



FEDERAL GRANT PROGRAM PROCUREMENT POLICY

Section 1: Introduction

When appropriate, the City of Minot requests grant monies for projects that benefit its citizens. Requestors will follow all guidance and ensure proper financial stewardship of taxpayer resources on the City's behalf. As a recipient of Federal funds, the City's policy is to ensure procurement procedures reflect applicable state laws, local laws, and conform to applicable Federal laws and standards identified in 2 CFR 200.318-327.

Section 2: Code of Conduct

1. No employee, officer, or agent of the City of Minot shall participate in the selection or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict could arise if the employee, officer, agent, or board member; any member of their immediate family; their partner; or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest, or a tangible personal benefit from an entity considered for a contract. **(2 CFR 200.318(c)(1))**
2. No employee, officer, agent, or board member of the City of Minot shall solicit or accept gratuities, favors or anything of monetary value from contractors or firms, potential contractors or firms, or parties to sub-agreements, except where the financial interest is not substantial. **(2 CFR 200.318(c)(1))**
3. The prohibition against conflicts of interest and gratuities and kickbacks shall be conspicuously set forth in every local public agency written contract and solicitation. It shall be a breach of ethical standards for any public employee or former employee, officer, or agent knowingly to use confidential information for his actual or anticipated personal gain, or the actual or anticipated personal gain of any other person. **(2 CFR 200.318 (c)(1))**
4. Any alleged violations of these standards of conduct shall be referred to the City of Minot Attorney. Where violations appear to have occurred, the offending employee, officer or agent shall be subject to disciplinary action, including but not limited to dismissal or transfer; where violations or infractions appear to be substantial in nature, the matter may be referred to the appropriate officials for criminal investigation and possible prosecution. Any elected official, employee or designated agent of the City who knowingly and deliberately violates the provisions of this code will be open to civil suit without the legal protection of the City. Furthermore, such a violation of these procurement standards may be grounds, subject to the City's discretion, for dismissal by the City. **(2 CFR 200.318(c)(1))**
5. Any contractor or potential contractor who knowingly and deliberately violates the provisions of these procurement standards will be barred from future transactions with the City where federal funds are involved. **(2 CFR 200.318(c)(1))**



Items 1-5 are the responsibility of the Program Administrator, City Engineer, Department Heads, Finance Director as procurement officer, and City Attorney.

Section 3: Pre-Solicitation

1. For the purposes of implementing this policy, the City of Minot Finance Director is the procurement officer. The procurement officer is responsible for procurement of services, supplies, equipment, or construction obtained with federal funds and shall review all proposed procurement actions to avoid the purchase of unnecessary or duplicative items. Such reviews shall consider consolidation or breaking out to obtain a more economical purchase. When determined appropriate by the procurement officer, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach. **(2 CFR 200.318(d))**
2. The City of Minot will maintain records sufficient to detail the history of procurement. These records will include but are not limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price. **(2 CFR 200.318(i))**

The procurement records are the responsibility of the department head or program administrator to ensure items are properly completed. The City's internal auditor will monitor each project with work procured to ensure the items in the procurement records were actually performed.

3. The City of Minot will perform cost or pricing analysis for EVERY procurement transaction in excess of the Simplified Acquisition Threshold (\$250,000), including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement transaction. As a starting point, the City will make independent estimates before receiving bids or proposals. The engineer's cost estimate will meet this requirement for formal sealed bids. This must be a detailed cost breakdown for the overall estimate providing the elements of the total cost not only the total price. **(2 CFR 200.324(a))**
4. A cost reasonableness analysis and documentation is required for a RFQ or RFP (competitive negotiations) or any time price competition is not the main evaluation factor. This analysis must be completed before awarding the contract. Cost Analysis is the evaluation of separate elements (e.g. labor, materials, profit, etc.) that make up a contractor's total cost proposal or price to determine if they are allowable, directly related to the requirement and ultimately, reasonable. Cost analyses are used when there is no price competition or when price competition is not the only evaluation factor, such as procuring A/E, professional, consulting, or program administrator services. **(2 CFR 200.324(a))**



5. To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services, the City of Minot will explore the feasibility to enter into State and local intergovernmental agreements or inter-entity agreements, where appropriate, for procurement or use of common goods and services. The City will also explore the use of Federal excess and surplus property in lieu of purchasing new equipment and property if feasible and if it reduces project costs. The City will also explore the feasibility of using value engineering (the systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost) clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. **(2 CFR 200.318(e)(f)(g))**
6. The City of Minot will take all necessary affirmative steps to ensure that small businesses, minority businesses, women's business enterprises, veteran-owned businesses and labor surplus area firms are used when possible. Affirmative steps shall include:
 - a. Placing qualified small and minority businesses, women's business enterprises, and veteran-owned businesses on solicitation lists.
 - b. Assuring small and minority businesses, women's business enterprises, and veteran-owned businesses are solicited whenever they are potential sources
 - c. The City of Minot will also consider the feasibility of dividing total requirements, when economically feasible, into smaller tasks or quantities so as to permit maximum participation by small and minority businesses, women's business enterprises, and veteran-owned businesses.
 - d. Where permitted by regulations, delivery schedules will be developed which will include participation by such businesses.
 - e. The City will also use the services and assistance, as appropriate, of such organizations as the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce. The City will require of its prime contractors, if subcontracts are to be let, to take the affirmative steps listed above. **(2CFR 200.321(a)(b))**
7. The City will comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 containing the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and



establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. **(2 CFR 200.323)**

Items 1 – 7 are the responsibility of the Program Administrator, City Engineer, Department Heads and Finance Director as the procurement officer.

