

CITY OF OSHKOSH, WISCONSIN



REQUEST FOR PROPOSALS
FOR
MARKETING & PUBLIC RELATIONS SERVICES

May 25, 2022

GO Transit
926 Dempsey Trail
Oshkosh, Wisconsin 54902
www.oshkoshtransit.com

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PART A – NOTICE TO VENDORS
CITY OF OSHKOSH PURCHASING DIVISION

I. GENERAL

A. General Information

The City of Oshkosh (also herein referenced as the “City”) is requesting proposals from firms (hereinafter known as “Proposers”), to provide Marketing and Public Relations Services.

B. Questions or Addenda

Questions regarding this RFP must be submitted via electronic mail. No informal communication shall occur regarding this RFP, including requests for information or speculation between Proposers and any City of Oshkosh employees. Any contact or attempt to contact any other employee of the City regarding this RFP may result in the immediate disqualification of the Proposer. Oral and other interpretations or clarifications will be without legal effect. Only questions answered by formal written addenda will be binding. All questions regarding this RFP must be submitted via email by the deadline stated within this RFP to:

Jon G. Urben, General Services Manager, City of Oshkosh
Email: jurben@ci.oshkosh.wi.us

Proposers interested in receiving any addenda to this RFP shall provide an email address to Jon Urben by no later than the deadline for submitting questions stated within this RFP.

II. TERMS AND CONDITIONS

A. RFP Submittal

All proposals, sealed and marked “**PROPOSAL FOR MARKETING & PUBLIC RELATIONS SERVICES,**” are due by **10:00 a.m. on Thursday, June 30, 2022** and must be delivered to:

City Manager, c/o City Clerk's Office,
Room 108, City Hall,
215 Church Avenue, P.O. Box 1130,
Oshkosh, WI 54903-1130

Any proposal received after this time will not be considered. Proposals may be withdrawn prior to the date/time set for proposal opening. Proposals may be modified or withdrawn by the proposer’s authorized representative in person, or by written notice. If proposals are modified or withdrawn in person, the authorized representative shall make his identity

known and shall sign a receipt for the proposal. Written notices shall be received in the office where proposal was submitted no later than the exact date/time for proposal opening.

The City of Oshkosh reserves the right, where it may serve the City's best interest, to request additional information or clarification from proposers, or to allow corrections of error or omissions. At the discretion of the City, service providers submitting proposals will be requested to make oral presentations as part of the evaluation process.

There is no expressed or implied obligation for the City of Oshkosh to reimburse responding providers for any expenses incurred in preparing proposals in response to this request.

Proposals submitted are considered public information in accordance with State statutes governing data practices. Should you have any sections of the proposal that are considered trade secrets, please identify those in a separate document at the end of the proposal. In the event of a public records request for such information the City will notify proposers of the request, however the City shall make the final determination regarding what records it may be required to provide in accordance with the statutes.

The City of Oshkosh reserves the right to reject any or all proposals or to waive any technicality and accept any proposal that is deemed in the best interest of the city. The city also reserves the right to select, and subsequently award the proposed service to the provider which best meets the city's needs, quality levels and budget restraints.

Upon award the successful proposer will be required to provide a certificate of insurance meeting the City's insurance requirements, as listed within this RFP. Except for exempt materials, all proposals and information submitted by proposers will be available for viewing after the evaluation process is complete and a contract is awarded to the selected proposer.

PART B - GENERAL INFORMATION

GO Transit provides fixed-route bus service in the City of Oshkosh. As required by the Americans with Disabilities Act (ADA), GO Transit also offers paratransit service to individuals with disabilities within the City of Oshkosh that are unable to access bus routes. Additional paratransit services are also provided to other populations within the City of Oshkosh and rural Winnebago County residents. The purpose of this RFP is to hire a contractor who will provide marketing and public relations services including social media management. GO Transit's mission is to provide reliable, affordable and accessible public transportation to support our community's mobility needs. The City of Oshkosh/GO Transit is hereinafter referred to as "GO Transit."

Disadvantaged Business Enterprise

GO Transit has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. It is the policy of GO Transit to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. There is no contract goal established for this agreement. If a proposer is certified with the State of Wisconsin as a DBE vendor, please indicate the DBE certification within the submitted proposal.

