

# Bis-Man Transit Board Meeting

November 19, 2020, 11:30AM

<https://us02web.zoom.us/j/88981483670>

Call in #: (312)626-6799; Meeting ID: 889 8148 3670

## Welcome & Introductions

## Approval of Agenda

## Consent Agenda

1. Previous Month's Minutes
  - a. Attachment A – October Regular Meeting; Vision Meeting; Finance Committee Minutes
2. Financial Report
  - a. Attachment B
3. Ride Stats
  - a. Attachment C
4. Procurement Policy Recommendation
  - a. Attachment D
5. Security Purchase Approval
  - a. Attachment E
6. Concrete Repair Approval
  - a. Attachment F
7. Engine Replacement Approval
  - a. Attachment G
8. Grant Approval (5310, 5339)
  - a. Attachment H
9. Re-brand Printing Bid Approval
  - a. Attachment I

## **Public Comment**

## **Standing Committee Update**

1. Finance Committee Update

## **Ad Hoc Committee Update**

1. New Route Task Force Update

## **Unfinished Business**

1. Strategic Plan Check In
  - a. Attachment J
2. Bis-Man Transit Logo Re-Brand
  - a. Attachment K
3. Final Presentation of Fixed Routes
  - a. Attachment L
4. COVID-19 Transport

## **New Business (Regular Agenda)**

1. Otto Bremer Grant Approval
  - a. Attachment M
2. TAM Plan Approval
  - a. Attachment N
3. Metropolitan Planning Organization Update – Steve Saunders

## **Executive Director Report**

1. Triennial Review Update
2. Advertising Update
3. City of Bismarck Contract Update



**Operations Report**

**Other Business**

**Adjourn**

☐ **The next Board Meeting will be held December 17, 2020 at 11:30am.**



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

October 2, 2020, 12:00 P.M.

Via Zoom

Attending:	President/Shaula Laber	Vice President/Lynn Wolf
	Karel Sovak	Steve Heydt
	Royce Schultze	Glenn Lauinger
	Commissioner Dennis Rohrer	
Not Attending:	Sec. /Tres. DeNae Kautzmann	Lacey Long
Staff:	Deidre Hughes	Taylor Kitzan

Meeting was called to order at 12:00 P.M.

- 1. Vision Statement Discussion:** Karel led the meeting by explaining that the Vision Statement is guided by the Mission Statement. The Mission Statement is why an organization exists and how it's going to function and the Vision Statement is where an organization sees themselves in the future. Karel pointed out the commonalities in all the Vision Statement's that were submitted and discussed how those commonalities fit with the Mission Statement. Karel opened up the meeting for discussion.

Shauna asked Karel how he would recommend wording the commonalities he saw. Karel answered that following the Mission Statement, the Vision Statement should be followed by action words, such as "to be" or "to provide", to then incorporate the chosen commonalities after the action words. Steve commented that the common word "safe" didn't seem far-reaching and that using a stronger word might be more effective. Karel explained that the word "safe" isn't always assumed, especially in larger cities. Commissioner Rohrer asked how to get this message to the people, so that they know the Vision. Karel recommended placing the Vision Statement everywhere so it is prominent in the community.

Steve commented that he liked the words safe, reliable, and efficient. Karel agreed and explained that not only do we have to have a statement, but to put action behind that statement. Glenn discussed that his submitted statement Steve commented on could be condensed and used at the Vision Statement. Commissioner Rohrer suggested condensing by using the word "affordable" instead of "cost-effective". Karel suggested "efficiency" instead of "affordable". Commissioner Rohrer commented that "affordable" seems to be more important to the community in Mandan. Steve commented that "efficiency" goes hand-in-hand with "affordable". Royce commented that he likes the word "efficiency", but doesn't tie it with "affordable".

Karel discussed by using the commonalities of safe, reliable, and efficient would tie in the action words "to contribute" to the mission. Deidre commented that she likes "to contribute to the quality of life in our communities" and that Bis-Man Transit currently is not viewed as an asset to our communities. By increasing the quality of life in our communities we would be seen as an asset. Steve suggested changing "increasing" the quality of life to "support" or "contribute". Lynn agreed with Steve and commented that we have to put the Vision Statement on our buses so it's more visible.

Karel summarized the comments and discussion by saying, "Our vision is to provide safe, reliable, and efficient service to support the overall quality of life in our communities." Lynn commented that he likes the word "service", but does not like the word "communities" because Bismarck, Mandan, and Lincoln are all one community. Steve suggested to change to "our community" and to change "service" to "public transportation" so that the service is being described. Karel

commented that “public transportation” is in the mission, so didn’t know if it should be repeated in the vision. Lynn suggested that we stay consistent with using “community” instead of “communities” in both the mission and vision. Karel disagreed with changing the mission as “Bis-Man” describes communities and he doesn’t know if the City of Lincoln considers their community as a part of “Bis-Man” and asked the group their thoughts. Deidre responded that she prefers “communities”. Karel suggested using “our communities” to tie both Bismarck and Mandan together. Commissioner Rohrer commented that he is impartial to either community or communities.

Karel summarized the Vision Statement as “Our Vision is to provide safe, reliable, and efficient public transportation to support the overall quality of life in our communities.” Steve asked how to move forward with the proposed Vision Statement and Lynn suggested having the Board vote on it at the next Regular Board Meeting. Karel and Steve agreed. All participants agreed with the proposed Vision Statement and how to move forward.

Meeting adjourned at 12:38 P.M.



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

October 22, 2020, 11:30 A.M.

Via Zoom

Attending:	President/Shalna Laber	Vice President/Lynn Wolf
	Sec. /Tres. DeNae Kautzmann	Glenn Lauinger
	Lacey Long	Steve Heydt
	Karel Sovak	Royce Schultze
	Commissioner Guy	

Not Attending:	N/A
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Staff:	Deidre Hughes	Taylor Kitzen
	Mike Mundahl	Craig Thomas
	Danae Thiery	Tom Reisenauer

Guests:	Helen Baumgartner	Susan Dingle
	Trevor Vannett	

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

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

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

**City of Bismarck Mask Mandate Update:** Commissioner Guy thanked the Board for moving this item up in the agenda due to time constraint. The City of Bismarck City Commission had a meeting with the ND Public Health Department, ND Department of Health, Bismarck Public Schools, and the Bismarck-Mandan Chamber of Commerce about the current state of the COVID-19 pandemic. Commissioner Guy discussed that during the meeting a city-wide mask mandate was considered and how Transit would be affected. Deidre responded that Transit is following all guidelines on the buses and would change if a mandate was put into place. Shauna proposed to have a COVID-19 Crisis Management Meeting to discuss further details.