Section 4: Solicitation Procedures

Section 4.1: Full and Open Competition

1. ALL procurement carried out with federal funds, where the City of Minot is a direct party, shall be carried out in a manner that provides maximum full and open competition with no exclusionary or discriminatory specification. Procurement procedures will not restrict or eliminate competition. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals will be excluded from competing for such procurements. **(2 CFR 200.319(a)(b) and 49 U.S.C. 5325(h))**
2. The City of Minot shall not place unreasonable requirements on firms in order for them to qualify to do business. The City will not require unnecessary experience and excessive bonding. Nor will the City of Minot encourage or participate in noncompetitive practices among firms or affiliated companies. The City of Minot shall remain alert to organizational conflicts which would jeopardize the negotiation process and limit competition. The City of Minot will not award noncompetitive contracts to consultants that are on retainer contracts. The City will not specify only a "brand name" product instead of allowing "an equal" product to be offered. A "brand name or equal" description may be used to define the performance or other salient requirements of procurement. The specific features, performance, or other relevant requirements of the named brand which must be met by offerors shall be clearly stated. No arbitrary actions will be undertaken in the procurement process. **(2 CFR 200.319(c)(1-7) and §200.319(d)(1))**
3. The City will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. This section does not preempt State or local licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project to compete for the contract. **(2 CFR 200.319(b))**
4. Pursuant to state law and federal regulations 2 CFR 200.319(d)(2)) all solicitations shall incorporate a clear and accurate description of the technical requirements for the material, service, or product to be procured. In



competitive procurements, these descriptions shall not contain features which unduly limit competition. The description may include a statement of the qualitative nature of the material, product, or service and when necessary, the minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications shall be avoided whenever possible. The solicitation must identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals. **(2 CFR 200.319(d)(1-3))**

5. The City will ensure that all prequalified lists of persons, firms or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the City will not preclude potential bidders from qualifying during the solicitation period. **(2 CFR 200.319(e))**
6. The City of Minot may incorporate a scoring mechanism that rewards bidders that commit to specific numbers and types of U.S. jobs, minimum compensation, benefits, on-the-job- training for employees making work products or providing services on a contract, and other worker protections. The City may also make inquiries of bidders about these subjects and assessing the responses. Any scoring mechanism must be consistent with the U.S. Constitution, applicable Federal statutes and regulations, and the terms and conditions of the Federal award. **(2 CFR 200.319(g))**

Items 1 – 6 are the responsibility of the Program Administrator, City Engineer, Department Heads and Finance Director as the procurement officer.

Section 4.2: Methods of Procurement

Direct procurement by the City of Minot shall be made by using one of the following methods depending on the type of service to be procured.

1. Micro Purchase Procedures. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed \$10,000 (or \$2,000 in the case of acquisitions for construction subject to the Davis-Bacon Act). To the extent practicable, the City will distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the City considers the price to be reasonable based on research, experience, purchase history, or other information; and maintains documentation to support the decision. **(2 CFR 200.320(a)(1))**
2. Small Purchase Procedures. Relatively simple, informal procurement procedures will be used where the purchase of materials, services, supplies, equipment, and/or other property will not cost in the aggregate more than \$250,000, except where further limited by state law or local policy. The procurement officer must obtain a minimum of three oral or written price or rate quotations from qualified sources. Documentation on all quotations



received (whether oral or written) shall be made a part of the file. Selections shall be made principally on price. Payment shall be made upon delivery or completion. **(2 CFR 200.320(a)(2))**

Items 1 and 2 are the responsibility of the Program Administrator, City Engineer, Department Heads and Finance Director as the procurement officer.

3. Procurement by Sealed Bids/Formal Advertising. The City of Minot follows the North Dakota Century Code Chapter 48-01.2 for procurement of public improvements which requires procurements of greater than \$200,000 to be procured by sealed bids. Under this procedure bids are publicly advertised in accordance with the applicable laws and the City of Minot's sealed bid procedures. A firm fixed price contract (either lump sum or unit price) shall be awarded to the responsible bidder whose bid is lowest in price and that conforms to all the material terms and conditions of the advertisement for bids. **(2 CFR 200.320(b) and NDCC 48-01.2)**

a. The sealed bid method is the preferred method for procuring construction, ONLY if the following conditions apply.

- i. There are complete, adequate, and realistic specifications or purchase descriptions.
- ii. There are two or more responsible bidders who are willing and able to compete effectively.
- iii. The procurement can be made on a firm fixed-price contract, made in writing, and selection of the successful bidder can appropriately be made principally on the basis of price to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of. **(2 CFR 200.320(b)(1)(i) and 200.320(b)(1)(ii)(D))**

b. The advertisement for bids shall be publicly advertised in the official newspaper of the City of Minot for three consecutive weeks. The first publication of the advertisement must be at least twenty-one days before the date of the opening of bids. Bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids. **(2 CFR 200.320(b)(1)(ii)(A) and North Dakota Century Code 48-01.2-04)**

c. The advertisement for bids, including the specifications and pertinent attachments, shall clearly define the items, end products or services needed



in order for the bidders to properly respond to the advertisement. **(2 CFR 200.320(b)(1)(ii)(B))**

d. All bids shall be opened publicly at the time and place specified in the advertisement for bids. **(2 CFR 200.320(b)(1)(ii)(C))**

e. Any or all bids may be rejected if there is a sound documented reason **(2 CFR 200.320(b)(1)(ii)(E))**

Item 3 is the responsibility of the Program Administrator, City Engineer, City Clerk (bid opening), Department Head and Finance Director as the procurement officer.