Funding

Funding for this procurement is provided by City, State, and Federal taxpayer dollars. As such, the agreement with the successful proposer shall at all times be subject to the rules and regulations of Wisconsin Department of Transportation and the Federal Transit Administration, under the provisions of the Urban Mass Transportation Act of 1964, as amended. (See Federal Clauses pages 18-29).

Length of Contract

The contract length will be for three (3) years with an anticipated start date of August 1, 2022. After the initial three-year contract this contract may be renewed by the city for two additional one year terms. A sample contract is listed on p. 18.

Project Introduction

GO Transit is seeking competitive proposals from qualified and experienced firms to develop and execute strategies and tactics in support of its marketing initiatives. The successful proposer's marketing initiatives will incorporate a wide range of strategies to effectively promote and increase awareness of GO Transit's services to key audiences including but not limited to: existing riders; potential riders; and the general public/non-riders. The successful proposer will have demonstrated experience in brand building, marketing, public relations, social media management & marketing, digital marketing, ,

media planning & placement and market research. GO Transit's primary marketing goals are to maintain and increase bus ridership and improve public perception of transit in the City of Oshkosh

Estimated Budget

GO Transit has a current total contractual services budget of approximately \$24,000 per year for this service. Additionally, advertising expenses were approximately \$7,000 in 2022. We anticipate similar budget amounts each year of this RFP's resulting agreement. However, additional services may be requested beyond these amounts, which depend on campaigns, unforeseen events and tasks we agree to undertake in a given year. See "Cost Proposal Form" to provide rates for additional services.

Insurance Requirements

Prior to award of this contract the successful proposer will be expected to provide a certificate of insurance meeting the attached insurance requirements. Note: the proposer does not need to provide a bid bond, payment bond or performance bond for this project. The City of Oshkosh Insurance Requirements are attached to this RFP.

PART C – SCOPE OF WORK

Summary

The selected firm's shall develop an overall strategy for advertising and promoting public transit services in the Oshkosh market. In general, this will include, but is not limited to planning, conceptualizing, producing, implementing, evaluating, and analyzing marketing and public relations solutions. Specific items/tasks include, but are not limited to the following:

- Create and maintain monthly and annual marketing plan
- Implement brand communication strategy
- Production of all creative, copy writing and media placement. The selected firm must have extensive graphic design/creative capabilities.
- Social media management (see section below)
- Manage public relations, press releases and interview scheduling with the collaboration of Oshkosh Media Services as needed. Ability to provide media prep and coaching to GO Transit staff in advance of media interviews. The selected firm's staff must be available during interview or onsite, if needed.
- Selected firm must have local and regional media relationships.
- Promotion of GO Transit's rider app and website
- Development of high quality, economical production options for printing and marketing materials and items related to this contract

The selected firm will be able to respond and quickly react to the needs of GO Transit and events outside of GO Transit's control. Public relations capabilities must include ability to respond in less than 30-minutes in the event of an unforeseen event(s).

All work products associated with this contract shall be the property of GO Transit. All graphic design work must be provided in a format editable using Adobe Creative Suite.

Attendance at City of Oshkosh Transit Advisory Board and Oshkosh Common Council meetings may be required to present on annual marketing plan updates or other topics as needed.

Social Media Management

GO Transit Twitter, Facebook, Instagram, YouTube and LinkedIn social media platforms. The selected firm will manage these platforms on behalf of GO Transit, including content development, calendar, regular posting of content (including time sensitive posts), monitoring posts and analytics tracking. GO Transit will provide the awarded firm with access to the applicable user accounts.

At a minimum, social media should be monitored and managed from 6:00 AM – 8 PM Monday – Saturday. The selected firm is expected to provide a timely response to posts when appropriate.

Meetings

Regular meetings will be held between the selected firm's project manager and other applicable team members with GO Transit staff for the purpose of maintaining a close relationship, planning, status reporting, etc. Meetings can be held online or at GO Transit's administrative office located at 926 Dempsey Trail in Oshkosh.

Audits

The Contractor shall make financial and operating records available to State, Federal, County and City auditors in order to comply with program audit requirements. Accounting records and other related financial books and records shall be subject to an audit as directed by GO Transit. Such audit shall be completed at Contractor's expense and delivered to GO Transit no later than 150 days after the end of Contractor's fiscal year.

