

Buy America Certificate

§661.5 General requirements.

- (a) Except as provided in §661.7 and §661.11 of this part, no funds may be obligated by FTA for a grantee project unless all iron, steel, and manufactured products used in the project are produced in the United States.
- (b) All steel and iron manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives.
- (c) The steel and iron requirements apply to all construction materials made primarily of steel or iron and used in infrastructure projects such as transit or maintenance facilities, rail lines, and bridges. These items include, but are not limited to, structural steel or iron, steel or iron beams and columns, running rail and contact rail. These requirements do not apply to steel or iron used as components or subcomponents of other manufactured products or rolling stock, or to bimetallic power rail incorporating steel or iron components.
- (d) For a manufactured product to be considered produced in the United States:
 - (1) All of the manufacturing processes for the product must take place in the United States; and
 - (2) All of the components of the product must be of U.S. origin. A component is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents.

§661.6 Certification requirements for procurement of steel or manufactured products.

If steel, iron, or manufactured products (as defined in §§661.3 and 661.5 of this part) are being procured, the appropriate certificate as set forth below shall be completed and submitted by each bidder or offeror in accordance with the requirement contained in §661.13(b) of this part.

Certificate of Compliance with Buy America Requirements

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(1), and the applicable regulations in 49 CFR part 661.

Date: _____
Signature: _____
Company: _____
Name: _____
Title: _____

Certificate of Non-Compliance with Buy America Requirements

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. 5323(j)(2), as amended, and the applicable regulations in 49 CFR 661.7.

Date: _____
Signature: _____
Company: _____
Name: _____
Title: _____

**CERTIFICATION OF PRIMARY PARTICIPANT REGARDING
DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY
MATTERS**

The Primary Participant (applicant for an FTA grant or cooperative agreement, or potential contractor for a major third party contract) _____ certifies to the best of its knowledge and belief, that it and its principals:

- 1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- 2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or Local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- 3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (2) or this certification; and
- 4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or Local) terminated for cause or default.

If the primary participant (applicant for an FTA grant or cooperative agreement, or potential third party contractor) is unable to certify to any of the statements in this certification, the participant shall attach an explanation of this certification.

The Primary Participant (applicant for an FTA grant or cooperative agreement, or potential contractor for a major third party contract), _____ certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. Sections 3801 et seq. are applicable thereto.

Signature and Title of Authorized Official

Date: _____

Lobbying Restrictions

The undersigned 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 influencing or attempting to influence 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.
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 section 1352, title 31, U.S. Code. 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.

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

SCHEDULE C

CONTRACTORS SCHEDULE OF DBE PARTICIPATION

(Must be submitted with proposal)

Name of Prime or General Vendor

Automatic Passenger Counters
Name of Project

DBE Contractor On Schedule D	Description of Work	Start Date End Date	Agreed Price

(Attach Additional Copies If Necessary)

The undersigned agrees to enter into formal agreements with DBE contractors for the work listed on this schedule conditioned upon successful execution of a contract with Metro Bus.

Name of Company/Vendor

Name of Company Official/Title

Date

Signature

OR:

_____ No DBE is included in this bid/proposal.

Company/Vendor

Signature

Date

SCHEDULE D

CERTIFICATION OF COMPLIANCE WITH DBE REQUIREMENTS

(Must be submitted with proposal)

Requirements:

Areas requiring close attention are:

- * Reporting and Documentation requirements.
- * Computation of DBE Participation based on type of service/product provided.
- * Agreements between a bidder/proposer and a DBE in which the DBE promises not to provide subcontracting quotations to other bidders/proposers are prohibited.
- * DBEs must perform a useful function in relation to the project.

Proposers Certification:

A signature below is a commitment to fully comply with all the DBE requirements of this project.

Name of Company Official	Name of Company/Proposer
Name of DBE Contact Person Within Company	Signature of Company Official
Phone No. of DBE Contact Person	Project Name
Date	

OR:

_____ No DBE is included in this bid/proposal.

Company/Vendor	Signature	Date
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SCHEDULE F

DBE LETTER OF INTENT TO PERFORM AS A CONTRACTOR OR SUBCONTRACTOR

(Must be submitted with proposal)

	<u>Automatic Passenger Counters</u>
Name of Prime or General Proposer	Name of Project

The undersigned intends to perform work in connection with the above project as (Check one):

an individual a corporation a partnership a joint venture

The Disadvantaged Business Enterprise status of the undersigned is confirmed and current in the Minnesota Unified Certification Program Directory of DBEs (Check one):

Yes No

The undersigned is prepared to perform the following described work in connection with the above project. Use additional paper if necessary.