4. Procurement by Competitive Proposals. Request for Proposals (RFP) and Request for Qualifications (RFQ)
 - a. Competitive proposal is normally conducted with more than one source submitting an offer, and award of either a fixed-price or cost-reimbursement type contract. It is generally used when conditions are not appropriate for sealed bids. When competitive proposal is used, the following requirements apply:
 - i. Proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized proposals shall be honored to the maximum extent practical. **(2 CFR 200.320(b)(2)(i))**
 - ii. Proposals will be solicited from an adequate number of qualified sources; three or more are desired. If less are received, document attempts to generate more interest. **(2 CFR 200.320(b)(2)(i))**
 - iii. The City will have a written method for conducting technical evaluations of the proposals received and for selecting recipients. **(2 CFR 200.320(b)(2)(ii))**
 - iv. Contracts will be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered. This shall always include negotiation of price to insure cost reasonableness. **(2 CFR 200.320(b)(2)(iii))**
 - b. Competitive proposal procedures are used for qualifications-based procurement (RFQ) of architectural/engineering (A/E) professional services, where competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. At the conclusion of successful negotiations, the competitor shall be invited to enter into a contract. This method, where price is not used as a selection factor, can only be used in procurement of A/E professional services and the contract MUST clearly establish a cost ceiling which cannot be exceeded without contract modification. It cannot be used to purchase other types of



services through A/E firms that are potential sources to perform the proposed effort. **(2 CFR 200.320(b)(2)(iv))**

- i. The Brooks Act requires agencies to promote open competition by advertising, ranking, selecting, and negotiating contracts based on demonstrated competence and qualifications for the type of engineering and design services being procured, and at a fair and reasonable price. **(40 USC Ch. 11)**

5. Noncompetitive Procurement:

- a. Procurement through solicitation of a proposal from only one source, only when one or more of the following circumstances apply:
 - i. The aggregate amount of the procurement transaction does not exceed the micro-purchase threshold **(2 CFR 200.320 (c)(1))**
 - ii. The item is available only from a single source. **(2 CFR 200.320(c)(2))**
 - iii. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation. **(2 CFR 200.320(c)(3))**
 - iv. The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity. **(2 CFR 200.320(c)(4))**
 - v. After solicitation of a number of sources, competition is determined inadequate. **2 CFR 200.320(c)(5))**

Items 4 and 5 are the responsibility of the Program Administrator, City Engineer, Department Head and Finance Director as the procurement officer.

Section 5: Award

Section 5.1 Awarding Contracts

Contracts will only be awarded to responsible, responsive contractors/firms possessing the ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such factors as the contractor's/firm's capacity, integrity, compliance with public policy, record of past performance, and financial/technical resources. The contractor's/firm's capacity will not only include consideration of its inherent capabilities but also take into consideration all its existing commercial and governmental business commitments.

"Responsible bidder" refers to the character or quality of the bidder -- whether it is an entity with which the City of Minot is safe doing business. "Responsive bidder" refers to whether or not the bidder has met the required specifications in its bid to the City of Minot. Written determination of contractor's responsibility should be documented and placed in the contract file.

- 1. Any or all bids may be rejected if there is a sound documented reason. Disqualification of a bidder for **lack of responsibility** will require notice to



the bidder and the opportunity for a hearing. Rejection of a bid because of **unresponsiveness** requires only that bidder be informed of why bid was rejected. [See ATTACHMENT A] **(2 CFR 200.318(h))**

2. The City of Minot will implement Executive Orders 12549 and 12689, and 2 CFR part 180, which restricts awards, subawards, and contract with certain parties that are debarred suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities. To ensure compliance the City will verify the intended contractor is not excluded or disqualified by one of the following methods:

- a. Check the System for Award Management Exclusion and printing out the resulting page for placement in the procurement file.
- b. Collecting a certification from the contractor.
- c. Adding a clause or condition to the covered transaction with the contractor. **(2 CFR 180.300 and 2 CFR 200.213)**

3. See ATTACHMENT A #2 regarding rejection of offers from debarred contractors.

Items 1 & 2 are the responsibility of the Program Administrator, Engineer, Department Head and the Finance Director as the procurement officer.

Section 5.2 Contract Pricing

1. Time and material-type contracts will only be used after determining no other contract is suitable. Time and materials contracts prescribe cost to the City as the sum of 1) actual cost of materials; and 2) direct labor hours charges at fixed hourly rates that reflect wages, general and administrative expenses, and profit. This formula generates an open-ended contract price with no profit incentive for the contractor to control costs or labor efficiency. Therefore, each contract must set a price ceiling where the contractor shall pay any costs beyond that threshold. Frequent oversight actions can help ensure the contractor has efficient methods and effective cost controls. **(2 CFR 200.318(j)((1-2)))**
2. The City will negotiate profit as a separate price element for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work. **(2 CFR 200.324(a))**
3. Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred, or cost estimates included in negotiated prices would be allowable for the non-Federal entity under 2 CFR 200 Subpart E Cost Principles. **(2 CFR 200.324(b))**



4. For sealed bids a firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder.
5. Cost plus percentage of cost and percentage of construction cost methods of contracting MUST NOT be used. **(2 CFR 200.324(c))**

Items 1-5 are the responsibility of the Program Administrator, Federal Compliance Officer, and the Finance Director as the procurement officer.