Non-federal entities that expend \$500,000 or more in Federal awards in a year are required to have annual audits in accordance with OMB Circular A-133. Under the current service level in this solicitation, the Contractor does not receive more than \$500,000 in Federal awards. GO Transit funding includes roughly 30% federal funds. However, if the Contractor receives Federal awards through other contracts, this requirement may apply.

Invoicing

Monthly invoices shall be forwarded within ten (10) days after the end of each month to:

City of Oshkosh AP
P.O. Box 1130
Oshkosh, WI 54903

PART D - RESPONSIBILITIES OF GO TRANSIT

Contractor Compensation

GO Transit agrees to pay the Contractor monthly. Monthly invoices shall be forwarded within ten (10) days after the end of each month to:

GO Transit - City of Oshkosh
PO Box 1130
Oshkosh, WI 54903

Upon verification of the monthly invoice, approved invoiced amounts will be paid to the Contractor within 30 days. In the event an overpayment is made to the Contractor, the Contractor shall refund all such excess compensation to GO Transit.

Changes to the Agreement

GO Transit may at any time by thirty (30) days written notice change or amend the awarded proposer's agreement. Should the Contractor not wish to abide with these changes, the Contractor shall give 30 days' written notice of their intent to terminate the agreement.

PART E – PROPOSAL REQUIREMENTS AND SUBMITTAL INSTRUCTION

General Information

Award of the contract shall be made to the most responsive and responsible proposer whose proposal meets the specifications and is most advantageous to the City of Oshkosh.

Proposed Schedule

The following schedule provides information on events and deadlines for this proposal.

RFP Issued	May 25, 2022
Deadline for Submitting Written Questions/Clarifications	June 10, 2022
Email amendments to proposers, which includes answers to all questions submitted, supplements and/or revisions to RFP	June 15, 2022
Deadline for Proposal Submittal	June 30, 2022
Anticipated Contract awarded	July, 2022
Anticipated Contract start date	August 1, 2022

The City of Oshkosh reserves the right to reject any or all proposals, to waive any informalities in the process, or to accept any proposal deemed in the best interests of the City of Oshkosh.

Addenda / Questions

All requests for interpretations, corrections or questions to this RFP must be emailed to General Services Manager, jurben@ci.oshkosh.wi.us. Only interpretations or corrections of the RFP made in writing by the General Services Manager are binding. In the event that it becomes necessary to provide additional clarifying data or information, or to revise any part of this RFP, revisions/amendments and/or supplements will be provided to all known recipients of this initial RFP. To ensure all supplemental information (if available) regarding the initial RFP is shared with all proposers, interested parties should email their contact information to Jon Urben at jurben@ci.oshkosh.wi.us before June 8, 2022.

Proposal Selection

An evaluation committee will consist of members who have been selected because of their special expertise and knowledge of the service(s) and/or product(s) that are the subject of this RFP. Proposers may not contact members of the evaluation committee regarding this solicitation.

The proposals will be initially reviewed to determine if the mandatory requirements are met. Failure to meet mandatory requirements shall result in the proposal being rejected. In the event that all proposers do not meet one or more of the mandatory requirements, the evaluation committee reserves the right to continue the evaluation of the proposals, which most closely meet the mandatory requirements of this RFP.

Based on the evaluation of the written proposal, the evaluation committee may require additional information from the top-scoring proposers to clarify or confirm proposal information. Additional information obtained may be of any or all of the following: proposer interviews, reference reviews, proposer presentation/demonstration, and on-site visits of proposer facilities.

If additional information is needed, the evaluation committee will make every reasonable attempt for scheduling at a time and location that is agreeable to the proposer. Failure of a proposer to fulfill or accommodate additional information requests from the evaluation committee may result in rejection of that proposer's proposal.

Evaluation Criteria

The following four evaluation criteria are listed in priority order.

1. Capabilities, qualifications and experience of proposed team.
2. Demonstrated successful implementation of previous marketing strategies, public relations, planning and campaign experience.
3. Methodology and approach
4. Cost Proposal

Interview/Presentation

The proposal Evaluation Committee reserves the right to interview and request a presentation of proposal/service and to request the proposer to demonstrate the capabilities of its service.

