

Bis-Man Transit defines small purchases as those relatively simple and informal methods for securing supplies, services, or property that cost more than \$10,000 but do not cost more than \$50,000 in the aggregate. This small purchase threshold is below FTA regulation. If small purchase procedures are used, price or rate quotations shall be solicited from an adequate number of qualified sources. The number of sources will depend upon the availability of qualified sources, but the objective should ordinarily be to obtain quotes from at least three vendors. Both the solicitation and quotes should be written, in either electronic or hard copy form. Generally, the contract will be in the form of a purchase order, although the nature of the procurement (e.g. for services) may require additional terms and conditions.

#### 5.4.1 Bis-Man Transit Competition Guidelines

The competition guidelines expressed below apply only to purchases that are greater than \$50,000 annual threshold requiring formal advertising, solicitation and bid. However, such purchases are not automatically excluded from consideration for formal bidding without advertising if cost-savings or other factors make bidding advisable. The Executive Director and staff will periodically examine proposed expenditures for lines or classes of standard commercial items of material exceeding \$15,000.00 annually, based on 12-month usage history, to determine if cost savings may be realized through a formal bid process.

For all types of purchases less than the statutory threshold for formal bids, competition guidelines will be relieved when the purchase is known to be “sole source” or when there are less than two potential sources available or willing to quote. In such cases, FTA-required procedures for sole-source acquisitions and documentation (see Section 8 Non-Competitive Negotiation) will be followed and all efforts to identify and solicit competitive quotations from an adequate number of vendors will be documented.

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#### 5.4.2 Check Request/Petty Cash/Direct Pay Items

Certain expenses are incurred without the issuance of a purchase requisition supporting each payment. Such expenses are typically the following types:

- (a) Periodic vendor payments under established vendor contracts or leases
- (b) Utility and telephone bills
- (c) Licenses and permits
- (d) Organizational membership dues, conferences and registration fees, travel advances, and employee reimbursement (may be subject to prior approval)
- (e) Subscriptions to trade journals, periodicals, newspapers
- (f) Postage

- (g) Investigative expenses (background investigations)
- (h) Settlement of claims and litigation
- (i) Minor office supplies

For some of these payments, Bis-Man Transit will receive a bill or invoice and for others, Bis-Man Transit may bear the responsibility for meeting a scheduled payment. These payments shall be made by the Accountant pursuant to approval by the Executive Director.

## **6.0 FORMAL PROCUREMENT METHODS**

### **6.1 General**

When Bis-Man Transit requirements for a line or class of materials to be purchased annually exceeds \$50,000 or rental/lease payments shall exceed \$50,000 annually, or a simple service contract shall be over \$50,000, formally advertised competitive bidding is required. Sealed bids are publicly solicited and a fixed-price (lump sum or unit price) contract is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price.

In addition to the above required formally advertised IFB solicitations, Bis-Man Transit may determine in certain circumstances that issuing an IFB with or without formal advertising for a purchase requirement under the annual threshold would be appropriate in order to secure a favorable price or other benefit to Bis-Man Transit.

### **6.2 Conditions Determining When Formal Advertising is Appropriate**

The following conditions should be present for an IFB to be considered:

- (a) A complete, adequate and realistic specification or purchase description is available;
- (b) Two or more responsible bidders are willing and able to compete effectively for the business;
- (c) The procurement lends itself to a firm fixed-price contract and the selection of the successful bidder can be made principally on the basis of price; and
- (d) No discussion with bidders is needed.

If this procurement method is used, the following requirements apply:

- (a) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time to prepare bids prior to the date set for public opening of the bids (usually the due date shall not be less than 30 days from the issue date of the IFB);

- (b) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services sought in order for the bidder to properly respond;
- (c) All bids will be publicly opened at the time and place prescribed in the invitation for bids;
- (d) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. When specified in bidding documents, factors such as discounts, transportation costs, and life cycle costs shall be considered in determining which bid is lowest;

Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

- (e) Any or all bids may be rejected if there is a sound documented business reason.
- (f) Immediately after the receipt and opening of bids, Bis-Man Transit staff shall examine all bids timely received to determine if they are responsive. Responsiveness is determined at the time of bid opening, and cannot involve any material or information received thereafter. A responsive bid is one that is timely received and which complies with all requirements of the solicitation; it must represent a clear and unequivocal offer to provide the good or services specified at a stated price or prices. Exceptions to the specification or contractual terms, or ambiguous or conditional pricing shall render a bid non-responsive. However, if the terms of the solicitation permit, minor informalities may be waived, defined as matters not affecting the price, schedule, or quality of the bid.
- (g) Bis-Man Transit staff shall determine if the lowest responsive bid was submitted by a responsible bidder. This evaluation considers whether the bidder has in all aspects the ability to successfully perform the contract, including the necessary technical and financial resources; the prior experience and integrity; and capability of providing the specified insurance, bonding, and DBE participation. Price reasonableness is also evaluated in the process. If this evaluation raises concerns regarding the bidder's capability in any of these areas, the bidder should be given a reasonable opportunity to show why it should not be found non-responsive. In the event a bidder is determined non-responsive, it shall be so notified, and the responsibility of the next-lowest responsive bidder evaluated.

The sealed bid method is the preferred method for procuring any type of construction project, if the conditions in the feasibility paragraphs above apply.

### 6.3 Public Advertising



Invitations for Bid for purchases over \$50,000, in aggregate or annually, will be publicly advertised at least thirty (30) days before the date that bids will be received. At a minimum, publication will occur on Bis-Man Transit website and or locally in the general newspaper of largest circulation in the Bismarck-Mandan area. As appropriate to the purchase, publication may also be placed in the Local Record, construction or equipment trade journals, transit trade journals, appropriate web sites, etc. to foster competition. In addition to the public notice, bids are to be solicited directly from potential bidders. Any such direct solicitations shall include minority and woman-owned businesses, where practical.

Bis-Man Transit Staff will also maintain Bidders lists for routine types of purchases containing current and prospective vendors. Names of vendors may be added at their request or by the Executive Director.

6.4 Solicitation: Preparation of Invitation for Bid

An IFB is the complete assembly of related documents, either attached or incorporated by reference, and furnished to prospective bidders. It must describe the requirements accurately and completely. The requirements set forth in the IFB may include special qualifications required of potential contractors, life cycle costing, value analysis, and any other criteria such as testing, quality, workmanship, delivery and suitability for a particular purpose which may help in determining acceptability. Unnecessarily restrictive specifications or terms and conditions that unduly limit competition must be avoided. Some situations considered to be restrictive of competition included, but are not limited to:

- (a) Unreasonable requirements placed on firms in order for them to qualify to do business;
- (b) Unnecessary experience or excessive bonding requirements;
- (c) Noncompetitive pricing practices between firms or between affiliated companies;
- (d) Noncompetitive awards to any person or firm on retainer contracts;
- (e) Organizational conflicts of interest. An organizational conflict of interest means that because of other activities, relationships, or contracts, a contractor is unable, or potentially unable, to render impartial assistance or advice to Bis-Man Transit; a contractor's objectivity in performing the contract work is or might be otherwise impaired; or a contractor has an unfair competitive advantage;
- (f) The specification of only a "brand name" product without listing its salient characteristics and not allowing "an equal" product to be offered; and
- (g) Any arbitrary action in the procurement process.

IFBs should contain the following information if applicable to the purchase:

- (a) IFB (sequence) number;
- (b) Name and address of Bis-Man Transit;
- (c) Date of issue;
- (d) Date, hour and place of bid opening;
- (e) Requirement for bidder to provide its name and complete address, including street, city, county, state, and ZIP code;
- (f) A statement that bidders should include in the bid the address to which payment should be mailed, if that address is different from that of the bidder;
- (g) Description of material, equipment, or services to be furnished under each item, in sufficient detail to promote competition;
- (h) Provide packaging, packing, preservation, and marking requirements, if any;
- (i) Include inspection, acceptance, quality assurance, and reliability requirements, if any;
- (j) Specify the requirements for time, place, and method of delivery or other performance;
- (k) Permission, if appropriate, to submit bids of alternate material or design (in addition to bid called for);
- (l) Statement that "Bids must set forth full, accurate, and complete information as required by the IFB";
- (m) Bid guarantee, performance and payment bond requirements;
- (n) A minimum bid acceptance period required of the bidder;
- (o) Any special technical specifications;
- (p) Any special provisions relating to progress payments, patents, liquidated damages, etc.;
- (q) Any contract provisions required by federal, state, or local law,

(r) All factors to be considered in evaluation of bids, such as shipping costs, taxes and surcharges, etc., and how they will be considered,

(s) How to obtain copies of documents incorporated by reference,

(t) Instructions regarding how late bids will be handled.

## 6.5 Solicitation Guidelines

### 6.5.1 Specifications

Specifications and purchase descriptions will provide accurate descriptions of the technical requirements for the material, equipment or service and will include the procedure for determining whether the requirement has been met. When possible, Bis-Man Transit will state performance specifications defining the expected performance standards the end product is expected to achieve.

### 6.5.2 Bidding Time

Adequate time will be given between the issuing of bids and the time set for receipt of bids to permit prospective contractors to prepare bids. Generally, no less than 30 days will be allowed for standard commercial items and when purchasing other than standard commercial items, or purchasing services. Complex procurements for certain items of equipment or construction will require significantly longer bidding time.

### 6.5.3 Distribution of an IFB

An IFB over \$50,000 will be publicly advertised in accordance with Section 6.3. In addition to the public notice, they may be mailed to known prospective vendors. Records of any IFB or bid will be maintained for a reasonable period in order for the vendor to be consulted in preparing a source list for similar any IFB.

### 6.5.4 Amendment of an IFB

Any change or correction necessary in bid quantities, specifications, delivery schedules, opening date, etc., which is required after issuing any IFB but before bid opening, will be made by issuing an amendment. Any new information given to one prospective bidder will be furnished to all others in the form of an amendment. Consideration will be given to the period of time remaining to opening and the period will be extended in such amendment, if necessary. Notice of amendment will be furnished to each person furnished an IFB.

### 6.5.5 Responsiveness of Bids

A bid must comply in all material respects with the IFB, including the method and timeliness of submission. Telegraphic or facsimile bids will not be considered under the competitive sealed bid procedure, unless specifically permitted in the IFB. Bidders are expected to use the Bis-Man Transit bid form, and in failing to do so may be considered non-responsive. Should a bidder submit a bid on its own bid form or a letter, it may only

be considered if the bidder specifically states it accepts all terms and conditions of the IFB, and if the award would result in a binding contract not varying from the IFB.

#### 6.5.6 Modification/Withdrawal of Bids

Bids may be modified or withdrawn by written, telegraphic, or facsimile notice or in person if submitted to and received by the Executive Director not later than twenty-four (24) hours before the time set for bid opening. Telegraphic or facsimile modifications or withdrawals will be sealed in an envelope by a Bis-Man Transit official and noted for opening with the bid package. Information will not be disclosed prior to opening.

#### 6.5.7 Time and Place of Bid Submission

The IFB, and public advertisement if advertised, will set forth the time, date, and place for opening of bids. A bidder will not be required to (but may) submit a bid before the time specified for receipt of bids. Bid specifications will set forth the manner in which sealed bids are to be marked and identified as sealed bids. When received by Bis-Man Transit, sealed bids will be date stamped "Received," and the time of receipt noted.