**Public Comment:** Trevor encourages the new routes created by the New Route Task Force as well as the requirement to wear a mask on the bus.

### **Standing Committee Update**

1. **Finance Committee Update:** DeNae discussed Roy Rickert's job service appeal and who would all be attending the meeting. DeNae mentioned the potential \$8,000 cost to rebrand the buses.

### **Ad Hoc Committee Update**

1. **New Route Task Force:** Deidre discussed that the Task Force is still in place, but hasn't met due to public comment sessions on the proposed new fixed routes. Public Hearing is the next step to move forward with any route changes.

### **Unfinished Business:**

1. **CTAG Update:** Susan explained what information was all discussed at the latest CTAG Meeting that was held on Tuesday. Susan mentioned that the group wanted to change the frequency of meetings from every three months to every other month. Deidre discussed the possibility of reworking the group bylaws, so there would be more participation from different demographics.
2. **Route Redesign Public Comment/Next Steps:** Deidre discussed that there was a total of nine participants over the three public comment sessions via zoom and in-person and four additional participants through the website. A CAT driver attended one of the sessions and provided great feedback on the proposed new fixed-routes. Deidre explained there was an online submission from a resident who was



concerned with the purple route in Mandan. Operations contacted this individual to clarify and there is no longer that concern. Deidre discussed that the Public Hearing Session is next and that there has to be a 15-day notice in the Bismarck Tribune beforehand.

### **New Business (Regular Agenda):**

1. **2021 Holiday Hours - Paratransit:** CTAG recommends the same Holiday Hours for 2021 that were put in place for 2020. Lynn moved to approve the recommended holiday hour ride schedule for 2021. Karel seconded. Motion carried.
2. **Board Appointment:** The Board of Directors open position has three candidates running for election to fill the unexpired term ending in April 2022. The candidates are Helen Baumgartner, Susan Dingle, and Trevor Vannett. The Board elected Helen.
3. **Bis-Man Transit Rebrand:** Deidre proposed a new logo design as a re-brand of the old logo. With all of the new and positive changes, a new logo would give Bis-Man Transit a fresh look. DeNae and Glenn were in favor, but not until after an extension of the City of Bismarck contract. Karel moved to adopt the re-brand for Bis-Man Transit as presented. Steve seconded the motion. Karel amended his motion to include pending the City of Bismarck contract decision with the consent of the second. Discussion included suggestion to have more logo options presented for consideration. Motion carried 5 to 3.

### **Executive Director Report:**

1. **Technology Update:** Deidre discussed that Transit has started using the Ecolane app for para transit riders. The biggest feature of the app is Diminishing Balances where riders can call in and put money onto their account to use for future rides with a debit/credit card. Deidre updated the Board that the new AVL Software Company, Transloc, was going through proposed contract changes with their legal team.
2. **Advertising Update:** Deidre updated the Board that there were two more bench backs that were going to be installed the next day.
3. **City of Bismarck Letter of Intent Update:** Deidre discussed the Letter of Intent to the City of Bismarck to renew the contract in June of 2021 for another five-year term was on the regular agenda at the Bismarck City Commission meeting on Tuesday, October 27<sup>th</sup>. Commissioner Guy recommended to Deidre to be prepared to answer any questions the City Commission might have.

**Operations Report:** Craig explained that there were changes made to the corporate office of National Express. National Express Operations at Bis-Man Transit previously reported to

the Central Region, and now report to the West Region. Mark Foster is the new COO and Ron Swayne is the new Regional Vice President. Craig answered the question from September's Board Meeting of what type of disinfectant was used inside of the buses and if it would cause deterioration. The disinfectant is called Procon Turquoise 3 and the active ingredients are also found in common household products. There have been no adverse effects on the interior of the buses. Craig explained that currently, drivers are only required to wear their mask if there are riders on the bus and that there was a policy in place for complaints.

**Other Business:** Deidre discussed that she is in the process of applying for the Otto Bremmer Grant. This grant would, if awarded, would allow Transit to purchase a new bus. The 5339b and 5310 grants will be presented to the Board at next month's meeting. Deidre also updated the Board that Tom and herself were currently working on the RFP process for new bus engines that will put fixed route buses back on the road.

Meeting adjourned at 12:48 P.M.



# **Bis-Man Transit Finance Committee Meeting Minutes**

October 16, 2020, 10:30 AM

Via Zoom

Attending:                      Shauna Laber                                      Glenn Lauinger

Sec./Treasurer DeNae Kautzmann

Staff:                              Deidre Hughes

Meeting was called to order at 10:30 AM

1. The board agenda does not contain items that have a fiscal impact. However, if the Board decides to rebrand there may be logo costs. If logos put on all buses the cost is approximately \$8,000, there is no upfront cost if wait and put on buses as purchased.
2. The unemployment claim denial has been appealed by Roy Rickert. Job Service has been notified that we will be attending the hearing. Deidre was not involved in the action and would be unable to speak to the issues. Shauna will attend as Board President and a member of the Administration Committee. Karel and Steve will be contacted relative to attending the hearing also since they serve on the Administrative Committee.

Meeting adjourned at 3:45 P.M.

