



NORTHERN WINNEBAGO DIAL-A-RIDE SERVICE

CONTRACT

REQUEST FOR PROPOSAL

2017-2019

RFP VT-16-009

PROPOSALS MUST BE SUBMITTED NO LATER THAN

1:00 PM CST NOVEMBER 18, 2016

LATE PROPOSALS WILL BE REJECTED

Submitting the proposal:

Identify outside of proposal as "VT-16-009 NORTHERN WINNEBAGO DIAL-A-RIDE SERVICE PROPOSAL." Include cost proposal in a separate sealed envelope identified as "COST PROPOSAL".

Proposers must submit, in a sealed package, one (1) original (identify) plus four (4) copies of all materials required for acceptance of their proposal on or before 1:00 PM CST November 18, 2016. Proposing firms are also requested to provide a **CD with an electronic (.pdf) version of their proposal** for ease of storage and transmittal between City stakeholders.

In lieu of a pre-proposal conference, a formal period for questions and answers will be conducted. Questions must be submitted in writing, and may be conveyed by mail or other physical delivery to the contact address below; by email to amy.erickson@appleton.org; or by fax (920) 832-1631, Attn: Amy Erickson. Questions will be received no later than 1:00 PM CST on Friday, November 4, 2016. Answers to the questions, as well as any addenda, or further RFP information will be posted on Valley Transit's website @ www.myvalleytransit.com on the "Requests For Proposal" page, no later than Friday, November 11, 2016.

Proposal Packages should be addressed to:

VALLEY TRANSIT

ATTN: AMY ERICKSON, PARATRANSIT COORDINATOR

801 SOUTH WHITMAN AVENUE

APPLETON, WI 54914

VALLEY TRANSIT
NORTHERN WINNEBAGO DIAL-A-RIDE SERVICE

Request for Proposals

Valley Transit is requesting proposals to provide ambulatory transportation service to elderly persons 60 years of age and over who reside within the Cities of Neenah, Menasha, the Village of Fox Crossing, Town of Menasha, or the Heritage Area.

Valley Transit, the City of Neenah, Town of Menasha, and the Village of Fox Crossing are hereinafter referred to as the “Contractor” or “Contractors” and the responding firm is hereinafter referred to as the “Provider.”

INTRODUCTION

GENERAL INFORMATION

The Contractor is requesting proposals from qualified providers of demand responsive ambulatory transportation services for elderly residents of the Cities of Neenah, Menasha, Town of Menasha, the Village of Fox Crossing, and the Heritage Area.

TERM OF CONTRACT

The contract will be for three (3) years commencing on January 1, 2017, and terminating December 31, 2019, with options to extend the contract by mutual consent for two (2) one year periods. The provision of this service is contingent on federal, state, and local funding sources. There will be termination clauses that can be implemented by either party, as outlined in the Federal Requirement section. Prospective contractors may submit proposals on all or part of the service.

SCOPE OF SERVICE

SERVICE DESCRIPTION

This type of service is general demand responsive ambulatory origin to destination transportation service designed for the elderly persons who reside within the City of Neenah, City of Menasha, Town of Menasha, the Village of Fox Crossing, or within the “Heritage Area” as described below. Trips are provided at a reduced cost to persons aged 60 and over who reside in the Cities of Neenah or Menasha, the Town of Menasha or the Heritage Area.

SERVICE AREA

The zone that is used to determine the service area for riders under this program is generally described as:

1. Those areas within the following boundaries: west, Highway 76, to Highway 15 and Mayflower Road to Capitol Drive, except slightly north of Highway 41 between Ballard Road and French Road north; slightly east of Highway 441 from Manitowoc Road to Evergreen Drive, to the east; and County Road G, to the South.

The Heritage Area, for determining eligibility of riders outside of the aforementioned cities and town is described as:

2. Those areas of the City of Appleton which lie within Winnebago County, generally those areas south of Calumet St., and west of Oneida St.

See Exhibit A for a full map of the zone.