If the evaluation committee determines a need for interviews, only vendor(s) with highest evaluations (competitive range) will be invited for interview & presentation.

Mandatory Proposal Requirements

The following format includes the mandatory forms and documentation for the preparation and submittal of proposals.

Proposals shall include the specified elements below:

- a. Transmittal/Cover Letter containing the statements listed below and signed by an authorized officer of the responding organization.

- 1) The information contained in this submission is accurate and complete as of the date of submission.
 - 2) The responding organization understands and is willing to comply with all contractual requirements.
- b. Written Proposal Response
 - c. Cost Proposal Form
 - d. Acknowledgement of Amendments/Addendums (if any)
 - e. Certifications:
 - 1) Lobbying Certification
 - 2) Debarment and Suspension Certification
 - 3) Compliance with Overall Federal Regulations Certification

Written Proposal Response

Proposers shall answer the following within their proposal. Each proposal shall limit their proposal to these elements and maintain the same order in their response. GO Transit desires concise proposals. However, the proposer should not withhold information from the written response in anticipation of a future presentation or interview, since this offering may not be solicited.

Qualifications, Related Experience & References

- 1) List name of Firm/Organization and Chief Executive Officer. Include business address, telephone number and email address. List name, title, phone number and email address of individual designated to represent organization in subsequent discussions or negotiations related to this solicitation.
- 2) Provide legal status of firm (sole proprietor, for-profit corporation or joint venture corporation, for-profit partnership, non-profit corporation, public agency, or other-identify). If firm is a DBE (as described earlier in this document), please note here.
- 3) Provide a general description of the firm's financial condition and identify any conditions (e.g. bankruptcy, pending litigation, planned office closures, impending merger) that may impede or impact the proposer's ability to complete the Scope of Work.
- 4) Provide concise resumes of key personnel that would be assigned to work with GO Transit on a regular basis. The resumes should feature relevant job

experience, at least the past three years, and membership and certifications pertinent to providing the services defined in this RFP.

- 5) Briefly describe your firm's specialty/niche and core capabilities. Describe your firm's experience regarding the main areas described in the Scope of Work of this RFP.
- 6) Provide three (3) recent references that you consider most relevant in demonstrating your ability to perform the proposed effort. For each reference, please include client's name, client's project manager (email and phone number), a description of work performed and date of completion. GO Transit may check references outside of the submitted reference list.
- 7) Provide two (2) samples of media campaigns that you consider most relevant to the service described in this RFP. Include a brief description of the campaign and results.

Methodology of Approach

- 1) Provide a summary of how your firm would address the Scope of Work described in this RFP. Describe what level of service GO Transit should expect to receive within your cost proposal
- 2) Provide a brief narrative of how your firm's team would communicate and collaborate with GO Transit.
- 3) Briefly describe any additional information or value-added capabilities that you believe may be relevant to the evaluation of your firm's proposal.

Cost Proposal Form

The proposer may recreate the form below, but must complete all information and maintain the same order.

In 2021 GO Transit had an annual budget of \$24,000 for this service.

Please indicate the base annual amount for this service

<u>Base Annual Amount</u>				
<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u> <i>(option)</i>	<u>Year 5</u> <i>(option)</i>

It is possible that GO Transit would undertake special projects; ask the awarded firm to support/assist GO Transit with unforeseen events; or other activity that may not be accounted for in the base marketing budget. Below indicate costs for additional services beyond those included in your proposal. Please show as cost per hour by service type, expand rows in table for additional service types if needed.

	<u>Cost per Hour</u>				
<u>Additional Service Type</u>	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u> <i>(option)</i>	<u>Year 5</u> <i>(option)</i>

Notes: (1) Include additional information on an attached page if needed. (2) The completed Cost Proposal Form must be included in a separate sealed envelope (identified as "Cost Proposal") within the sealed proposal package submitted to Valley Transit.

Firm Name: _____

Name & Title of Vendor's Authorized Official: _____

Email of Vendor Authorized Official for DocuSign: _____

Signature: _____

Date: _____

Lobbying Certification

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

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

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq .)]

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

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

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

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

If the undersigned is required to complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying" (see #2 above), please include Standard Form—LL with this proposal submittal.

