

**THE UNIVERSITY OF NORTHERN IOWA**  
**REQUEST FOR PROPOSAL NUMBER Q8768**

**FARE BOXES**

**University of Northern Iowa  
Purchasing Services  
Office of Business Operations  
103 Gilchrist Hall  
Cedar Falls, IA 50614-0008**

**Schedule of Activities**

<b>RFP Posted</b>	<b>October 21, 2009</b>
<b>Written questions due from suppliers</b>	<b>November 10, 2009</b>
<b>Responses to questions posted</b>	<b>November 16, 2009</b>
<b>Due date</b>	<b>November 30, 2009 3:00 pm CST</b>

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## **SECTION 1. INTRODUCTION**

The University of Northern Iowa, located in Cedar Falls, Iowa, in cooperation with the Metropolitan Transit Authority of Black Hawk County, are interested in obtaining pricing for fare boxes, in order to better serve our community. Vendor must have a demonstrated ability to provide products and services in an efficient, professional manner, complying with State and Federal regulations and UNI policies.

The University of Northern Iowa, located in Cedar Falls, was founded in 1876. Today, the campus covers 915 acres and consists of six colleges: Business Administration, Education, Humanities and Fine Arts, Natural Sciences, Social and Behavioral Sciences, and Graduate College. Approximately 13,080 undergraduate and graduate students are currently enrolled.

MET Transit is the primary mode of public transportation and operates approximately twenty vehicles which serve a population of approximately 130,000 people and 91 square miles. The implementation of fare boxes to our transit system will be treated as a pilot for future bus systems. Ultimately the product(s) selected could be introduced to other municipalities with fixed-route systems that seek to conform to the regional architecture across the State of Iowa.

This document sets forth the requirements of the University, and provides background information to put these requirements into perspective.

The required documentation of expertise and qualifications outlined in this request are intended to serve primarily as a general guide for each statement of qualifications, with the minimum requirements listed. Each Vendor is expected to submit a fully detailed statement of qualifications, which adequately describes the advantages and benefits the University would realize by selecting the Vendor.

## **SECTION 2. INSTRUCTIONS TO VENDORS**

2.1 Submission-Proposals are to be submitted in an envelope or other container and labeled as shown below:

Request for Proposal # Q8768  
Purchasing Services  
The University of Northern Iowa  
103 Gilchrist Hall  
Cedar Falls, Iowa 50614-0008

All Vendors must furnish two written copies of their proposal and one electronic copy. All copies are to be signed by an authorized representative of the Vendor.

There will not be a public opening of the proposals.

Your proposal must be received at University of Northern Iowa Purchasing Services by 3:00 p.m., CST, **November 30, 2009** to receive consideration. Any proposal received after the date and time specified for the receipt of proposals shall not be considered and shall be returned unopened.

Written questions, inquiries, and requests for clarification must be submitted to molly.rickert@uni.edu no later than November 10, 2009. All vendor questions/answers will be posted to the Purchasing website by November 16, 2009.

Vendors are expected to comply with all specifications, terms, conditions and instructions in this Request for Proposal and must furnish all required information.

Proposals should be prepared simply and economically. Proposals should provide a description of the Vendor's capabilities to satisfy the requirements of the solicitation. Emphasis should be on completeness and clarity of content.

All proposals that are submitted on time become the property of the University of Northern Iowa and will not be returned to the Vendor.

2.2 Signature- A legally authorized representative of the Vendor must sign the proposal. The individual signing the proposal certifies that the proposal is made without collusion with any other person, persons, vendor or parties submitting a proposal; that it is in all respects fair and in good faith and without collusion or fraud, and that the signer is legally authorized to bind the principal Vendor.

2.3 Modification or Withdrawal- Prior to the date and time designated for the receipt of proposals, proposals submitted early can be modified or withdrawn only by written notice to the University of Northern Iowa Purchasing Services. Such notice must be received in Purchasing Services on or before the date and time for receipt of proposals. Withdrawn proposals may be resubmitted up to the date and time designated for receipt of proposals.

Offered prices and terms shall remain firm for acceptance for one hundred eighty (180) days after the date and time scheduled for the receipt of proposals. Proposals may not be modified or withdrawn during that time unless as a result of a clarification or negotiation requested by the University.

2.4 Definitions- The following terms, when used in this Request for Proposal, are to be defined as follows:

University: The University of Northern Iowa also referred to as UNI.

Vendor: A firm, person, company, or corporation submitting a response to this Request for Proposal.

Responsible Vendor: A firm, person, company, or corporation who has the capability in all respects to perform fully the contract requirements and who also has the integrity and reliability that will assure good faith performance.

Successful Vendor: The firm, person, company, or corporation receiving the award and with whom a successful contract is negotiated.

RFP: Request for Proposal.

Contract/Agreement: These terms are used interchangeably throughout this document.

Addenda: Written or graphic information issued by University of Northern Iowa Purchasing Services prior to the due date for receipt of proposals that modify or interpret the Request for Proposal documents by addition, deletion, clarification, or correction.

Offer or Proposal: The response to this Request for Proposal.

Solicitation: This Request for Proposal.

2.5 Multiple Proposals- The University of Northern Iowa is seeking proposals that meet its requirements as outlined in this RFP. If more than one method of meeting these requirements is proposed, each should be labeled, "Primary", "Secondary", etc., and submitted separately. Submittals will be evaluated in the specified priorities. Always respond to all requirements of the RFP in your primary proposal, as the University may deem alternate proposals unacceptable.

2.6 Addenda- Purchasing Services shall issue any and all interpretations, corrections, revisions, and amendments to prospective Vendors in the form of written addenda. All addenda issued shall become a part of the contract documents and must be acknowledged in the Proposal Form by all Vendors. Any addenda or instructions issued by the University of Northern Iowa prior to the designated due date and time for receiving proposals will become a part of this Request for Proposal.

2.7 Cost of Preparing Proposal- Costs for developing the proposals and any subsequent activities prior to the contract award are solely the responsibility of the Vendors. The University of Northern Iowa will provide no reimbursement for any costs associated with a Vendor's participation in the Request for Proposal process.