## October 2020

## MONTHLY REPORT

	Month	YTD	PY Month	PY YTD	% INC/DEC OVR PYM	% INC/DEC OVR PYTD	
RIDERSHIP							
FIXED ROUTE	5,225	47,251	8,612	86,594	-39.33%	-45.43%	
PARATRANSIT	6,229	59,863	9,334	91,518	-33.27%	-34.59%	
Total	11,454	107,114	17,946	178,112	-36.18%	-39.86%	
FR AVG. DAILY BOARDINGS	193.52						
DR AVG. DAILY BOARDINGS	200.94						
			Pass./Hour	Pass./Hour	Pass./Hour		
						% INC/DEC	
REVENUE HOURS	Month	YTD	Month	YTD	PY YTD	PY YTD	OVR PYTD
FIXED ROUTE	1,862.23	14,921.28	2.81	3.17	4.99	17,361.6	-14.06%
PARATRANSIT	2,412.28	24,328.58	2.58	2.46	2.82	32,423.6	-24.97%
Total	4,274.51	39,249.86	2.68	2.73	3.6	49,785.2	
			Pass./Mile	Pass./Mile			
							% INC/DEC
REVENUE MILES	Month	YTD	Month	YTD	PY YTD		OVR PYTD
FIXED ROUTE	31,499	248,730	0.17	0.19	288,558		-13.80%
PARATRANSIT	32,343.98	320,020.51	0.19	0.19	439,220		-27.14%
Total	63,842.98	568,750.51	0.36	0.38	727,778		-21.85%
					% INC/DEC		% INC/DEC
ON TIME PERFORMANCE	Month	YTD	PY Month	PY YTD	OVR PYM		OVR PYTD
FIXED ROUTE	0.00%	84.16%	81.25%	80.07%	-100.00%		5.11%
PARATRANSIT	94.00%	97.80%	96.00%	95.90%	-2.08%		1.98%
RIDERSHIP PER ROUTE							% INC/DEC
ROUTE	Month	YTD		PY Month			OVR PYM
BLACK	881	8898		1347			-34.6%
BLUE	1020	9066		1557			-34.5%
GREEN	818	6629		1677			-51.2%
RED	865	8839		1726			-49.9%
BROWN	810	6864		1210			-33.1%
PURPLE	831	6955		1095			-24.1%
U-Mary	161	953		428			-62.4%
ACCIDENTS	Month	Month at Fault	YTD	YTD at Fault			
FIXED ROUTE	0	0	3	3			
PARATRANSIT	0	0	5	5			
SERVICE VEHICLE	0	0	0	0			
COMPLAINTS	Month	YTD					
FIXED ROUTE	1	19					
PARATRANSIT	8	30					
COMPLIMENTS	Month	YTD					
FIXED ROUTE	0	1					
PARATRANSIT	1	19					
Office Staff	0	4					

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November 19, 2020

**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 findings from the FTA during the 2017 Triennial Review. Since the approval of the current policy at the August 2019 Board Meeting, a number of errors have been found.

**DISCUSSION:** Significant changes to the policy include correction of the Buy America requirements, addition of protest appeals process, and a number of discrepancies with department heads and directors that does not suit the actual procurement processes of Bis-Man Transit. By correcting these issues, Bis-Man Transit will remain compliant with the FTA for the 2020 Triennial Review, as well as provide clear guidance for staff on the correct procurement procedures.

The document tracking the changes made will also be provided to the Board of Directors for review.

**FINANCIAL IMPACT:** None.

Bis-Man Transit Board

# PROCUREMENT POLICIES AND PROCEDURES

Effective November 19, 2020

## TABLE OF CONTENTS

<b>SECTION 1 – Purpose and Introduction .....</b>	<b>5</b>
1.0 Objective .....	5
1.1 General Procurement Standards .....	5
1.2 Competition .....	5
1.3 Standards of Conduct .....	6
1.4 Economic Purchasing .....	6
1.5 Specifications .....	6
1.6 Contract Administration .....	6
1.7 Records .....	6
1.8 Contract Period .....	7
1.9 Use of Existing Contracts .....	7
1.9.1 Federal and State Contracts .....	7
1.9.2 Exercising Options in Other Agency Contracts .....	7
1.9.3 Types of Options .....	8
1.10 Protests .....	8
1.10.1 Policy .....	8
1.10.2 Submittal Procedures .....	8
1.10.3 Protests of the Solicitation Process .....	9
1.10.4 Protests of the Evaluation Process .....	10
1.10.5 Evaluation of Protests .....	11
1.10.6 Protest Appeal .....	11
1.10.6 Protests Files with FTA .....	12
 <b>SECTION 2 – Policies.....</b>	 <b>12</b>
2.1 Ethics .....	12
2.1.1 Relationships .....	12
2.1.2 Gifts and Gratuities .....	12
2.1.3 Violations .....	12
2.2 Organizational Conflict of Interest .....	13
2.3 Centralized Purchasing Authority .....	13
2.4 Approval Levels for Purchase.....	15
2.4.1 Emergency Purchases .....	15
2.5 Disadvantaged Business Enterprises .....	16
2.5.1 Program .....	16
2.5.2 Policy .....	16
2.5.3 Award Procedures.....	16
2.6 Audits/Inventory of Assets.....	17
2.6.1 Real Property Acquisition and Management.....	17
2.6.2 Equipment Management Standards .....	17
2.6.3 Parts and Supplies Inventory.....	17
2.7 Disposition of Surplus Equipment and Supplies/Scrap .....	18
2.7.1 Identification of Surplus/Obsolete Materials, Supplies, Equipment .....	18

2.7.2	Disposition Before End of Service Life .....	18
2.7.3	Retain and Use Elsewhere .....	18
2.7.4	Value over \$5,000 .....	18
2.7.5	Less than \$5,000 Value.....	19
2.7.6	Like-Kind Trade-In or Offset Exchange .....	19
2.7.7	Transfer to Public Agency for Non-Transit Use.....	19
2.7.8	Sell and Use Proceeds for Other Capital Projects .....	19
2.7.9	Unused Supplies .....	19
2.7.10	Disposal of Scrap .....	19
<b>SECTION 3 – Responsibilities .....</b>		<b>20</b>
3.1	General .....	20
3.2	Bis-Man Transit Board.....	20
3.3	Executive Director .....	20
3.4	Accountant.....	21
3.5	Disadvantaged Business Enterprise Liaison Officer .....	21
<b>SECTION 4 – Acquisition Planning.....</b>		<b>22</b>
4.1	General .....	22
4.2	Departmental Responsibilities .....	22
4.3	Planning Major Procurements .....	23
4.4	Planning Routine Procurements.....	23
<b>SECTION 5 – Methods of Procurement – Below Bidding Threshold.....</b>		<b>23</b>
5.1	General .....	23
5.2	Petty Cash Purchases.....	24
5.3	Micro Purchases .....	24
5.4	Small Purchases .....	25
5.4.1	Bis-Man Transit Competition Guidelines .....	25
5.4.2	Check Request/Petty Cash/Direct Pay Items .....	25
<b>SECTION 6 – Formal Procurement Methods.....</b>		<b>26</b>
6.1	General .....	26
6.2	Conditions Determining When Formal Advertising is Appropriate.....	26
6.3	Public Advertising.....	28
6.4	Solicitation: Preparation of IFB .....	28
6.5	Solicitation Guidelines .....	30
6.5.1	Specifications.....	30
6.5.2	Bidding Time .....	30
6.5.3	Distribution of IFBs.....	30
6.5.4	Amendment of IFB .....	30
6.5.5	Responsiveness of Bids .....	30
6.5.6	Modification/Withdrawal of Bids.....	31
6.5.7	Time and Place of Bid Submission.....	31