Section 6: Contract Provisions

Contracts shall include the following provisions and conditions:

1. Contracts for more than the Simplified Acquisition Threshold currently set at \$250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. **(Appendix II Part 200 (A))**
2. All contracts in excess of \$10,000 must address termination for cause and for convenience by the City of Minot including the manner in which it will be affected and the basis for settlement. **(Appendix II Part 200 (B))**
3. Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b) in accordance with Executive Order 11246. "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339) as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
 - a. Federal assisted construction contract "means any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work."**(Appendix II to Part 200 (C))**
4. All contracts must include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public



Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The City of Minot shall report all suspected or reported violations to the Federal awarding agency. **(Appendix II Part 200 (D))**

5. All prime construction contracts in excess of \$2,000 awarded by the City of Minot must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141–3144, and 3146–3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The City of Minot shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The City shall report all suspected or reported violations to the Federal awarding agency. **(Appendix II Part 200(D))**
6. All contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. **(Appendix II Part 200(E))**
7. All contracts and subgrants of amounts in excess of \$150,000, shall contain a provision which requires agreement to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 USC 7401-7671q), and the Federal Water Pollution Control Act as amended (33 USC 1251-1387), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). **(Appendix II Part 200 (G))**



8. A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), "Debarment and Suspension." 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. **(Appendix II, Part 200 (H))**
9. Contractors applying or bidding for an award of \$100,000 or more must file the required Byrd Anti-Lobbying Amendment certification and ensure each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 USC 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier, up to the non-Federal award. **(Appendix II, Part 200 (I))**
10. Contracts must contain a clause stating contractors will comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. **(2 CFR 200.323 and Appendix II, Part 200 (J))**
11. As appropriate, and to the extent consistent with law, the contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products. **(2 CFR 200.322 and 2 CFR part 184)**
12. Contracts must contain performance requirements: period of performance - including completion date, penalties for non-performance, and liquidated damages. 81 FR 36557; 78 FR 14344 dated March 5, 2013.
13. Contracts may contain other specific provisions required by the federal awarding agency, where applicable. (See ATTACHMENT B: Federal Transit Administration Matrix and Compliance with Buy America)



Contract provisions are the primary responsibility of the Program Administrator, Department Head, Engineer and Finance Director as the procurement officer.

Section 7: Contract Administration

1. The City of Minot shall maintain contract administration systems that ensure contractors/firms perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. The accepted performance of contractors/ firms will be a factor in subsequent contract negotiations and award. Remedial action by the City of Minot through legal processes shall be considered in instances of identified significant nonperformance. **(City of Minot Contractor Monitoring Plan and 2 CFR 200.318 (b))**
2. The City of Minot will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards will not relieve the City of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the City's unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction. **(2 CFR 200.318(k))**

Responsibility of the Program Administrator, Department Head, Engineer and Finance Director as the procurement officer (items 1&2). Internal auditors (item 1)

Section 8: Awarding Agency Review

1. The City of Minot will make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure the item and/or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the City of Minot desires to have the review accomplished after a solicitation has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase. **(2 CFR 200.325 (a))**
2. The City will make available upon request, for the Federal awarding agency or passthrough entity pre-procurement review, procurement documents, such as request for proposals or invitations for bids, or independent cost estimates, when:
 - a. The City's procurement procedures or operation fails to comply with the procurement standards in this part;



- b. The procurement is expected to exceed the Simplified Acquisition Threshold (\$250,000) and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
 - c. The procurement, which is expected to exceed the Simplified Acquisition Threshold (\$250,000), specifies a "brand name" product;
 - d. The proposed contract is more than the Simplified Acquisition Threshold (\$250,000) and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
 - e. A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold (\$250,000). **(2 CFR 200.325 (b))**
3. The City will be exempt from the pre-procurement review in paragraph (2) if the Federal awarding agency or pass-through entity determines City procurement systems comply with the standards of this part. **(2 CFR 200.325 (c))**
- a. The City of Minot has self-certified its procurement system. Self-certification does not limit the Federal awarding agency's right to survey the system. The City provided written assurances to the Department of Housing and Urban Development that it complies with procurement standards found in Part 200. The City has cited specific policies, procedures, regulations, or standards as being in compliance with these requirements and has its system available for review. **(2 CFR 200.325 (c))**

Items 1-3 are the responsibility of the Program Administrator, Federal Compliance Officer, and the Finance Director as the procurement officer.

Section 9: Bonding Requirements

Bonding requirements for procurements with federal funds exceeding the Simplified Acquisition Threshold of \$250,000 will include the minimum requirements listed below:

To be submitted with the bidding documents:

- (1) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified. (2 CFR 200.326(a))**

To be submitted at time of contract award:

- (2) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one**



executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract. (2 CFR 200.326(b))

- (3) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract. (2 CFR 200.326(c).)**

This section is the responsibility of the Program Administrator, Department Head, and the Finance Director as the procurement officer.

Section 10: Protest Procedure

Standardized procedures will be used to process and resolve disputes relating to procurements.

1. Protestors must exhaust all administrative remedies with the City of Minot before pursuing with the awarding agency, and the awarding agency shall be notified of all formal protests.
2. Reviews of protests by the awarding agency will be limited to: violations of Federal law or regulations and the standards of section 2 CFR Part 200, Subpart D. State and local law violations will be investigated by the respective jurisdiction and violations of the City of Minot procedures shall be addressed by City Management. Protests received by the Federal agency outside their scope, will be referred back to the City of Minot.
3. Any person who is aggrieved in connection with the solicitation or award of a contract shall make a protest to the procurement officer.
 - a. Protest with respect to a **solicitation** shall be submitted in writing at least two (2) working days prior to the opening of bids or the closing date for receipt of proposals.
 - b. Protest with respect to the **award** of a contract shall be submitted in writing within ten (10) calendar days after the contract award.
 - c. All protests will be made in accordance with the procedures outlined in ATTACHMENT A.

This section is the responsibility of the Program Administrator, Department Head, and the Finance Director as the procurement officer.