Bids will be publicly opened and read aloud at the time and place designated in the notice. To be considered responsive, bids must be submitted not later than the exact time specified. Late bids will only be accepted if proven to be late due to Bis-Man Transit's mishandling after receipt at its offices.

#### 6.6 Two-Step Sealed Bidding

Two-step sealed bidding is a procurement method involving the submittal of non-priced technical proposals in the first step, and a sealed bid submittal in the second step. Two-step competitive sealed bidding is used when it is impractical to initially prepare a definitive purchase description to support an award based on prices. This method is especially useful in acquisitions requiring technical proposals, particularly those for complex items. In such instances a Request for Proposal is issued requesting the submission of non-priced technical proposals, to be followed by an IFB for a price, limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation. There is no negotiation in the two-step competitive bid process; however, Bis-Man Transit, at its option, may request information from bidders to clarify material contained in their technical proposals.

##### 6.6.1 Conditions for Use

Unless other factors require the use of sealed bidding, two-step sealed bidding may be used in preference to negotiation when all of the following conditions are present:

- (1) Available specifications or purchase descriptions are not definite or complete or may be too restrictive without technical evaluation, and any necessary discussion, of the technical aspects of the requirement to ensure mutual understanding between each bidder and Bis-Man Transit;

- (2) Definite criteria exist for evaluating technical proposals;
- (3) More than one technically-qualified source is expected to be available;
- (4) Sufficient time will be available for use of the two-step method;
- (5) A firm-fixed-price contract or a fixed-price contract with economic price adjustment will be used.
- (6) None of the following precludes the use of two-step sealed bidding:
- (7) Multi-year contracting
- (8) Bis-Man-Transit owned facilities or special tooling be made available to the successful bidder
- (9) A total small business set-aside
- (10) The use of the price evaluation adjustment for small disadvantaged business concerns
- (11) The use of a set-aside or price evaluation preference for small business concerns
- (12) A first or subsequent production quantity is being acquired under a performance specification

6.6.2 Procedures for Two-Step Sealed Bidding

Two-step sealed bidding is a procurement method involving the submittal of non-priced technical proposals in the first step, and a sealed bid submittal in the second step.

6.6.3 The Two-Step process is appropriate when all of the following conditions exist:

- (a) Available specifications or purchase descriptions are not definite or complete or may be too restrictive without technical evaluation and any necessary discussion of the technical aspects of the requirement to ensure mutual understanding between each source and Bis-Man Transit.
- (b) Definite criteria exist for evaluating technical proposals.
- (c) More than one technically qualified source is expected to be available, and more than one technical solution is considered possible.
- (d) Sufficient time will be available for use of the two-step method.

- (e) A firm-fixed-price contract or a fixed-price contract with economic price adjustment will be used.

#### 6.6.4 Step One

The first step requires bidders to submit technical proposals for evaluation, generally under the procedures for competitively negotiated procurements. Proposals are evaluated for technical merit including, if appropriate, discussions with bidders and requests for revised proposals. The objective of the process is to negotiate one or more technical solutions acceptable to Bis-Man Transit. As part of this process, staff will conduct a responsibility review of each proposer and resolve any concerns in this area. At the end of this step, the providers of acceptable technical solutions will have been identified, and the proposed solutions negotiated to provide a definition of each which meets the requirements for a sealed-bid specification, although in this case, the specification for each will be different, reflecting the proposer's technical approach.

#### 6.6.5 Step Two

Each bidder whose technical proposal as negotiated has been found acceptable is invited to submit a sealed bid to provide the goods or services defined in its negotiated technical proposal. Award is based upon the lowest responsive price from a responsible bidder.

#### 6.7 Competitive Negotiations (Sealed Proposals)

The competitive negotiation procurement process is conducted through a formal Request for Proposals (RFP). This method of procurement is generally used when conditions are not appropriate for the use of sealed bids. This method may be used for acquisition of supplies or services only if staff determines in advance that competitive sealed bidding is not practicable and documents the file accordingly.

Architect/engineering and related services are procured through a variation of the RFP process, as described below.

##### 6.7.1 Competitive Negotiation Method

The competitive negotiation method of procurement is appropriate staff determines the following conditions exist:

- (a) A complete, adequate, and realistic specification or purchase description is not available.
- (b) Two or more responsible bidders are willing and able to compete effectively for the award.
- (c) The selection of the successful bidder requires consideration of factors other than price.
- (e) Discussions with bidders are anticipated to be needed.

- 6.7.2 Each RFP will include a description of the factors other than price by which proposals will be evaluated. Evaluation factors and sub factors will be listed in order of their relative importance. For RFPs other than small purchases, technical and pricing proposals shall be submitted in separate volumes.
- 6.7.3 Bis-Man Transit will appoint persons who have knowledge of procurement subject matter/technology to participate in the Technical Evaluation Panel (TEP). To the extent feasible, the panel members shall represent different staff members within Bis-Man Transit. Each panel member shall be required to disclose any potential conflict of interest, and may be excluded by the Executive Director on that basis. The evaluation process shall be confidential, and each participant shall not share information about the Proposals to individuals outside of the TEP. Technical personnel may be from other public agencies or contractors if necessary, providing there is no conflict of interest. The Executive Director will chair the TEP. The evaluation process is flexible, depending upon the complexity of the procurement, the number and quality of proposals, and the dollar values involved.
- 6.7.4 The TEP will review the technical evaluation factors and their relative importance as included in the RFP. In the event of any concerns, the RFP may be amended accordingly. DBE participation will not be assigned a weight as an evaluation factor, but will be considered as separate factor along with the weighted technical factors for award of the contract. Scoring shall include a description of the strengths and weaknesses of each proposal identified for each factor.

The TEP shall review the scoring, and prepare an initial report of the technical strengths, weaknesses, performance risks (if any) and ambiguities in the proposals, and identify any questions or clarifications desired from the proposers.

The TEP will, in consultation with Bis-Man Transit Staff, identify those proposers whose technical scores in combination with the proposed price gives them a reasonable chance of obtaining the award, eliminating those firms whose proposals are either technically deficient or unreasonably priced; these firms shall be notified by Bis-Man Transit they are no longer under consideration. Any firm so rejected cannot be further considered for award. The number of remaining firms can vary depending upon the competitiveness of the proposals; while a group of three to five proposals is considered ideal, care should be taken not to eliminate any proposal otherwise qualified for the sake of an arbitrary number.

- 6.7.5 The remaining firms are considered to be in the “competitive range.” The TEP shall determine the need and methods of further exploring the quality and pricing on the proposals. The intent of this process is to ensure each proposal is revised to conform, to the greatest extent possible, to the needs of Bis-Man Transit in the solicitation. These methods may include written questions and answers, and discussions either by



telephone or in person. Site visits may also be conducted if appropriate. Questions and discussions need not be identical for each proposer, but should be geared to address the perceived weaknesses of each. In this process, however, care must be taken to avoid giving proposers information from another proposal, which might give the proposer a competitive advantage.

- 6.7.6 At the end of the evaluation process, the TEP will re-score the proposals, using the same evaluation criteria and scoring. Based upon the results of the scoring, the panel may (1) eliminate some of the remaining proposals and conduct further discussions with the rest; (2) determine all firms are still in the competitive range but additional discussions are necessary; or (3) determine further discussions will not significantly affect the outcome of this procurement.
- 6.7.7 When the TEP reaches a determination, further discussion are not likely to significantly affect the outcome of the procurement, the Executive Director shall request each remaining proposer to submit a Best and Final Offer (BAFO), incorporating all revisions developed during the evaluation process. BAFOs may involve a complete resubmittal of both the technical and pricing proposals, suitably revised, or resubmittal of certain sections. When the intent is to incorporate the BAFO into the final contract, a complete resubmittal should be required. BAFOs must be submitted on an equal basis, giving each proposer the same amount of time to prepare, and with a common date and time for receipt. Failure to submit a BAFO by the time identified shall render a proposal non-responsive, unless it is the only BAFO submitted.
- 6.7.8 Following receipt of BAFOs, the TEP shall conduct a final scoring and determine the firm to be recommended for award, ensuring that the BAFO is in all respects acceptable. In rare instances, the TEP may ask the Executive Director to request revisions to the BAFO. The TEP will prepare a final evaluation report to (1) describe the technical strengths, weaknesses, and risks (if any) of the proposals in accordance with the technical evaluation criteria; (2) evaluate the proposal estimated costs for reasonableness (for cost type contracts); or prices offered (for fixed price contracts), and (3) recommend the “best value” offer – the proposal which offers the best combination of technical merit/performance and pricing.
- 6.7.9 The Executive Director shall prepare a summary of the solicitation process, including a record of the negotiation process. This document, together with a copy of all proposals and related documentation is to be kept in the official contract file.

6.8 Architect/Engineer Contracts

FTA Circular 4220.1F incorporates requirements of 40 U.S.C. § 541, known as the “Brooks Act” when contracting for architect/engineer (A&E) services. Other types of services considered A&E include program management, construction management, feasibility studies, preliminary engineering, design, surveying, mapping, and services

which require performance by a registered or licensed architect or engineer. The Brooks Act requires:

- (a) Bidder qualifications are evaluated;
- (b) Price is excluded as an evaluation factor;
- (c) Negotiations be conducted with only the most qualified bidder; and
- (d) Failing agreement on price, negotiations with the next most qualified bidder are conducted until a contract award can be made to the most qualified bidder whose price is fair and reasonable to Bis-Man Transit.

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

#### 6.9 Non-Competitive Procurement

Non-competitive (Sole Source) procurements are accomplished through solicitation and acceptance of a proposal from only one source. A contract amendment or change order not within the scope of the original contract is considered a sole source procurement that must comply with this subparagraph. Guidance as to what is “within the scope” of a contract may be found in the FTA Best Practices Procurement Manual, Section 9.2.1- Contract Scope and Cardinal Changes. A ‘Tag-on’ is defined by FTA as additions to the scope of work or deliverable items not included in the original contract competition, and which must be treated as sole source additions to the contract. A Tag-on is not to be treated as a change within the scope of the contract.

6.9.1 Procurement by non-competitive proposals may be used when only one source is practicably available and the award of a contract is infeasible under competitive small purchase procedures, sealed bids, or proposals and at least one of the following circumstances applies:

- (a) The item is only available from a single source;
- (b) The public exigency or emergency for the requirement will not permit a delay resulting from competitive negotiations;
- (c) FTA authorizes noncompetitive negotiations;
- (d) After solicitation of a number of sources, competition is determined inadequate.

6.9.2 After solicitation of a number of sources, competition is determined inadequate and an evaluation of the specifications determines they are not unduly restrictive of competition.

- 6.9.3 Receipt of a single responsive and responsible bid or proposal is not, by itself, conclusive evidence competition was inadequate; the Executive Director must determine if there was a perception of competition which would affect the bid or proposal. Under these circumstances, award is not considered a sole source. Bis-Man Transit staff, however, must investigate the reason why no other bids or proposals were received; verify the specification was not unduly restrictive and the solicitation cannot be modified in a manner resulting in greater competition; and document the file accordingly.
- 6.9.4 A cost analysis is required for each sole source acquisition.
- 6.9.5 The contract file must include a sole source determination by Bis-Man Transit explaining the reasons for the award on a non-competitive basis. This determination must include a full description of the circumstances, including documentation of efforts to obtain competition, where appropriate.