2.8 No Contingent Fees- No person or selling agency shall be employed or retained or given anything of monetary value to solicit or secure this contract, except bona fide employees of the Vendor or bona fide established commercial or selling agencies maintained by the Vendor for the purpose of securing business. For breach or violation of this provision, the University of Northern Iowa shall have the right to reject the proposal, annul the contract without liability, or, at its sole discretion, deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee or other benefit.

2.9 A Submission of a Response to the RFP Represents That Your Firm Has:

2.9.1 Read and completely understands the RFP documents.

2.9.2 Promptly notified the University of any ambiguity, inconsistency or error discovered upon examination of the proposal documents.

2.9.3 Become completely familiar with the conditions and requirements.

2.9.4 Based its proposal upon those conditions and requirements.

2.9.5 Understood that proposals may be rejected because of faulty specifications, failure to comply with the requirements of the conditions and specifications of the RFP, abandonment of the project, insufficient funds, evidence of unfair bidding procedures, including collusion, evidence of Vendor's financial instability, or by the Purchasing and Payables Manager or designee if, in their opinion, the best interest of the University will not be served.

2.9.6 Understood that delivery and completion dates will be part of the evaluation criteria in determining the award, if applicable.

2.10 Submission- If a proposal is sent by mail, the Vendor should make allowance for the time required for such transmission. The Purchasing Services representative whose duty it is to open proposals will decide when the specified time has arrived and no proposal received thereafter will be considered.

2.11 Receipt- All proposals received prior to the date and time specified for the receipt of proposals will be considered. Opening of any proposal does not mean the proposal has fully complied with all proposal requirements. Later review of each proposal may reveal failure on the part of the Vendor to provide all required proposal documents. Failure to supply information requested may be cause for rejection of the proposal as non-responsive. The University shall be under no obligation to provide any Vendor with an opportunity to submit the missing documents. However, the University reserves the right to request any missing bid document if no competitive advantage will be realized.

2.12 Obligations- The contents of the proposal, and any clarification thereto, submitted by the successful Vendor, including any modifications made by mutual agreement of the Vendor and the University shall become part of the contractual obligation and are incorporated by reference into the ensuing contract. Each Vendor shall include in its proposal all requirements, terms or conditions it may have, and shall not assume that an opportunity will exist to add such matters after the proposal has been submitted. Unacceptable terms and conditions added by the Vendor may cause the University to award to another Vendor, despite pricing differences.

#### 2.13 Qualifications of Vendors

2.13.1 The University shall make such investigations deemed necessary to determine the ability of the Vendor to service the University's needs and requirements.

2.13.2 The University reserves the right to reject any proposal if the evidence submitted by, or investigation of, such Vendor fails to satisfy the University that the Vendor is properly qualified and possesses the capabilities and resources to carry out the obligations of the potential contract. In submitting a proposal, adequate information regarding these capabilities shall be provided by the Vendor.

2.13.3 Additionally, the Vendor shall provide all necessary safeguards for safety and protection, as set forth by the United States Department of Labor, Occupational Safety and Health Administration.

2.13.4 The Vendor shall keep informed of, and shall comply with, all applicable codes, laws, ordinances, rules, regulations and orders of the municipal, state, and federal government, or other public bodies having jurisdiction affecting this RFP.

2.14 On-Site Presentation/Demonstration- UNI reserves the right to request an on-site or virtual presentation and demonstration of the products and proposed relationship offered in response to this proposal.

2.15 Access to Vendor Records/Audits- The Vendor agrees to keep and provide full access to all records that pertain to UNI throughout the period that the Agreement remains in effect and for a minimum of seven years after the Agreement is terminated, unless required to retain for a longer period by state or federal status.

2.15 Severability of the Agreement- In the event any one or more of the provisions contained herein shall for any reason be help to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision, but shall be construed as if such invalid or unenforceable provision had never been contained. Further, in the event that any provision shall be help to be unenforceable by virtue of its scope, but may be made enforceable by a limitation thereof, such provision shall be deemed to be amended to the minimum extent necessary to render it enforceable under the laws of the jurisdiction in which enforcement is sought.

### **SECTION 3. DETAILED SPECIFICATIONS / SCOPE OF WORK**

3.1 Scope of Work- The University of Northern Iowa Parking Operations, a designated recipient of Federal Transit Administration funds in conjunction with the Metropolitan Transit Authority of Black Hawk County (MET), a private entity, is requesting proposals for the provision of product installation, set up, training and maintenance of user friendly fare boxes and related technologies for eighteen fixed-route transit system buses serving the Waterloo and Cedar Falls Metropolitan areas. These boxes will replace out-dated fare collections devices in an effort to modernize and better control revenues, monitor trends and track ridership.

#### **3.2 Quantity of 18- Computerized fare boxes conforming to national architectural ITS standards and the following:**

- 3.2.1 Detachable operator control unit
- 3.2.2 Equipped with magnetic stripe card readers
- 3.2.3 Passenger counter/display
- 3.2.4 Smart card capability
- 3.2.5 Ability to store value of smart cards
- 3.2.6 Capable of accepting a variety of coins and tokens
- 3.2.7 Accepts and counts coins at a sustained rate of 10 coins per second
- 3.2.8 Must be compatible with Automatic Vehicle Location (AVL) applications
- 3.2.9 Electronically programmable coin acceptor (add new coins or tokens through software)
- 3.2.10 Electronic validation of coins and bills
- 3.2.11 Automatically tracks cashbox contents from the fare box to the cashiering area or money room
- 3.2.12 Automatically returns invalid coins and bills to customer
- 3.2.13 Electronic validation of revenue
- 3.2.14 Variable bill cash box, from 500 bills up
- 3.2.15 Capable of creating one to thirty-one day passes
- 3.2.16 Capable of providing change
- 3.2.17 Capable of rejecting coins to a coin retention device basin
- 3.2.18 Capable of issuing and reading transfer slips
- 3.2.19 Secure jam clear
- 3.2.20 Must be able to integrate to MET bus systems
- 3.2.21 Capable of issuing programmable passes for specified periods of time and/or locations
- 3.2.22 Must have portability which allows the unit or components to be transferable from one bus to another in case of break-downs or vehicle changes
- 3.2.23 Must have user friendly interface for drivers
- 3.2.24 Mounts either from the floor or pole mount (mount must be included)
- 3.2.25 Log in capability for each driver
- 3.2.26 Ability for the setting of revenue service thresholds, permits transit companies to allow fare boxes to be probed for data without cashbox exchange if an insufficient amount of revenue is in the cash box
- 3.2.27 Equipment must be flexible enough to integrate with other on board electronics, dependable with minimal moving parts and provide safety and security for drivers and transferable from one vehicle to another

