

Per the U.S. Department of Transportation Federal Transit Administration's circular C4220.ID dated August 4, 1998, Milwaukee Transport Services, Inc., must adhere to procurement requirements for Third Party Contracting.

STATUTORY AND REGULATORY REQUIREMENTS

CLAUSE	RESTRICTIVE CONDITIONS	THRESHHOLD	REFERENCE
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MANDOTORY CLAUSES

All Contract

DBE		None	Master Agreement, Sec. 19(b)(3)
Title VI		None	Master Agreement, Sec. 19(c)(2)
EEO	All but commercial supplies, raw materials, or constructions	None	Master Agreement, Sec. 19(a)(1)
Cargo Preference	Overseas materials	None	Master Agreement, Sec. 16(h)
Audit and Inspection	Non-competitive	None	Master Agreement, Sec. 8(2)
Environmental: *NEPA *Clean Air Act *Clean Water Act *Energy Conservation *RCRA *CERCLA		None	Master Agreement, Sec. 24
Notice of Federal Requirements		None	Master Agreement, Sec. 2(c)
Rights in Data and Copyrights	Planning, research, development, or demonstration contracts	None	Master Agreement, Sec. 18(g)
Patent Rights	Planning, research, development, or demonstration contracts	None	Master Agreement, Sec. 17
Record Retention		None	49 CFR 18.36(i)(11)
Access Requirements for Individuals with Disabilities		None	Master Agreement, Sec. 19(d)

Privacy	Contracts in which record systems are designed, developed or operated	None	Master Agreement, Sec. 29
Buy America Certification	Contents for manufactured goods	\$100,000	49 CFR Part 661
Labor Provisions	Non-construction	\$2,000	Master Agreement, Sec. 22(b)
Termination		\$10,000	49 CFR 18.36(i)(2)
Remedies/Breach of Contract	Other than small purchases	\$100,000	49 CFR 18.36(i)(1)
Debarment and Suspension (Integrity Certification)		\$100,000	49CFR Part 29; FTA Circular 2015.1
Lobbying Certification		\$100,000	Master Agreement, Sec. 3(d)
Nondiscrimination		None	Master Agreement, Sec. 20(a)(1) and (2)
Liquidating Damages	If appropriate	None	Master Agreement, Sec. 20(f)
Labor Provisions		\$2,000	Master Agreement, Sec. 22(a)
EEO Specifications		\$10,000	Master Agreement, Sec. 20(b)
	SOLICITATION REQUIREMENTS		
FTA Role in Bid Protests		None	FTA Circular 4220 ID
EEO Notice for Goals	Construction contracts	\$10,000	Master Agreement, Sec. 20(c)
	RECOMMENDED CLAUSES		
Interest of Members of		None	Master Agreement, Sec. 3(b)
Debarred Bidders		None	49 CFR 29; Master Agreement, Sec., 16(m)
Air Pollution		None	49 CFR 85 and 49 CFR 86
Project Signs		None	Master Agreement, Sec. 20(i)
Vehicle Pollution Requirements	Vehicle Procurements	None	49 CFR 85 and 49 CFR 86
Insurance/Bonding	Construction	None	Master Agreement, Sec. 20(e) and (h)

RIGHT TO AUDIT

Chapter 56.30 of the Milwaukee County Ordinances states that:

"All professional service contracts as defined under Section 56.30(4) shall contain a provision which provides that the Contractor shall permit the authorized representatives of the County Auditor, after reasonable notice, the right to inspect and audit all data and records of Contractor related to carrying out the contract for a period of up to three years after completion of the Contract."

Quite often the prime consultant which has been awarded a County professional services contract enlists the help of various subconsultants and/or associates to fulfill its contractual obligations.

In order to properly address the intent of this Ordinance and allow the Audit Department complete access to all data and records relating to the contract, the right to audit provision contained in professional services contracts must contain the following:

- A requirement that the prime consultant obtain prior written Milwaukee County approval for all subconsultants and/or associates to be used in performing its contractual obligations.
- A requirement that there be a written contractual agreement between the prime consultant and its County approved subconsultant and/or associates which binds the subconsultant to the same audit contract terms and conditions as the prime consultant.

Strict adherence to the above by all departments will help ensure greater accountability over the dollars expended on professional services purchased by Milwaukee County.