Firm Name: _____

Name & Title of Vendor's Authorized Official: -

Signature: _____

Date: _____

Debarment and Suspension Certification

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

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

The certification in this clause is a material representation of fact relied upon by Valley Transit. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to Valley Transit, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Firm Name: _____

Name & Title of Vendor's Authorized Official: -

Signature: _____

Date: _____

Compliance with Overall Federal Regulations Certification

49 CFR Part 18

The Contractor listed below hereby certifies that it shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Federal Transit Administration (FTA) Master Agreement between the City of Appleton/ValleyTransit and the Federal Transit Administration, as they may be amended or promulgated from time to time during the term of this contract. The Contractor's failure to so comply shall constitute a material breach of this contract. FTA contract clauses are listed in this RFP.

Firm Name: _____

Name & Title of Vendor's Authorized Official: -

Signature: _____

Date: _____

2022 Marketing & Public Relations Services FEDERAL CLAUSES

NO GOVERNMENT OBLIGATION TO THIRD PARTIES

Applicability to Contracts: Applicable to all contracts

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under \$10,000. These requirements do not apply to micro-purchases; except for construction contracts over \$2,000.

Flow Down Requirement: Not required by statute or regulation for either primary contractors or subcontractors, this concept should flow down to all levels to clarify, to all parties to the contract, that the Federal Government does not have contractual liability to third parties, absent specific written consent.

Model Clause/Language: While no specific language is required, FTA has developed the following language.

No Obligation by the Federal Government.

(1) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

**31 U.S.C. 3801 et seq.
49 CFR Part 31 18 U.S.C. 1001
49 U.S.C. 5307**

Applicability to Contracts: These requirements are applicable to all contracts.

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under \$10,000. These requirements do not apply to micro-purchases; except for construction contracts over \$2,000.

Flow Down Requirement: These requirements flow down to contractors and subcontractors who make, present, or submit covered claims and statements.

Model Clause/Language: These requirements have no specified language, so FTA proffers the following language.

Program Fraud and False or Fraudulent Statements or Related Acts.

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq . and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

ACCESS TO RECORDS AND REPORTS

**49 U.S.C. 5325
18 CFR 18.36 (i)
49 CFR 633.17**

Applicability to Contracts: Reference Chart "Requirements for Access to Records and Reports by Type of Contracts"

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under \$10,000. These requirements do not apply to micro-purchases; except for construction contracts over \$2,000.

Flow Down Requirement: FTA does not require the inclusion of these requirements in subcontracts.

Model Clause/Language: The specified language is not mandated by the statutes or regulations referenced, but the language provided paraphrases the statutory or regulatory language.

Access to Records - The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 18 C. F. R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$250,000.

3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

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

6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 18 CFR 18.39(i)(11).

7. FTA does not require the inclusion of these requirements in subcontracts.

REQUIREMENTS FOR ACCESS TO RECORDS AND REPORTS BY TYPES OF CONTRACT

	Operational Service Contract	Turnkey Contract	Construction Contract	Arch. or Engineering Contract	Rolling Stock Contract	Professional Service Contract
State Grantees						
Contracts below Simplified Acquisition Threshold (Small Purchase) (\$250,000)	None	Those imposed on state pass thru to Contractor	None	None	None	None
Contracts above \$100,000/Capital Projects	None unless ¹ non-competitive award	Those imposed on state pass thru to contractor	Yes, if non-competitive award or if funded thru ² 5307, 5309, 5311	None unless non-competitive award	None unless non-competitive award	None unless non-competitive award
Non-State Grantees						
Contracts below Simplified Acquisition Threshold (Small	Yes	Those imposed on non-state Grantee pass	Yes	Yes	Yes	Yes

Purchase) (\$250,000)		thru to Contractor				
Contracts above \$100,000/Capital Projects	Yes	Those imposed on non-state Grantee pass thru to Contractor	Yes	Yes	Yes	Yes

FEDERAL CHANGES

2 CFR Part 1201

Applicability to Contracts: The Federal Changes requirement applies to all contracts.

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under \$10,000. These requirements do not apply to micro-purchases; except for construction contracts over \$2,000.

Flow Down Requirement: The Federal Changes requirement flows down appropriately to each applicable changed requirement.

Model Clause/Language: No specific language is mandated. The following language has been developed by FTA.