6.6	Two-Step Sealed Bid .....	31
6.6.1	Conditions for Use.....	31
6.6.2	Procedures for Two-Step Sealed Bidding.....	32
6.6.3	The Two-Step Sealed Bidding.....	32
6.6.4	Step One.....	33
6.6.5	Step Two.....	33
6.7	Competitive Negotiations (Sealed Proposals) .....	33
6.7.1	Competitive Negotiations Method.....	33
6.7.10	Architect/Engineering Contracts .....	36
6.8	Non-Competitive Procurement .....	36
<b>SECTION 7 – Receipt and Evaluation of Bids and Proposals .....</b>		<b>37</b>
7.1	Sealed Bids.....	37
7.2	Competitive Proposals .....	37
7.3	Responsiveness Review .....	38
7.4	Responsive Review.....	38
<b>SECTION 8 – Contract Cost and Price Analysis .....</b>		<b>38</b>
8.1	Requirement .....	38
8.2	Independent Cost Estimate .....	38
8.3	Cost Analysis .....	39
8.4	Price Analysis .....	39
<b>SECTION 9 – Construction Contracts .....</b>		<b>39</b>
9.1	General .....	40
9.2	Federal Labor Requirements.....	40
9.2.1	Davis-Bacon Act.....	40
9.2.2	Copeland Anti-Kickback Act .....	40
9.2.3	Contract Work Hours and Safety Standards Act.....	40
<b>SECTION 10 – Contract Administration .....</b>		<b>41</b>
10.1	Post-Award Responsibilities .....	41
10.1.1	Monitoring for Contract Compliance .....	41
10.1.2	Enforcing Contract Provisions .....	41
10.1.3	Issuing Timely Performance and Payment Appraisals.....	41
10.1.4	Modifying Contract as Necessary .....	41
10.1.5	Closing Out Contract.....	42
10.2	Project Management .....	42
10.3	Contract Amendments and Change Orders.....	42
10.4	Contract Requirements .....	42
10.5	Assignment of Contract Rights .....	44
10.5.1	Acquisition Through Assigned Contract Rights.....	44
10.5.2	Alternatives to Assigned Contract Rights.....	44
10.6	Impermissible Actions .....	45

10.6.1	Federal Procurement Standards .....	46
10.7	Special Contract Requirements.....	46
10.7.1	Liquidated Damages Provisions .....	46
10.7.2	Progress Payment Provisions .....	46
10.8	Insurance Provisions .....	47
10.9	Prohibited or Restricted Contract Types .....	50
10.10	Revenue Contracts .....	51
10.11	Contract Termination Provisions .....	51
10.12	Buy America Provisions .....	52
10.13	Lobbying Restrictions .....	53
10.14	Debarment and Suspension (SAM.gov) .....	53
10.15	TVM Requirements .....	53
10.16	Federal Provisions and Required Contract Clauses .....	53
<b>Appendix A – Solicitation File Checklist .....</b>		<b>55</b>
<b>Appendix B – Contract File Checklist.....</b>		<b>56</b>
<b>Appendix C – Methods of Procurement – Quick Reference.....</b>		<b>57-58</b>
<b>Appendix D – Applicability of Third Party Contract Provisions.....</b>		<b>59-61</b>
<b>Appendix E – Procurement Process Checklist.....</b>		<b>62-68</b>
<b>Appendix F – Pre-Award/Post-Delivery Audits .....</b>		<b>68-75</b>

**\*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 \$5,000.00	Executive Director
Over \$5,000.00	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 \$5,000 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 \$5,000 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 \$5,000.00 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 \$5,000 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 \$5,000 on behalf of Bis-Man Transit. May sign any contract exceeding \$5,000 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.

3.6 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.

### 5.3 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)

#### 5.4 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.
- 6.7.10 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.

#### 6.8 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.

##### 6.8.1 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.

##### 6.8.2 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.

- 6.8.3 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.
- 6.8.4 A cost analysis is required for each sole source acquisition.
- 6.8.5 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 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 \$5,000 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 (CONTINUED)**  
**METHODS OF PROCUREMENT – QUICK REFERENCE**

Method	Micro Purchases	Small Purchase (supplies, equipment, services)	Sealed Bids (construction. Supplies, equipment, non-professional services)	Competitive Proposals (supplies, equipment, services)	Non-Competitive (Single or Sole Source)
Threshold	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 \$5,000 requires Board approval, New equipment valued greater than \$25,000 requires City approval	More than \$25,000, if higher than \$5,000 requires Board approval, New equipment valued greater than \$25,000 requires City approval
Planning	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
Obtain Quotes / Bids / Proposals	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
Award Purchase Order/ Contract	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)

TYPE OF PROCUREMENT					
PROVISION	Professional Services / A&E	Operations / Management	Rolling Stock Purchase	Construction	Materials & Supplies
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)

TYPE OF PROCUREMENT					
PROVISION	Professional Services / A&E	Operations / Management	Rolling Stock Purchase	Construction	Materials & Supplies
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

## **APPENDIX E**

### **Procurement Process Checklist**

#### **TO DO BEFORE THE PROCUREMENT PROCESS**

- ☐ Review procurement process and policies
- ☐ Implement procurement process and policies if necessary
- ☐ Determine scope of procurement
- ☐ Prepare a written Independent Cost Estimate and place in the procurement file – Check off item in Exhibit A
- ☐ Identify who needs to be involved
- ☐ Plan the procurement process
- ☐ 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 (See Exhibit A)
- ☐ Develop technical specifications and/or Scope of Work
- ☐ Identify potential bidders/proposers
- ☐ 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)
- ☐ Procurement Department review and approval of procurement package – Check off items in Exhibit A

#### **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)
- ☐ Procures for Review/Acceptance of Approved Equals (if applicable)
- ☐ 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)
- ☐ Check federal suspended or debarred contractor list (SAM) (place documentation in the procurement file)
- ☐ Conduct responsibility determination (place documentation in the procurement file)
- ☐ Conduct all pre-award activities and place signed certifications in the procurement file
- ☐ Procurement Department review and approval – Check off items in Exhibit A
- ☐ 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 service contract to selected bidder/proposer
- ☐ Monitor contractor activities (if applicable)
- ☐ Post-delivery inspection of capital equipment purchases (if applicable)
- ☐ Complete and execute required post-delivery certification forms (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 – Check off items in Exhibit A  
☐ Verify payment to contractor  
☐ Submit ECHO form for reimbursement of federal share