Also, per FTA guidelines; Milwaukee Transport Service, Milwaukee County, FTA, the Comptroller General or any other authorized agent of these parties, shall be granted access to records for all negotiated contracts over \$25,000.

Revised 7/1/97

CONTRACTUAL PROVISIONS (REQUIRED CLAUSES - FTA PROJECTS)

Milwaukee County Transit System is operated and managed by Milwaukee Transport Services, Inc (MTS).

This contract is subject to a financial assistance contract between Milwaukee County Transit System, Milwaukee County and the U.S. Department of Transportation. Consequently, each bidder must comply with the following requirements:

I. INTEREST OF MEMBERS OF OR DELEGATES TO CONGRESS

"No member of or delegate to the Congress of the United States shall be admitted to any share or part of this contract or to any benefit arising therefrom."

II. PROHIBITED INTEREST

"No member, officer, or employee of the public body or of a local public body during his tenure or one year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof."

III. EQUAL EMPLOYMENT OPPORTUNITY

"In connection with the execution of this contract, the contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, disability, age, sex, or national origin. The contractor shall take affirmative action to insure that applicants are employed and that employees are treated during their employment, without regard to their race, religion, color, disability, age, sex, or national origin. Such actions shall include but not be limited to the following: Employment, Upgrading, Demotion, or Transfer; Recruitment or Recruitment Advertising; Layoff, or Termination; Rates of Pay, or Other Forms of Compensation; and Selection for Training, Including Apprenticeship."

IV. MINORITY BUSINESS ENTERPRISE

In connection with the performance of this contract, the contractor will cooperate with Milwaukee County in meeting its commitments and goals with regard to the maximum utilization of disadvantaged and women business enterprises and will use its best efforts to insure that disadvantaged and women business enterprises shall have the maximum practicable opportunity to compete for subcontract work under this contract.

V. BRAND NAMES

In all cases materials must be furnished as specified, but where brand names are used, consider the term "approved equal" to follow. However, written approval of any proposed substitution must be obtained by bidder prior to submitting bid. See Protest and Appeal Procedures in General Directions for Bidding.

VI. WRITTEN CHANGE ORDERS

Oral change orders are not permitted. No change in this contract shall be made unless the contracting officer gives his prior written approval therefore. The contractor shall be liable for all costs resulting from, and/or for satisfactorily correcting, any specification change not properly ordered by written modification to the contract and signed by the contracting officer.

VII. LIABILITIES AGAINST PROCURING AGENCY

The contractor shall indemnify, keep and save harmless the procuring agency, its agents, officials, and employees against all injuries, deaths, losses, damages, claims, suits, liabilities,

judgements costs out of, or resulting from, the contractor's acts or omissions, including acts or omissions of its employees, servants and agents.

VIII. PATENT INFRINGEMENT

The procuring agency should advise the contractor of any impending patent suit and provide all information available. The contractor shall defend any suit or proceeding brought against the procuring agency based on a claim that any equipment, or any part thereof, furnished under this contract constitutes an infringement of any patent, and the contractor shall pay all damages and costs awarded therein, excluding incidental and consequential damages, against the procuring agency. In case said equipment, or any part thereof, is in such suit held to constitute infringement and use of said equipment or parts is enjoined, the contractor shall, at its own expense and at its option, either procure for the procuring agency the right to continue using said equipment or part, or replace same with noninfringing equipment, or modify it so it becomes noninfringing.

IX. PRICE AND COST ANALYSIS

In the event a single bid is received, MTS will conduct a price and/or cost analysis of the bid based on data which shall be provided by the bidder. A cost analysis is the process of examining the bid and evaluating the separate cost elements. It should be recognized that a price analysis through comparison to other similar procurements must be based on an established or competitive price of the elements used in the comparison. The comparison must be made to a purchase of similar quantity and involving similar specifications. Where a difference exists, a detailed analysis must be made of this difference and costs attached thereto. Where it is impossible to obtain a valid price analysis, it may be necessary for MTS to conduct a cost analysis of the bid price. The price and/or cost analysis shall be made by competent and experienced auditors or price analysts. An engineer's estimate or comparison of the prices involved is insufficient for cost analysis purposes.

X. TERMINATION FOR CONVENIENCE

[Applies to Contracts over \$10,000]

The performance of work under this contract may be terminated by the procuring agency in accordance with this clause in whole, or from time to time in part, whenever the contracting officer shall determine that such termination is in the best interest of the procuring agency. Any such termination shall be effected by delivery to the contractor of a notice of termination specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination become effective.