## **7.0 Receipt and Evaluation of Bids and Proposals**

### **7.1 Sealed Bids**

Sealed bids must be received prior to the exact time specified in the IFB. Late bids are not acceptable, and should be returned to the bidder unopened. Prior to the time set for receipt of bids, staff should check the front desk to ensure no bids have been delivered there, and should be at the place designated for receipt of bids, (usually the building lobby) not less than five minutes prior to the deadline. The envelope of each bid received should be stamped with the date and time of receipt, to verify timeliness. Bids shall be publicly opened, and the bid prices read. Each bid should be recorded in writing, including the name of the bidder and the bid price. Bids are public documents and bidders have the right to examine the bids of other parties after the bid opening. This should be done in a controlled environment, and not in the place of bid opening.

### **7.2 Competitive Proposals**

Proposals must be received prior to the exact time specified in the RFP, and the Executive Director should follow the same procedure as for sealed bids prior to the deadline for receipt. However, proposals are not publicly opened. A list of proposals shall be made, including the name of the proposer and the number of copies received.

### **7.3 Responsiveness Review**

Both bids and proposals are subject to requirements of responsiveness. This review is conducted by the Executive Director. Usually the requirement of responsiveness for a bid is more complex than for a proposal. This is because a bid is "locked in" at the time of receipt, and proposals are subject to discussions and negotiations. As a result, many items required with a sealed bid need not be submitted with a proposal. Responsiveness looks at the submittal as of the time it was received, and a bidder cannot later correct a deficiency. Any defect in an area of responsiveness requires the rejection of the bid or proposal. As a result, the Executive Director should ensure only items essential to the

award be specified as matters of responsibility. The submittal of product samples, for example, is usually better treated as a matter of responsibility. The most usual matters of responsiveness include timeliness of receipt, proper signatures for a commitment by the bidder to provide the items solicited, required DBE submittals, and, where required, bid binds. Proper completion of the pricing form is a matter of responsiveness for sealed bids; any exception to the terms and conditions of an IFB renders a bid non-responsive.

#### 7.4 Responsible Review

The following factors will be considered in determining responsiveness of a bid or proposal:

- (a) Ability and capacity of bidder to provide the materials;
- (b) Integrity, character, and reputation of the bidder;
- (c) Competency and experience of the bidder;
- (d) Past performance record of the bidder;
- (e) And the financial and technical resources of the bidder

### **8.0 Contract Cost and Price Analysis**

#### 8.1 Requirement

A cost or price analysis must be performed for every procurement action, including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation. FTA "Pricing Guide for Grantees" provides guidance in performing the appropriate degree of cost or price analysis.

#### 8.2 Independent Cost Estimate

Any cost or price analysis must be based on an independent cost estimate, which should be developed before a solicitation is issued, but in no event after the receipt of bids or proposals. For contract modifications, the independent cost estimate must be prepared without knowledge of the contractor's proposed pricing. Each independent cost estimate will include the date, estimated price, and basis of determination.

#### 8.3 Cost Analysis

A cost analysis must be performed when the bidder is required to submit the elements (i.e., labor hours, overhead, materials, etc.) of the estimated cost. A cost analysis is not required when the pricing reflects a catalog or market price of a commercial product sold in substantial quantities to the general public or is based on prices set by law or regulation.

- 8.3.1 A cost analysis will be necessary when adequate price competition is lacking, including sole source procurements (including contract modifications and change orders), unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or on the basis of

prices set by law or regulation. Where change orders involve items for which unit prices are included in the contract, a cost analysis is not required.

8.3.2 Profit is to be negotiated as a separate element of the price for each contract in which there is no price competition and, in all cases, where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, and industry profit rates in the surrounding geographical area for similar work.

8.3.3 Costs or prices based on estimated costs for contracts will be allowable only to the extent the costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles contained in Part 31 of the Federal Acquisition Regulations.

#### 8.4 Price Analysis

A price analysis looks at the price as a whole without examination of its various components. Several techniques may be used in performing a price analysis:

- (a) Comparing prices to those obtained for previous procurements.
- (b) Comparing prices to those obtained by other agencies for like items.
- (c) Comparing the range of prices received for the procurement involved; a price more than 10% higher or lower than the other prices received may raise questions as to whether the bidder interpreted the bid requirements differently than did the other bidders/proposers, and may render the bid price unreasonable.
- (d) Requiring each bidder/proposer to certify that the prices offered are no higher than those charged other customers for items of similar quality and quantity.

8.4.1 Adequate price competition may be determined to exist when the perception of competition exists, even if only one bid or proposal is received; conversely, the receipt of multiple bids or proposals with widely differing prices may not constitute adequate price competition.

## 9.0 **CONSTRUCTION CONTRACTS**

### 9.1 General

Under federal laws and regulations, certain special solicitation and contract requirements apply to construction contracts which are not necessarily applicable to non-construction contracts. These special requirements include mandatory requirements for bid bonds, performance bonds, and payment bonds for construction contracts over \$250,000.00, minimum insurance requirements, liquidated damages provisions in contracts, Anti-Kickback provisions and labor provisions applicable to all construction contracts under the Davis-Bacon Act.

Construction contract solicitation and administration requirements will not be covered in detail in this manual/policy. Solicitations and contracts for construction or “public work” activity will require careful review by legal counsel to assure completeness.

## 9.2 Federal Labor Requirements

### 9.2.1 Davis-Bacon Act

Bis-Man Transit is subject to the requirements of the Davis-Bacon Act, under which the advertised specifications for every Bis-Man Transit contract over \$2,000.00 for construction, alteration and/or repair, including painting and decorating of public buildings or public works which requires or involves the employment of laborers and/or mechanics, must contain a provision stating the minimum wages to be paid them based on determinations by the Secretary of Labor of local prevailing wage rates for comparable work. The rates must be posted at the site, and the wages must be paid in full no less often than weekly.

A copy of the determination of the Secretary of Labor must be included in each solicitation and the award of any contract must be conditioned upon the contractor accepting the terms of it. As a FTA grantee, Bis-Man Transit must report all reported or suspected violations to the FTA.

### 9.2.2 Copeland Anti-Kickback Act

Bis-Man Transit is subject to the requirements of the Copeland Anti-Kickback Act (40 U.S.C. § 276c) as supplemented by Department of Labor regulations (29 CFR Part 3) applicable to all contracts or subcontracts for construction or repair. This Act provides that each contractor or subcontractor shall be 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/she is otherwise entitled. Bis-Man is required to report any suspected or reported violations to the FTA.

### 9.2.3 Contract Work Hours and Safety Standards Act

All contracts issued for construction in excess of \$150,000.00 by Bis-Man Transit or its subcontractors which involves the employment of mechanics or laborers, shall include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 – 333) as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor will be required to compute the wages of every mechanic and laborer on the basis of a standard workweek of forty (40) hours. Work in excess of the standard work week is permissible provided the worker is compensated at a rate of not less than 1-1/2 times the basic rate of pay for all hours worked in excess of 40 hours in the work week.

Section 107 of the Act is applicable to construction work and provides no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his/her health and safety, as determined

under construction, safety and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.

## **10.0 CONTRACT ADMINISTRATION**

### **10.1 Post-Award Responsibilities**

Post-award contract administration responsibilities include the following responsibilities:

#### **10.1.1 Monitoring for Contract Compliance**

The Executive Director is responsible for monitoring contract compliance. If relying on staff (or Project Manager) for contract compliance monitoring, the Executive Director must assure staff (or Project Manager) gives timely notice of contract compliance problems.

#### **10.1.2 Enforcing Contract Provisions**

It is Bis-Man Transit's responsibility to enforce the contract as written or amended. If not enforced, a loss of time or product quality may be incurred.

#### **10.1.3 Issuing Timely Performance and Payment Approvals**

The Executive Director is the person with authority to approve contract performance so progress payments or other authorized expenditures of funds to the contractor are made. Bis-Man Transit will develop a process to ensure proper documentation has been reviewed and approved so payment approvals can be made. Timely approvals enable the work to proceed on a timely basis.

#### **10.1.4 Modifying the Contract as Necessary**

As the contract work proceeds, modifications or changes may become necessary. After technical considerations are resolved (by project manager), it is the Executive Director who has authority to initiate non-cardinal contract changes on behalf of Bis-Man Transit consistent with the scope of the project.

#### **10.1.5 Closing Out the Contract**

When the contract performance is completed, it is the Executive Director's responsibility to close-out the contract.

### **10.2 Project Management**

The Executive Director shall appoint a staff member to serve as the project manager for every project in excess of \$15,000.00 (this excludes purchase of standard items of material exceeding \$15,000.00 per year). It is Bis-Man Transit's responsibility to follow the contractor through the work process, providing technical direction to the contractor regarding the Scope of Work (which defines specific tasks, milestones and review procedures for the specific project). Staff will respond to correspondence on technical

matters from the contractor, either orally (then following-up with a written memo to the contract file) or in writing, and shall furnish the Executive Director with a copy of or memorandum reflecting all correspondence with the contractor. Bis-Man Transit staff shall review the progress of all the work on a periodic basis and initiate any required reviews.

The contractor may be required to document the amount of time and money spent on work on a periodic basis as specified by the contract. It is the staff's responsibility to review the contractors' documentation and invoices in relation to the milestones, work expended, and budget, and to advise Bis-Man Transit whether the contractor is in compliance with the contract.

### 10.3 Contract Amendments and Change Orders

Change orders are amendments to a contract and may be required to adjust a contract quantity or performance period due to unanticipated conditions. Change orders are considered non-competitive procurements and are subject to the same requirements as noted in Section 8. -The Executive Director shall determine whether the proposed change order contains a change in scope, which may be grounds for bidding the extra work. All change orders are subject to Executive Director review and approval. If a change order, or the cumulative effect of all change orders, is to increase the original contract amount by over ten percent (10%) of the original contract amount approved by the Board, the Executive Director shall submit it to the Bis-Man Transit Board for prior approval before the change is made. Change orders are subject to the availability of funds.

An independent cost estimate and a cost analysis must be performed and filed in the Bis-Man Transit contract file in along with any change order, unless price reasonableness can be established based on catalog or market price of a commercial product or on the basis of prices set by law or regulation.

### 10.4 Contract Requirements

Contracts established by Bis-Man Transit should set forth the responsibility and rights of each party clearly and completely in order to minimize the potential for conflict, and should set forth the directions for resolutions of disputes, if any. Contracts should include the following elements, as appropriate to the specific purchase.