#### **3.3 Test Plan Requirements-**

- 3.3.1 Phase 1- Vendor develops detailed test plan; UNI and MET approves plan
- 3.3.2 Phase 2- Partial test plan- The test carried out after full installation of the base infrastructure and installation of equipment in one or two vehicles.
- 3.3.3 Phase 3- Full test- Test carried out after full installation of vase infrastructure and installation of equipment and software on all vehicles.

3.3.4 30 day acceptance –Thirty day acceptance achieved after thirty days of operations with no major downtime or errors.

3.3.5 Warranty- Warranty must begin after the thirty day acceptance is achieved.

3.4 Installation must be included in Vendor proposal.

3.5 Four copies of operating manual in English for installation, maintenance, and use (complete with wiring diagrams and specifications) are to be provided at the time the units are delivered.

3.6 After sales support- Vendor must provide access to 24/7 telephone support. Include pricing in proposal.

3.7 Warranty- Vendor must guarantee a minimum of one year from the final day of thirty day acceptance period to repair and/or replace any part or modular component determined to be defective in material or workmanship under normal use and service at no additional cost. Extended warranty options must be made available and outlined within this proposal.

3.8 Training and Support- Vendor must provide training on an individual location basis or in a group setting as approved by the University Parking Operator. Vendor shall provide additional training, if needed or as requested at prevailing rates throughout the length of the warranty period. Additional training must be determined by the university.

3.9 Miscellaneous- The vendor must be willing to provide temporary demonstrator equipment at no additional cost for customer evaluation, input, and satisfaction if necessary.

#### **SECTION 4. PROPOSAL CONTENT**

A committee including University staff and MET staff will evaluate the proposals and make a recommendation. The evaluation will be based on the qualifications of the Vendor as exhibited by the information provided in their response to the Request for Proposal, additional information requested by the University of Northern Iowa, information obtained by the University of Northern Iowa from references provided by the Vendors, information obtained by the University of Northern Iowa from independent sources and appropriately verified to be accurate.

Proposals will be evaluated in accordance to the requirements set forth in this Request for Proposal. The University of Northern Iowa will award the bid to the Vendor whose proposal is determined to be in the best interest of the University of Northern Iowa. The financial terms may not be the sole determining factor. A Vendor's submission of a proposal constitutes their acceptance of this evaluation technique and their recognition and acceptance that subjective judgments will be used by the evaluators.

Evaluation factors include (in no particular order):

- Technical and functional capability of the proposed offering
- Cost of product
- Excellent references
- Service Manual Quality
- Technical support
- Product reliability
- Service and maintenance record and responsiveness
- Organization, utilization of DBE's
- Conformance to proposal requirements
- Warranty compliance
- Delivery performance
- Compliance with Federal Clauses

A Vendor's proposal may not be considered, and may be rejected as non-responsive, if it does not include the items listed below.

4.1 Form of Proposal completed and signed by your vendor's representative.

4.2 Pricing- Vendor must identify, itemize and price every component or sub-system required for product to perform as a full function system. You must identify all components that are recommended as spare or stocking repair parts. Itemized pricing is required. Delivery (FOB Destination) should be included in the item price, or listed as a separate line item. 24/7 support must be included also. Include all pricing as **Supplement 1** of your RFP Response.

4.3 Warranty- Provide standard warranty information. Provide details about associated costs to extend the warranty. Include as **Supplement 2** of RFP response.

4.4 Installation/Training- Please price requested training from section three. Please specify if this is included in the bid price, or state the price as a separate line item. Include as **Supplement 3** of RFP response.

4.5 References- Vendor must provide at least three references currently using the proposed product, preferably references with similar circumstances. The University reserves the right to check additional sources or make any further investigations deemed necessary. Include as **Supplement 4** of RFP response.

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4.6 Implementation Plan- Vendor must include their implementation plan. Include as **Supplement 5** of RFP response.

4.7 Exceptions- Vendor exceptions to RFP document. (**Attachment A**).

4.8 Federal Clauses- Vendor must read and agree to the attached contract clauses (**Attachment B**).

**SECTION 5. STANDARD TERMS AND CONDITIONS**

Unless a Vendor expressly and specifically states otherwise on the proposal compliance form, submission of a proposal indicates the Vendor's acknowledgement and acceptance of the following terms and conditions:

5.1 University Rights/Obligations-The University of Northern Iowa reserves the right to accept or reject any or all proposals, waive irregularities, to accept any part of a proposal, to withhold the award, and to make no award as is deemed to be in the best interests of the University.

5.2 Vendor/Proposal Obligations

5.2.1 The successful Vendor must be licensed to do business in the State of Iowa and comply with provisions of Chapter 490 of the Iowa Code.

5.2.2 The proposal constitutes an offer by the Vendor which shall remain open and irrevocable for a period of one hundred eighty (180) calendar days from the due date.

5.2.3 The Vendor consents to the University contacting and obtaining any information relevant to this Request for Proposal from the references identified by the Vendor in its proposal or other sources deemed appropriate by the University.

5.2.4 Failure to supply information requested may be cause for rejection of the proposal as non-compliant.

5.2.5 Determination of compliance and responsiveness to the requirements of the RFP will be made after a thorough and careful review of the proposals. Public review of the submitted proposals will not be possible until an award has been made and the University has removed any trade secret, confidential or proprietary information, if any, from the proposals.

5.3 Formation of the Agreement- UNI will accept a proposal, as written, by issuing a written "Notice of Award" to selected Contractor that incorporates the proposal documents by reference and accepts all or selected portions of vendor's proposal. The notice of award may be in the form of a UNI Purchase Order.