After receipt of a notice of termination, and except as otherwise directed by the contracting officer, the contractor shall: Stop work under the contract on the date and to the extent specified in the notice of termination; place no further orders or subcontractors for materials, services, or facilities, except as may be necessary for completion of such portion of the work under the

contract as is not terminated; terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the notice of termination; assign to the procuring agency in the manner, at the times, and to the extent directed by the contracting officer, all of the right, title, and interest of the contractor under the orders and subcontracts so terminated, in which case the procuring agency shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts; settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the contracting officer, to the extent he may require, which approval or ratification shall be final for all the purposes of this clause; transfer title to the procuring agency and deliver in the manner, at the times, and to the extent, if any, directed by contracting officer the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated, and the completed or partially completed plans, drawings, information and other property which, if the contract had been completed, would have been required to be furnished to the procuring agency; use its best efforts to sell, in the manner, at the times, to the extent, and at the price(s) directed or authorized by the contracting officer, any property of the types referred to above, provided, however, that the contractor shall not be required to extend credit to any purchaser, and may acquire any such property under the conditions prescribed by and at a price(s) approved by the contracting officer, and provided further, that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the procuring agency to the contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the contracting officer may direct; complete performance of such part of the work as shall not have been terminated by the notice of termination; and take such action as may be necessary, or as the contracting officer may direct, for the protection or preservation of the property related to this contract which is in the possession of the contractor and in which the procuring agency has or may acquire an interest.

Settlement of claims by the contractor under this termination for convenience clause shall be in accordance with the provisions set forth in federal procurement regulations (FPR) 1-8.701(c), (d), (e), (f), (g), (h), (i), (j), and (k) except that wherever the word "GOVERNMENT" appears it shall be deleted and the words "PROCURING AGENCY" shall be substituted in lieu thereof.

XI. TERMINATION FOR DEFAULT
[Applies to Contracts over \$10,000]

The procuring agency may, by written notice of default to the contractor, terminate the whole or any part of this contract if the contractor fails to make delivery of the supplies or to perform the services within the time specified herein or any extension thereof; or if the contractor fails to perform any of the other provisions of the contractor, or so fails to make progress as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of 10 days (or such longer period as the contracting officer may authorize in writing) after receipt of notice from the contracting officer specifying such failure.

If the contract is terminated in whole or in part for default, the procuring agency may procure, upon such terms and in such manner as the contracting officer may deem appropriate, supplies or services similar to those so terminated. The contractor shall be liable to the procuring agency for any excess costs for such similar supplies or services, and shall continue the performance of this contract to the extent not terminated under the provisions of this clause.

Except with respect to defaults of subcontractors, the contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the contractor. If the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the contractor and subcontractor, and without the fault or negligence of either of them, the contractor shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the contractor to meet the required delivery schedule.

Payment for completed supplies delivered to and accepted by the procuring agency shall be at the contract price. The procuring agency may withhold from amounts otherwise due the contractor for such completed supplies such sum as the contracting officer determines to be necessary to protect the procuring agency against loss because of outstanding liens or claims to former lien holders.

If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the contractor was not in default under the provisions of this clause, or that the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to termination for convenience of the procurement agency.

The rights and remedies of the procuring agency provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

XII. CARGO PREFERENCE - USE OF UNITED STATES FLAG VESSELS

The Contractor agrees to utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo lines, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this Contract, to the extent such vessels are available at fair and reasonable rates from United States-flag commercial vessels.

XIII. TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

The Contractor agrees to comply with, and assure the compliance by its subcontractors under this Project, with all requirements of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d; U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the

Department of Transportation - Effectuation of Title VI of the Civil Rights Act," 49 CFR Part 21.