- (a) Statement of Work/Scope of Work
  - (1) Contract Objectives
  - (2) Contract Scope
  - (3) Specifications/Purchase Descriptions



- (4) Progress Report Requirements (consultant/professional services contracts and any contract containing progress payment provisions)
- (b) Delivery Schedule
- (c) Contract Period
- (c) Pricing Schedule (should include description of each line item, quantity, unit of measure, unit price and total price for each item)
- (e) Payment Schedule (including special terms such as progress payments and authorities to withhold payments)
- (f) Inspection Provisions and Acceptance Criteria
- (g) FOB (Free on Board) Point and Delivery Instructions
- (h) Other Requirements (if appropriate):
  - (1) Identification of key personnel and facilities.
  - (2) Extent of subcontracting and consulting.
  - (3) Provision for changes by Bis-Man Transit within the general scope of the contract.
  - (4) Provision for termination for default by Bis-Man Transit for its convenience and, where appropriate, suspension of the contractor's work under the contract.
  - (5) Provisions for resolution of protests (required in solicitation), contract claims and disputes.
  - (6) Sanctions or remedies, such as liquidated damages or performance bonds, for contract's non-performance.
  - (7) Notice of any FTA or other federal requirements applicable to the contract.

10.5 Assignment of Contract Rights

- (1) Bis-Man Transit shall limit its procurements to the amount of property and services required to meet its reasonably expected needs without adding excess capacity simply for the purpose of assigning contract rights to others at a later

- date. Bis-Man Transit shall be able to justify the quantities it procures. Bis-Man Transit shall maintain written statements of its anticipated material requirements.
- (2) If Bis-Man Transit awards an indefinite-delivery-indefinite-quantity (IDIQ) contract for supplies or services, the solicitation and contract award shall include both a minimum and maximum quantity representing the foreseeable needs of Bis-Man Transit.
  - (3) Bis-Man Transit may find it has inadvertently acquired contract rights in excess of its needs. Bis-Man Transit may assign these contract rights to other eligible public transit systems provided the original contract includes an assignability provision or contains other appropriate assignment provisions. This process is called “piggybacking.”

#### 10.5.1 Acquisition Through Assigned Contract Rights

Although FTA does not encourage the practice, Bis-Man Transit may find it useful to acquire contract rights through assignment by another recipient. Bis-Man Transit shall first determine the contract price remains fair and reasonable, and the contract provisions comply with all Federal requirements. Bis-Man Transit does not need to perform a second price analysis if a price analysis was performed for the original contract. Bis-Man Transit shall be responsible for ensuring the contractor’s compliance with FTA Buy America requirements and execution of all the required pre-award and post-delivery Buy America review certifications. Before proceeding with the assignment, however, Bis-Man Transit shall review the original contract to be sure that the quantities the assigning recipient acquired, coupled with the quantities the acquiring recipient seeks, do not exceed the amounts available under the assigning recipient’s contract.

#### 10.5.2 Alternatives to Assign Contract Rights

Assignments limit Bis-Man Transit’s choices to specify property and services acquired to meet another recipient’s particular needs, and may be less suited to Bis-Man Transit needs. Bis-Man Transit may use the following options:

##### Joint Procurements

Whenever feasible, Bis-Man Transit will consider combining or “pooling” their procurements to obtain better pricing. Joint procurements represent the combined buying power of more than one purchaser at the time when prices are established. A joint procurement offers the advantage of permitting Bis-Man Transit to acquire property and services more closely responsive to Bis-Man Transit material requirements than would be available through assignments of existing contract rights. A joint procurement contract shall include total minimum and maximum quantities.

##### Intergovernmental Procurements

Federal, state, and local government resources may provide attractive procurement opportunities.

#### 10.6 Impermissible Actions

Bis-Man Transit may not use Federal assistance to finance:

(1) Improper Contract Expansion

A contract has been improperly expanded when it includes a larger scope, greater quantities, or options beyond the recipient's reasonably anticipated needs. A contract has also been improperly expanded when excess capacity has been added primarily to permit assignment of those contract rights to another entity. The Common Grant Rules require the recipient to have procurement procedures that preclude the recipient from acquiring property or services it does not need.

(2) Cardinal Changes

A significant change in contract work (property or services) that causes a major deviation from the original purpose of the work or the intended method of achievement, or causes a revision of contract work so extensive, significant, or cumulative that, in effect, the contractor is required to perform very different work from that described in the original contract, is a cardinal change. A change within the scope of the contract (sometimes referred to as an "in-scope" change) is not a cardinal change.

(3) Changes in Quantity

Bis-Man Transit may make a change in quantity in contract work to account for the realities of the marketplace and to make minor adjustments contemplated fairly and reasonably by the parties when they entered into the contract. (See U.S. Supreme Court decision in *Freund v. United States*, 260 U.S. 60 (1922) .

(4) Tests

Among other things, customary marketing practices can influence the determination of which changes will be "cardinal." Other tests involve the nature and extent of the work to be performed, the amount of effort involved, whether the change was originally contemplated at the time the original contract was entered into, or the cumulative impact on the contract quantity, quality, costs, and delivery terms.

(5) Rolling Stock

In the case of rolling stock, a major change in quantity or a substitution of major end items not contemplated when competition for the original award took place would generally be a cardinal change. An example of a cardinal change would be a change from a high-floor to a low-floor vehicle. Changing an engine might result in a cardinal change depending on the circumstances surrounding the project and whether a compatible replacement could be obtained through competition. Bis-Man Transit may make changes to seating, fabrics, colors, exterior paint schemes, signage, floor covering and other similar changes.

10.6.1 Federal Procurement Standards

The broader standards applied in Federal contracting practice reflected in Federal Court decisions, Federal Boards of Contract Appeals decisions, and Comptroller General decisions provide guidance in determining whether a change would be treated as a cardinal change. Pursuant to FTA direction, Bis-Man Transit shall consider the collective wisdom within these decisions in determining the nature of third-party contract changes along the broad spectrum between permissible changes and impermissible cardinal changes. For further information and clarification, Bis-Man Transit will consult FTA's *Best Practices Procurement Manual* and "Frequently Asked Questions" at the FTA Web site: <https://www.transit.dot.gov/funding/procurement/procurement>

## 10.7 Special Contract Requirements

### 10.7.1 Liquidated Damages Provisions

Bis-Man Transit shall determine whether or not the use of a liquidated damage provision is appropriate for each specific procurement. The assessment for damages shall be at a specific rate per day for each day of overrun in contract time; and the rate must be specified in the third-party contract. Bis-Man Transit will not include such provisions in contracts unless:

- (a) the time of delivery is of such importance that Bis-Man Transit can reasonably expect to suffer damage if the delivery is delinquent,
- (b) Bis-Man Transit determines the delivery schedule is reasonable at the time of contract award, and
- (c) damages would be difficult or impossible to establish.

If the Executive Director determines a liquidated damages provision is necessary in a contract, he/she shall document the derivation of the rate of assessment and assure it is reasonable, proper, and not arbitrary. Any liquidated damages recovered shall be credited to the project account involved unless the FTA permits otherwise.

### 10.7.2 Progress Payment Provisions

The following standards relate to Bis-Man Transit use of progress payment provisions:

- (a) Progress payments may be appropriate if:
  - (1) the contractor will not be able to bill the first delivery of products, or other performance milestones, for a substantial time after work must begin, and
  - (2) the contractor will make expenditures for contract performance during the period prior to delivery having significant impact on its working capital.

- (b) Progress payments may be appropriate for small or DBE businesses if the contractor demonstrates actual financial need or unavailability of private financing.
- (c) When progress payments are used, Bis-Man Transit will obtain title to property (i.e., materials, work in progress, and finished goods) for which progress payments are made. Such title must be free of all encumbrances, or Bis-Man Transit will secure a priority lien pursuant to Article 9 of the Uniform Commercial Code and applicable state law and local ordinances. Alternative security for progress payments by irrevocable letter of credit or equivalent means to protect Bis-Man Transit interests in the progress payments may be used in lieu of obtaining title.

## 10.8 Insurance Provisions

Bis-Man Transit should determine when insurance is required and include in any solicitation and contract document a clause informing contractors of the minimum coverage requirements required by federal or State statutes. When FTA grant funds are used, the minimum requirements shall be as follows:

### (a) Contractor Insurance

The contractor shall, at all times during the term of this contract and extended terms thereof, provide and maintain the following types of insurance protecting the interests of Bis-Man Transit and the Bis-Man Transit Board, hereafter referred to as Bis-Man Transit, et al for the remainder of this section, and the Contractor with limits of liability not less than those specified below.

#### (1) Workers Compensation Insurance\*\*

Providing Statutory Benefits under the Workers Compensation Act of the State of North Dakota and/or any other state or federal law or laws applicable to the Contractor employees performing work under this contract.

#### (2) Employers Liability Insurance\*\*

With limits of liability not less than \$500,000.00 for each accident, \$500,000.00 for each employee for disease and \$500,000.00 policy limit for disease.

**\*\*This insurance must be endorsed with a Waiver of Subrogation Endorsement, waiving the right of recovery for the insured under subrogation or otherwise from Bis-Man Transit et. al.**

#### (3) Commercial General Liability

Coverage shall carry at least limits of \$500,000.00 for each occurrence of bodily injury and property damage with a general aggregate of \$1,000,000.00 and a products and completed operations aggregate of \$1,000,000.00.

There shall not be any policy exclusions or limitations for contractual liability covering the Contractor obligations herein; personal injury/advertising liability; explosion, collapse and underground property damage hazards; medical payments; fire damage; legal liability; broad form property damage; liability for independent contractors.

(4) Comprehensive Automobile Liability Insurance

Covering all owned, hired and non-owned vehicles used in connection with the work performed under this contract with limits of liability not less than \$1,000,000.00 combined single limit.

(5) Builders Risk Insurance

Against all risks of direct physical loss shall be obtained by the Contractor in an amount of insurance equal at all times to the replacement cost value of all materials on site, in transit, installed, at temporary locations elsewhere, and labor performed. The policy to be insured jointly in the names of the Contractor and Bis-Man Transit et al.

(6) Umbrella Liability

Covering General Liability, Automobile Liability and Employer Liability with limits of not less than \$2,000,000.00.

(7) Certificates of Insurance

Before commencing with this contract, the Contractor shall mail Certificates of Insurance satisfactory to Bis-Man Transit et al (or, as and when Bis-Man Transit et. al may direct, copies of the actual insurance policies) at the following address:

Bis-Man Transit  
3750 East Rosser Avenue  
Bismarck, ND 58501  
ATTN: Executive Director

Certificates from each insurance company evidencing that insurance required by paragraph a, sections 1-5 above are in force, stating policy numbers, dates of expiration, and limits of liability thereunder. All copies of policies and Certificates of Insurance submitted to Bis-Man Transit et al shall be in form and content acceptable to Bis-Man Transit et al.

(8) Approval of Forms and Companies

All insurance described in this contract shall be written by an insurance company or companies satisfactory to Bis-Man Transit et. al and licensed to do business in North Dakota and shall be in form and content satisfactory to Bis-Man Transit et. al. No party subject to the provisions of this contract shall violate or knowingly permit to be violated any of the provisions of the policies of insurance described herein. Except as may otherwise specifically be provided herein to the contrary, all policies of insurance which are in any way related to the work required by this contract shall be endorsed waiving the issuing insurance company's rights of recovery against Bis-Man Transit et al, whether by way of subrogation or

otherwise. All insurance should be provided by insurance companies with a current Best's Rating of A- or better.