5.4 Termination – If Vendor is adjudged bankrupt or makes a general assignment for the benefit of creditors, if a receiver is appointed on account of Vendor's insolvency, if Vendor repeatedly refuses or fails to supply enough employees, management staff, or equipment to adequately provide timely delivery or services for UNI, or if Vendor is otherwise guilty of a substantial violation of the Contract Documents, UNI may terminate the Agreement after giving Vendor a minimum thirty (30) days written notice, without penalty to UNI. In any case where Vendor has failed to provide equipment and services or has provided nonconforming equipment and services, UNI shall provide a Cure Notice. If after notice Vendor continues to be in default, UNI may procure services from another source and terminate the Agreement, without penalty to UNI. Vendor may be required to pay UNI the difference if a higher cost firm is selected.

5.5 Assignment- Any contractual agreement resulting from this Request for Proposal may not be assigned or transferred by the Vendor without prior written consent of the University and the bonding vendor if appropriate.

5.6 Indemnification- To the extent permitted by Iowa law, University hereby agrees to indemnify, protect and hold harmless Vendor, its officers, directors, shareholders, employees, and agents, and each of them, in their corporate and individual capacities, from any expense, liability or damage any of them may incur, including as a result of claims, demands, costs, awards or judgments of any kind or nature, by anyone whomsoever, arising out of or otherwise connected with this Agreement, provide such claims are due to the negligent acts of University. Vendor agrees to defend, indemnify and hold harmless the State of Iowa, University of Northern Iowa, its Board of Regents, faculty, students,

employees and agents from all liability, injuries, claims or damages (including claims of bodily injury or property damage) and loss, including costs, expenses, and attorneys' fees, which arise from its operations or the negligent acts of Vendor, its officers, directors, employees, and agents under this Agreement.

5.7 Code of Fair Practice- Vendor shall not discriminate against any employee or applicant for employment because of race, color, religion, sexual orientation, gender identification, marital status, national origin, sex, age, or physical or mental disability, or status as a US veteran. Vendor shall take affirmative action to ensure that applicants are employed and that the employees are treated during employment without regard to their race, creed, color, religion, national origin, sex, age, or physical or mental disability or status as a Vietnam-era/disabled veteran, except where it relates to a bona fide occupational qualification. Such action shall include but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or terminations; rates of pay or other forms of compensation; and selection for training, including apprenticeship. If applicable to this agreement, Vendor shall comply with the provisions of Federal Executive Order 11246 as amended by Executive Order 11375. In the event of Vendor's non-compliance with this section 5.7 or with any of the aforesaid regulations, this contract may be canceled, terminated or suspended in whole or in part, without penalty to the Board of Regents, State of Iowa, the University or the State of Iowa, and Vendor may be declared ineligible for further contracts with Board of Regents, State of Iowa, institutions.

5.8 Qualifications of Bidder- The Vendor shall keep informed of, and shall provide all permits and comply with all applicable laws, ordinances, rules, regulations and orders of the state and federal government, or public bodies having jurisdiction affecting this proposal and the service referenced herein.

5.9 Laws- Terms and provisions of this proposal and any agreement resulting from this proposal shall be construed in accordance with the laws of the State of Iowa, and any and all litigation or actions commenced in connection with this proposal or agreement resulting from this proposal shall be instituted in the appropriate courts of the State of Iowa.

5.10 Iowa Preference Law -Preference shall be given to purchasing products produced within the State of Iowa, when they are of a quality reasonably suited to the purpose intended, and can be secured without additional cost over foreign products or products of other states, according to *Iowa Code* §§73.1.

5.11 Gratuities- The laws of the State of Iowa provide that it is a criminal offense to offer, promise or give anything of value or benefit to a state employee with the intent to influence that employee's acts, opinion, judgment, or exercise of discretion with respect to that employee's duties. Evidence of violation of this statute will be turned over to the proper prosecuting attorney.

**5.12 IMPORTANT – Exceptions to Contract Documents-**The Vendor shall clearly state in the submitted proposal any exceptions to, or deviations from the specific RFP Instructions, Specifications, Form of Proposal, Evaluation Criteria, and/or any exceptions to these Terms and Conditions. Such exceptions or deviations will be considered in evaluating the proposals. Any exceptions must be noted on the Proposal Compliance Form, and returned with the submitted proposal.

5.13 Insurance Requirements - Vendor shall purchase and maintain, throughout the term of this Agreement, comprehensive general liability insurance, including contractual liability, slip and fall coverage and comprehensive automobile liability insurance to protect Vendor from all claims for bodily injury, including accidental death, personal injury, and property damage arising from operations under this Agreement, whether such operations be by Vendor, subcontractor, agent, or by anyone else directly or indirectly employed by Vendor. In addition, Vendor shall purchase and maintain errors and

omissions insurance to protect UNI from any losses associated with Vendor's acts. All statutory insurance requirements, including worker's compensation, shall be met. All required insurance policies shall be issued by reputable insurance companies duly authorized to engage in the insurance business in the State of Iowa. Limits of such insurance shall be as stated below:

Worker's Compensation Statutory  
Comprehensive General Liability \$1,000,000 each occurrence\*  
Commercial Auto Liability \$1,000,000 each occurrence\*  
Errors and Omissions \$1,000,000 each occurrence\*  
\*\$2 Million aggregate

The State of Iowa, the University of Northern Iowa, and the Board of Regents, State of Iowa, shall be named on such policies as additional insureds. Failure to maintain insurance coverage throughout the life of any resulting contract, consistent with the provisions of this Section, shall be considered a breach of contract. As evidence of the above, the Vendor will submit certificates of insurance on an annual basis. The certificates shall also provide that should the policy be cancelled or materially changed, thirty (30) day written notice prior to the effective date for the change or cancellation, shall be given directly to UNI.

Vendor agrees to waive all rights of subrogation against UNI, the State of Iowa, the Board of Regents, State of Iowa, the Regent institutions, their employees and agents for any claim filed against Vendor or other firms associated with the Agreement.