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

CIVIL RIGHTS REQUIREMENTS

**29 U.S.C. § 623, 42 U.S.C. § 2000
42 U.S.C. § 6102, 42 U.S.C. § 12112
42 U.S.C. § 12132, 49 U.S.C. § 5332
29 CFR Part 1630, 41 CFR Parts 60 et seq.**

Applicability to Contracts: The Civil Rights Requirements apply to all contracts.

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under \$10,000. These requirements do not apply to micro-purchases; except for construction contracts over \$2,000.

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

Model Clause/Language: The following clause was predicated on language contained at 49 CFR Part 19, Appendix A, but FTA has shortened the lengthy text.

Civil Rights - The following requirements apply to the underlying contract:

The following requirements apply to the underlying contract:

- (1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for

employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action 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. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

49 CFR Part 26

Applicability to Contracts: The Disadvantaged Business Enterprise (DBE) program provides guidance to grantees on the use of overall and contract goals, requirement to include DBE provisions in subcontracts, evaluating DBE participation where specific contract goals have been set, reporting requirements, and replacement of DBE subcontractors. Additionally, the DBE program dictates payment terms and conditions (including limitations on retainage) applicable to all subcontractors regardless of whether they are DBE firms or not.

The DBE program applies to all DOT- assisted contracting activities. A formal clause such as that below **must** be included in all contracts and subcontracts above the micro-purchase level (\$10,000 except for construction contracts over \$2,000).

Clause Language

Each contract the **Recipient** signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following Federal Clause language:

- a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. GO Transit has established a 1.1% transit DBE race neutral goal FFY 2020-2022. A separate contract specific goal has not been established for this procurement.

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

- c. The contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed in its written documentation of its contract commitment to the **Recipient** unless the contractor obtains written consent from the **Recipient**.
- d. The contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the DBEs as listed in its written documentation of its commitment to the **Recipient** unless the contractor obtains written consent from the **Recipient**.
- e. The contractor will be required to report its DBE participation obtained throughout the period of performance.
- f. **Prompt Payment** - The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than **10** calendar days after the contractor's receipt of payment for that work from the **Recipient**. In addition, the contractor is required to return any retainage payments to those subcontractors within **10** calendar days after incremental acceptance of the subcontractor's work by the **Recipient** and contractor's receipt of the partial
- g. The contractor shall not terminate a DBE subcontractor listed in its written documentation of its commitment to the **Recipient** to use a DBE subcontractor (or an approved substitute DBE firm) without the **Recipient's** prior written consent. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.
- h. The contractor must promptly notify the **RECIPIENT** whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. For purposes of this paragraph, good cause includes the following circumstances:
 - i. The listed DBE subcontractor fails or refuses to execute a written contract.
 - ii. The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor.
 - iii. The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements.
 - iv. The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
 - v. The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1,200 or applicable state law;

- vi. WisDOT determined that the listed DBE subcontractor is not a responsible contractor;
 - vii. The listed DBE subcontractor voluntarily withdraws from the project and provides to you written notice of its withdrawal;
 - viii. The listed DBE is ineligible to receive DBE credit for the type of work required;
 - ix. A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
 - x. Other documented good cause that compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.
- i. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the **RECIPIENT**.
- j. Before transmitting to WisDOT its request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to WisDOT, of its intent to request to terminate and/or substitute, and the reason for the request.

INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

FTA Circular 4220.1F

Applicability to Contracts: The incorporation of FTA terms applies to all contracts.

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under \$10,000. These requirements do not apply to micro-purchases; except for construction contracts over \$2,000.

Flow Down Requirement: The incorporation of FTA terms has unlimited flow down.

Model Clause/Language: FTA has developed the following incorporation of terms language:

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

TERMINATION

2 CFR Part 1201

2 CFR 200

FTA Circular 4220.1F

Applicability to Contracts: All contracts (with the exception of contracts with nonprofit organizations and institutions of higher education,) in excess of \$10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be affected and the basis for settlement. (For contracts with nonprofit organizations and institutions of higher education the threshold is \$250,000.) In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

Flow Down Requirement: The termination requirements flow down to all contracts in excess of \$10,000, with the exception of contracts with nonprofit organizations and institutions of higher learning.