(9) Additional Insured Endorsement

The policy or policies providing Commercial General Liability, Automobile Liability, Employer Liability and Umbrella Liability coverage and as required above shall be endorsed to name the Bis-Man Transit et al. Additional Insured with respect to operations performed by or on behalf of the Contractor in performance of this contract. The policy shall be endorsed so the Contractor insurance is primary to all programs of insurance and self-insurance carried by Bis-Man Transit et al.

(10) Notice of Cancellation or Material Change

Policies and/or certificates shall specifically provide thirty (30) day written notice of cancellation, non-renewal, or material change to be sent to Bis-Man et al. In the event of cancellation of any policy and/or certificate for nonpayment of premium, Bis-Man Transit et al reserves the right, but is not obligated to pay this premium, and to deduct this cost from final payment to the Contractor for services rendered.

(11) Subcontractors

If any part of the work is sublet, the Contractor shall require any and all subcontractors performing work under this contract to carry insurance of the types and with limits of liability as the Contractor shall deem appropriate and adequate. In the event a subcontractor is unable to furnish adequate insurance required under the contract, the Contractor shall endorse the subcontractor as an Additional Insured. The Contractor shall obtain and furnish Bis-Man Transit et al certificates of insurance evidencing the subcontractor's insurance coverage.

(12) Multiple Policies

The limits of liability as required above may be provided by a single policy of insurance or a combination of primary, excess or umbrella liability policies. In no event shall the total limit of liability for any one occurrence or accident be less than the amounts shown above.

(13) Deductibles

Companies issuing the insurance policies and the Contractor shall have no recourse against Bis-Man Transit et al for payment of any premiums or assessments for any deductibles, as all such premiums and deductibles are the sole responsibility and risk of the Contractor.

(14) OSHA and Other Regulations

The Contractor shall be responsible for compliance with all safety rules and regulations of the Federal Occupational Safety and Health Act of 1990 and those of all applicable state and local laws or regulations during the conduct of and the Contractor's performance of this contract. The Contractor shall indemnify Bis-Man

et al for all fines, penalties and corrective measures that result from the acts of commission or omission of the Contractor, its subcontractors, if any, agents, employees and assignees and their failure to comply with such safety rules and regulations.

Bis-Man Transit, as contract administrator, shall assure a current certificate is on file at all times during performance of the contract.

#### 10.9 Prohibited or Restricted Contract Types

The Common Grant Rule provides more guidance to the Transit System, on prohibited or restricted contract types. The following contract types are restricted or prohibited:

(1) Cost Plus a Percentage of Cost – Prohibited

Pursuant to the Common Grant Rules, Bis-Man Transit shall not use cost plus a percentage of cost plus a percentage of construction cost methods of contracting.

(2) Time and Materials – Restricted

Pursuant to the Common Grant Rules, Bis-Man Transit shall be permitted to use the time and material contracts only if the following conditions are met:

- a. Permitted to Use, Bis-Man Transit has determined no other contract type is suitable; and

(3) Firm Ceiling Price

If the contract specifies a ceiling price the contractor may not exceed except at its own risk.

#### 10.10 Revenue Contracts

Revenue contracts are those third party contracts whose primary purpose is to either generate revenues in connection with a transit related activity, or to create business opportunities utilizing an FTA-funded asset. FTA requires these contracts to be awarded utilizing competitive selection procedures and principles. In accordance with FTA Circular 4220.1 F section 7(n) as amended, the extent of and type of competition required is within the discretionary judgment of the Executive Director. Any Revenue contract which is expected to exceed \$10,000 annually will require approval from the Board. Revenue contracts may have a period of performance beyond 5 years if Bis-Man Transit believes it is in Bis-Man Transit's best interest. (Reason will be documented and contained in the procurement file.)

#### 10.11 Contract Termination Provisions



All contracts over \$10,000.00 shall contain provisions for termination for cause and for convenience by Bis-Man Transit including the manner by which it will be affected and the basis for settlement.

For all contracts in excess of the small purchase threshold, there shall be administrative, contractual or legal remedies in instances where contractors violate or breach the contract terms, including sanctions and penalties as may be appropriate.

The performance of work under a contract containing such provisions may be terminated in part or in whole when staff, in consultation with the Executive Director, the Board, and Legal Counsel (when sought), determines that such termination is in the best interests of Bis-Man Transit. Contracts may be terminated for convenience (i.e., a reduced need or otherwise in the best interests of Bis-Man Transit) or for default (i.e., the contractor has failed to perform under the contract requirements). Contractors will not be granted the right of termination.

When the decision to terminate is made, a "Notice of Termination" shall be sent by the Executive Director to the contractor by certified mail, with a return receipt requested. The Notice of Termination shall specify the reason for termination, the extent to which the performance of work is terminated (i.e., in whole or in part), and the day upon which such termination becomes effective. Settlement of claims shall be made as soon as possible after the issuance of a Notice of Termination/Default to protect the interests of and minimize the liability of Bis-Man Transit. When settlement cannot be made, Bis-Man Transit shall reserve the right to issue a determination of the amount due consistent with the termination clause and applicable cost principles, subject to appeal under the disputes provisions of the contract.

Bis-Man Transit will consider a no-cost settlement instead of issuing a termination notice when it is known the contractor will accept one, Bis-Man Transit property was not furnished, and there are no outstanding payments, debts due Bis-Man Transit, or other contractor obligations to Bis-Man Transit.

#### 10.12 Buy America Provisions

Procurements involving the purchase of iron, steel and manufactured goods will be subject to the "Buy America" requirements in 49 *CFR* Part 661.

All Bis-Man Transit procurements in excess of \$150,000.00 are subject to the Buy America regulation, which requires that all steel and manufactured products (and cement in construction) have 100% U.S. content and be manufactured in the United States. There are special provisions relating to purchase of buses and communications equipment which require seventy percent (70%) content and final assembly in the United States. In purchasing buses, Bis-Man Transit is required (49 *CFR* Part 663) to conduct a pre-award and post-delivery audit of the manufacturer's Buy America certification.

49 CFR § 661.13(b) requires Bis-Man Transit include a requirement in the solicitation, as a condition of responsiveness, the bidder submit with the bid a completed Buy America certificate in accordance with 49 CFR § 661.6 or §661.12, as applicable. There are three implications of this requirement:

- (1) If the certifications are not completed and submitted with the bid, the bid is non-responsive and cannot be considered. Bis-Man Transit cannot go back and ask, in a competitively sealed bidding procurement, for the bidder to complete the certification and submit it after bids are received.
- (2) However, the bidder certifies with its bids (whether or not it will be bound by the applicable requirement), it is bound by that certification and cannot change it after bid opening.
- (3) If the bidder certified it will comply with all the applicable Buy America requirements, it will not be eligible later for a waiver of those requirements.

Buy America Certification forms will be included with each IFB or RFP solicitation and will be required to be executed and submitted with a bid or proposal. Purchases made using small purchase procedures are most often made under a purchase order, in order to set up the account payable. A Bis-Man Transit purchase order states conditions of purchase, including Buy America requirements. It is a condition of the Bis-Man Transit purchase order, when accepting the order, the vendor certifies Buy America requirements are met. In those few instances where a purchase order is not used, Bis-Man Transit will furnish a certification form to the vendor for execution. Once a certification is received from a vendor for a particular item, it is not necessary to require receipt of a certification for each subsequent purchase provided there is a certification on file for that item.

If a waiver for the Buy America requirements is sought, the following is the process to be followed:

Applications for waivers are processed in accordance with the provisions of 49 *CFR* §661.9. The waiver must be obtained "in a timely manner" through Bis-Man Transit. A Bis-Man Transit request for waiver must be made in writing, and should include all facts and justification to support the waiver, and be submitted to the FTA Administrator through the appropriate FTA Regional Office. The Administrator (or Regional Administrator, in cases where authority has been delegated) will issue a written determination setting forth the reasons for granting or denying the exception request.

#### 10.13 Lobbying Restrictions

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 any contract of \$100,000 or more, the payor must complete and submit the Standard Form, "Disclosure Form to Report Lobbying," in accordance with its instructions.

10.14 Transit Vehicle Manufacturer Compliance with DBE Requirements

Before a transit vehicle manufacturer (TVM) may submit a bid or proposal to provide vehicles to be financed with FTA assistance, 49 C.F.R. § 26.49 requires the TVM to submit a certification that it has complied with FTA's DBE requirements. FTA's website contains a list of current certified TVMs and it is a best practice to confirm a TVMs certification with the list. If the TVM is not the site list, the Region 8 civil rights officer before awarding the contract.

10.15 Debarment and Suspension (SAM.gov)

It is the responsibility of Bis-Man Transit to check SAM.gov to ensure that the bidder has been deemed responsible and does not appear on the declined or suspended list.

10.16 Federal Provisions and Required Contract Clauses

When federal operating or capital funds are used in a purchase, certain solicitation provisions and required contract clauses must be incorporated in the Bis-Man Transit solicitation and award. These requirements are stated in the Bis-Man Transit FTA Master Agreement, FTA Circulars, and in the various regulations. Some provisions and clauses apply only over certain contract dollar thresholds, and some apply separately to construction and non-construction contracts. A separate contract administrator manual includes these provisions and required clauses.

When including "boilerplate" provisions and contract clauses in an IFB or RFP, the Executive Director will separately reference in bid instructions those provisions and/or clauses which are not applicable to the procurement, and will cross out and initial those inapplicable sections of the "boilerplate" document which is included in the solicitation.

**APPENDIX A  
SOLICITATION FILE CHECKLIST**

<b>Solicitation No.</b>	
<b>Title</b>	
<b>Issue Date</b>	
<b>SOLICITATION DOCUMENTATION</b>	<b>NOTES</b>
Legal Notices	
Posting to Website	
Solicitation	
Independent Cost Estimate	
Vendor List	
Pre-Proposal and Pre-Bid Meeting Documentation	
Amendments and Clarifications	
Record of Approved Equal Status Requests	
Bid Opening Record	
Request for Best and Final Offers	
All Bids and Proposals received (on time)	
<b>OFFER EVALUATION DOCUMENTATION</b>	
<b>Responsiveness</b>	<b>Responsiveness cont'd</b>
Completed and Signed Solicitation/Award	Buy America certification, as applicable
Completed pricing schedule	Bid Bond, as applicable
Acknowledge of Amendments, as applicable	Certificate of Insurance and Insurance Verification
Representations and Certifications complete	Vendor Profiles
DBE Forms	Excluded Parties List verification DBE Participation Goal Verification
Technical Evaluation Panel Reports	Record of Proposer interviews, questions and answers
Record of Past Performances and Verification	Documentation of Reason for Selection or Rejection of an Offer
Record of Financial Capacity	Notice of Solicitation Cancellation, if applicable
Cost or Price analysis	Award Recommendation