5.14 Immunity from Liability -Every person who is a party to this Agreement is hereby notified and agrees that UNI, and its agents, successors, and assigns are immune from liability and suit for or from Vendor's activities involving third parties and arising from this agreement.

5.15 Acts of God- Whenever a vendor's place of business, mode of delivery or source of supply has been disrupted by strike, or act of God, it shall be the responsibility of Vendor to promptly advise the University. UNI may elect to cancel all orders on file with Contractor and place the order with another vendor.

5.16 Advertising- Vendor shall not use or reference the name of University of Northern Iowa as a part of any commercial advertising without prior written approval of UNI's central administration and its Trademark and Licensing Office.

5.17 Taxes- The University of Northern Iowa is exempt from taxes for services rendered, equipment or parts supplied for this contract. Exemption certificates will be furnished upon request.

5.18 Trade Secret or Proprietary Information Shall Be Handled as Follows:

5.18.1 The laws of the State of Iowa require that at the conclusion of the selection process, the contents of all proposals will be placed in the public domain and be open to inspection by interested parties. Trade secrets or proprietary information that are recognized as such, and are protected by Iowa law may be withheld, if clearly identified as such in the proposal unless disclosure is required by law or court order. Pricing information and discounts offered cannot be considered proprietary information.

5.18.2 Failure to list all proprietary sections of the submitted proposal in the space provided on the Form of Proposal shall relieve University personnel from any responsibility, should such information be accidentally released or viewed by a competitor or the public.

5.19 Targeted Small Business & Disadvantaged Business Enterprises- The University is committed to the development of Targeted Small Businesses and Disadvantaged Business Enterprises. If

subcontracting is necessary, the Vendor will make every effort to use TSB or DBE in the performance of this contract. A report will be required at the completion of the contract indicating the extent of TSB and DBE participation.

5.20 Miscellaneous Terms and Conditions- No individual, department, school, college or office at the University of Northern Iowa has the authority to solicit or receive official proposals other than Purchasing Services. All solicitation is performed under the direct supervision of the Director of Business Operations and in accordance with University, Regent, State and Federal laws, policies, procedures and guidelines.

5.21 Most Favored Nation- The selected Vendor represents that the terms, conditions and prices established under the subsequent contract resulting from this Request for Proposal are equal to or better than those offered to other institutions, comparable universities, colleges, and/or community colleges. If during the term of the contract, the selected Vendor offers more favorable terms, conditions or prices to another institution, comparable universities, colleges and/or community colleges, the selected Vendor agrees to notify the University of Northern Iowa. The contract resulting from this Request for Proposal shall be amended to reflect the more favorable terms, conditions or prices. The University may confer with neighboring municipalities in Iowa, that offer publicly funded fixed-route transit systems, and inform them that if they are planning on considering fare boxes in the future, that they are authorized to purchase the selected product based on the accepted proposal.

5.22 University Vendor Appeal Procedure- Protests may be submitted regarding specifications or award. Protests must be submitted in writing. Contact the UNI purchasing agent on record to initiate protests.

5.23 FTA Vendor Appeal Procedure -FTA has developed an appeals process for reviewing protests of a recipient's procurement decisions.

5.23.1 Requirements for the Protester. The protester must: (a) Qualify as an "Interested Party." Only an "interested party" qualifies for FTA review of its appeal. An "interested party" is a party that is an actual or prospective bidder or offeror whose direct economic interest would be affected by the award or failure to award the third party contract at issue. A subcontractor does not qualify as an "interested party" because it does not have a direct economic interest in the results of the procurement. Consortia/Joint Ventures/Partnerships/Teams. An established consortium, joint venture, partnership, or team that is an actual bidder or offeror and is acting in its entirety, would qualify as an "interested party" because it has a direct economic interest in the results of the procurement. An individual member of a consortium, joint venture, partnership, or team, acting solely in its individual capacity, does not qualify as an "interested party" because it does not have a direct economic interest in the results of the procurement. Associations or Organizations. An association or organization that does not perform contracts does not qualify as an "interested party," because it does not have a direct economic interest in the results of the procurement.

5.23.2 Exhaust Administrative Remedies. The protester must exhaust its administrative remedies by pursuing the recipient's protest procedures to completion before appealing the recipient's decision to FTA.

5.23.3 (c) Appeal Within Five Days. The protester must deliver its appeal to the FTA Regional Administrator for the region administering its project or the FTA Associate Administrator for the program office administering its project within five (5) working days of the date when the protester has received actual or constructive notice of the recipient's final decision. Likewise,

the protester must provide its appeal to the FTA Regional Administrator for the region administering its project or the FTA Associate Administrator.

5.24 Guarantee- In filling this order, Vendor warrants and guarantees to University that the articles are in compliance with sections 5 and 12 of the Federal Trade Commission Act; the Fair Packaging and Labeling Act; the Federal Food, Drug and Cosmetic Act; the Consumer Product Safety Act; the Federal Insecticide, Fungicide and Rodenticide Act; the Federal Hazards and Substance Act; the Fair Labor Standards Act; the Wool Products Labeling Act; the Flammable Fabrics Act; the Occupational Safety and Health Act; and the Federal Anti-Kickback Enforcement Act; Debarment and Suspension policies (E.O.s 1249 and 12689); Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333); Rights to Inventions Made Under a Contract or Agreement in accordance with 37 CFR part 401; Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended; Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7); Buy American Act.

5.25 Export Control- Vendor acknowledges that a foreign national(s) may use the device/technology/and or data you propose, at the University. Vendor shall comply with all U.S. export controls laws and regulations, including but not limited to the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 through 130, and the Export Administration Regulations (EAR), 15 CFR Parts 730 through 799, in the performance of this Agreement. In the absence of available license exemptions/exceptions, Vendor shall be responsible for obtaining the appropriate licenses or other authorizations, if required, for exports of hardware, technical data, and software, or for the provision of technical assistance. Vendor shall be responsible for all regulatory record keeping requirements associated with the use of licenses and license exemptions/exceptions. Vendor shall be responsible for obtaining the appropriate licenses or other authorizations, if required, for exports of hardware, technical data, and software, or for the provision of technical assistance. Vendor shall be responsible for all regulatory record keeping requirements associated with the use of licenses and license exemptions/exceptions. Prior to disclosing or transferring to University any hardware, technical data, software or product utilizing any such data which is subject to export controls under federal law, Vendor shall notify the University in writing of the nature and extent of the export control. The University shall have the right to decline any such technical data or product utilizing such data. In the event Vendor sends any such technical data or product that is subject to export control, without notice of the applicability of such export control, the University has the right to immediately terminate the Agreement.