XIV. AUDIT AND INSPECTION

[Applies to Contracts over \$10,000]

I. General Audit Requirements

A Contractor that is a State, local government or Indian tribal government agrees to comply with the audit requirements of 49 CFR ° 18.26 and OMB Circular A-128, and any revision or supplement thereto. A Contractor that is an institution of higher education or nonprofit organization agrees to comply with the audit requirements of OMB Circular A 110 and OMB Circular A-133, and any revision or supplement thereto. A Contractor that is a private for-profit organization agrees to comply with the audit requirements of OMB Circular A-133. The Government may waive the OMB Circular A-128 audit requirement or substitute a requirement for a project audit performed in accordance with the Comptroller General's standards. The Contractor agrees to obtain any other audits required by the Government. Project closeout will not alter the Contractor's audit responsibilities. Audit costs for Project administration and management are allowable under this Project to the extent authorized by OMB Circular A-87, Revised; OMB Circular A-21, Revised; or OMB Circular A-122, Revised.

(2) Inspection by Federal Officials

The Contractor agrees to permit the Secretary and the Comptroller General of the United States, or their authorized representative, to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts of the Contractor and its contractors pertaining to the Project. The Contractor agrees to require each subcontractor whose contract award is not based on competitive bidding procedures as defined by the Secretary to permit the Secretary of Transportation and the Comptroller General of the United States, or their duly authorized representative, to inspect all work, materials, payrolls, and other data and records involving that contract, and to audit the books, records, and accounts involving that contract as it affects the Project.

XV. PROHIBITION AGAINST THE USE OF FEDERAL FUNDS FOR LOBBYING

[Applies to Contracts over \$100,000]

The Contractor and its subcontractors agree to comply with the provisions of 31 U.S.C. ° 1352, which prohibit the use of Federal funds for lobbying any official or employee of any Federal agency, or member or employee of Congress; and requires the Contractor to disclose any lobbying of any official or employee of any Federal agency, or member or employee of Congress in connection with Federal assistance. The Contractor and its subcontractors agree to comply with U.S. DOT regulations, "New Restrictions on Lobbying," 49 CFR Part 20. Failure

of the contractor or subcontractor to comply will be grounds for rejection of response.

XVI. DEBARMENT AND SUSPENSION

The Contractor agrees to obtain certification on debarment and suspension from its subcontractors and otherwise comply with U.S. DOT regulations, "Governmentwide Debarment and Suspension (Non-procurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)," 49 CFR Part 29. Failure of the contractor to comply with 49 CFR Part 29 or otherwise obtain the required subcontractor certifications will render contractor's proposal non-responsive, resulting in the rejection of the contractor's proposal.

XVII. PROCUREMENT INTEGRITY

[Applies to Contracts over \$25,000]

(1) Pursuant to Federal Acquisitions Regulation (FAR) 52.203-8, the Contractor agrees to notify Milwaukee County of possible violation of subsection 27(a), (b), (d), or (f) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), (hereinafter referred to as "the Act"), as implemented in the FAR, occurring during the conduct of this procurement.

(1) As required by subsection 27(e),(1)(B) of the Act, it is further understood that each officer, employee, agent, representative, and consultant of the Contractor who has participated personally and substantially in the preparation or submission of this offer will certify that he or she is familiar with, and will comply with, the requirements of subsection 27(a) of the Act, as implemented in the FAR, and will report immediately any information concerning a violation or possible violation of subsections 27(a), (b), (d), or (f) of the ACT, as implemented in the FAR, pertaining to this procurement.

XVIII. ENVIRONMENTAL, CONSERVATION AND ENERGY REQUIREMENTS

[Applies to Contracts over \$100,000]

The Contractor shall recognize that many Federal and State statutes imposing environmental, resource conservation, and energy requirements may apply to the Project. Some, but not all, of the major Federal laws that may affect the Project include: the National Environmental Policy Act of 1969, 42 U.S.C. [∞] 4321 et seq.; the Clean Air Act, as amended, 42 U.S.C. [∞] 7401 et seq. and scattered sections of 29 U.S.C.; the Clean Water Act, as amended, scattered sections of 33 and 12 U.S.C.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. [∞] 6901 et seq.; and the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. [∞] 9601 et seq. The Contractor shall also recognize that the Environmental Protection Agency (EPA), of the Federal Highway Administration (FHWA) and other agencies of the Federal Government have issued and are expected in the future to issue requirements in the form of regulations, guidelines, standards, orders, or other directive

that may affect the Project.

Accordingly, the Contractor agrees to adhere to, and impose on its subcontractors, any such Federal requirements, as the Government may now or in the future promulgate. Listed below are requirements of particular concern to the FTA. The Contractor expressly understands that this list does not constitute the Contractor's entire obligation to meet Federal requirements.