PROGRAM PARTICIPANTS

The individuals eligible to use this service are those persons aged 60 or over. The city or town of residence will make the final determination of eligibility. Tickets will be issued to the clients based on their city/town of residence. Three types of passenger tickets will be issued; one for residents of the Cities of Neenah and Menasha, one for residents of the Village of Fox Crossing and Town of Menasha, and a third for Heritage Area residents.

PROVIDER REQUIREMENTS

Provider must be properly licensed to provide elderly transportation service and must be in compliance with all applicable federal, state, and local codes, regulations, and licensing requirements as well as all applicable state motor vehicle codes and licensing requirements. Provider will provide proof of such to Contractor.

HOURS OF SERVICE AND ESTIMATED DEMAND FOR SERVICE

DEMAND: There are no guarantees on volume. The current annual demand estimates are as follows: (Trip(s) means one way passenger ride).

Demand responsive ambulatory trips are non-emergency (therapy, physician's visits, etc.) medical or personal business type trips. Trips are usually within the defined zone area.

- In 2015, there were 9,223 trips requiring a total of 39,725 revenue miles, for an average trip length of 4.31 miles.

More detail on ridership and costs is available upon specific request.

DAYS AND HOURS OF OPERATION: The hours of service shall be:

- 6:00 a.m. to 7:00 p.m. Monday through Friday
- 6:00 a.m. to 2:00 p.m. Saturday and Sunday

The system will be closed for the following holidays; New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving and Christmas Day. Service may be cancelled by the Provider or the Contractor because of inclement weather or dangerous road conditions. If the Vendor cancels services mid-day due to inclement weather or dangerous road conditions, every attempt should be made by the Vendor to safely return consumers back to their home if transported to a location earlier in the day.

ACCESSIBILITY AND SECUREMENT

The service must be accessible to ambulatory individuals. The Contractor can use a mix of vehicles to provide the service required under this contract including automobiles.

FARES

Within the zone, presentation of \$3.50 plus one Northern Winnebago Dial-A-Ride or Heritage Area ticket shall entitle one person to one trip.

Trips to destinations outside of the zone shall be by special arrangement, with presentation of one Northern Winnebago Dial-A-Ride or Heritage Area ticket plus the \$3.50 fare. **Provider should specify in their cost proposal any additional charge for these trips.**

The Provider is also asked to consider providing a discounted cost proposal for additional riders who are eligible for the elderly Northern Winnebago Dial-A-Ride program who may travel from the same origin to the same destination with another Dial-A-Ride patron.

Aides assisting eligible passengers will not incur a cost to themselves, the passenger, or the Dial-A-Ride program.

SCHEDULING

All program trips must be scheduled and dispatched through the provider.

The Dial-A-Ride provider will be open for calls from 6:00 AM to 7:00 P.M., Monday through Friday, and Saturdays and Sundays from 6:00 AM to 2:00 P.M. The system will be closed on the following holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas Day.

There will be no special provisions or prearrangements necessary for the Dial-A-Ride service. Time calls shall be accepted, however, and an average of at least 90% on-time performance shall be maintained for "previous day" scheduled trips, based on the scheduled pick-up time to within 15 minutes after the scheduled pick-up time.

Reservations will be taken on a "previous day" basis in accordance with ADA, 49 CFR Part 37. The Provider and Contractor can encourage more "advanced" reservations. Also, the Provider must allow more advanced reservations (at least 14 days in advance) consistent with the "subscription service" criteria contained in ADA.

The Dial-A-Ride service will be on a shared basis; if the service receives additional calls, and/or pickups in the vicinity of the first call, or near the route of patrons in the vehicle, the vehicle will deviate from the route to accommodate additional passengers.

Assistance will be rendered when necessary in the loading and unloading of parcels and personal effects and/or assistance to persons requiring personal help, but is limited to one trip to the customer's door.

TRAINING

The provider is responsible for providing all driver training to its employees.

Services provided under the resulting Agreement shall be subject to the terms and conditions of said Agreement.

ADMINISTRATION

KEY EMPLOYEE

The Provider will assign an individual whose primary management function will be the direction of services performed by the Provider.

