

**Lac du Flambeau Band  
of  
Lake Superior Chippewa Indians  
TRIBAL ROADS DEPARTMENT**



**REQUEST FOR PROPOSALS**  
for  
**Supply and Delivery of 3 AWD SUVs**

RFP NO. 20-TR-005

## 1. PURPOSE

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The Lac du Flambeau Band of Lake Superior Chippewa Indians, a federally recognized Indian Tribe organized under a constitution and bylaws pursuant to the Indian Reorganization Act, 48 Stat. 984, 25 U.S.C. § 476 (hereinafter "Tribe"), is soliciting bid proposals from qualified vendors for provision and delivery of three (3) new all-wheel drive (L) (LT) sport utility vehicles for the Tribe's Transit Program. The SUVs will be used as public transit vehicles, to transport passengers, including elderly and disabled persons, and cargo from and to specific destinations within Lac du Flambeau and the surrounding communities. The repetitive short distance pick-up and drop-off use will simulate city vehicle operation.

Each SUV must meet the minimum specifications set forth in Section 4 of this Request for Proposals (hereinafter RFP). Bidder must be a manufacturer, a factory branch, or a dealer engaged in the business of selling, dealing and servicing the equipment offered in bidder's proposal and must maintain a full stock of parts and provide full maintenance and repair service to and for the subject equipment.

This RFP does not commit the Tribe to accept any proposal submitted. The Tribe reserves the right to accept or reject any and all proposals, and to accept or reject any or all items in any proposal. The lowest bidder may not be the successful bidder. The Tribe reserves the right to negotiate with any and all bidders any and all parts of the proposals received, including, but not limited to, cost, specifications, and other relevant details and to accept the proposal most advantageous to, and in the best interest of, the Tribe. The Tribe is not responsible for any costs incurred by the respondents in the preparation of responses to this RFP. The terms "vendor", "bidder," and "respondent" are used interchangeably throughout this RFP and are intended to refer to a person or entity submitting, or intending to submit, a proposal in response to this RFP.

## 2. RFP ADMINISTRATIVE PROCEDURES

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**2.1 RFP CONTACT/CONTRACT ADMINISTRATOR.** The individual named below is the Tribal Contract Administrator who will be responsible for administration of the Purchase Contract entered into by and between the successful bidder (Vendor) and the Tribe. The Tribal Contract Administrator shall be the sole point of contact regarding this RFP from the date of issuance until selection of the successful bidder. To ensure clear and accurate communication and avoidance of the appearance of impropriety, from the date of issuance of this RFP until announcement of the successful bidder, vendors may contact only the RFP Contact. The RFP Contact/Contract Administrator will respond only to questions submitted in writing to the RFP Contact/Contract Administrator in accordance with this RFP. In the event that a vendor or someone acting on the vendor's behalf attempts to discuss this RFP verbally or in writing with any employee of the Tribe other than the RFP Contact/Contract Administrator designated below, the vendor may be disqualified as a prospective bidder.

Tribe's RFP Contact/Contract Administrator:	GEORGE W. THOMPSON, DIRECTOR LDF Tribal Roads Department P.O. Box 67 280 Industrial Park Road Lac du Flambeau, WI 54538 Email: gthompson@ldftribe.com
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**2.2 RFP TIMETABLE.** The dates set forth are subject to change, in the sole discretion of the Tribe:

EVENT	DATE
RFP Issued	<b>On or before September 15, 2020</b>
Proposals/Bids Due	<b>4:00 P.M. Local Time, October 9, 2020</b>
Notice of Award Issued	<b>October 12, 2020</b>
Delivery of Vehicle	<b>Within twenty (20) days of award notice</b>

## 2.3 DUTY TO EXAMINE AND INQUIRIES REGARDING RFP.

2.3.1 It is the responsibility of each bidder to examine the entire RFP, including all addenda, seek clarification in writing (inquiries), and examine its proposal for accuracy before submitting the proposal. Lack of care in preparing a proposal shall not be grounds for modifying or withdrawing the proposal after the proposal due date and time, nor shall it give rise to any contract claim.

2.3.2 All inquiries concerning this RFP, including any questions related to the terms and conditions of this RFP, shall be made in writing and submitted to the RFP Contact at the physical address or email address noted above. Verbal inquiries will not be accepted.