Model Clause/Language: FTA does not prescribe the form or content of such clauses. The following are suggestions of clauses to be used in different types of contracts:

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

b. Termination for Default [Breach or Cause] (General Provision) If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the (Recipient) may terminate this contract for default. Termination shall be affected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

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

c. Opportunity to Cure (General Provision) The (Recipient) in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

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

d. Waiver of Remedies for any Breach In the event that (Recipient) elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by (Recipient) shall not limit (Recipient)'s remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

e. Termination for Convenience (Professional or Transit Service Contracts) The (Recipient), by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the Recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

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

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

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

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

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

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

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

1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and

2. The contractor, within [10] days from the beginning of any delay, notifies the (Recipient) in writing of the causes of delay. If in the judgment of the (Recipient), the delay is excusable, the time for completing the work shall be extended. The judgment of the (Recipient) shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

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

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

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

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

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

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

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

If, after serving a notice of termination for default, the (Recipient) determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, the (Recipient), after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

ENERGY CONSERVATION REQUIREMENTS

**42 U.S.C. 6321 et seq.
2 CFR Part 1201**

Applicability to Contracts: The Energy Conservation requirements are applicable to all contracts.

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under \$10,000. These requirements do not apply to micro-purchases; except for construction contracts over \$2,000.

Flow Down Requirements: The Energy Conservation requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subagreements at every tier.

Model Clause/Language: No specific clause is recommended in the regulations because the Energy Conservation requirements are so dependent on the state energy conservation plan. The following language has been developed by FTA.

Energy Conservation - The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

RECYCLED PRODUCTS

**42 U.S.C. 6962
40 CFR Part 247
Executive Order 12873**

Applicability to Contracts: The Recycled Products requirements apply to all contracts for items designated by the EPA, when the purchaser or contractor procures \$10,000 or more of one of these items during the fiscal year, or has procured \$10,000 or more of such items in the previous fiscal year, using Federal funds. New requirements for "recovered materials" will become effective May 1, 1996.

These new regulations apply to all procurement actions involving items designated by the EPA, where the procuring agency purchases \$10,000 or more of one of these items in a fiscal year, or when the cost of such items purchased during the previous fiscal year was \$10,000.

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under \$10,000. These requirements do not apply to micro-purchases.

Flow Down Requirement: These requirements flow down to all to all contractor and subcontractor tiers.

Model Clause/Language: No specific clause is mandated, but FTA has developed the following language.

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

GOVERNMENT-WIDE DEBARMENT AND SUSPENSION

2 CFR part 180

2 CFR part 1200

2 CFR § 200.213

2 CFR part 200 Appendix II (I)

Executive Order 12549

Executive Order 12689

Background and Applicability

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

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

Flow Down

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

Debarment, Suspension, Ineligibility and Voluntary Exclusion

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

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

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

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

**CONTRACTOR AGREEMENT:
PROJECT TITLE
CITY OF OSHKOSH**

THIS AGREEMENT, made on the XXTH day of MONTH, 202X, by and between the CITY OF OSHKOSH, party of the first part, hereinafter referred to as CITY, and CONTRACT NAME, ADDRESS, hereinafter referred to as the CONTRACTOR,

WITNESSETH:

That the City and the Contractor, for the consideration hereinafter named, enter into the following agreement. The Contractor's proposal is attached hereto and reflects the agreement of the parties except where it conflicts with this agreement, in which case this agreement shall prevail.

ARTICLE I. COMPONENT PARTS OF THE CONTRACT

This contract consists of the following component parts, all of which are as fully a part of this contract as if herein set out verbatim, or if not attached, as if hereto attached:

- A. This Instrument
- B. Proposal Solicitation
- C. Contractor's Bid Proposal Form dated XXXXXX and attached.

In the event that any provision in any of the above component parts of this contract conflicts with any provision in any other of the component parts, the provision in the component part first enumerated above shall govern over any other component part which follows it numerically except as may be otherwise specifically stated.

ARTICLE II. PROJECT MANAGER

- A. Assignment of Project Manager. The Contractor shall assign the following individual to manage the project described in this contract:

(NAME, TITLE)

- B. Changes in Project Manager. The City shall have the right to approve or disapprove of any proposed change from the individual named above as Project Manager. The City shall be provided with a resume or other information for any proposed substitute and shall be given the opportunity to interview that person prior to any proposed change.