FEDERAL GRANT PROGRAM PROCUREMENT POLICY

ATTACHMENT A

1. Rejection of Bids and Offers

- Any bid or offer that fails to conform to the essential requirements of the invitation for bids (IFB) or request for proposal (RFP) shall be rejected.
- Any bid or offer that does not conform to the applicable specifications or requirements shall be rejected unless the IFB or RFP authorized the submission of alternate bids and the supplies offered as alternates meet the requirements specified in the IFB or RFP.
- Any bid or offer that fails to conform to the delivery schedule or permissible alternates stated in the IFB or RFP shall be rejected.
- A bid or offer shall be rejected when the bidder/offeror imposes conditions that would modify requirements of the invitation or limit the bidder's liability to the City of Minot, since to allow the IFB or RFP to impose such conditions would be prejudicial to other bidders/offerors. For example, bids shall be rejected in which the bidder/offeror
 - i. Protects against future changes in conditions, such as increased costs, if total possible costs to the City of Minot cannot be determined;
 - ii. Fails to state a price and indicates that price shall be price in effect at time of delivery;
 - iii. States a price but qualifies it as being subject to price in effect at time of delivery;
 - iv. When not authorized by the IFB or RFP, conditions or qualifies a bid or offer by stipulating that it is to be considered only if, before date of award, the bidder/offeror receives (or does not receive) award under a separate solicitation;
 - v. Requires that the City of Minot is to determine that the bidder's/offeror's product meets applicable City of Minot specifications; or
 - vi. Limits rights of the City of Minot under any contract clause.
- Any bid/offer may be rejected if the procurement officer determines in writing that it is unreasonable as to price. Unreasonableness of price includes not only the total price of the bid, but the prices for individual line items as well.

- 2. Debarment** - The City of Minot will comply with the provisions of **2 CFR 2424** (government debarment and suspension regulations) by ensuring bids or offers received from any person or concern that is suspended, debarred, proposed for debarment, or declared ineligible as of the bid opening date shall be rejected.



3. Further considerations for sealed bids:

- a. A low bidder may be requested to delete objectionable conditions from a bid provided the conditions do not go to the substance (as distinguished from the form) of the bid, or work an injustice on other bidders. A substance of bid condition affects price, quantity, quality, or delivery of the items offered.
- b. When a bid guarantee is required and a bidder fails to furnish the guarantee in accordance with the requirements of the invitation for bids.
- c. Low bids received from concerns determined to be not responsible shall be rejected.
- d. After submitting a bid, if all of a bidder's assets or that part related to the bid are transferred during the period between the bid opening and the award, the transferee may not be able to take over the bid/offer. Accordingly, the procurement officer shall reject the bid unless the transfer is affected by merger, operation of law.
- e. Notification: Any bid or offers that are rejected or otherwise excluded from the competitive range shall be notified promptly in writing by the procurement officer. The notice shall state the basis for the determination and that a proposal revision will not be considered.
- f. Record Keeping: The originals of all rejected bids/offers, and any written findings with respect to such rejections, shall be preserved with the papers relating to the acquisition.

4. Solicitation and Award Protest Procedures: The following procedures are established to resolve agency protests effectively, to build confidence in the City's procurement system, and to reduce protests outside of the City of Minot:

- a. Protests shall be concise and logically presented to facilitate review by the City of Minot. Failure to substantially comply with policy requirements may be grounds for protest dismissal.
- b. Protests shall include the following information:
 - i. Name, address, and telephone number (fax if applicable) of the protester.
 - ii. Solicitation or contract number.
 - iii. Detailed statement of legal and factual grounds for the protest, to include a description of resulting prejudice to the protester.
 - iv. Copies of relevant documents.
 - v. Request for a ruling by [*city, town, county, organization*].
 - vi. Statement as to the form of relief requested.
 - vii. All information establishing the protester as an interested party for the purpose of filing a protest.
 - viii. All information establishing the timeliness of the protest.



- c. All protests filed directly with the City of Minot will be addressed to the procurement officer or other official designated to receive protests.
- d. Interested parties may request an independent review of their protest as an appeal of the procurement officer's decision on a protest. The City of Minot shall designate the official(s) who are to conduct this independent review.
- e. Protests based on alleged improprieties in a solicitation shall be filed two (2) working days before the advertised opening of sealed bid or the closing date for receipt of proposals. In all other cases, protests shall be filed no later than ten (10) calendar days after the basis of protest is known or should have been known, whichever is earlier. The agency, for good cause shown, or where it determines that a protest raises issues significant to the City of Minot's procurement system, may consider the merits of any protest which is not timely filed.

5. Action upon receipt of protest:

- a. The City of Minot shall in all instances disclose information regarding the protest to the awarding agency.
- b. Upon receipt of a protest before award, a contract may not be awarded, pending the City of Minot's resolution of the protest, unless contract award is justified, in writing, for urgent and compelling reasons or is determined, in writing, to be in the best interest of the City of Minot. Such justification or determination shall be approved at a level above the contracting officer, or by another official pursuant to agency procedures.
- c. If award is withheld pending the City of Minot's resolution of the protest, the procurement officer will inform the bidders or offerors whose bids or offers might become eligible for award of the contract. If appropriate, the bidders or offerors should be requested, before expiration of the time for acceptance of their bids or offers, to extend the time for acceptance to avoid the need for resolicitation. In the event of failure to obtain such extension of bids or offers, consideration should be given to proceeding with award pursuant to paragraph (3)(1) of this section.
- d. Upon receipt of a protest within 10 days after contract award or within 5 days after a debriefing date offered to the protester under a timely debriefing request in accordance with competitive proposals debriefing procedure (below), the procurement officer shall immediately suspend performance, pending resolution of the protest within the agency, including any review by an independent higher level official, unless continued performance is justified, in writing, for urgent and compelling reasons or is determined, in writing, to be in the best interest of the City of Minot. Such justification or determination shall



be approved at a level above the procurement officer, or by another official pursuant to agency procedures.