2.4 **CONTENT OF RFP AND SUPERSEDING EFFECT.** This RFP is designed to provide prospective bidders with information necessary for the preparation of competitive proposals. Each bidder is responsible for determining all factors necessary for the submission of a comprehensive and compliant proposal. Proposals submitted in response to this RFP should be based solely on the material contained in the RFP, including any and all addenda. This RFP supersedes all previous RFPs and all proposals, oral and written, and all negotiations, conversations, communications and discussions heretofore had between the parties, related to the subject matter of this RFP.

2.5 **AMENDMENT OF RFP.** The Tribe reserves the right to amend this RFP at any time. In the event it becomes necessary to amend, add to, or delete any part of the RFP, an amendment will be provided to all known vendors/prospective bidders who received the original RFP and the Tribal Council. All submitted proposals/bids must include acknowledgment of the addenda.

2.6 **SUBMISSION OF PROPOSAL.** Proposals must be submitted to the Lac du Flambeau Tribal Secretary, to-wit: **Jamie Allen, Tribal Secretary, William Wildcat, Sr. Community Building, 418 Little Pines Road, P.O. Box 67, Lac du Flambeau, Wisconsin. The Tribal Secretary must receive proposals no later than 4:00 P.M. (local time), Friday, September 9, 2020. Any proposal received after this deadline will not be accepted.** Proposals may be submitted by mail or hand-delivered in an envelope. The envelope must be SEALED and include the following notation on the bottom left hand corner: "RFP FOR TRANSIT SUVs." Please also include company/individual name on the outside of the envelope. Bidders mailing proposals must allow ample mail delivery time to ensure timely receipt of their proposal. It is the bidder's responsibility to ensure that the proposal is received prior to the deadline. Postmarking by the due date will not substitute for actual receipt of the proposal by the Tribe. **Proposals sent via email or fax will NOT be accepted.**

2.7 **OPENING OF PROPOSALS.** The proposals will be opened during a CLOSED BID OPENING on Monday, October 12, 2020, at 9:00 o'clock A.M. (local time), or as soon thereafter as practicable.

2.8 **REJECTION OF PROPOSALS.** Notwithstanding any other provision of this RFP, at any time prior to execution of a written Purchase Contract, the Tribe reserves the right to reject any or all proposals, in whole or in part, to advertise for new proposals, to abandon the need for such services, and to cancel this RFP if it is in the best interest of the Tribe.

2.9 **COSTS OF PREPARING PROPOSALS.** The costs of preparing the proposal are the sole responsibility of the vendor. The Tribe is not responsible for any costs incurred by vendor which are related to the preparation or delivery of the proposal or any other activities carried out by the vendor related to this RFP.

2.10 **PROPOSALS PROPERTY OF THE TRIBE.** All proposals become the property of the Tribe and shall not be returned to the bidder submitting a proposal. The bidder agrees that the Tribe may copy the proposal for purposes of facilitating the evaluation of the proposal or for any other reason.

2.11 **VALIDITY OF PROPOSALS.** All proposals shall be valid for a period of sixty (60) business days following the date on which proposals are due, except that the proposal of the successful bidder shall remain valid until expiration or termination of any contract based upon the successful bidder's proposal, between the Tribe and the successful bidder.

**2.12 BIDDER’S REPRESENTATIONS.**

- 2.12.1 By submitting a bid, bidder certifies that bidder is authorized to conduct business in the State of Wisconsin.
- 2.12.2 By submitting this bid, bidder certifies that bidder is experienced and qualified to perform the services required by this RFP and is properly staffed, organized and financed to perform such services, and to commence such services immediately.
- 2.12.3 By submitting a bid, bidder certifies that bidder’s bid and proposal were made and submitted without collusion or fraud and that bidder has not offered or received any kickbacks or inducements from any other bidder, supplier, manufacturer or subcontractor in connection with its bid, and that bidder has not conferred on any Tribal employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