### EXHIBIT A

<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>	5% bid guarantee; 100% performance bond; and Payment bond equal to: <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>	<i>Obtain signed certification with bid or proposal Procurements of steel, iron or manufactured products over \$150,000</i>	§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>	<i>§15.n(3)</i>	
<i>Excluded Parties Listing System search</i>	<i>Perform prior to award Procurements greater than \$25,000</i>	<i>§3.b</i>	
<i>Lobbying Certification</i>	<i>Obtain signed certification with bid or proposals Procurements greater than \$100,000</i>	<i>§3.d(1)</i>	
<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>	<i>§3.d(1)</i>	

**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 o , or its appointed analyst o* \_\_\_\_\_

\_\_\_\_\_*(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

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

\_\_\_\_\_  
\_\_\_\_\_*(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, or its appointed analyst or* \_\_\_\_\_

\_\_\_\_\_  
*(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: \_\_\_\_\_

E

November 19, 2020

**TO:** Bis-Man Transit Board of Directors  
**FROM:** Deidre Hughes, Executive Director  
**SUBJECT:** Security Lock Recommendation

**BACKGROUND:** Bis-Man Transit has 5307 grant funding available for safety and security that needs to be used in order to close out the grant.

**DISCUSSION:** Bis-Man Transit solicited quotes from 3 local locksmiths. The project includes 8 interior access RFID controls and integration with the existing systems. We received 3 quotes.

**FINANCIAL IMPACT:** See chart below. If the lowest bidder, New Vision Security, is awarded the bid, the local match cost is \$1,479.32. The federal portion is \$5,917.26.

**RECOMMENDATION:** Staff recommends that the Board approves the award of this project to New Vision Security.

5307 Security Projects			
	<i>Federal</i>	<i>Local</i>	<i>Total</i>
Guardian Lock & Security	\$ 7,190.40	\$ 1,797.60	\$ 8,988.00
Warren's Locks	\$ 6,560.00	\$ 1,640.00	\$ 8,200.00
New Vision Security	\$ 5,917.26	\$ 1,479.32	\$ 7,396.58



November 19, 2020

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

**FROM:** Deidre Hughes, Executive Director

**SUBJECT:** Concrete Repair Recommendation

**BACKGROUND:** The Bis-Man Transit Board received 5339b grant funds for the repair of facility concrete repair.

**DISCUSSION:** Bis-Man Transit enlisted the help of the City of Bismarck Engineering Department to determine what repairs were needed. This department also assisted with the request for quotes. This is the second part of the repair project. The asphalt repair was completed earlier this fall. Due to the timing of the project, completion will likely take place in Spring of 2021. Three quotes were received. These quotes do not cover the full scope of the original planned concrete repair, previously presented, due to budgetary issues with the original quotes. However, all major areas of concern from the City of Bismarck are addressed within the scope of the project.

**FINANCIAL IMPACT:** We were awarded a 5339b grant to fund this project. We estimate that this should close out the 5339(b) Grant, set to expire June 30, 2021. See fiscal impact below.

**RECOMMENDATION:** Staff recommends approval of the quote from Brandoz Concrete for \$17,352 for concrete repair. The local match for this project is \$3,470.40.

5339b Concrete Repair			
	<i>Federal</i>	<i>Local</i>	<i>Total</i>
Alliance Concrete	\$ 13,918.40	\$ 3,479.60	\$ 17,398.00
Capital City Construction	\$ 14,880.00	\$ 3,720.00	\$ 18,600.00
Brandoz Concrete	\$ 13,881.60	\$ 3,470.40	\$ 17,352.00

November 19, 2020

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

**FROM:** Deidre Hughes, Executive Director

**SUBJECT:** Purchase of engines and transmissions for buses 1001,1002, 1003

**RECOMMENDATION:** Staff recommends approval of Wallwork Truck Center proposal for the repairs of 1001, 1002, and 1003, pending FTA final award of 5339 grant.

**BACKGROUND:** Bis-Man Transit requested FY19 5339 funds be reallocated for this this project, previously award for the purchase of one new fixed route bus. We are waiting on final approval for this reallocation from the FTA but are expected to be awarded late November. All three buses have been out of use late 2019.

The reallocation request, included the vehicle repairs, purchase of one additional cutaway bus, and a service truck were approved by the Bismarck City Commission March 10, 2020.

**DISCUSSION:** Quotes were sought from four vendors. Two proposals were received from Wallwork Truck Center and Nelson International Leasing. Of the proposals, Wallwork Truck Center came in with the lower bid. See below.

**FINANCIAL IMPACT:** The total local cost for the project is \$26,048.03 which will come from local match, if approved.

Engine Replacement 5339			Fiscal Impact			
	Wallwork	Nelson		Federal	Local	Total
Engine	\$ 27,802.32	\$ 27,056.59	Wallwork	\$ 104,192.11	\$ 26,048.03	\$ 130,240.14
Transmission	\$ 4,475.00	\$ 4,255.09				
DOC	\$ 2,279.62	\$ 1,993.25				
DPF	\$ 1,206.65	\$ 1,078.49				
All Parts	\$ 2,579.79	\$ 6,017.71				
Labor	\$ 5,070.00	\$ -				
Price Per Vehicle	\$ 38,343.38	\$ 40,401.13				
Labor Per Vehicle	\$ 5,070.00	\$ -				
Total Parts	\$ 115,030.14	\$ 121,203.39				
Total Labor	\$ 15,210.00	\$ -				
	<b>\$ 130,240.14</b>	<b>\$ 121,203.39*</b>				
* Did not provide labor costs						

H

November 19, 2020

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

**FROM:** Deidre Hughes, Executive Director

**SUBJECT:** FY22-5339; FY22-5310 Grants

**RECOMENDATION:** Staff recommends approval of this grant application for submittal to the City of Bismarck and the State of North Dakota.

**BACKGROUND:** The Federal Transit Administration (FTA) Section 5339 (Bus & Bus Facilities Program) is a capital-only program and funds are limited to capital projects to replace, rehabilitate, and purchase buses and bus-related equipment, and to construct or rehab bus-related facilities.

Section 5310, Enhanced Mobility of Seniors and Individuals with Disabilities Program goal is to improve mobility for older adults and persons with disabilities throughout the country. Under 49 U.S.C. 5310 funding provides financial assistance for capital purchases and operating assistance for transportation services planned, designed and carried out to meet the special transportation needs of older adults and persons with disabilities in all small urban and rural areas.

**DISCUSSION:** With these applications, Bis-Man Transit is requesting to replace one 30' Fixed Route bus that has exceeded it's useful life, 3 paratransit cutaway buses that have exceeded useful life, after hour service assistance for paratransit, Sunday service assistance for paratransit, and Mobility Manager assistance.