**APPENDIX B  
CONTRACT FILE CHECKLIST**

<b>CONTRACT NO.</b>	<b>CONTRACTOR</b>
<b>AWARD DATE</b>	<b>EXPIRATION DATE</b>
<b>CONTRACT DOCUMENTATION</b>	<b>NOTES</b>
Procurement summary, for base contract award, modifications, and contract extensions	
Executed contract	
Notice to Award	
Notice to Proceed	
Executed Contract Modifications (change orders)	
Documentation of Executed Contract Modifications,	
Documentation of the Requirement	
Sole source justification	
Record of Negotiations	
Independent Cost Estimate	
Cost or Price Analysis	
Record of approval at appropriate level	
Record of Funding	
Interested Parties Correspondence	
Internal correspondence, substantiating contract actions or deemed appropriate	
Copy of Bonds, as applicable	
Copy of current Certificate of Insurance	
Completed Contract Closeout Checklist	
Accepted Offer	

**APPENDIX C**  
**METHODS OF PROCUREMENT – QUICK REFERENCE**

<b>Method</b>	<b>Micro Purchases</b>	<b>Small Purchase (supplies, equipment, services)</b>	<b>Sealed Bids (construction. Supplies, equipment, non-professional services)</b>	<b>Competitive Proposals (supplies, equipment, services)</b>	<b>Non-Competitive (Single or Sole Source)</b>
<b>Threshold</b>	Up to \$10,000	More than \$10,000 up to \$50,000	More than \$50,000 New equipment valued greater than \$25,000 requires City approval	More than \$100,000, if higher than \$10,000 requires Board approval, New equipment valued greater than \$25,000 requires City approval	More than \$25,000, if higher than \$10,000 requires Board approval, New equipment valued greater than \$25,000 requires City approval
<b>Planning</b>	None, unless construction over \$2,000	Purchase Requisition, Technical Specification or Scope of Work, cost estimate, DBE Goal	Purchase Requisition, specification, vendor list, independent cost estimate, DBE Goal, Insurance requirements, schedule	Purchase Requisition, specification, vendor list, independent cost estimate, DBE Goal, Insurance requirements, schedule	Documented justification, Purchase Requisition, Specification or Scope of Work, independent cost estimate, Insurance requirements
<b>Obtain Quotes / Bids / Proposals</b>	At least ONE Quote in writing OR may be off-the shelf pricing for retail items	Scope of Work Reasonable number of Written Quotes (a minimum of three quotes, more if the market permits) Established Evaluation Criteria, Factors, and Relative Importance	IFB, Specification Publicly Advertised, Adequate number of known suppliers, Formal Sealed Bid, Open Bids Publicly	RFP, Scope of Work, Performance or Functional Specification, Advertise, Adequate number of qualified sources, Written Proposal Discussions Expected, BAFO	Only One Reasonably Available Supplier/Contractor, Written Proposal, Acknowledgement and Acceptance of FTA clauses, Completion of Representations and Certifications
<b>Award Purchase Order/ Contract</b>	Single Quote No Competition	Requires Competition Awarded to "Best Value" (usually low Bid)	Firm Fixed Price Awarded to Lowest Responsive and Responsible Bidder. Any and all bids may be rejected	Requires Competition Usually awarded to Best Value (best combination of meeting technical needs and price)	Written Justification, Available only from one known source

**APPENDIX C (CONTINUED)**  
**METHODS OF PROCUREMENT – QUICK REFERENCE**

<b>Method</b>	<b>Micro Purchases</b>	<b>Small Purchase (supplies, equipment, services)</b>	<b>Sealed Bids (construction. Supplies, equipment, non-professional services)</b>	<b>Competitive Proposals (supplies, equipment, services)</b>	<b>Non-Competitive (Single or Sole Source)</b>
<b>Determination of Fair and Reasonable Price</b>	Description of how price is fair and reasonable	Price Analysis	Low Bid	Price Analysis, if adequate competition exists, otherwise Cost Analysis required	Cost Analysis Required, unless basis is catalog or market price of commercial product
<b>Bonding Requirements</b>	Not Required	Not Required	Required for construction Contracts over \$100,000	Usually not required	Required for construction Contracts over \$100,000
<b>Davis-Bacon Wage Rates</b>	Construction contracts over \$2,000	Construction Contracts	Construction Contracts	Construction Contracts	Construction contracts over \$2,000
<b>Buy America Certification</b>	Exempt	Exempt	Required if over \$150,000	Required if over \$150,000	Required if over \$150,000
<b>Excluded Parties List Verification</b>	Not Required	Required if \$25,000 or higher	Required	Required	Required if \$25,000 or higher
<b>Documentation of Rationale / Basis for Award</b>	e.g. "Purchased at off the shelf pricing"	Historical Data or written summary (Findings of Fact)	Written Summary	Written Summary (Findings of Fact and Record of Negotiations)	Written Summary (Findings of Fact and Record of Negotiations)

**APPENDIX D  
PROVISIONS. CERTIFICATIONS, REPORTS, FORMS, AND OTHER-MATRICES**

**APPLICABILITY OF THIRD PARTY CONTRACT PROVISIONS**

(Excluding micro-purchases, except Davis-Bacon requirements apply to contracts exceeding \$2,000)

<b>TYPE OF PROCUREMENT</b>					
<b>PROVISION</b>	<b>Professional Services / A&amp;E</b>	<b>Operations / Management</b>	<b>Rolling Stock Purchase</b>	<b>Construction</b>	<b>Materials &amp; Supplies</b>
No Federal Government Obligation to Third Parties (by Use of a disclaimer)	All	All	All	All	All
False Statements or Claims Civil and Criminal Fraud	All	All	All	All	All
Access to Third Party Contract Records	All	All	All	All	All
Changes to Federal Requirements	All	All	All	All	All
Termination	>\$10,000 if 49 CFR Part 18 Applies	>\$10,000 if 49 CFR Part 18 Applies	>\$10,000 if 49 CFR Part 18 Applies	>\$10,000 if 49 CFR Part 18 Applies	>\$10,000 if 49 CFR Part 18 Applies
Civil Rights (Title VI, EEO, ADA)	>\$10,000	>\$10,000	>\$10,000	>\$10,000	>\$10,000
Disadvantaged Business Enterprises (DBEs)	All	All	All	All	All
Incorporation of FTA Terms	All	All	All	All	All
Debarment and Suspension	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000
Buy America			>\$150,000	>\$150,000	>\$150,000
Resolution of Disputes, Breaches, or Other Litigation	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Lobbying	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Air	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Water	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000



**APPENDIX D (CONTINUED)**  
**PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER-MATRICES**

**APPLICABILITY OF THIRD PARTY CONTRACT PROVISIONS**

(Excluding micro-purchases, except Davis-Bacon requirements apply to contracts exceeding \$2,000)

<b>TYPE OF PROCUREMENT</b>					
<b>PROVISION</b>	<b>Professional Services / A&amp;E</b>	<b>Operations / Management</b>	<b>Rolling Stock Purchase</b>	<b>Construction</b>	<b>Materials &amp; Supplies</b>
Cargo Preference			For property transported by ocean vessel	For property transported by ocean vessel	For property transported by ocean vessel
Fly America	For foreign air transport or travel	For foreign air transport or travel	For foreign air transport or travel	For foreign air transport or travel	For foreign air transport or travel
Davis-Bacon Act				>\$2,000	
Contract Work Hours and Safety Standards Act		>\$100,000 (except Transportation services)	>\$100,000	>\$100,000 (including ferry vessels)	
Copeland Anti-Kickback Act Section 1 Section 2				All exceeding \$2,000 (including ferry vessels)	
Bonding				\$100,000	
Seismic Safety	A&E for New Buildings & Additions				
Transit Employee Protective Arrangements		Transit Operations			
Charter Service Operations		All			
School Bus Operations		All			
Drug Use and Testing		Transit Operations			
Alcohol Misuse and Testing		Transit Operations			
Patent Rights	Research & Development				

**APPENDIX D (CONTINUED)**  
**PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER-MATRICES**

**APPLICABILITY OF THIRD PARTY CONTRACT PROVISIONS**

(Excluding micro-purchases, except Davis-Bacon requirements apply to contracts exceeding \$2,000)

<b>TYPE OF PROCUREMENT</b>					
<b>PROVISION</b>	<b>Professional Services / A&amp;E</b>	<b>Operations / Management</b>	<b>Rolling Stock Purchase</b>	<b>Construction</b>	<b>Materials &amp; Supplies</b>
Rights in Data and Copyright Requirements	Research & Development				
Energy Conservation	All	All	All	All	All
Recycled Products		Contracts for items designated by EPA, when procuring \$10,000 or more per year		Contracts for items designated by EPA, when procuring \$10,000 or more per year	Contracts for items designated by EPA, when procuring \$10,000 or more per year
Conformance with ITS National Architecture	ITS Projects	ITS Projects	ITS Projects	ITS Projects	ITS Projects
ADA Access	A&E	All	All	All	All
Notification of Federal Participation for States	Limited to States	Limited to States	Limited to States	Limited to States	Limited to States

**EXHIBIT E**

<b>FTA CONTRACT CLAUSES</b>	<b>COMMENTS</b>	<b>MASTER AGREEMENT REFERENCE</b>	<b>"x" – Included "na" – Not Applicable</b>
<i>No Federal government obligations to third-parties by use of a disclaimer</i>	<i>All contracts over \$3,000</i>	<i>§2.f</i>	
<i>Program fraud and false or fraudulent statements and related acts</i>	<i>All contracts over \$3,000</i>	<i>§3.f</i>	
<i>Access to Records</i>	<i>All contracts over \$3,000</i>	<i>§15.t</i>	
<i>Federal changes</i>	<i>All contracts over \$3,000</i>	<i>§2.c(1)</i>	
<i>Civil Rights (EEO, Title VI &amp; ADA)</i>	<i>All contracts over \$3,000</i>	<i>§12</i>	
<i>Incorporation of FTA Terms</i>	<i>All contracts over \$3,000</i>	<i>§15.a</i>	
<i>Energy Conservation</i>	<i>All contracts over \$3,000</i>	<i>§26</i>	
<i>Termination provisions</i>	<i>All contracts over \$10,000</i>	<i>§11</i>	
<i>Debarment and Suspension</i>	<i>All contracts over \$25,000</i>	<i>§3.b</i>	
<i>Buy America</i>	<i>When tangible property or construction will be acquired. All contracts over \$150,000</i>	<i>§14.a</i>	
<i>Provisions for resolution of disputes, breaches, or other litigation</i>	<i>All contracts over \$100,000</i>	<i>§56</i>	
<i>Lobbying</i>	<i>All contracts over \$100,000</i>	<i>§3.d</i>	
<i>Clean Air</i>	<i>All contracts over \$100,000</i>	<i>§25.b</i>	
<i>Clean Water</i>	<i>All contracts over \$100,000</i>	<i>§25.c</i>	
<i>Cargo Preference</i>	<i>When acquiring property suitable for shipment by ocean vessel. All contracts over \$100,000</i>	<i>§14.b</i>	
<i>Fly America</i>	<i>When property or persons transported by air between U.S. and foreign destination, or between foreign location. All contracts over \$100,000</i>	<i>§14.c</i>	
<i>Davis Bacon Act</i>	<i>Except for contracts less than \$2,000 or third party contracts for supplies, materials, or articles ordinarily available on the open market</i>	<i>§24.a</i>	
<i>Copeland Anti-Kickback Act Section 1 Section 2</i>	<i>All Construction Contracts over \$2,000</i>	<i>§24.a</i>	
<i>Contract Work Hours &amp; Safety Standards Act</i>	<i>All Construction Contracts over \$2,000</i>	<i>§24.a</i>	