**2.13 NATIVE AMERICAN PREFERENCE REQUIREMENTS.** The work to be performed under this proposal is subject to the Tribe’s General Procurement and Property Management Policies and Procedures, and Section 7(b) of the Indian Self-Determination and Education Assistance Act (25U.S.C. 450e (b)). Section 7(b) of the Indian Self-Determination and Education Assistance Act requires that to the greatest extent feasible: (1) preference and opportunities for training and employment shall be given to Native Americans, and (2) preference in the award of contracts and subcontracts shall be given to Native American organizations or Native American-owned economic enterprises as defined in Section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452). If claiming Native American Preference in contracting under this proposal, please indicate whether or not the firm can provide documentation that will qualify the firm as an “Economic Enterprise,” (Native American ownership constituting not less than 51 percent of the enterprise), or a “Tribal Organization,” (the recognized governing body of any Native American Tribe).

**2.14 PROPOSAL EVALUATION AND SOURCES OF INFORMATION.**

2.14.1 Proposals that are timely submitted and comply with the mandatory requirements of this RFP (the Tribe reserves the right to waive any informalities and/or irregularities, in the Tribe’s sole discretion) will be evaluated by the RFP committee with respect to the evaluation criteria listed below. The evaluation factors are listed below, not necessarily in order of importance:

- 1. Capacity/Experience/Reputation of vendor.
- 2. Price of all goods to be furnished in relation to this RFP.
- 3. Compliance with Vehicle Specifications.
- 4. Native American Preference.
- 5. Conformance to Terms and Conditions.
- 6. Delivery schedule of goods to be supplied.
- 7. Warranty of goods to be supplied.

2.14.2 The Tribe reserves the right to request additional information from any bidder prior to final selection and award of a bid, and the bidder shall furnish to the Tribe all such information and data as may be requested. The Tribe also reserves the right to obtain, from any and all sources, information concerning a bidder or a bidder’s products, services or personnel, to make such reasonable investigations as the Tribe deems proper and necessary to determine the ability of a bidder to perform the services contemplated by this RFP, and the right to consider information from other sources such as the bidder’s performance of other contracts. The Tribe may use any of this information to evaluate a bidder’s proposal.

**2.15 AWARD AND NOTIFICATION.**

2.15.1 Any bid award/purchase contract resulting from this RFP will not necessarily be awarded to the

vendor with the lowest price/bid. The Tribe will award the contract to the responsible vendor submitting the bid/proposal that the Tribe deems most advantageous to the Tribe.

**2.15.2** Notice of award to successful bidder will be sent via email or U.S. mail. Notice may also be provided via telephone. All bidders that submitted a proposal will be notified in writing of the Tribe's decision to not select.

**2.15.3** The Tribe reserves the right to either award a purchase contract without further negotiations with the successful bidder or to negotiate contract terms with the selected bidder if in the best interest of the Tribe. The successful bidder may be required to attend a post-award meeting with representatives of the Tribe to discuss the terms and conditions of the purchase contract. Negotiation and execution of contract with the successful bidder shall be completed not more than ten (10) days from date of award notification.

### **3. CONTENT AND FORMAT OF PROPOSAL**

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**3.1 PURPOSE.** These instructions prescribe the required format and content of the proposal and are designed to elicit information necessary to selection of the most qualified bidder, and to facilitate the submission of a proposal that is easy to understand and evaluate.

**3.2 FORMAT.** Proposals shall be prepared on 8.5" x 11" paper, single sided.

**3.3 CONTENT.** Each proposal shall respond completely to the following questions and requests for information:

**3.3.1** Please provide a description of the bidder's organization including size, goods and services provided and length of time in operation. Refer specifically to bidder's branch location or affiliate. Please provide full name, address, telephone number(s), fax number, and email address of bidder and bidder's primary contact, and verify that bidder is authorized to conduct business in the State of Wisconsin.

**3.3.2** Please provide the name and qualifications of the person(s) who will be responsible for general administrative oversight and direct supervision if bidder is awarded a purchase contract, as well as the person who will be responsible for working with the Tribe's Contract Administrator to address and resolve contract and performance issues.

**3.3.3** Please list three (3) entities, either commercial or governmental, to which bidder has provided vehicles and/or mechanical services within the past 3 years. Include the name, address and telephone number of the point of contact, and a description of the goods and/or services provided. The Tribe reserves the right to conduct reference checks.