ARTICLE III. CITY REPRESENTATIVE

The City shall assign the following individual to manage the project described in this contract:

(NAME, DEPARTMENT)

ARTICLE IV. SCOPE OF WORK

The Contractor shall provide the services described in the City's INVITATION FOR BID for the Project titled "**SOLICIATION NAME**" dated DATE, MONTH, YEAR, and the contractor's bid form and materials attached. If anything in the Bid Form conflicts with the Bid Specifications, the provisions in the Bid Specifications shall govern.

The Contractor may provide additional products and/or services if such products/services are requested in writing by the Authorized Representative of the City.

ARTICLE V. CITY RESPONSIBILITIES

The City shall furnish, at the Contractor's request, such information as is needed by the Contractor to aid in the progress of the project, providing it is reasonably obtainable from City records.

To prevent any unreasonable delay in the Contractor's work the City will examine all reports and other documents and will make any authorizations necessary to proceed with work within a reasonable time period.

ARTICLE VI. TIME OF COMPLETION

The work to be performed under this contract shall commence on **DATE** for a three-year term ending **DATE**. Upon mutual acceptance by both parties this contract may be renewed with the option for up to two, one-year renewals.

ARTICLE VII. PAYMENT

- A. The Contract Sum. **The City shall pay to the Contractor \$AMOUNT for the performance of the contract based on actual more/less quantities of services and the bidder unit prices as well as the annual price increases note on the attached cost proposal form.** Costs will be adjusted by any changes hereafter mutually agreed upon in writing by the parties hereto.
- B. Fee schedules shall be firm for the duration of this Agreement.
 - i. Method of Payment. **The Contractor shall submit itemized monthly**

statements for services. The City shall pay the Contractor within 30 calendar days after receipt of such statement. If any statement amount is disputed, the City may withhold payment of such amount and shall provide to Contractor a statement as to the reason(s) for withholding payment.

- ii. Additional Costs. Costs for additional services shall be negotiated and set forth in a written amendment to this agreement executed by both parties prior to proceeding with the work covered under the subject amendment.

ARTICLE VIII. STANDARD PROVISIONS

The CONTRACTOR agrees in all hiring or employment made possible by or resulting from this agreement, there will not be any discrimination against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin.

ARTICLE IX. CONTRACTOR TO HOLD CITY HARMLESS

The Contractor covenants and agrees to protect and hold the City of Oshkosh harmless against all actions, claims and demands of any kind or character whatsoever which may in any way be caused by or result from the intentional or negligent acts of the Contractor, his agents or assigns, his employees or his subcontractors related however remotely to the performance of this Contract or be caused or result from any violation of any law or administrative regulation, and shall indemnify or refund to the City all sums including court costs, attorney fees and punitive damages which the City may be obliged or adjudged to pay on any such claims or demands within thirty (30) days of the date of the City's written demand for indemnification or refund.

ARTICLE X. INSURANCE

The Contractor shall provide insurance for this project that includes the City of Oshkosh as an additional insured. The contractor's certificate of insurance for this project is attached.

ARTICLE XI. TERMINATION

- C. For Cause. If the Contractor shall fail to fulfill in timely and proper manner any of the obligations under this Agreement, the City shall have the right to terminate this Agreement by written notice to the Contractor. In this event, the Contractor shall be entitled to compensation for any satisfactory, usable work completed.
- D. For Convenience. The City may terminate this contract at any time by giving written notice to the Contractor no later than 10 calendar days before the termination date. If the City terminates under this paragraph, then the Contractor shall be entitled to compensation for any satisfactory work performed to the date of termination.

This document and any specified attachments contain all terms and conditions of the Agreement and any alteration thereto shall be invalid unless made in writing, signed by both parties and incorporated as an amendment to this Agreement.

In the Presence of:

CONTRACTOR

By: _____
NAME, TITLE
COMPANY

(Seal of Contractor if a Corporation)

CITY OF OSHKOSH

(Witness)

By: _____
Mark A. Rohloff, City Manager

(Witness)

And: _____
Jessi Balcom, City Clerk

APPROVED:

I hereby certify that the necessary provisions have been made to pay the liability which will accrue under this contract.

City Attorney

City Comptroller