<b>FTA CONTRACT CLAUSES</b>	<b>COMMENTS</b>	<b>MASTER AGREEMENT REFERENCE</b>	<b>"x" – Included "na" – Not Applicable</b>
<i>Bonding for construction activities exceeding \$100,000</i>	<p>5% bid guarantee; 100% performance bond; and Payment bond equal to:</p> <ul style="list-style-type: none"> <li>• 50% for contracts &lt; \$1 M</li> <li>• 40% for contracts &gt; \$1 M, but &lt; \$5 M</li> <li>• \$2.5 M for contracts &gt; \$5 M</li> </ul>	§15.o(1)	
<i>Seismic Safety</i>	<i>All Contracts for construction of new buildings or additions to existing buildings</i>	§23.e	
<i>Nonconstruction Employee Protection (Contract Work Hours and Safety Standards Act)</i>	<i>Applicable to all turnkey, rolling stock and operational contracts (excluding contracts for transportation services) over \$100,000</i>	§24.b	
<i>Transit Employee Protective Arrangements</i>	<i>Applies to Section 5307, 5309, 5311 and 5316 funded operations contracts</i>	§24.d	
<i>Charter Service Operations</i>	<i>All operations contracts</i>	§28	
<i>School Bus Operations</i>	<i>All operations contracts</i>	§29	
<i>Drug and Alcohol Testing</i>	<i>Safety sensitive functions. Applies to Sections 5307, 5309 and 5311 operations contracts</i>	§32.b	
<i>Patent Rights</i>	<i>R&amp;D contracts</i>	§17	
<i>Rights in Data and Copyrights</i>	<i>R&amp;D contracts</i>	§18	
<i>Disadvantaged Business Enterprises (DBEs)</i>	<i>Contracts awarded on the basis of a bid or proposal offering to use DBEs</i>	§12.d	
<i>Prompt Payment and Return of Retainage</i>	<i>Per 49 CFR Part 26, if grantee meets the threshold for a DBE program</i>	§12.d	
<i>Recycled Products</i>	<i>Contracts for items designated by EPA, when procuring \$10,000 or more per year</i>	§15.k	
<i>ADA Access</i>	<i>Contracts for rolling stock or facilities construction/ renovation</i>	§12.g	
<i>Assignability Clause</i>	<i>Piggyback procurements</i>	§15.a	
<i>Special Notification Requirements for States</i>	<i>Applies to contracts awarded by states</i>	§38	
<i>Bus Testing Certification and Report</i>	<i>Obtain prior to award Procurements of buses and modified mass produced vans</i>	§15.n(4)	
<i>TVM Certifications</i>	<i>Obtain prior to award Procurements of buses and modified mass produced vans</i>	§12.d(1)	
<i>Buy America Certification</i>	<p><i>Obtain signed certification with bid or proposal</i> <i>Procurements of steel, iron or manufactured products over \$150,000</i></p>	§14.a	
<i>Pre-Award Audit</i>	<i>Obtain prior to award Rolling stock procurements over \$100,000</i>	§15.n(3)	

<b>FTA CONTRACT CLAUSES</b>	<b>COMMENTS</b>	<b>MASTER AGREEMENT REFERENCE</b>	<b>"x" – Included "na" – Not Applicable</b>
<i>Pre-Award Buy America Certification</i>	<i>Sign prior to award Rolling stock procurements over \$100,000</i>	<i>§15.n(3)</i>	
<i>Pre-Award Purchaser's Requirement Certification</i>	<i>Sign prior to award Rolling stock procurements</i>	<i>§15.n(3)</i>	
<i>Post-Delivery Audit</i>	<i>Obtain prior to acceptance Rolling stock procurements over \$100,000</i>	<i>§15.n(3)</i>	
<i>Post-Delivery Buy America Certification</i>	<i>Sign prior to acceptance Rolling stock procurements over \$100,000</i>	<i>§15.n(3)</i>	
<i>Post-Delivery Purchaser's Requirement Certification</i>	<i>Sign prior to acceptance Rolling stock procurements</i>	<i>§15.n(3)</i>	
<i>Contract Administration System</i>	<i>Verify prior to contract award</i>	<i>Ch. III, §3</i>	
<i>Record of Procurement History</i>	<i>Verify prior to payment The file contains a complete procurement history.</i>	<i>Ch. III, §3.d(1)</i>	
<i>Protest Procedures</i>	<i>Verify prior to solicitation</i>	<i>Ch. VII, §1</i>	
<i>Selection Procedures</i>	<i>Verify prior to solicitation The procurement contains a description of contractor selection method.</i>	<i>Ch. III, §3d(1)(c)</i>	
<i>Independent Cost Estimate</i>	<i>Verify prior to solicitation The procurement contains a description of contractor selection method</i>	<i>Ch. VI, §6</i>	
<i>Cost/Price Analysis</i>	<i>Verify prior to award A cost or price analysis is in the procurement file</i>	<i>Ch. VI, §6</i>	
<i>Responsibility Determination</i>	<i>Verify prior to award A contractor responsibility determination is in the procurement file</i>	<i>Ch. VI, §8.b</i>	
<i>Justification for Noncompetitive Awards</i>	<i>Verify prior to award If applicable</i>	<i>Ch. VI, §3.i(1)(b)</i>	
<i>No excessive bonding requirements</i>	<i>Verify prior to solicitation If applicable</i>	<i>Ch. VI, §2.h(1)(f)</i>	
<i>No exclusionary specifications</i>	<i>Verify prior to solicitation</i>	<i>Ch. VI, §2.a(4)</i>	
<i>No geographic preferences</i>	<i>Verify prior to solicitation Except for A&amp;E services</i>	<i>Ch. VI, §2.a(4)(g)</i>	
<i>Evaluation of Options</i>	<i>Verify prior to award If applicable</i>	<i>Ch. VI, §7.b</i>	
<i>Exercise of Options</i>	<i>Verify prior to award If applicable</i>	<i>Ch. V, §7.a</i>	
<i>On-Site Inspector's Report</i>	<i>Obtain prior to acceptance Rolling stock procurements for more than 10 vehicles for areas greater than 200,000 in population and 20 for areas less than 200,000 in population</i>	<i>§15.n(3)</i>	

<b>FTA CONTRACT CLAUSES</b>	<b>COMMENTS</b>	<b>MASTER AGREEMENT REFERENCE</b>	<b>"x" – Included "na" – Not Applicable</b>
<i>Federal Motor Vehicles Safety Standards Pre-Award and Post-Delivery Certification</i>	<i>Obtain prior to award and then sign prior to acceptance Rolling stock procurements</i>	§15.n(3)	
<i>Excluded Parties Listing System search</i>	<i>Perform prior to award Procurements greater than \$25,000</i>	§3.b	
<i>Lobbying Certification</i>	<i>Obtain signed certification with bid or proposals Procurements greater than \$100,000</i>	§3.d(1)	
<i>Standard Form LLL and Quarterly Updates (when required)</i>	<i>Obtain prior to award Procurements greater than \$100,000 where contractor engages in lobbying activities</i>	§3.d(1)	

**APPENDIX F  
PRE-AWARD AND POST-DELIVERY VEHICLE AUDITS**

**Pre-Award Buy America:**

**PRE-AWARD BUY AMERICA COMPLIANCE CERTIFICATION**

*As required by Title 49 of the CFR, Part 663 – Subpart B, \_\_\_\_\_  
(the recipient) is satisfied that the buses to be purchased, \_\_\_\_\_  
(number and description of buses) from \_\_\_\_\_  
(the manufacturer), meet the requirements of Section 165(b)(3) of the Surface Transportation Assistance Act  
of 1982, as amended. The recipient, or its appointed analyst \_\_\_\_\_  
(the analyst – not the manufacturer or its agent), has reviewed documentation provided by the manufacturer,  
which lists (1) the proposed component and subcomponent parts of the buses identified by manufacturer,  
country of origin, and cost; and (2) the proposed location of the final assembly point for the buses, including  
a description of the activities that will take place at the final assembly point and the cost of final assembly.*

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

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

**Pre-Award FMVSS Compliance Certification:**

**PRE-AWARD FMVSS COMPLIANCE CERTIFICATION**

*As required by Title 49 of the CFR, Part 663 – Subpart D, \_\_\_\_\_*

*(the recipient) certifies that it received, at the pre-award stage, a copy of*

*\_\_\_\_\_’s (the manufacturer) self-certification information stating that*

*the buses, \_\_\_\_\_ (number and description of buses), will comply with the*

*relevant Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety*

*Administration in Title 49 of the Code of Federal Regulations, Part 571.*

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

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



**Pre-Award Purchasers Requirements Certification:**

**PRE-AWARD PURCHASER'S REQUIREMENTS CERTIFICATION**

\_\_\_\_\_ (the recipient) certifies that the buses to be purchased, \_\_\_\_\_ (number and description of buses) from \_\_\_\_\_ (the manufacturer), are the same product described in the recipient's solicitation specification and that the proposed manufacturer is a responsible manufacturer with the capability to produce a bus that meets the specifications.

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

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

## Vehicle Acceptance Inspection Checklist:

### Exterior Body

	P	F
Panel Fit	___	___
Window Fit	___	___
Door Fit	___	___
Paint Finish	___	___
Door Operation	___	___
Mud Flaps	___	___
Sealer/Caulking	___	___
Proper Decals	___	___
Water Leaks	___	___
Block Heater Cord	___	___

### Exterior Lights

	P	F
Low Headlights	___	___
High Headlights	___	___
Day Running	___	___
Parking Lights	___	___
Clearance Lights	___	___
Brake Lights	___	___
Reverse Lights	___	___
Turn Signals	___	___
Hazards/Flashers	___	___
Entrance Doors	___	___
Reflectors	___	___

### Fluid Levels

	P	F
Antifreeze	___	___
A.freeze Protection	___	___
Power Steering	___	___
Washer Fluid	___	___
Engine Oil	___	___
Transmission Fluid	___	___
Brake Fluid	___	___
Tire Pressure	___	___

### Lube and Adjust

	P	F
Door Hinges	___	___
Door Seals	___	___
Door Locks	___	___
Doors Push Shut	___	___
Emergency Releases	___	___
Mirrors	___	___
Battery Cables	___	___
Battery Box Door	___	___
Windows	___	___

### Interior Lights

	P	F
Drivers Dome	___	___
Passengers Dome	___	___
Stepwell Lights	___	___
Side Door Interior	___	___
Instrument Panel	___	___
Indicator Lights	___	___
Light Monitor Opt	___	___
Intermotive Lights	___	___
Control Panel Lights	___	___

### Safety Equipment

	P	F
First Aid Kit	___	___
Fire Extinguisher	___	___
Triangles	___	___
Flares	___	___
Body Fluid Cleanup	___	___
Seat Belt Cutters	___	___
Seat Belt Operation	___	___
All Seats Secure	___	___
Emergency Window	___	___
Roof Hatches	___	___
Mount Items	___	___