<u>Item</u>	<u>Agreed Price</u>
_____	_____
_____	_____
_____	_____

Information for Contractors:

St. Cloud Metropolitan Transit Commission requires all prime contractors to make proper payment to its subcontractors. Metro Bus may withhold payment from the prime contractor or take such other action as may be appropriate to insure that subcontractors are properly paid.

Agreements in which a DBE promises to provide bids, work estimates, team membership, etc. to only one bidder/proposer on a project is prohibited.

The undersigned agrees not to sublet or award a significantly greater portion of the work of this contract than would be expected on the basis of normal industry practices. The undersigned will be directly responsible for the execution of the work elements included in this contract agreement or any subcontract agreement and will carry out this responsibility by actually performing, managing and supervising the work involved in the contract or subcontract.

The undersigned will enter into a formal agreement for the above work as a prime bidder or as a subcontractor to the above named bidder/proposer conditioned upon execution of a contract for this project with Metro Bus.

	By:	
(Name of Disadvantaged Business Enterprise)		(Name)
(Address)		(Signature)
(Date)		(Title)

OR:

<input type="checkbox"/> No DBE is included in this bid/proposal.			
	Company/Vendor	Signature	Date

STATE OF MINNESOTA – AFFIRMATIVE ACTION CERTIFICATION

If your proposal to an RFP is or could be in excess of \$100,000.00, complete the information requested below to determine whether you are subject to the Minnesota Human Rights Act (Minnesota Statutes §363A.36) certification requirement, and to provide documentation of compliance, if necessary. It is your sole responsibility to provide this information and, if required, to apply for Human Rights certification prior to the due date and time of the proposal and to obtain Human Rights certification prior to the execution of the contract. The State of Minnesota is under no obligation to delay proceeding with a contract until a company receives Human Rights certification.

BOX A – For companies which have employed more than 40 full-time employees within Minnesota on any single working day during the previous 12 months. All other companies proceed to BOX B.

Your proposal will be rejected unless your business:

Has a current Certification of Compliance issued by the Minnesota Department of Human Rights (MDHR)

-or-

Has submitted an affirmative action plan to the MDHR, which the Department received prior to the date and time the proposals are due.

Check one of the following statements if you have employed more than 40 full-time employees in Minnesota on any single working day during the previous 12 months:

- We have a current Certificate of Compliance issued by the MDHR. *Proceed to Box C. Include a copy of you Certification with your proposal*
- We do not have a current Certificate of Compliance; However, we submitted an Affirmative Action Plan to the MDHR for approval, which the Department received on _____ (date). *Proceed to Box C.*
- We do not have a Certification of Compliance, nor has the MDHR received an Affirmative Action Plan from our company. We acknowledge that our proposal will be rejected. *Proceed to Box C. Contact the MDHR for assistance. (See below for contact information)*

Please note: Certificates of Compliance must be issued by the MDHR. Affirmative Action Plans approved by the federal government, a county, or a municipality must still be received, reviewed and approved by the MDHR before a certificate can be issued.

BOX B – For those companies not described in BOX A

Check below

- We have not employed more than 40 full-time employees on any single working day in Minnesota within the previous 12 months. *Proceed to BOX C.*

BOX C – For ALL companies

By signing this statement, you certify that the information provided is accurate and that you are authorized to sign on behalf of the responder. You also certify that you are in compliance with federal affirmative action requirements that may apply to your company. (These requirements are generally triggered only by participating as a prime or subcontractor on federal projects or contracts. Contractors are alerted to these requirements by the federal government.)

Name of Company: _____ Date _____

Authorized Signature: _____ Telephone number: _____

Printed Name: _____ Title: _____

For assistance with this form, contact:

Minnesota Department of Human Rights, Compliance & Community Relations

Mail:	The Freeman Building, 625 Roberts Street North St. Paul, Minnesota 55155	TC Metro:	651-296-5663	Toll Free:	800-657-3704
Web:	www.humanrights.state.mn.us	Fax:	651-296-9042	TTY:	651-296-1283
Email:	compliance.mdhr@state.mn.us				

Standard DOT Conditions

UNITED STATES DEPARTMENT OF TRANSPORTATION
ST. CLOUD METROPOLITAN TRANSIT COMMISSION

1. REQUIRED CLAUSES, CONTRACT PROVISIONS

The services identified in these specifications are to be purchased with the assistance of a grant from the Federal Government under the Urban Mass Transportation Act of 1964, as amended (hereinafter referred to as Federal Transit Administration (FTA). The successful Vendor will be required to comply with all terms and conditions prescribed for third party contracts in grant contract/s between the United States of America and the St. Cloud Metropolitan Transit Commission, (Metro Bus).