- e. The City of Minot shall make their best efforts to resolve protests within thirty-five (35) days after the protest is filed. To the extent permitted by law and regulation, the parties may exchange relevant information.
- f. The City of Minot protest decisions shall be well-reasoned, and explain the City of Minot's position. The protest decision shall be provided to the protester using a method that provides evidence of receipt.

6. Competitive Proposal Debriefing Procedure:

- a. An offeror, upon its written request received by the agency within three (3) working days after the date on which that offeror has received a notification to of award, shall be debriefed and furnished the basis for the selection decision and contract award.
- b. To the maximum extent practicable, the City of Minot will conduct the debriefing within five (5) working days after receipt of the written request.
- c. Debriefings of successful and unsuccessful offerors may be done orally, in writing, or by any other method acceptable to the procurement officer.
- d. The procurement officer should normally chair any debriefing session held. Individuals who conducted the evaluations shall provide support.
- e. At a minimum, the debriefing information shall include
 - i. The City of Minot's evaluation of the significant weaknesses or deficiencies in the offeror's proposal, if applicable;
 - ii. The overall evaluated cost or price (including unit prices), and technical rating, if applicable, of the successful offeror and the debriefed offeror, and past performance information on the debriefed offeror;
 - iii. The overall ranking of all offerors, when any ranking was developed by the agency during the source selection;
 - iv. A summary of the rationale for award;
 - v. For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror;
 - vi. Reasonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations, and other applicable authorities were followed.
- f. The debriefing shall not include point-by-point comparisons of the debriefed offeror's proposal with those of other offerors. Moreover, the debriefing shall not reveal any information concerning:
 - i. Trade secrets;



- ii. Privileged or confidential manufacturing processes and techniques;
 - iii. Commercial and financial information that is privileged or confidential, including cost breakdowns, profit, indirect cost rates, and similar information;
 - iv. The names of individuals providing reference information about an offeror's past performance.
- g. An official summary of the debriefing shall be included in the contract file.



FEDERAL GRANT PROGRAM PROCUREMENT POLICY

ATTACHMENT B

Federal Transit Administration Contract Provision Matrix and Compliance with Buy America



PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER -- MATRICES

A. THIRD PARTY CONTRACT PROVISIONS

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

PROVISION	COMMENTS	MASTER AGREEMENT REFERENCE (based on FA MA(30) 11-2-2022)
All FTA Assisted Third Party Contracts and Subcontracts		
No Federal Government Obligations to Third Parties (Use of Disclaimer)		§ 3(l)
False or Fraudulent Statements or Claims – Civil and Criminal Fraud		§ 4.e
Access to Third Party Contract Records		§ 16.s
Changes to Federal Requirements		§ 3.j.(1)
Equal Employment Opportunity (except special DOL construction clause))		§ 12
Disadvantaged Business Enterprises (DBEs)	Contract awarded on the basis of a bid/proposal offering to use DBEs.	§ 12.e
Incorporation of FTA Terms	Per FTA C 4220.1F.	§ 16.d
Prompt Payment		49 CFR 26.29
Prohibition on Certain Telecommunications Equipment		2 CFR 200.216 FAR 52.204-24
Awards Exceeding \$10,000		
Terminations		§ 11 and § 16.d.(2)
Debarment and Suspension	Awards exceeding \$25,000	§ 4.h
Notice to FTA and U.S. DOT Inspector General of waste, fraud, abuse...	Awards exceeding \$25,000	§ 39(b)
Lobbying	Awards exceeding \$100,000	§ 4.c and § 16.d(8)
Awards Exceeding the Simplified Acquisition Threshold (\$250,000)		
Resolution of Disputes, Breaches, or Other Litigation		§ 39
Awards Exceeding \$150,000 by Statute		
Clean Air	42 U.S.C. 7401-7671q.	§ 16.d.(7)
Clean Water	33 U.S.C 1251-1387	§ 16.d.(7)
Buy America	When tangible property or construction will be acquired. The threshold for applicability is no longer tied to the simplified acquisition threshold. It is statutorily fixed in 49 U.S.C. §5323(j)(13).	§ 15.a and b

Note: The Special EEO Clause for Construction is now shown on next page under "Construction Activities" for all contracts.



PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER — MATRICES

– THIRD PARTY CONTRACT PROVISIONS (Continued)

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

PROVISION	COMMENTS	MASTER AGREEMENT REFERENCE (based on FA MA(30) 11-2-2022)
Transport of Property or Persons		
Cargo Preference	When acquiring property suitable for shipment by ocean vessel.	§ 15.c
Fly America	When property or persons are transported by air between U.S. and foreign destinations, or between foreign locations.	§ 15.d
Construction Activities		
Construction Employee Protections – Davis-Bacon Act	For contracts exceeding \$2,000.	§ 16.d.(4)
Construction Employee Protections – Contract Work Hours & Safety Standards Act	For contracts exceeding \$100,000. OMB Office of Federal Financial Management has not adopted the FAR clause 2.101 \$150,000 simplified acquisition threshold standard.	§ 16.d.(5)
Construction Employee Protections – Sec. 1 Copeland Anti-Kickback Act – Sec. 2 Copeland Anti-Kickback Act	All contracts All construction contracts exceeding \$2,000.	§ 16.d.(4)
Special EEO Provision for Construction	All construction contracts	§ 16.d.(3)
Bonding for Construction Activities Exceeding \$250,000	5% bid guarantee bond. 100% performance and payment bond.	§ 16.n
Seismic Safety	Construction contracts for new buildings or for existing buildings.	§ 23.b
Veterans Preference	All construction contracts	16.u
Non-construction Activities		
Nonconstruction Employee Protection – Contract Work Hours & Safety Standards Act	For all turnkey, rolling stock, and operational contracts (except transportation services contracts and open market contracts) exceeding \$100,000. OMB Office of Federal Financial Management has not adopted the FAR clause 2.101 \$150,000 simplified acquisition threshold standard.	§ 24.b
Transit Operations		
Transit Employee Protective Arrangements		§ 24.d
Charter Bus Operations		§ 28
School Bus Operations		§ 29
Drug Use and Testing	Safety sensitive functions.	§ 35.b
Alcohol Misuse and Testing	Safety sensitive functions.	§ 35.b



PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER—MATRICES

A. THIRD PARTY CONTRACT PROVISIONS (Continued)

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

PROVISION	COMMENTS	MASTER AGREEMENT REFERENCE (based on FA MA(30) 11-2-2022)
Planning, Research, Development, and Demonstration Projects		
Patent Rights		§ 17
Rights in Data and Copyrights		§ 18
Special Notification Requirements for States		
Special Notification Requirement for States		§ 37
Miscellaneous Special Requirements		
Energy Conservation	All Contracts	§ 26
Recycled Products	Contracts when procuring \$10,000 or more per year of items designated by EPA.	§ 16.d.(10)
Prohibition on Certain Telecommunications Equipment	All Contracts	2 CFR 200 Appendix II 2 CFR 200.216
Conformance with National ITS Architecture	Contracts and solicitations for ITS projects.	§ 16.I
ADA Access	Contracts for rolling stock or facilities construction/renovation.	§ 12.h
Assignability Clause	Procurements through assignments ("piggybacking").	§ 16.a, which incorporates FTA circular 4220.1



PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER—MATRICES

B. APPLICABILITY OF THIRD PARTY CONTRACT PROVISIONS

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

TYPE OF PROCUREMENT					
PROVISION	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
No Federal Government Obligations to Third Parties (by Use of a Disclaimer)	All	All	All	All	All
False Statements or Claims Civil and Criminal Fraud	All	All	All	All	All
Access to Third Party Contract Records	All	All	All	All	All
Changes to Federal Requirements	All	All	All	All	All
Termination	>\$10,000	>\$10,000	>\$10,000	>\$10,000	>\$10,000
Equal Employment Opportunity except Special DOL EEO clause for construction projects)	All	All	All	All	All
Special DOL EEO clause for construction projects				>\$10,000	
Disadvantaged Business Enterprises (DBEs)	All	All	All	All	All
Incorporation of FTA Terms	All	All	All	All	All
Debarment and Suspension	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000
Buy America			>\$150,000	>\$150,000	>\$150,000
Resolution of Disputes, Breaches, or Other Litigation	>\$250,000	>\$250,000	>\$250,000	>\$250,000	>\$250,000
Lobbying	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Air	>\$150,000	>\$150,000	>\$150,000	>\$150,000	>\$150,000
Clean Water	>\$150,000	>\$150,000	>\$150,000	>\$150,000	>\$150,000
Cargo Preference			Transport by ocean vessel.	Transport by ocean vessel.	Transport by ocean vessel.
Fly America	Foreign air transp. /travel.	Foreign air transp. /travel.	Foreign air transp. /travel.	Foreign air transp. /travel.	Foreign air transp. /travel.
Notice to FTA and U.S. DOT Inspector General of Information Related to Fraud, Waste, etc.	\$25,000 or More. Prime and Subs	\$25,000 or More. Prime and Subs	\$25,000 or More. Prime and Subs	\$25,000 or More. Prime and Subs	\$25,000 or More. Prime and Subs
Prompt Payment	All	All	All	All	All



PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER—MATRICES

B. APPLICABILITY OF THIRD PARTY CONTRACT PROVISIONS (Continued)

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

TYPE OF PROCUREMENT					
PROVISION	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
Davis-Bacon Act				>\$2,000 (also ferries).	
Veterans Preference				>\$150,000	
Contract Work Hours and Safety Standards Act		>\$250,000 (transportation services excepted).	>\$250,000	>\$250,000 (also ferries).	
Copeland Anti-Kickback Act Section 1 Section 2				All > \$2,000 (also ferries).	
Bonding				>\$250,000	
Seismic Safety	A&E for new buildings & additions.			New buildings & additions.	
Transit Employee Protective Arrangements		Transit operations.			
Charter Service Operations		All			
School Bus Operations		All			
Drug Use and Testing		Transit operations.			
Alcohol Misuse and Testing		Transit operations.			
Patent Rights	R & D				
Rights in Data and Copyrights	R & D				
Energy Conservation	All	All	All	All	All
Recycled Products		EPA-selected items \$10,000 or more annually.		EPA-selected items \$10,000 or more annually.	EPA-selected items \$10,000 or more annually.
Seat Belt Use	All	All	All	All	All
Distracted Driving	All	All	All	All	All
Conformance with ITS National Architecture	ITS projects.	ITS projects.	ITS projects.	ITS projects.	ITS projects.
ADA Access	A&E	All	All	All	All
Notification of Federal Participation for States	Limited to States.	Limited to States.	Limited to States.	Limited to States.	Limited to States.
Prohibition on Certain Telecommunications Equipment	All	All	All	All	All



PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER—MATRICES

C. CERTIFICATIONS, REPORTS, AND FORMS

CERTIFICATIONS, REPORTS, AND FORMS	COMMENTS	REGULATORY REFERENCE
Bus Testing Certification	All procurements of new model transit buses and vans and existing models being modified with major changes.	49 CFR Part 665
TVM Certifications	All rolling stock procurements.	49 CFR Part 26
Buy America Certification	Procurements of steel, iron, manufactured products and construction materials exceeding \$150,000.	49 CFR Part 661
Preaward Review	FTA Annual Certification for any rolling stock procurement.	49 CFR Part 663
Preaward Buy America Certification	Rolling stock procurements exceeding \$150,000.	49 CFR Part 663
Preaward Purchaser's Requirement	All rolling stock procurements.	49 CFR Part 663
Post Delivery Review	FTA Annual Certification for any rolling stock procurement.	49 CFR Part 663
Post Delivery Buy America Certification	Rolling stock procurements exceeding \$150,000.	49 CFR Part 663
Post Delivery Purchaser's Requirement	All rolling stock procurements to the extent required by Federal law and regulations.	49 CFR Part 663
On-Site Inspector's Report	Rolling Stock except for procurements of: - 10 or fewer vehicles; - 20 or fewer vehicles serving rural (other than urbanized) areas or urbanized areas or 200,000 people or fewer; - any amount of primary manufactured standard production and unmodified vans that after visual inspection and road testing meet the contract specifications.	49 CFR Part 663
Federal Motor Vehicle Safety Standards - Preaward and Post Delivery Reviews	Motor vehicle procurements (49 CFR 571).	49 CFR Part 663
Lobbying	Procurements exceeding \$100,000.	49 CFR Part 20 OMB Office of Federal Financial Management has not adopted FAR 2.101 \$150,000 simplified acquisition threshold standard.
Standard Form LLL and Quarterly Updates (when required)	Procurements exceeding \$100,000 where contractor engages in lobbying activities.	49 CFR Part 20 OMB Office of Federal Financial Management has not adopted FAR 2.101 \$150,000 simplified acquisition threshold standard.



PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER—MATRICES

D. OTHER MATTERS

OTHER MATTERS	COMMENTS	STATUTORY OR REGULATORY REFERENCES
Contract Administration System		2 CFR § 200.318(b)
Record of Procurement History		2 CFR § 200.318(i)
Protest Procedures		2 CFR § 200.318(k)
Selection Procedures		2 CFR § 200.320 b.
Cost/Price Analysis		2 CFR § 200.324
Justification for Noncompetitive Awards	If Applicable.	2 CFR § 200.320 c.
No Excessive Bonding Requirements		2 CFR § 200.319(b) (2)
No Exclusionary Specifications		2 CFR § 200.319(d) (1)
No Geographic Preferences	Except for A&E Services	42 CFR § 200.319 c.



Compliance with Buy America

BUY AMERICA

These requirements apply to contracts over \$150,000 if they involve the purchase of iron, steel, manufactured goods, or rolling stock.

- Contractor shall comply with 49 U.S.C. 5323(j) and 49 CFR part 661, which provide that federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 CFR § 661.11. The contractor must submit to the City the appropriate Buy America certification with its offer. Offers that are not accompanied by a completed Buy America certification will be rejected as non-responsive.
- Build America, Buy America Act: Construction and construction materials used in FTA-funded projects are subject to the domestic preference requirement of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 – 70927 (2021), as implemented by the U.S. Office of Management and Budget's "Buy America Preferences for Infrastructure Projects," 2 CFR Part 184. The Recipient acknowledges that this agreement is neither a waiver of § 70914(a) or a finding under § 70914(b). In accordance with 2 CFR § 184.2(a), the Recipient shall apply the standards of 49 CFR Part 661 to iron, steel, and manufactured products.

ROLLING STOCK LIMITATIONS

These requirements apply to contracts for the purchase of rolling stock.

Contractor and its subcontractors must comply with the limitation on certain rolling stock procurements at 49 U.S.C. § 5323(u), prohibiting the procurement of rolling stock from specified manufacturers for public transportation use.

PRE-AWARD & POST-DELIVERY AUDITS OF ROLLING STOCK PURCHASES

These requirements apply to contracts for the purchase of rolling stock.

Contractor shall comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 CFR part 663. Contractor shall comply with the Buy America certification(s) submitted with its offer. Contractor shall participate and cooperate in any pre-award and post-delivery audits performed pursuant to 49 CFR part 663 and related FTA guidance.



BUY AMERICA CERTIFICATION

This certification applies to contracts over \$150,000 if they involve the purchase of iron, steel, manufactured goods, or rolling stock. Offers that do not include this completed certification, if applicable, will be rejected as nonresponsive.

If this Offer is valued in excess of \$150,000 and involves the procurement of steel, iron, or manufactured products (as defined in 49 CFR §§ 661.3 and 661.5), the Proposer hereby certifies that it:

- ☐ Will comply with the requirements of 49 U.S.C. § 5323(j)(1) and the applicable regulations in 49 CFR part 661;

OR

- ☐ Cannot comply the requirements of 49 U.S.C. § 5323(j) (and 49 CFR part 661) but may qualify for an exception to the requirements pursuant to 49 U.S.C. § 5323(j)(2), as amended, and the applicable regulations in 49 CFR § 661.7.

If this Offer is valued in excess of \$150,000 and involves the procurement of buses or other rolling stock (including associated equipment), the Proposer hereby certifies that it:

- ☐ Will comply with the requirements of 49 U.S.C. § 5323(j) and the applicable regulations of 49 CFR § 661.11;

OR

- ☐ Cannot comply with the requirements of 49 § U.S.C. 5323(j) (and 49 CFR § 661.11), but may qualify for an exception to the requirements consistent with 49 U.S.C. § 5323(j)(2)(C), as amended, and the applicable regulations in 49 CFR § 661.7.

The Proposer certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification. In addition, the Proposer understands and agrees that the provisions of 31 U.S.C. §§ 3801 et al. are applicable to this certification.

Company: _____

Name/Title: _____

Signature: _____

Date: _____