**3.3.4** Please identify and describe, in detail, any and all warranties associated with the vehicles bidder proposes to supply to the Tribe.

**3.3.5** Please provide a detailed maintenance schedule relative to the vehicles bidder proposes to supply to the Tribe.

**3.3.6** Please describe in detail bidder's ability to provide maintenance and repair services with respect to the vehicles bidder proposes to supply to the Tribe, and state whether bidder will provide technical assistance/training to the Tribe's fleet mechanic, relative to the proposed vehicles, should the need arise.

**3.3.7** Please provide copies of all literature, brochures, operating manuals and specification information pertaining to the vehicles proposed by bidder.

**3.3.8** The submission of additional pertinent information beyond the requirements of this RFP is acceptable.

**3.4 BID.** The bid/proposal includes all labor, materials, equipment, costs, overhead, profit, services, and incidentals necessary for the successful supply and delivery of the vehicles proposed by bidder and described in Section 4, below. Bid shall reflect any and all applicable discounts relative to the Tribe's Fleet #818062, as requested in Section 4.7, below. The Tribe is exempt from Sales Tax.

**3.5 DISPUTES.** In case of any doubt or differences of opinions as to the contents of this RFP, or interpretation of any provision of this RFP, the decision of the Tribe shall be final and binding upon all parties.

#### **4. SPECIFICATIONS (EQUIPMENT AND SERVICES)**

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**4.1** The Tribe is requesting proposals for the supply and delivery of three (3) new all-wheel drive (L) (LT) sport utility vehicles, model year 2020, meeting the minimum specifications detailed below.

**4.2** If bidder's proposal does not match the minimum specifications in any respect, please include a list of differences in your proposal/bid.

**4.3** Any ADDITIONAL options must be listed in your proposal/bid with any additional associated costs.

#### **4.4 POWERTRAIN SPECIFICATIONS.**

**4.4.1** Fuel efficient 3.6L V6 engine with heavy duty cooling system.

**4.4.2** Automatic Transmission with Tow/Haul package.

#### **4.5 GENERAL SPECIFICATIONS.**

**4.5.1** COLOR - GRAY OR METALLIC GRAY.

**4.5.2** All Wheel Drive.

**4.5.3** Battery and charging system must accommodate electronic accessories, including two-way radio, on-board dispatching equipment, safety lighting, etc.

**4.5.4** Power Steering and Tilt Steering Wheel.

**4.5.5** Front and Side Air Bags.

**4.5.6** Cruise Control.

**4.5.7** Electric Locks.

**4.5.8** 4 Wheel Disc Brake Braking System.

**4.5.9** Air Conditioning.

**4.5.10** 6-8 Passenger Capacity; Bucket seats in second row to facilitate access to third row; All seats to be black cloth and non-heated.

**4.5.11** Suspension must accommodate daily passenger and cargo hauling, while maintaining sufficiently low ground clearance to permit easy access for elderly and/or disabled passengers.

**4.5.12** Floor Protection - Hard rubber flooring if available, or heavy-duty, all-weather floor mats/liners throughout each vehicle.

**4.5.13** 18" rims with All Season tires and full-size spare tire.

**4.5.14** Tire pressure monitoring system.

**4.5.15** Rear park assist camera and object alarm system.

**4.5.16** Manufacturer's standard AM/FM radio.

**4.5.17** Two (2) Keys/Fobs.

**4.5.18** Power windows and power outside mirrors with integrated turn signals.

**4.5.19** Power front seats.

**4.5.20** Cargo room for driver supplies.

**4.6 WARRANTY.** Extended Warranty - 5 Years, 100,000 miles.

**4.7 FEDERAL FLEET DISCOUNT.** Please identify any and all discounts to which the Tribe is entitled, based upon its Federal Fleet No. 818062.

4.8 **DELIVERY.** Vendor shall timely deliver the vehicles to 280 Industrial Park Road, Lac du Flambeau, Wisconsin. **Delivery shall be by appointment, to ensure availability of designated receiving personnel and immediate payment.**

4.9 **MAINTENANCE/REPAIR.** Vendor shall ensure that a majority of vehicle parts are in stock at all times and that technician assistance/training relative to the proposed vehicles can be provided to the Tribal fleet mechanic if needed.