The contract between Metro Bus and the successful Vendor, and between the contractor in each of its related subcontracts, shall contain the following provisions:

2. FEDERAL LAWS AND REGULATIONS

Federal laws, regulations, policies, and related administrative practices applicable to this Contract on the date the Contract is executed may be modified from time to time and said modifications will apply to this project as required. All standards or limits set forth in this Contract to be observed in the performance of the project are minimum requirements.

3. PROHIBITED INTERESTS

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

4. INTEREST OF MEMBERS OR OF DELEGATES TO CONGRESS

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

5. INELIGIBLE CONTRACTORS

The contractor hereby certifies that it is not one included on the U.S. Comptroller General's Consolidated List of Persons or Firms currently debarred for violations of various public

contracts incorporating labor standards provisions.

6. INTEREST OF CONTRACTOR

The contractor covenants that he presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. The Contractor further covenants that in such performance of this Agreement, no person having such interest shall be employed.

7. AUDIT AND INSPECTION OF RECORDS

The Contractor shall permit the authorized representative of Metro Bus, the U.S. Department of Transportation and the Comptroller General of the United States to inspect all project work, materials, payrolls and other data, and to audit the books, records, and accounts of the Contractor relating to its performance under this contract.

Metro Bus has agreed to require each third party contractor whose contract award is not based on competitive proposal procedures as defined by the Secretary to permit the Secretary of Transportation and the Comptroller General of the United States, or their duly authorized representatives, to inspect all work, materials, payrolls, and other data and records involving that contract, and to audit the books, records, and accounts involving that contract as it affects the Project.

Contractors shall maintain contract records for three years after final agreement is made.

8. COPYRIGHT AND PATENT

No reports, maps or other documents produced in whole or in part under this Agreement shall be subject of an application for copyright by or on behalf of the contractor.

If any contract or subcontract involves the development of patents, a Patent Rights Clause must be obtained from FTA and included in the contract.

9. COPELAND "ANTI-KICKBACK" ACT

The contractor shall comply with the provisions of the Copeland "Anti-Kickback" Act (18 USC 874) as supplemented by Department of Labor regulations (29 CFR, Part 3).

This Act provides that each contractor or subcontractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled.

10. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The contractor and subcontractors shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by Department of Labor regulations (29 CFR, Part 5). Under Section 103 of the Act, the contractor and each subcontractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard workday of 8 hours and a standard workweek of 40 hours. Work in excess of the standard workday or workweek is permissible provided that the worker is compensated at a rate of not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or 40 hours in the workweek. Section 107 of the Act is applicable to construction work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to his health and safety as determined under construction, safety and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

11. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

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

12. ENERGY CONSERVATION

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

13. PROHIBITION AGAINST THE USE OF FEDERAL FUNDS FOR LOBBYING

Contractors who apply or submit proposals 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 to 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 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.

14. BREACHES AND DISPUTE RESOLUTION

(a) Disputes

The Metro Bus Executive Director shall decide disputes arising in the performance of this Contract, which are not resolved by agreement of the parties, in writing. 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 Executive Director. 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 Executive Director shall be binding upon the Contractor and Contractor unless litigation is thereafter commenced in a court of competent jurisdiction.

(b) Performance During Dispute

Unless otherwise directed by Metro Bus, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

(c) 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 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, which shall not exceed fifteen (15) working days, after the first observance of such injury or damage.

(d) Remedies

Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between Metro Bus 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 Metro Bus is located.

(e) Rights and Remedies

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder 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 either party shall constitute a waiver of any right or duty afforded under the Contract, nor shall any such action or failure to act constitute an approval of or acceptance in any breach thereunder, except as may be specifically agreed in writing by both parties.