Under Inspection	P	F
Front Suspension	___	___
Rear Suspension	___	___
Brake Lines/Hoses	___	___
Exhaust System	___	___
Fuel Lines	___	___
Coolant Values	___	___
Lic. Plate Screws	___	___

Int. Accessories	P	F
Park Brake Light	___	___
Wipers	___	___
Horn	___	___

Heaters	P	F
Check Defrost	___	___
Check Lines	___	___

Prep for Delivery	P	F
Clean Inside	___	___
Clean Outside	___	___
Wax Floor	___	___
Inspections Done	___	___

Wheelchair Equipment	P	F
Brake Interlock	___	___
Lift Operation	___	___
Tie Downs	___	___
Lift Adjustment	___	___
Manual Operation	___	___

Interior Decals	P	F
Capacity	___	___
Exit Windows	___	___
Exit Door	___	___
Warning Signs	___	___

Wheelchair Securements	P	F
Bolt Spacing	___	___
Upper Body Straps	___	___

Road Test	P	F
Gauges	___	___
Steering	___	___
Alignment	___	___
Vibrations	___	___
Road Noise	___	___
Handling	___	___
Emergency Brake	___	___
A/C Operation	___	___
Heater Operation	___	___
Warning Lights Off	___	___
Warning Buzzers Off	___	___
Shift Quality	___	___

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Inspector's Signature                      Date

**POST DELIVERY BUY AMERICA CERTIFICATION:**

**POST-DELIVERY BUY AMERICA COMPLIANCE CERTIFICATION**

As required by Title 49 of the CFR, Part 663 – Subpart C, \_\_\_\_\_

(the recipient) certifies that it is satisfied that the buses received,

\_\_\_\_\_ (number and description of buses) from

\_\_\_\_\_ (the manufacturer), meet the

requirements of Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended. The

recipient, or its appointed analyst \_\_\_\_\_ (the analyst – not the

manufacturer or its agent), has reviewed documentation provided by the manufacturer, which lists (1) the

actual component and subcomponent parts of the buses identified by the manufacturer, country of origin,

and cost; and (2) the actual location of the final assembly point for the buses, including a description of the

activities that took place at the final assembly point and the cost of final assembly.

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

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

**POST-DELIVERY FMVSS CERTIFICATION:**

**POST-DELIVERY FMVSS COMPLIANCE CERTIFICATION**

*As required by Title 49 of the CFR, Part 663 – Subpart D, \_\_\_\_\_*

*(the recipient) certifies that it received, at the post-delivery stage, a copy of*

*\_\_\_\_\_’s (the manufacturer) self-certification information stating that the buses,*

*\_\_\_\_\_ (number and description of buses), comply with the*

*relevant Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety*

*Administration in Title 49 Code of Federal Regulations, Part 571.*

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

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

**POST DELIVERY PURCHASERS REQUIREMENT CERTIFICATION:**

**POST-DELIVERY PURCHASER'S REQUIREMENTS CERTIFICATION**

*As required by Title 49 of the CFR, Part 663 – Subpart C,*

\_\_\_\_\_ *(the recipient)*

*certifies that a resident inspector, \_\_\_\_\_(the resident inspector*

*- not an agent or employee of the manufacturer), was at \_\_\_\_\_ 's*

*(the manufacturer) manufacturing site during the period of manufacture of the buses,*

\_\_\_\_\_ *(number and description of buses). The inspector monitored*

*manufacturing and completed a report on the manufacture of the buses providing accurate records of all bus*

*construction activities. The report addresses how the construction and operation of the buses fulfill the*

*contract specifications. After reviewing the report, visually inspecting the buses, and road testing the buses,*

*the recipient certifies that the buses meet the contract specifications.*

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

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

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

## Procurement Process Checklist

*Bis-Man Transit Signature:*

*City of Bismarck Signature:*

### TO DO BEFORE THE PROCUREMENT PROCESS

- \_\_\_ Review procurement process and policies
- \_\_\_ Determine scope of procurement
- \_\_\_ Prepare a written **Independent Cost Estimate** and place in the procurement file
- \_\_\_ Identify who needs to be involved
- \_\_\_ Decide on the method of procurement: Informal quotations, RFQ, IFBG, or RFP

### PROCUREMENT PACKAGE PREPERATION

- \_\_\_ Convene Review Committee
- \_\_\_ Develop draft RFQ, IFB, or RFP
- \_\_\_ Insert required FTA clauses and certifications into the procurement package (\$10,000+)
- \_\_\_ Develop technical specifications and/or Scope of Work
- \_\_\_ Identify potential bidders/proposers – Document and place in procurement folder
- \_\_\_ Develop evaluation process and criteria for RFQ and RFP procurements
- \_\_\_ Review protest procedures (these should be a part of the procurement package)
- \_\_\_ Finalize draft of procurement package (i.e., IFB, RFP, or RFQ)
- \_\_\_ Review and approval of procurement package

### CONDUCTING THE PROCUREMENT

- \_\_\_ Finalize RFQ/IFB/RFP Package
- \_\_\_ Advertising and Notifying of potential bidders/proposers and place documentation in the procurement file
- \_\_\_ Conduct pre-bid or pre-proposal conference (optional)
- \_\_\_ Pre-bid/pre-proposal approved equals protests procedures (if applicable)
- \_\_\_ Bid/proposal deadline and acceptance

### PRE-AWARD REVIEW AND CONCURRENCE PROCESS

- \_\_\_ Conduct bid opening or receive proposals
- \_\_\_ Prepare tabulation of bids (place documentation in the procurement file)
- \_\_\_ Reconvene review committee for RFPs or RFQs
- \_\_\_ Conduct evaluation process for RFPs or RFQs (place documentation in the procurement file)
- \_\_\_ Evaluate bids/proposals for required elements/responsiveness (place documentation in the procurement file)
- \_\_\_ Conduct **cost or price analysis** on responsive bids/proposals (place documentation in the procurement file)
- \_\_\_ Sole Source bids must include pricing justification and current price list
- \_\_\_ Check federal suspended or debarred contractor list (**SAM**) \$25,000+
- \_\_\_ Conduct **responsibility determination** (place documentation in the procurement file) \$10,000+
- \_\_\_ Conduct all pre-award activities and place signed certifications in the procurement file
- \_\_\_ Procurement Department review and approval
- \_\_\_ Review and approval of intent to award
- \_\_\_ Notify selected and rejected bidders/proposers
- \_\_\_ Handle intent to award protests using the local process

### POST-AWARD AND POST-DELIVERY ACTIVITIES

- \_\_\_ Issue purchase order or contract to selected bidder/proposer
- \_\_\_ Monitor contractor activities (if applicable)
- \_\_\_ Post-delivery inspection of capital equipment purchases (rolling stock, etc)
- \_\_\_ Complete and execute required post-delivery certification forms (if applicable)
- \_\_\_ Audit Post-Delivery Buy America Certifications (if applicable)
- \_\_\_ Acceptance, warranty and service arrangements made with contractor (if applicable)
- \_\_\_ Vehicle Title/Registration – Title must show grantee as lien holder (if applicable)
- \_\_\_ Contractor submission of required forms and certifications
- \_\_\_ Obtain verification of acceptance of the goods or services procured
- \_\_\_ Obtain approval for payment of the contractor invoice
- \_\_\_ Procurement Department review and approval
- \_\_\_ Verify payment to contractor



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### Responsibility Determination Checklist

Bidder/Proposer: \_\_\_\_\_

Description of Services/Goods: \_\_\_\_\_

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

For each of the areas described below, check that the appropriate research has been accomplished and provide a short description of the research and the results.		
Research	Acceptable	Comment
1. Appropriate financial, equipment, facility, and personnel	<input type="checkbox"/> Yes <input type="checkbox"/> No	
2. Ability to meet the delivery schedule.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
3. Satisfactory period of performance	<input type="checkbox"/> Yes <input type="checkbox"/> No	
4. Satisfactory record of integrity, not on declined, disbarred, or suspended listings.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
5. Receipt of all necessary data from Supplier.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
6. Vendor has been deemed responsible and does not appear on the declined or suspended list as shown on <a href="http://www.sam.gov">www.sam.gov</a> . Attach report.	<input type="checkbox"/> Yes <input type="checkbox"/> No	

Based upon the above information, I have determined that \_\_\_\_\_ is a responsible contractor for this procurement.

Signature \_\_\_\_\_

Title \_\_\_\_\_ Date \_\_\_\_\_





## Sole Source Justification Form

### Section 1: Sub-Recipient Information

Name of Agency	Item Description/Project Name	Delivery/Completion Date
Name/Signature of Preparer	Total Estimated Price/Cost	Date of Estimate

### Section 2: Sole Source Justification

Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures and at least one of the following circumstances applies:

<b>Item Description</b>	
-------------------------	--

I, \_\_\_\_\_ certify that the reason, as noted below, for seeking a sole source justification for this procurement is accurate.

**Check One:**

- The item is available only from a single source (sole source justification is attached or described below in the "comments" section).
- The public urgent need or emergency for the requirement will not permit a delay resulting from the competitive solicitation (documented emergency condition is attached)
- FTA authorizes noncompetitive negotiations (letter of authorization is attached).
- After soliciting a number of sources, competition is determined to be inadequate (record of the sources solicited is attached).

<b>Recommended Source:</b>	
<b>Price or Cost Analysis attached?</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>Comments:</b>	

Bis-Man Transit Use Only

Approved by: \_\_\_\_\_ Date: \_\_\_\_\_



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### INDEPENDENT COST ESTIMATE

(To be used for all procurements except micropurchases)  
Need one form for each item being procured.

AGENCY

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PROJECT AUTHORIZATION (Leave this field blank if a project authorization has not been awarded for this procurement.)

---

ITEM BEING PROCURED

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COST ESTIMATE

---

**Estimate was obtained using the following process:**

- Published price list (e.g., catalogs).
- Past pricing. Previous purchase date for similar item: \_\_\_\_\_
- Engineering or technical estimate.
- Item is a standard commercial item sold in the open marketplace.
- Analysis of price components against current published standards, such as labor rate, cost per unit, etc.
- Other (please describe) \_\_\_\_\_

SIGNATURE

---

DATE

---



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**Certification Regarding  
Debarment, Suspension, and Other Responsibility Matters  
Primary Covered Transactions**

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 13 CFR Part 145. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations are available from local offices of the U.S. Small Business Administration.

**(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS BELOW)**

- 1) The prospective primary participants certified to the best of its knowledge and belief that it and its principals:
  - a) Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
  - b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (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;
  - c) 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 (1)(b) of this certification; and
  - d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default.
  
- 2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective primary participant shall attach an explanation to this proposal.

Business Name: \_\_\_\_\_

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

Name and Title of Authorized Representative

\_\_\_\_\_

Signature of Authorized Representative

## INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations (13 CFR Part 145).

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the ineligibility of its principals. Each participant may, but is not required to, check the Non-procurement List.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

**CERTIFICATION  
OF  
RESTRICTIONS ON LOBBYING**

I, \_\_\_\_\_, hereby certify on behalf of \_\_\_\_\_ 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 any 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, and officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contact, 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-grant, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

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

Executed this \_\_\_\_\_ day of \_\_\_\_\_.

By: \_\_\_\_\_  
\_\_\_\_\_