**FINANCIAL IMPACT:** See below.

FY22 5339 Grant Application				
	Make/Model	Federal	Local	Total
Project 1	2021 30' Gillig Low Floor	\$ 398,515.73	\$ 70,326.31	\$ 468,842.04
FY22 5310 Grant Application				
	Make/Model	Federal	Local	Total
Project 1	2021 Chevrolet 4500 Express	\$ 69,337.90	\$ 12,236.10	\$ 81,574.00
Project 2	2021 Chevrolet 4500 Express	\$ 69,337.90	\$ 12,236.10	\$ 81,574.00
Project 3	2021 Chevrolet 4500 Express	\$ 69,337.90	\$ 12,236.10	\$ 81,574.00
Project 4	After Hours Service	\$ 71,106.00	\$ 71,106.00	\$ 142,212.00
Project 5	Sunday Service	\$ 44,653.91	\$ 44,653.91	\$ 89,307.82
Project 6	Mobility Manager Salary	\$ 20,400.00	\$ 5,100.00	\$ 25,500.00
	<b>TOTAL</b>	<b>\$ 344,173.61</b>	<b>\$ 157,568.21</b>	<b>\$ 501,741.82</b>

November 19, 2020

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

**FROM:** Deidre Hughes, Executive Director

**SUBJECT:** Bis-Man Transit Rebrand Project

**BACKGROUND:** The Bis-Man Transit Board approved moving forward with the rebrand project at the October Board Meeting.

**DISCUSSION:** In order to move forward with the rebrand on the fleet, staff gathered quotes for removal and application of decals on the paratransit fleet. The fixed route fleet does not require any updates. Three vendors provided quotes for the project. If the Board chooses, decals can be replaced as new vehicles are purchased, leaving the existing logo on the current fleet.

**FINANCIAL IMPACT:** The bid for the fixed route AVL Software/Hardware came in significantly under budget allowing for possible reallocation of CARES Act Funds for the rebrand project. CARES Act funds would cover the entire cost of the project with no local match needed. See attached.

**RECOMMENDATION:** Staff recommends approval of the quote from Bismarck Sign Co. for the full replacement and removal of logos on the current paratransit fleet. Completing the project all at once would allow for a smoother transition to the updated look.

# VENDOR SCORECARD TEMPLATE

## COST SUMMARY

<b>Bismarck Sign Co.</b>	
Fabricate and Install 3M Digital Graphics to (19) Paratransit Vans	\$ 1,605.00
Fabricate and Install 3M Digital Graphics to (2) Rear Lift Vans	\$ 260.00
Fabricate and Install 3M Digital Graphics to (2) MiniVans	\$ 485.00
Removal is \$65/hour – estimating about 1 hour per van (23 vehicles)	\$ 1,495.00
<b>Total</b>	<b>\$ 3,845.00</b>

<b>Mann Signs</b>	
19 – Paratransit Vehicles - 3 new logo graphics on each vehicle, driver door, lift door, and above front windshield. Includes removal of existing logo graphics in same areas on each vehicle	\$ 9,975.00
2 – Rear Lift Vans – 2 new logo graphics on each vehicle, 1 on driver door, 1 on passenger door. Includes removal of existing logo graphics in same areas on each vehicle	\$ 1,050.00
2 – Minivans – 2 new logo graphics on each vehicle, 1 on driver door, 1 on passenger door. Includes removal of existing logo graphics in same areas on each vehicle - \$1,050	\$ 1,050.00
<b>Total</b>	<b>\$ 12,075.00</b>

<b>Sign-a-rama</b>	
19 – Paratransit Vehicles - Vinyl, Installation of new logo, & Removal of old logo	\$ 7,980.00
2 - Rear Lift Vans - Vinyl, Installation of new logo, & Removal of old logo	\$ 400.00
2 - Minivans - Vinyl, Installation of new logo, & Removal of old logo	\$ 197.33
Taxes	\$ 141.22
<b>Total</b>	<b>\$ 8,718.55</b>

**\*Note: Could be less if time for removal is less than quoted\***

<b>Signs by Jan</b>	
19 – Paratransit Vehicles - Vinyl, Installation of new logo, & Removal of old logo	\$ 10,355.00
2 - Rear Lift Vans - Vinyl, Installation of new logo, & Removal of old logo	\$ 1,090.00
2 - Minivans - Vinyl, Installation of new logo, & Removal of old logo	\$ 1,090.00
<b>Total</b>	<b>\$ 12,535.00</b>

## Bis-Man Transit 2020-2021 Annual Plan

**Goal:** Create a vision statement. **Complete.**

- Determine users' needs through established stakeholder relationships
- Host a visioning session for the board members o Add to next board meeting agenda – when and how
- Adopt the vision statement
- Integrate that vision into the fabric of the organization

**Goal:** Increase advertising revenue to \$80,000 by December 31, 2021.

- Identify advertising income schedule by 3/31/20.
  - If new placement of branding on the paratransit vehicles is approved, there is a significant increase in sellable add space for full vehicle wraps on the paratransit fleet. This will increase advertising revenue potential greatly
  - Will be entering into a 5 year advertising agreement with Bismarck Airport which will incur \$40,000 in advertising revenue.
  - Of the 28 total benches, only six are currently open for new advertising. Maintenance continues to repair damaged benches throughout Bismarck to help increase public perception and allow for more advertising space.
  - Depending on the results of the Urban Projects Grant, additional benches will be purchased to place throughout both Bismarck and Mandan.
  - Expired wraps on 1001 and 1002 have been removed. Once repairs are complete, we will have two buses available for full wraps.

**Goal:** Identify and apply for a minimum of one new grant not previously received in 2019 or 2020.

- Bis-Man Transit has applied for the Urban Projects Grant, which we have not been awarded in the past.
- Bis-Man Transit will also be submitting an application for the Otto Bremer Grant, which we were awarded in 2017.

**Goal:** Investigate and determine the viability of revenue bus services with community stakeholders with consideration of FTA regs.

- Determine if BSC and/or University of Mary need closed loop routes
- Determine if hospitals, medical facilities require shuttle options
- We have already been working the the NDSU School of Nursing and Sanford Health for the fixed route service. With the proposed route redesign, the Blue Route will be significantly more accessible for these user groups and both see great value in providing service closer the hospitals. They are interested in promoting the service internally when the changes take affect.
- Beginning talks have begun with the University of Mary on offering a “Park and Ride” program to students living in town travelling out to campus.