## 5. PURCHASE ORDER TERMS AND CONDITIONS

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5.1 **INSPECTION.** The Tribe has the right of inspection and approval. Inspection shall not constitute final acceptance and the successful bidder/supplier will remain bound by any warranties set out in the specification requirements.

5.2 **RIGHT TO CANCEL.** The Tribe reserves the right to cancel the Purchase Order if specified delivery terms are not met or if goods or services fail to meet specification requirements.

5.3 **SUBSTITUTIONS.** No substitutions are permitted unless previously agreed to by the Tribe and confirmed in writing.

5.4 **SUPPLIER PRICING.** The successful bidder/supplier shall not change prices, terms or conditions without the prior written permission of the Tribe.

## 6. REQUIREMENTS

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6.1 **INSURANCE.** By signing and submitting a bid/proposal under this RFP, the bidder certifies that if awarded a bid, it will have insurance coverage as specified below at the time the purchase contract is awarded and will maintain such coverage through delivery of the subject vehicles:

6.1.1 General Liability Coverage: Minimum of \$500,000 per person per occurrence; \$500,000 property damage; \$5,000 medical expense; \$2,000,000 aggregate.

6.1.2 Umbrella Liability Coverage: \$1,000,000.

6.2 **COMPLIANCE WITH LAWS.** The successful bidder will agree to abide by and comply with all applicable laws, rules, ordinances, regulations and administrative rulings of the Lac du Flambeau Band of Lake Superior Chippewa Indians, the United States, and the State of Wisconsin.

6.3 **MARKETING PROHIBITION.** The successful bidder shall not use the name of, or refer to, the Lac du Flambeau Band of Lake Superior Chippewa Indians or the Tribal Roads Department of the Lac du Flambeau Band of Lake Superior Chippewa Indians or any other department of the Tribe in any marketing activity, nor will the successful bidder use said names or references thereto in any endorsement of its company, products, or services, without the written consent of the Lac du Flambeau Band of Lake Superior Chippewa Indians.

6.4 **NO ASSIGNMENT.** No bidder may assign its bid/proposal or any rights or obligations with respect thereto to any other party. No purchase contract between a successful bidder and the Tribe may be assigned by either party without the prior written consent of the other party, which consent may be given, withheld, or conditioned in the sole and absolute discretion of the party whose consent is sought. Any assignment, subcontract or delegation in derogation of this provision shall be deemed void

6.5 **DEBARMENT AND SUSPENSION.** No contract shall be made to parties listed on the General Services List of Parties Excluded from Federal Procurement or Non-procurement Programs in accordance with E.O.'s 12549 and 12689, "Debarment and Suspension." A list of excluded parties can be found at [www.sam.gov](http://www.sam.gov). 2 CFR 180, OMB

Guidelines to Agencies on Government-wide Debarment and Suspension (Non-procurement), governs debarment and suspension of federal grantees and sub-grantees from receiving federal grant awards. Debarment and suspension can occur if federal grantees use federal funds wastefully or fraudulently. In order to ensure federal funds do not flow to excluded parties, federal agencies and grantees are required to check for excluded parties prior to opening bids or awarding.

- 6.6 FEDERAL CLAUSES.** Federal grant monies fund this procurement, in whole or in part. Vendors/Contractors awarded contracts that use such funds must comply with certain Federal certifications and clause requirements. It is the contractor's responsibility to be aware of the pertinent certifications and contract clauses for the instant procurement and ensure compliance with such requirements prior to award and throughout the term of any resultant contract. Applicable Federal clauses are set forth IN ADDENDUM A of this RFP. The full text of these clauses is available at the National Rural Transit Assistance Program (RTAP) website under "ProcurementPro." The website address is: <http://www.nationalrtap.org/> .
- 6.7 GOVERNING LAW AND VENUE.** The successful bidder/vendor shall consent and agree that any and all questions arising in connection with this RFP and/or any purchase contract arising therefrom shall be governed first by the laws and ordinances of the Lac du Flambeau Band of Lake Superior Chippewa Indians and second by federal and Wisconsin laws, if applicable. The successful bidder shall further consent and agree to the jurisdiction of the Lac du Flambeau Band of Lake Superior Chippewa Tribal Court and that the venue for any legal proceeding relating to this RFP and/or any contract by and between the successful bidder and the Tribe shall be the Lac du Flambeau Band of Lake Superior Chippewa Tribal Court.
- 6.8 SOVEREIGN IMMUNITY.** The Lac du Flambeau Band of Lake Superior Chippewa Indians does not waive its Sovereign Immunity.