(a) Environmental Protection

To the extent applicable, the Contractor agrees to comply with the requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. ^{oo} 4321 et seq.; Section 14 of the Federal Transit Act, as amended, 49 U.S.C. app. ^{oo} 1610; the Council on Environmental Quality regulations, 40 CFR Part 1500 et seq.; and the joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," at 23 CFR Part 771 and 49 CFR Part 622.

(b) Air Pollution

The Contractor agrees to comply with the joint FHWA/FTA regulations, "Air Quality Conformity and Priority Procedures for Use in Federal-Aid Highway" and 49 CFR Part 623. The Contractor agrees to obtain satisfactory assurances that any facilities or equipment acquired, constructed, or improved as a part of the Project are or will be designed and equipped to limit air pollution as provided in accordance with the following EPA regulations: "Control of Air Pollution from Motor Vehicles and Motor Vehicle Engines", 40 CFR Part 85; "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicles Engines: Certification and Test Procedures," 40 CFR Part 86; and "Fuel Economy of Motor Vehicles," 40 CFR part 600; in accordance with applicable Federally approved State Implementation Plan(s) (in particular, the Transportation Control Measures); and in accordance with applicable Federal regulations, directives and other standards.

(c) Use of Public Lands

No publicly owned land from a park, recreation area, or wildlife or waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, or any land from a historic site of national, State, or local significance may be used for the Project unless specific findings required by 49 U.S.C. ^o 303 are made by the U.S. DOT.

(d) Historic Preservation

The Contractor agrees to assist the Government to comply with Section 106 of the National Historic Preservation Act, 16 U.S.C. § 470f, involving historic and archaeological preservation by:

- (1) Consulting the State Historic Preservation Officer on the conduct of investigations, in accordance with Advisory Council on Historic Preservation regulations, "Protection of Historic and Cultural Properties," 36 CFR Part 800, to identify properties and resources listed in or eligible for inclusion in the National Register of Historic Places that may be affected by the Project, and notifying the Government (FTA) of the existence of any such properties; and
- (2) Complying with all Federal requirements to avoid or mitigate adverse effects upon such properties.

(e) Energy Conservation

The Contractor and its subcontractors shall comply with mandatory standards and policies relating to energy efficiency that are contained in applicable State energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. § 6321 et seq.

(f) Mitigation of Adverse Environmental Effects

Should the proposed Project cause adverse environmental effects, the Contractor agrees to take all reasonable steps to minimize such effects pursuant to 49 U.S.C. app. § 1610, all other applicable statutes, and the procedures set forth in 23 CFR Part 771 and 49 CFR Part 622. The Contractor agrees to undertake all environmental mitigation measures that may be identified as commitments in applicable environmental documents (such as environmental assessments, environmental impact statements, memoranda of agreements, and statements required by 49 U.S.C. § 303) and with any conditions imposed by the Government as part of a finding of no significant impact or a record of decision; all such mitigation measures are incorporated in and made part of this Agreement by reference. If some or all mitigation measures are deferred, as soon as the Government and the Contractor agree on those measures, those agreed-upon measures will be incorporated into this Agreement. Such mitigation measures may not be modified or withdrawn without the express written approval of the Government.

XIX. LABOR PROVISIONS

Nonconstruction Contracts

[Applies to Contracts over \$2,000]

Pursuant to Department of Labor regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 CFR Part 5, the following provisions shall be incorporated in all federally-assisted non-construction contracts of \$2,000 let by MTS in carrying out the Project:

(1) Non-construction Contracts

The requirements of the clauses contained in 29 CFR § 5.5(b) or Part II, Subsections 119.a(10) through 119.a(13) of this agreement are applicable to any contract subject to the overtime provisions of the contract work hours and safety standards act and not to any of the other statutes cited in 29 CFR § 5.1. The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records to be maintained under this clause shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the FTA, the U.S. DOT, or the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

(2) Non-construction Subcontracts

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in Part II, Subsections 119.a(10) through (12) and Subsection 119.b(2) of this agreement and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in Part II, Subsections 119.a(10) through 119.a(12) and Subsection 119.b(2) of this agreement.

State and Local Government Employees

The provisions of the Fair Labor Standards Act, as amended by Pub. L. 99-150, Nov. 13, 1985, and any further amendment, apply to State and local government employees that participate in the FTA assisted Project with Milwaukee County.