5.26 Energy Star Purchases- Whenever possible, UNI will purchase equipment that is rated energy efficient by this joint program of the U.S. Environmental Protection Agency and the U.S. Department of Energy.

5.27 Hazardous Material- All packaging, transportation and handling of hazardous materials shall be in accordance with applicable federal and state regulations including, but not limited to, the Material Safety Data Sheet provision of O.S.H.A. Hazard Communication Standard 29 CFR 1910.1200, and Iowa Administrative Code, Section 530.

5.28 Clean Air and Water Certification – Vendor certifies by filling this order, that its facility(s) is not on the Environmental Protection Agency (EPA) List of Violating Facilities. Vendor will immediately notify University Purchasing Services of the receipt of any communication indicating that any vendor's facilities are under consideration to be listed on the EPA List of Violating Facilities.

5.29 Federal Subcontract – If this agreement constitutes a subagreement under a prime contract with a federal agency, the terms and conditions of the prime contract shall prevail.

**SECTION 6. FORM OF PROPOSAL / VENDOR RESPONSE**

6.1 Bidder agrees to all Quote Terms and Conditions contained this RFP

Yes \_\_\_\_\_

No \_\_\_\_\_ **Note:** If No, please list exceptions on Attachment A

6.2 Bidder agrees to all Specifications contained in this RFP

Yes \_\_\_\_\_

No \_\_\_\_\_ **Note:** If No, please list exceptions on Attachment A

6.3 Proprietary Information Please list all information or sections that you consider proprietary. Note that pricing and financial arrangements cannot be considered as proprietary information. The sections of this quote listed below represent trade secrets or proprietary information.

Section	Page No.	Section Page	No.
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6.4 Payment Terms: \_\_\_\_\_

6.5 Vendor Information

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

Federal I.D. Number/SSN: \_\_\_\_\_

Official Address : \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Firm's State or Foreign Country of Residence \_\_\_\_\_

Telephone Number \_\_\_\_\_

Fax Number \_\_\_\_\_

Email \_\_\_\_\_

Authorized Signature \_\_\_\_\_

Typewritten or Printed Signature \_\_\_\_\_ Date \_\_\_\_\_



**ATTACHMENT B**  
**Federal Clauses**

The following clauses are included in all contracts where federal funds from the Federal Transit Administration are involved. The applicability of each clause is defined under the title and corresponding page number. Proposers are required to sign certifications where applicable (although some clauses are only required for projects over 100,000 dollars; the University still requires these be signed).

<u>Reference</u>	<u>Page</u>
1. Fly America Requirements.....	19
2. Buy America Requirements.....	19
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FLY AMERICA REQUIREMENTS

49 U.S.C. §40118  
41 CFR Part 301-10

Applicability to Contracts

The Fly America requirements apply to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation. Transportation on a foreign air carrier is permissible when provided by a foreign air carrier under a code share agreement when the ticket identifies the U.S. air carrier's designator code and flight number. Transportation by a foreign air carrier is also permissible if there is a bilateral or multilateral air transportation agreement to which the U.S. Government and a foreign government are parties and which the Federal DOT has determined meets the requirements of the Fly America Act.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down Requirements

The Fly America requirements flow down from FTA recipients and sub recipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

Model Clause/Language

The relevant statutes and regulations do not mandate any specified clause or language. FTA proposes the following language.

**Fly America Requirements** - The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and sub recipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

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BUY AMERICA REQUIREMENTS

49 U.S.C. 5323(j)  
**49 CFR Part 661**

Applicability to Contracts

The Buy America requirements apply to the following types of contracts: Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$100,000).

Flow Down

The Buy America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance. The \$100,000 threshold applies only to the grantee contract, subcontracts under that amount are subject to Buy America.

Mandatory Clause/Language

The Buy America regulation, at 49 CFR 661.13, requires notification of the Buy America requirements in FTA-funded contracts, but does not specify the language to be used. The following language has been developed by FTA.

Buy America - The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless 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. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification (below) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

Certification requirement for procurement of steel, iron, or manufactured products.

*Certificate of Compliance with 49 U.S.C. 5323(j)(1)*

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 CFR Part 661.5.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Vendor Name \_\_\_\_\_

Title \_\_\_\_\_

*Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)*

The bidder or offerer hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Vendor Name \_\_\_\_\_

Title \_\_\_\_\_

Certification requirement for procurement of buses, other rolling stock and associated equipment.

ENERGY CONSERVATION REQUIREMENTS

42 U.S.C. 6321 et seq.  
49 CFR Part 18

Applicability to Contracts

The Energy Conservation requirements are applicable to all contracts.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

The Energy Conservation requirements extend to all third party contractors and their contracts at every tier and subrecipients and their sub agreements 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.

LOBBYING

31 U.S.C. 1352  
49 CFR Part 19  
49 CFR Part 20

Applicability to Contracts

The Lobbying requirements apply to Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

The Lobbying requirements mandate the maximum flow down, pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5) and 49 C.F.R. Part 19, Appendix A, Section 7.

Mandatory Clause/Language

- Clause and specific language therein are mandated by 49 CFR Part 19, Appendix A.

Modifications have been made to the Clause pursuant to Section 10 of the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.* ]

- Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d)

- Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 CFR Part 20, Appendix A.

Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995.

- Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A.

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." 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 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

#### APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

*(To be submitted with each bid or offer exceeding \$100,000)*

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 sub awards at all tiers (including subcontracts, sub grants, 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.

\_\_\_\_\_ Signature of Contractor's Authorized Official

\_\_\_\_\_ Name and Title of Contractor's Authorized Official

\_\_\_\_\_ Date

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 \$2,500. These requirements do not apply to micro-purchases.