15. CARGO PREFERENCE - U.S. FLAG VESSELS

46 C.F.R. Part 381, Metro Bus shall insert the following clauses in contracts let by Metro Bus in which equipment, materials or commodities may be transported by ocean vessel in carrying out the Project:

THE CONTRACTOR AGREES--

- (a) To utilize privately owned United States-Flag Commercial Vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials or commodities pursuant to 46 C.F.R. Part 381 to the extent such vessels are available at fair and reasonable rates for United States-Flag Commercial Vessels.
- (b) To furnish within 20 days following the date of loading for shipments originating within the United States, or within 30 working days following the date of loading for shipment originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the recipient (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, 400 Seventh Street, S.W., Washington, D.C. 20590, marked with appropriate identification of the project.
- (c) To include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

16. DISADVANTAGED BUSINESS ENTERPRISE

The Federal Fiscal Year goal has been set by Metro Bus in an attempt to match projected procurements with available qualified disadvantaged businesses. Metro Bus goals for procurements, budgeted service contracts, bus parts, and other material and supplies for

Disadvantaged Business Enterprises have been established by Metro Bus as set forth by the Department of Transportation Regulations 49 C.F.R. Part 23, March 31, 1980, and amended by Section 106(c) of the Surface Transportation Assistance Act of 1987, and is considered pertinent to any contract resulting from this request for proposal.

- (a) It is the policy of the Department of Transportation and Metro Bus that Disadvantaged Business Enterprises, as defined in 49 CFR Part 23, and as amended in Section 106(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987, shall have maximum opportunity to participate in the performance of Contracts financed in whole or in part with federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 23 and section 106(c) of the STURAA of 1987, apply to this contract.
- (b) The Contractor agrees to ensure that DBE's as defined in 49 CFR Part 23 and Section 106(c) of the STURAA of 1987, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this Agreement. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with the regulations in 49 CFR, Part 23, to insure that DBE's have the maximum opportunity to compete for and perform contracts/subcontracts. The Contractor shall not discriminate on the basis of race, color, national origin, religion, sex, age or physical handicap in the award and performance of contracts/subcontracts.
- (c) It is further the policy of Metro Bus to promote the development and increase the participation of businesses owned and controlled by the disadvantaged. DBE involvement in all phases of Metro Bus procurement activities is encouraged.
- (d) The Contractor and its subcontractors agree to ensure that disadvantaged businesses have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under the Agreement. In that regard, all Contractors and subcontractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 as amended, to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts.
- (e) Minority participation, achieved through the purchase of materials or supplies from a minority business that is not a manufacturer, will be determined by sixty (60%) percent of the value of the supplies purchased, as compared to the total dollar value of the contract if the minority business is the manufacturer or directly perform all services, then 100% of the total dollar value of the contract is counted.



- (f) Expenditures to businesses that are joint ventures should be counted on the basis of percentage ownership of the eligible DBE.
- (g) Submission of a properly signed proposal, price quotation, or their equivalent is a commitment to the minimum utilization requirements, and all related conditions stated herein, including a commitment to make every good faith effort to meet the requirements by subcontracting and/or joint venturing with DBE's. If the Contractor fails to meet its requirements, it will bear the burden of furnishing sufficient documentation or reasonable efforts.
- (h) Agreement between a Vendor and a DBE, in which the DBE promises not to provide subcontracting quotations to other Vendors, are prohibited.
- (i) Along with submission of the proposal, the Vendor shall include the following:
Schedule F - Certification of Compliance with DBE Requirements (enclosed)
Schedule C - Contractors Schedule of DBE Participation (enclosed)
- (j) Prior to contract award, Vendor must provide the following:
- Schedule D - DBE Letter of Intent to Perform as a Subcontractor (enclosed)
 - DBE certification eligibility
 - Copies of DBE subcontractor certifications from other transit properties (DOT's, transit systems, etc).
- (k) Metro Bus will provide affirmative assistance as may be reasonable and necessary to assist the prime contractor in implementing their programs for DBE participation. The assistance may include the following upon request:
- Identification of qualified DBE
 - Available listing of Minority Assistance Agencies
 - Holding request for proposal (RFP) conference to emphasize requirements.
- (l) The Contractor will keep records and documents for a reasonable time following performance of this contract to indicate compliance with the Metro Bus DBE program. These records and documents will be made available at reasonable times and places for inspection by any authorized representative of Metro Bus and will be submitted to Metro Bus upon request.
- (m) Where the Contractor is found to have **failed to exert sufficient reasonable and good faith efforts** to involve DBE's in the work provided, Metro Bus may declare the contractor noncompliant and in breach of contract.