**Goal:** Identify possible locations and partnerships for a central hub in south or central Bismarck.

- Review pertinent city planning documents to uncover all possible locations
- Conduct interviews with potential key partners including city commission, UMary, Bismarck Industries
- Determine the minimal requirements for the centralized hub would be
- Create a task force upon completion of the work of the Fixed Route task force to undertake the hub initiative
- Beginning coversations with the University of Mary on constructing a portion of the new building, once the current public health building is demolished, that would be dedicated to Bis-Man Transit. This will require significantly more consideration and discussion.

**Goal:** Executing the plan developed by the Fixed Route Task Force.

- Secure approval by the Transit Board
- Conduct public comment period
- Secure approval by the City Commission
- Communicate the changes to current users
- Promote the new routes to encourage use
- Roll-out the changes with operations
- Dependant on the Bismarck City Commission Approval. Tenatively planning to present at the December 8th meeting.

**Goal:** Quarterly calibration of the annual plan by the board.

- Monthly progress reports provided to board
- Quarterly calibration would be a dedicated board discussion

K

## Proposed Logo



#1



#2



#3



#4



November 19, 2020

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

**FROM:** Deidre Hughes, Executive Director

**SUBJECT:** Otto Bremer Grant

**RECOMMENDATION:** Staff recommends approval of this grant application for submittal to the Otto Bremer Trust for the purchase of one additional paratransit cutaway.

**BACKGROUND:** The Otto Bremer Trust mission reflects the intent of the founder, Otto Bremer. His vision and longstanding commitment to communities during and after the Great Depression endure today through the Otto Bremer Trust. They have built the organization to reflect the challenges and opportunities found throughout Minnesota, Montana, North Dakota, and Wisconsin. They are mindful of Otto's extraordinary legacy and to be faithful stewards of the vision and assets consistent with the Trust's perpetual structure. Otto Bremer's commitment to helping people and communities provides the cornerstone of the Trust's investment philosophy. He recognized then, as we do today, that Good Lives Here.

**DISCUSSION:** Bis-Man Transit has previously applied for and was awarded an Otto Bremer grant in 2017 for the purchase of one paratransit cutaway bus. This purchase was to replace a vehicle that was outside of its useful life. With this application, Bis-Man Transit is requesting funds to expand the fleet to allow for a greater spare ratio for the paratransit fleet. Currently, 19 paratransit vehicles are in use during maximum service with three spares. With preventative maintenance and breakdowns, a 10% spare ratio could cause issues. The FTA allows for a 20% spare ratio.

**FINANCIAL IMPACT:** If awarded, there is no local match for this project.

Otto Bremer Grant Application		
	Make/Model	Total
Project 1	2021 Chevrolet 4500 Express	\$ 81,600.00

Review/Submit

## Public Transportation Vehicles

## Standard Grant Application

<b>Project Title</b>	Public Transportation Vehicles
<b>Purpose</b>	To provide safe, efficient, and reliable modes of transportation for the public in our community.
<b>Proposal Summary</b>	<p>Our project for 2021 is to purchase one new bus to use for public transportation services in the Bismarck/Mandan/Lincoln communities. The bus would be a 14 passenger (5yr/150,000 mile) bus that would be dedicated for use in the paratransit mode of service for those who are incapable of utilizing the fixed route service. Our current fleet consist of 21 paratransit vehicles, with 19 vehicles in maximum services throughout daily operation. With minimal spares in our current fleet and the recent push for social distancing onboard public transportation, Bis-Man Transit runs the risk of being unable to provide the much-needed transportation for at risk individuals in our communities. Necessary preventative maintenance tasks, such as oil changes and tire rotation often take at least one vehicle off the road each day.</p> <p>To address the need for fleet expansion, the Bis-Man Transit Board (a 501(c)3 company) is taking steps to promote efficiency with daily operations. The majority of our service is funded through local, state, and federal tax dollars; however, the lasting effects of the pandemic have greatly impacted that funding, leaving very little for capital expenditures. An Otto Bremer Trust grant award for the purchase of one additional bus would help ensure Bis-Man Transit is able to continue providing safe, reliable, and efficient service for years to come.</p>
<b>Amount Requested</b>	\$81,600.00
<b>Total Program Cost, including requested amount</b>	\$81,600.00
<b>Organization Budget</b>	\$4,318,657.94
<b>Duration in Years</b>	1
<b>Community</b>	<p>Our community is very proactive in trying to meet the transportation needs of our disabled and elderly population. In 2019, over 108,000 paratransit and demand response trips were completed. As our community grows, the need for reliable public transportation grows with it. Not only does the service promotes individual's freedom but it encourages economic growth in the area. Ensuring that the fleet of vehicles is fully functioning and capable of supporting the community needs is of the utmost importance.</p> <p>If we do not have an adequate size fleet to accommodate the community growth, we will be forced to turn away passengers who have no alternate means of transportation. Being the sole public transportation provider for Bismarck, Mandan, and Lincoln, it is utmost importance that we able to complete all requested trips for the elderly and disabled.</p>
<b>Proposed Work</b>	<p>Our current vehicles in maximum service on paratransit for 2020 is 19. With only two spare paratransit vehicles in the fleet, we run the risk of being unable to accommodate all requested rides for the elderly and disabled communities. If awarded for this project, we would be able to add one additional paratransit bus to our fleet ensuring all requested trips are able to be completed. It is also important that the trips that we do complete are done within the expected time constraints. If we are short on our fleet or receive an influx in trip requests, we are unable to pick up or drop off passengers within their scheduled window. On time performance is important for the overall customer experience and effectiveness of the service. Passengers utilize our paratransit service to travel to places of employment and medical appointments where timeliness is</p>

necessary.

The Federal Transit Administration (FTA) requires once vehicles have exceeded their useful life standards, they are retired from the fleet. These standards are implemented to ensure passengers are being transported in the safest possible manner. As vehicles age and increase in miles, breakdowns become increasingly common. We currently have three paratransit buses that have exceeded useful life. Fourteen passenger cutaway buses are rated for 5 years 150,000 miles per the FTA.

Two buses within the fleet are rear lift vans that are unable to pick up non-ambulatory passengers many of the requested locations, due to safety concerns. Loading and unloading passengers in wheelchairs cannot be completed on the streets, unlike the proposed cutaway bus that places the ramp directly on the sidewalk.

Preventative maintenance tasks also remove vehicles from daily service in order to keep the existing fleet in good working order and extend the useful life.

The combination of all the previously mentioned items has created a definite need for an additional paratransit bus. With federal funding being limited, Bis-Man Transit has needed to seek alternative funding sources, such as the Otto Bremer Trust to maintain our services.