Flow Down

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 sub grantee of the FTA Recipient in accordance with 49 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 sub grantee 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 \$100,000.

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 sub grantee 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 sub grantee 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 49 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**

<b>Contract Characteristics</b>	<b>Operational Service Contract</b>	<b>Turnkey</b>	<b>Construction</b>	<b>Architectural Engineering</b>	<b>Acquisition of Rolling Stock</b>	<b>Professional Services</b>
<b>I State Grantees</b>	None	Those imposed on state pass thru to Contractor	None	None	None	None
a. Contracts below SAT (\$100,000)	None unless <sup>1</sup> non-competitive award		Yes, if non-competitive award or if funded thru <sup>2</sup> 5307/5309/5311	None unless non-competitive award	None unless non-competitive award	None unless non-competitive award
b. Contracts above \$100,000/Capital Projects						
<b>II Non State Grantees</b>	Yes <sup>3</sup>	Those imposed on non-state Grantee pass thru to Contractor	Yes	Yes	Yes	Yes
a. Contracts below SAT (\$100,000)	Yes <sup>3</sup>		Yes	Yes	Yes	Yes
b. Contracts above \$100,000/Capital Projects						

**Sources of Authority:**

<sup>1</sup> 49 USC 5325 (a)

<sup>2</sup> 49 CFR 633.17

<sup>3</sup> 18 CFR 18.36 (i)

FEDERAL CHANGES

49 CFR Part 18

Applicability to Contracts

The Federal Changes requirement applies to all contracts.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

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.

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Conformity to ITS Architecture

Bidder should conform to national/regional ITS architecture. Standards can be found at:

<http://www.iteris.com/itsarch/>

Bonding Requirement

Applicability to Contracts

For those construction or facility improvement contracts or subcontracts exceeding \$100,000, FTA may accept the bonding policy and requirements of the recipient, provided that they meet the minimum requirements for construction contracts as follows:

- a. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantees" 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 his bid, execute such contractual documents as may be required within the time specified.
- b. A performance bond on the part to 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.
- c. 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. Payment bond amounts required from Contractors are as follows:

- (1) 50% of the contract price if the contract price is not more than \$1 million;

(2) 40% of the contract price if the contract price is more than \$1 million but not more than \$5 million; or

(3) \$2.5 million if the contract price is more than \$5 million.

d. A cash deposit, certified check or other negotiable instrument may be accepted by a grantee in lieu of performance and payment bonds, provided the grantee has established a procedure to assure that the interest of FTA is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond.

**Flow Down**

Bonding requirements flow down to the first tier contractors.

**Model Clauses/Language**

FTA does not prescribe specific wording to be included in third party contracts. FTA has prepared sample clauses as follows:

**Bid Bond Requirements (Construction )**

(a) Bid Security

A Bid Bond must be issued by a fully qualified surety company acceptable to (Recipient) and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder.

(b) Rights Reserved

In submitting this Bid, it is understood and agreed by bidder that the right is reserved by (Recipient) to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [ninety (90)] days subsequent to the opening of bids, without the written consent of (Recipient).

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within [ninety (90)] days after the bid opening without the written consent of (Recipient), shall refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of (Recipient's) damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor.

It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by (Recipient) as provided in [Item x "Bid Security" of the Instructions to Bidders]) shall prove inadequate to fully recompense (Recipient) for the damages occasioned by default, then the undersigned bidder agrees to indemnify (Recipient) and pay over to (Recipient) the difference between the bid security and (Recipient's) total damages, so as to make (Recipient) whole.

The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested, will render the bid unresponsive.

**Performance and Payment Bonding Requirements (Construction)**

The Contractor shall be required to obtain performance and payment bonds as follows:

(a) Performance bonds

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).
2. The (Recipient) may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The (Recipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(b) Payment bonds

1. The penal amount of the payment bonds shall equal:
  - (i) Fifty percent of the contract price if the contract price is not more than \$1 million.
  - (ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million;  
or
  - (iii) Two and one half million if the contract price is more than \$5 million.
2. If the original contract price is \$5 million or less, the (Recipient) may require additional protection as required by subparagraph 1 if the contract price is increased.

**Performance and Payment Bonding Requirements (Non-Construction)**

The Contractor may be required to obtain performance and payment bonds when necessary to protect the (Recipient's) interest.

(a) The following situations may warrant a performance bond:

1. (Recipient) property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).
2. A contractor sells assets to or merges with another concern, and the (Recipient), after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.
3. Substantial progress payments are made before delivery of end items starts.
4. Contracts are for dismantling, demolition, or removal of improvements.

(b) When it is determined that a performance bond is required, the Contractor shall be required to

obtain performance bonds as follows:

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).
2. The (Recipient) may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The (Recipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(c) A payment bond is required only when a performance bond is required, and if the use of payment bond is in the (Recipient's) interest.

(d) When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:

1. The penal amount of payment bonds shall equal:

(i) Fifty percent of the contract price if the contract price is not more than \$1 million;

(ii) Forty percent of the contract price if the contract price is more than \$1 million

but not more than \$5 million; or

(iii) Two and one half million if the contract price is increased.

#### **Advance Payment Bonding Requirements**

The Contractor may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. The (recipient) shall determine the amount of the advance payment bond necessary to protect the (Recipient).

#### **Patent Infringement Bonding Requirements (Patent Indemnity)**

The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. The (recipient) shall determine the amount of the patent indemnity to protect the (Recipient).

#### **Warranty of the Work and Maintenance Bonds**

1. The Contractor warrants to (Recipient), the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by (Recipient), free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by the [Project Manager], the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

2. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by (Recipient) and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to (Recipient). As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment [as provided in Item X below], furnish separate Maintenance (or Guarantee) Bonds in form acceptable to (Recipient) written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

CLEAN AIR

42 U.S.C. 7401 et seq  
40 CFR 15.61  
49 CFR Part 18

Applicability to Contracts

The Clean Air requirements apply to all contracts exceeding \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year.

Flow Down

The Clean Air requirements flow down to all subcontracts which exceed \$100,000.

Model Clauses/Language

No specific language is required. FTA has proposed the following language.