17. SMALL BUSINESS ENTERPRISE

Disadvantaged Business Enterprise or DBE means a for-profit small business concern

- (1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals, and
- (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

The United States Small Business Administration (SBA) defines a small business concern as one that is independently owned and operated, is organized for profit, and is not dominant in its field. Depending on the industry, listed below, size standard eligibility is based on the average number of employees for the preceding twelve months or on sales volume averaged over a three-year period. The general size standards for small businesses to be applied to this Program are:

- (1) Manufacturing: Maximum number of employees may range from 500 to 1500, depending on the type of product manufactured;
- (2) Wholesaling: Maximum number of employees may range from 100 to 500 depending on the particular product being provided;
- (3) Services: Annual receipts may not exceed \$2.5 to \$21.5 million, depending on the particular service being provided;
- (4) Retailing: Annual receipts may not exceed \$5.0 to \$21.0 million, depending on the particular product being provided;
- (5) General and Heavy Construction: General construction annual receipts may not exceed \$13.5 to \$17 million, depending on the type of construction;
- (6) Special Trade Construction: Annual receipts may not exceed \$7 million;
- (7) Agriculture: Annual receipts may not exceed \$0.5 to \$9.0 million, depending on the agricultural product. The terms used throughout this program have the meanings defined in 49 CFR 26.5.

18. BUY AMERICA

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR 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 CFR 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60

percent domestic content.

A Vendor or offeror must submit to the FTA recipient the appropriate Buy America certification with all proposals on FTA-funded contracts, except those subject to a general waiver. Proposals or offers that are not accompanied by a completed Buy America certification must be rejected as non-responsive. This requirement does not apply to lower tier subcontractors.

Vendors must include a signed Buy America certification statement.

19. PROTEST PROCEDURES

Contractors that feel an alleged violation of Metro Bus' procurement procedures has occurred during a solicitation may file a written protest with the Executive Director up to the date and time of the proposal opening. The Executive Director will review the protest and determine if the proposals will be opened or delayed. The Executive Director's decision will be transmitted in writing to the protesting party within five city working days.

Contractors that feel that an alleged violation of Metro Bus' procurement procedure has occurred after proposal opening may file a written protest with the Executive Director up to three working days after the date and time proposals were opened. The Executive Director will review the protest and determine if the award of the contract to the responsive Vendor should be delayed. The Executive Director's decision will be transmitted in writing to the protesting party within three city working days.

Parties not satisfied by the Executive Director's decision regarding either type of protest described above, may, within five city working days of receipt of the Executive Director's written decision, appeal the decision to the Metro Bus Commission. The appeal must be made in writing. The Commission will schedule a hearing where the appellant may be heard. Once the Commission's decision is announced, no further local appeals may be made.

Contractors should fill all protests in care of the Executive Director, as appropriate, at the following address:

Metro Bus
Request for Proposal Protest
665 Franklin Avenue NE
St. Cloud, MN 56304

The decision of the Metro Bus Board of Commissioners is final.

The Federal Transit Administration (FTA) will only review protests regarding the alleged failure

of the purchases to have a written protest procedure or alleged failure to follow such procedures. Protestors may file a protest with the FTA regional office not later than five federal working days after a final decision of Metro Bus. Metro Bus will not award any contracts until it is sure that no protest has been filed with the FTA. The protest filed with the FTA shall:

- (a) Include the name and address of the protestor.
- (b) Identify the grantee, project number, and the proposal number.
- (c) Contain a statement of the grounds for protest and any supporting documentation. This should detail the alleged failure to follow protest procedures or the alleged failure to have procedures and be fully supported to the extent possible.
- (d) Include a copy of the local protest filed with the grantee and include a copy of the grantee's decision, if any.

Protests to the FTA should be addressed to:

Office of Program Oversight
Federal Transit Administration
200 West Adams Street, Suite 320
Chicago, IL 60606

Vendors are cautioned that Metro Bus takes all protests seriously and that frivolous protests lacking factual basis will subject a protestor to assessment of Metro Bus' cost and legal fees in responding to the protest. Vendors must review the Metro Bus proposal protest guidelines carefully before filing a protest. At the time of filing a protest, the vendor agrees to be bound by these guidelines.