**ADDENDUM A  
TO REQUEST FOR PROPOSALS FOR  
SUPPLY AND DELIVERY OF 3 AWD SUVs**

**RFP NO. 20-TR-005**

**FEDERALLY REQUIRED CONTRACT CLAUSES**

**A. No Government Obligation to Third Parties.**

Applicability – All contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000).

- (1) The recipient and contractor acknowledge and agree that, notwithstanding any concurrence by the US Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the US Government, the US Government is not a party to this contract and shall not be subject to any obligations or liabilities to the recipient, the contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- (2) Contractor agrees to include the above clause in each subcontract financed in whole or in part with FTA assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**B. Program Fraud and False or Fraudulent Statements or Related Acts.**

Applicability – All contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000).

- (1) Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, 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 FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification, the US Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act (1986) on contractor to the extent the US Government deems appropriate.
- (2) If contractor makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification to the US Government under a contract connected with a project that is financed in whole or in part with FTA assistance under the authority of 49 USC 5307, the Government reserves the right to impose the penalties of 18 USC 1001 and 49 USC 5307(n)(1) on contractor, to the extent the US Government deems appropriate.
- (3) Contractor shall include the above two clauses in each subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

**C. Access to Records and Reports.**

Applicability – As shown below. These requirements do not apply to micro-purchases (\$3,000 or less, except for construction contracts over \$2,000) The following access to records requirements apply to this Contract:

- (1) Where the purchaser is not a State but a local government and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 18.36(i), contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives access to any books, documents, papers and contractor records which are pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor shall also, pursuant to 49 CFR 633.17, provide authorized FTA representatives, including any PMO contractor, access to contractor's records and construction sites

pertaining to a capital project, defined at 49 USC 5302(a)1, which is receiving FTA assistance through the programs described at 49 USC 5307, 5309 or 5311.

- (2) Where the purchaser is a State and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 633.17, contractor shall provide the purchaser, authorized FTA representatives, including any PMO Contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which receives FTA assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a 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 an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 19.48, contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives, 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 a purchaser which is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 USC 5325(a) enters into a contract for a capital project or improvement (defined at 49 USC 5302(a)1) through other than competitive bidding, contractor shall make available records related to the contract to the purchaser, the Secretary of USDOT and the US Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
- (5) Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (6) Contractor shall maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) 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 recipient, FTA Administrator, US Comptroller General, or any of their authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Re: 49 CFR 18.39(i)(11). FTA does not require the inclusion of these requirements in subcontracts.

#### **D. Federal Changes.**

All Contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000) Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the purchaser and FTA, as they may be amended or promulgated from time to time during the term of the contract. Contractor's failure to comply shall constitute a material breach of the contract.

#### **E. Civil Rights Requirements.**

All contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000) The following requirements apply to the underlying contract:

- (1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 USC 2000d, Sec. 303 of the Age Discrimination Act (1975), as amended, 42 USC 6102, Sec. 202 of the Americans with Disabilities Act (1990), 42 USC 12132, and 49 USC 5332, contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age or disability. Contractor shall also comply with applicable Federal implementing regulations and other 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 USC 2000e, and 49 USC 5332, contractor shall comply with all applicable equal employment opportunity requirements of USDOL, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, USDOL," 41 CFR 60 et seq., (implementing Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 USC 2000e), and any applicable Federal statutes, executive orders, regulations, and policies that may in the future affect construction activities undertaken in the course of the project. Contractor shall 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, contractor shall comply with any implementing requirements FTA may issue.