Clean Air - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

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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 \$2,500. These requirements do not apply to micro-purchases.

Flow Down

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.

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NO GOVERNMENT OBLIGATION TO THIRD PARTIES

Applicability to Contracts

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

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.

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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 \$2,500. These requirements do not apply to micro-purchases.

Flow Down

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.

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TERMINATION

49 U.S.C. Part 18

[FTA Circular 4220.1E](#)

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 effected and the basis for settlement. (For contracts with nonprofit organizations and institutions of higher education the threshold is \$100,000.) 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

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 effected 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 or 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.

### GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

49 CFR Part 29  
Executive Order 12549

#### **Background and Applicability**

In conjunction with the Office of Management and Budget and other affected Federal agencies, DOT published an update to 49 CFR Part 29 on November 26, 2003. This government-wide regulation implements Executive Order 12549, *Debarment and Suspension*, Executive Order 12689, *Debarment and Suspension*, and 31 U.S.C. 6101 note (Section 2455, Public Law 103-355, 108 Stat. 3327).

The provisions of Part 29 apply to all grantee contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contract or subcontract (at any level) for Federally required auditing services. 49 CFR 29.220(b). This represents a change from prior practice in that the dollar threshold for application of these rules has been lowered from \$100,000 to \$25,000. These are contracts and subcontracts referred to in the regulation as “covered transactions.”

Grantees, 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) they propose to contract or subcontract with is not excluded or disqualified. They do this by (a) Checking the Excluded Parties List System, (b) Collecting a certification from that person, or (c) Adding a clause or condition to the contract or subcontract. This represents a change from prior practice in that certification is still acceptable but is no longer required. 49 CFR 29.300.

Grantees, contractors, and subcontractors who enter into covered transactions also must require the entities they contract with to comply with 49 CFR 29, subpart C and include this requirement in their own subsequent covered transactions (i.e., the requirement flows down to subcontracts at all levels).

#### **Clause Language**

The following clause language is suggested, not mandatory. It incorporates the optional method of verifying that contractors are not excluded or disqualified by certification.

#### **Suspension and Debarment**

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 the University of Northern Iowa (UNI). If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to UNI, 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.

Privacy Act  
**5 U.S.C. 552**

**Applicability to Contracts**

When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts.

**Applicability to Micro-Purchases**

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

**Flow Down**

The Federal Privacy Act requirements flow down to each third party contractor and their contracts at every tier.

**Model Clause/Language**

The text of the following clause has not been mandated by statute or specific regulation, but has been developed by FTA.

**Contracts Involving Federal Privacy Act Requirements** - The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974,

5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

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**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 \$2,500. These requirements do not apply to micro-purchases.

Flow Down

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 shorten the lengthy text.

Civil Rights - 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.

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## BREACHES AND DISPUTE RESOLUTION

49 CFR Part 18

[FTA Circular 4220.1E](#)

### Applicability to Contracts

All contracts in excess of \$100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

### Flow Down

The Breaches and Dispute Resolutions requirements flow down to all tiers.

### Model Clauses/Language

FTA does not prescribe the form or content of such provisions. What provisions are developed will depend on the circumstances and the type of contract. Recipients should consult legal counsel in developing appropriate clauses. The following clauses are examples of provisions from various FTA third party contracts.

**Disputes** - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of (Recipient)'s [title of employee]. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide by the decision.

**Performance During Dispute** - Unless otherwise directed by (Recipient), Contractor shall continue performance under this Contract while matters in dispute are being resolved.

**Claims for Damages** - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

**Remedies** - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the (Recipient) and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the (Recipient) is located.

**Rights and Remedies** - The duties and obligations imposed by the Contract Documents and the rights and remedies available there under shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the (Recipient), (Architect) or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach there under, except as may be specifically agreed in writing.

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DISADVANTAGED BUSINESS ENTERPRISE (DBE)

## 49 CFR Part 26

Background and Applicability

The newest version on the Department of Transportation's Disadvantaged Business Enterprise (DBE) program became effective July 16, 2003. The rule 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 above the micro-purchase level. The requirements of clause subsection b flow down to subcontracts.

A substantial change to the payment provisions in this newest version of Part 26 concerns retainage (see section 26.29). Grantee choices concerning retainage should be reflected in the language choices in clause subsection d.

Clause Language

The following clause language is suggested, not mandatory. It incorporates the payment terms and conditions applicable to all subcontractors based in Part 26 as well as those related only to DBE subcontractors. The suggested language allows for the options available to grantees concerning retainage, specific contract goals, and evaluation of DBE subcontracting participation when specific contract goals have been established.

**Disadvantaged Business Enterprises**

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%. The agency's overall goal for DBE participation is 4.127%. A separate contract 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 University of Northern Iowa** deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

c. *{If a separate contract goal has been established, use the following}* Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following **[concurrent with and accompanying sealed bid] [concurrent with and accompanying an initial proposal] [prior to award]**:

1. The names and addresses of DBE firms that will participate in this contract;
2. A description of the work each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written documentation of the bidder/offerer's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;

5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and

6. If the contract goal is not met, evidence of good faith efforts to do so.

**Bidders/Offerors]** must present the information required above **with initial proposals** (see 49 CFR 26.53(3)).

*{If no separate contract goal has been established, use the following}* The successful bidder/offerer will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

d. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the University of Northern Iowa. In addition, **[is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the University of Northern Iowa and contractor's receipt of the partial retainage payment related to the subcontractor's work.**

e. The contractor must promptly notify **the University of Northern Iowa**, 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. 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 University of Northern Iowa.

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INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

[FTA Circular 4220.1E](#)

Applicability to Contracts

The incorporation of FTA terms applies to all contracts.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

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 4220.1E](#) 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.

CLEAN WATER REQUIREMENTS

33 U.S.C. 1251

Applicability to Contracts

The Clean Water requirements apply to each contract and subcontract which exceeds \$100,000.

Flow Down

The Clean Water requirements flow down to FTA recipients and subrecipients at every tier.

Model Clause/Language

While no mandatory clause is contained in the Federal Water Pollution Control Act, as amended, the following language developed by FTA contains all the mandatory requirements.

Clean Water – (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.