20. TERMINATION FOR CONVENIENCE

Metro Bus may terminate this contract, in whole or in part, at any time by thirty (30) days prior written notice to the successful Vendor. The successful Vendor shall be paid its costs, including contract closeouts, and profit on work performed up to the time of termination. The successful Vendor shall promptly submit its termination claim to be paid the successful Vendor. If the successful Vendor has any property in its possession belonging to Metro Bus, the successful Vendor will account for the same, and dispose of it in the manner Metro Bus directs.

21. TERMINATION FOR DEFAULT

If the successful Vendor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the successful Vendor fails to perform in the manner called for in the contract, or if the successful Vendor fails to comply with any other provisions

of the contract, Metro Bus may terminate this contract for default. Upon serving ten (10) days prior written notice of termination on the successful Vendor setting forth the manner in which the successful Vendor is in default shall effect termination. The successful Vendor 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 Metro Bus that the successful Vendor 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 successful Vendor, Metro Bus after setting up a new delivery or performance schedule, may allow the successful Vendor to continue work, or treat the termination as a termination for convenience. If Vendor determines Metro Bus is in default of the Contract, Vendor may terminate the Contract if, after thirty (30) days written notice, such default is not cured by Metro Bus.

22. CIVIL RIGHTS REQUIREMENTS

- (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 effect 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 American with Disabilities Act as amended, 42 U.S.C. '12112, the Contractor agrees that it will comply with the requirements of the 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.

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.

23. LABOR STANDARDS PROVISIONS

- (1) **Nonconstruction Contracts.** The requirements of the clauses contained in 29 C.F.R. ' 5.5(b) or Part II, Subsections 119.a (10) through 119.a (13) of this contract are applicable to any contract subject to the overtime provisions of the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 C.F.R. ' 5.1. The contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records to be maintained under this clause shall be made available by the contractor or subcontractor for inspection, copying or transcription by authorized representatives of the Federal Transit Administration, U.S. Department of Transportation,

or the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

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

24. CLEAN WATER

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. 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.

25. CLEAN AIR

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.

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 the FTA.

26. PROGRAM FRAUD AND FALSE FRAUDULENT STATEMENTS OR RELATED ACTS

- (a) 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 in all material respects of any statement it has made, it knowingly 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 available 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.

- (b) 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.
- (c) 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.

27. 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 Agreement (Form FTA MA (2) dated October, 1995) 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.

28. 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 4220.1C, dated May 1, 1995, 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 Metro Bus requests for performance hereunder, which would cause Metro Bus to be in violation of the FTA terms and conditions.

29. NATIONAL ITS ARCHITECTURE

Consistent with Title V, Section 5206 (e) of the Transportation Equity Act for the 21st Century, the DOT developed in April 2001, the Federal Transit Administration National ITS Architecture Policy on Transit Projects. Intelligent Transportation Systems - ITS - means electronics, communications or information processing used singly or in combination to improve the efficiency or safety of a surface transportation system@. An ITS project is Any project that in whole or in part funds the acquisition of technologies or systems of technologies that provide or significantly contribute to the provision of one or more ITS User Services as defined in the National ITS Architecture.

Contractor agrees to comply with all requirements and standards of the National ITS Architecture Policy on Transit Projects. For information regarding the Policy, see <http://www.its.dot.gov/aconform/aonform.htm>

30. PREFERENCE FOR RECYCLED PRODUCTS

To the extent practicable and economically feasible, the Contractor agrees to provide a competitive preference for recycled products and services that conserve natural resources and protect the environment and are energy efficient. Examples of such products may include, but are not limited to, products described in U.S. Environmental Protection Agency (U.S. EPA) guidelines at 40 C.F.R. Parts 247-253, which implement section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6962.

31. SEISMIC SAFETY

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

32. ADA ACCESS

Contractor agrees that all work performed will be in compliance with all applicable laws pertaining to access. The contractor also agrees to comply with all applicable provisions of the ADA Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities; with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*,



which requires that buildings and public accommodations be accessible to individuals with disabilities; and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable.

33. FLY AMERICA

The Contractor understands and agrees that the Federal Government will not participate in the costs of international air transportation of any persons involved in or property acquired for the Project unless that air transportation is provided by U.S.-flag air carriers to the extent service by these carriers is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. 40118, and with U.S. General Services Administration (U.S. GSA) regulations pertaining to the use of United States flag air carriers, 41 C.F.R. 301-2.61 (b), and any later regulations at 41 C.F.R. 301-10.131 et seq.

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