- (b) Age - In accordance with Sec. 4 of the Age Discrimination in Employment Act (1967), as amended, 29 USC 623 and 49 USC 5332, contractor shall refrain from discrimination against present and prospective employees for reason of age. Contractor shall also comply with any implementing requirements FTA may issue.
  - (c) Disabilities - In accordance with Sec. 102 of the Americans with Disabilities Act (ADA), as amended, 42 USC 12112, contractor shall comply with the requirements of US Equal Employment Opportunity Commission (EEOC), Regulations to Implement Equal Employment Provisions of the Americans with Disabilities Act, 29 CFR 1630, pertaining to employment of persons with disabilities. Contractor shall also comply with any implementing requirements FTA may issue.
- (3) Contractor shall include these requirements in each subcontract financed in whole or in part with FTA assistance, modified only if necessary to identify the affected parties.

#### **F. Incorporation of Federal Transit Administration (FTA) Terms.**

All contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000) The preceding provisions include, in part, certain Standard Terms & Conditions required by USDOT, whether or not expressly stated in the preceding contract provisions. All USDOT-required contractual provisions, as stated in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The contractor shall not perform any act, fail to perform any act, or refuse to comply with any request that would cause the recipient to be in violation of FTA terms and conditions.

#### **G. Termination.**

Applicability – All Contracts over \$10,000, except contracts with nonprofit organizations and institutions of higher learning, where the threshold is \$100,000.

- (1) Termination for Convenience (General Provision) the recipient may terminate this contract, in whole or in part, at any time by written notice to contractor when it is in the recipient's best interest. Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient. If contractor is in possession of any of the recipient's property, contractor shall account for same, and dispose of it as the recipient directs.
- (2) Termination for Default [Breach or Cause] (General Provision) If contractor does not deliver items in accordance with the contract delivery schedule, or, if the contract is for services, and contractor fails to perform in the manner called for in the contract, or if 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 to contractor setting forth the manner in which contractor is in default. Contractor shall only be paid the contract price for supplies delivered and accepted, or for services performed in accordance with the manner of performance set forth in the contract. If it is later determined

by the recipient that 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 contractor, the recipient, after setting up a new delivery or performance schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

- (3) Opportunity to Cure (General Provision) the recipient in its sole discretion may, in the case of a termination for breach or default, allow contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination shall state the time period in which cure is permitted and other appropriate conditions. If contractor fails to remedy to the recipient's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by contractor or written notice from the recipient setting forth the nature of said breach or default, the 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 the recipient from also pursuing all available remedies against contractor and its sureties for said breach or default.
- (4) Waiver of Remedies for any Breach In the event that the recipient elects to waive its remedies for any breach by contractor of any covenant, term or condition of this Contract, such waiver by the recipient shall not limit its remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.
- (5) 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 recipient's interest. If the 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.
- (6) Termination for Default (Supplies and Service) If 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 contractor a notice of termination specifying the nature of default. Contractor shall 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 contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.
- (7) Termination for Default (Transportation Services) If 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 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 contractor a notice of termination specifying the nature of default. Contractor shall 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 contractor has possession of the recipient goods, contractor shall, as directed by the recipient, protect and preserve the goods until surrendered to the recipient or its agent. Contractor and the recipient shall agree on payment for the preservation and protection of goods. Failure to agree on an amount shall be resolved under the Dispute clause. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

#### **H. Lobbying.**

Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts over \$100,000 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.

**I. Disadvantaged Business Enterprise.**

Contracts over \$3,000 awarded on the basis of a bid or proposal offering to use DBEs.

- (1) 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 recipient's overall goal for DBE participation is listed elsewhere. If a separate contract goal for DBE participation has been established for this procurement, it is listed elsewhere.
- (2) 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 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 municipal corporation deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- (3) If a separate contract goal has been established, 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.
- (4) If no separate contract goal has been established, the successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.
- (5) The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 10 working days after the contractor's receipt of payment for that work from the recipient. In addition, the contractor may not hold retainage from its subcontractors or must return any retainage payments to those subcontractors within 10 working days after the subcontractor's work related to this contract is satisfactorily completed or must return any retainage payments to those subcontractors within 10 working days after incremental acceptance of the subcontractor's work by the recipient and contractor's receipt of the partial retainage payment related to the subcontractor's work.
- (6) The contractor must promptly notify the recipient whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the recipient.

**J. Access Requirements for Persons with Disabilities.**

Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.