The success of public transportation is based on number of various metrics, including ridership numbers, productivity, safety, and customer satisfaction which are tracked monthly. The public is involved in the vision, goals, and upcoming improvements through the use of public participation meetings. Additionally, we have also created the Citizen Transportation Advocacy Group which meets regularly to discuss program initiatives and address potential concerns.

The Bis-Man Transit Board is a nonprofit entity that is contracted by the City of Bismarck to deliver valued public transportation, linking people, jobs and communities. The operations portion of the system is subcontracted out. The total work force of Bis-Man Transit is approximately 60 employees. The service provided to the general public includes fixed route, paratransit, and demand response modes. We work directly with local, state, and federal government for funding and approval of various projects.

Since our last Otto Bremer grant application, we have underwent many staffing changes, including a new Executive Director in July of 2020. We have been working hard to improve and solidify stakeholder relationships, rider satisfaction, and create a clear focus for Bis-Man Transit's mission and vision.

Due to COVID-19, state funding has decreased significantly. With decreases in ridership on both paratransit and fixed route, fare revenue has also been impacted.

Bis-Man Transit, established in 1987, has been providing Bismarck and Mandan with paratransit and demand response services since 1990. Fixed route services were introduced in 2004 in an effort to create a fully comprehensive public transportation system for the community. Bis-Man Transit continually evaluates the system to ensure transportation needs are being met.

We work with the State of North Dakota to purchase paratransit buses from the State Bid. This ensures we are able to receive the best possible price while complying with all purchasing regulations.

We also work with a variety of user groups such as local colleges, senior centers, retirement communities, centers for independent living, and many more. These partnerships helped to grow knowledge of public transportation in the community, increase ridership, and clarifying the direction of public transit.

The population and geographical area of the Bismarck-Mandan communities continues to grow. With this growth, it is vital that public transit grows as well. Public transportation reduces congestion on the roads while encourage economic growth within the service area. Access to education, employment, recreation, and medical appointments is integral to the entire community, not just those with personal vehicles. In order to continue operating at a high level of service for the elderly and disabled community, fleet expansion needs to be addressed.

## Impact

## Your Organization and Resources

## Partners and Networks

## Looking Ahead

**Other Information**

Navigating public transportation with the current COVID-19 pandemic has been challenging. Although Bis-Man Transit was awarded CARES Act Funding to assist with the cost of operations, we have experienced a decrease in State Funding. This decrease is projected to outlast the projected CARES Act funding assistance. In order for Bis-Man Transit to address upcoming fleet expansion, we must seek outside financial assistance. Ensuring all fleet vehicles are within useful life parameters as well offer increased ridership opportunities in the future is of the utmost importance.

Staff continues to work in person, during this time, but is prepared to work remotely if need be. Meetings take place remotely and will continue for the foreseeable future in an effort to promote social distancing for office staff.

Paratransit trips are being scheduled to promote social distancing, as well. This has put a strain on our paratransit fleet, creating a need for the purchase of an expansion vehicle.

**Standard Grant Financial Info**

<b>Fiscal Year Start Month</b>	January
<b>Fiscal Year Start Day</b>	1
<b>Fiscal Year End Month</b>	December
<b>Fiscal Year End Day</b>	31
<b>Previous FY Actual Revenues</b>	\$6,436,292.00
<b>Previous FY Actual Expenses</b>	\$7,159,535.00
<b>Previous FY Actual Net</b>	(\$723,243.00)
<b>Previous FY Budget Revenues</b>	\$5,483,535.85
<b>Previous FY Budget Expenses</b>	\$6,026,716.25
<b>Previous FY Budget Net</b>	(\$543,180.40)
<b>Previous FY Notes</b>	
<b>Year to Date As Of</b>	11/10/2020
<b>YTD Actual Revenues</b>	\$3,964,980.29
<b>YTD Actual Expenses</b>	\$3,166,517.39
<b>YTD Actual Net</b>	\$798,462.90
<b>Annual Budget Revenues</b>	\$4,471,782.66
<b>Annual Budget Expenses</b>	\$4,558,382.66
<b>Annual Budget Net</b>	(\$86,600.00)

**YTD Notes**

<b>Balance Sheet As Of</b>	11/10/2020
<b>Current Assets</b>	\$2,781,963.26
<b>Total Assets</b>	\$2,781,963.26
<b>Current Liabilities</b>	\$2,168.84
<b>Total Liabilities</b>	\$2,168.84
<b>Balance Sheet Notes</b>	

### Standard Grant Attachments

#### Organization Contacts (REQUIRED)

Sr. Number	File Name	Attachment Description (Optional)	Created Date
1	Organization Contacts.xlsx	Organization Contacts Bis-Man Transit	11/12/20

#### Proof of Tax-Exempt Status (REQUIRED)

Sr. Number	File Name	Attachment Description (Optional)	Created Date
1	Proof of Tax-Exempt Status-IRS Determination Letter.pdf		11/12/20

#### Board List (REQUIRED)

Sr. Number	File Name	Attachment Description (Optional)	Created Date
1	Board List-Board of Directors.xlsx	Board of Directors Effective November 2020	11/12/20

#### Organization Budgets and Actual Fiscal Performance (REQUIRED)

Sr. Number	File Name	Attachment Description (Optional)	Created Date
1	Organization Budgets and Actual Fiscal Performance-Budget VS Actual FY19.pdf		11/12/20
2	Organization Budgets and Actual Fiscal Performance-Budget VS Actual FY20.pdf		11/12/20

Project Budget (REQUIRED unless requesting general operating support only)

Sr. Number	File Name	Attachment Description (Optional)	Created Date
No Attachments			

Balance Sheet (REQUIRED)

Sr. Number	File Name	Attachment Description (Optional)	Created Date
1	Balance Sheet-Balance Sheet YTD 2020.pdf		11/12/20

Audit

Sr. Number	File Name	Attachment Description (Optional)	Created Date
1	Audit-2019-41169-Deliverables-Audit Report-December 31, 2019.pdf	2019 Financial Statement Audit	11/12/20

Sr. Number	File Name	Attachment Description (Optional)	Created Date
1	990-2019 Form 990.pdf		11/12/20

Other Sources of Funding (REQUIRED)

Sr. Number	File Name	Attachment Description (Optional)	Created Date
1	Other Sources of Funding-FY21 State Aid.pdf	Approved by NDDOT	11/12/20

Additional Attachments (optional)

Sr. Number	File Name	Attachment Description (Optional)	Created Date
No Attachments			

Standard Grant Signature

Signature Acknowledgement



Your Full Name