RECORDS, AUDIT, AND OTHER ADMINISTRATIVE REQUIREMENTS

Record Maintenance. Provider agrees to maintain separate written records and documents during the term of the contract and for seven (7) years thereafter relating to the finances and performance of the services under this proposal. All documents, whenever possible, will be kept separate and apart from all other provider documents. These shall include records pertaining to all collected fares, wages, salaries, and costs which were used as a base for computing accounts payable or items reimbursable under this proposal.

Audit. Accounting records and other related financial books and records shall be subject to an audit as directed by Valley Transit. Such audit shall be completed at Provider's expense and delivered to Valley Transit no later than 150 days after the end of Provider's fiscal year.

Access to Records. The Provider agrees that it will permit Valley Transit or its agents during regular business hours to review, inspect, examine, and copy all records pertaining to the performance of the terms and conditions of this proposal. Further, the Provider shall permit Valley Transit to review and examine its records of all other trips provided to persons with disabilities by the Provider outside of this proposal including, but not limited to, programs under Title XIX and the Department of Vocational Rehabilitation.

At the termination of the term of this proposal, Valley Transit shall have the right to examine all original records, make appropriate copies of these records and take possession of these copies.

Records.

- **Mileage and Trip Data.** Valley Transit is required by Federal Transit Administration (hereinafter referred to as FTA) to collect certain mileage and trip data. The following information must be provided for each trip.
 - 1) Name and identification number of rider.
 - 2) Trip Date

- 3) Origin and destination with appropriate arrival/departure times both scheduled and actual
- 4) Purpose of trip (not mandatory)
- 5) Itemization of trip costs
- 6) Driver name and employee number # (if applicable)
- 7) Actual trip pick-up/drop-off times and actual trip mileage must be recorded.

- **Financial and Performance Data.** The Provider is required to keep separate written financial and performance records. These records will include all wages, salaries, and costs to be used as a base for computing Accounts Payable or Items Reimbursable. Records must be available for inspection by Valley Transit or Valley Transit's approved agent at all times upon reasonable notification. The Provider will also allow Valley Transit, on a random basis, to inspect the service for specific performance measures (*i.e.*, on time performance).
- **Employee Information.** The Provider shall provide Valley Transit, upon request, with a list of all personnel who will perform services in any manner and describe how they are involved in the program.
- **Vehicle Information.** The Provider shall complete the National Transit Database Safety and Security and Vehicle Inventory Form. Provider shall also report revenue hours and miles and total vehicle hours and miles on a monthly basis.
- **Accident/Incident Information.** Provider shall report any accident/incident where any vehicle involved requires towing or any individual involved requires medical attention to Valley Transit no later than the following business day.
- **Public Comment.** Provider shall follow Valley Transit's public comment policies and procedures.

Employee Standards

Valley Transit is dedicated to providing a smoke-free environment for all users of its paratransit services. Smoking is not permitted inside any vehicle that performs paratransit service for Valley Transit even if passengers are not present.

Rude, offensive and abusive language or behavior is prohibited.

All Provider personnel should maintain a high level of customer service.

All drivers are required to wear a uniform shirt and ID badge.

VEHICLE REQUIREMENTS

The Provider shall supply, at its own expense, all vehicles required in performing the services under this agreement. A copy of the National Transit Database Safety and Security and Vehicle Inventory Form and licensing and inspection documentation for each vehicle must be on file with Valley Transit before services may be provided with by said vehicles.

All vehicles used in program service must meet all applicable Federal, State and local vehicle operation regulations.

Vehicles used to provide contract service may not be older than seven years from the original vehicle manufacture date. After a vehicle has reached six years from its manufacture date, Valley Transit will consider exceptions on an individual vehicle basis per Provider request.

The Provider shall post signs in vehicles as requested by Valley Transit.

The Provider shall not sell any space or display any advertising on any vehicle used in the operation of this service. Bumper stickers and other similar materials are specifically not allowed. The Provider will distribute no literature without express prior authorization from Valley Transit. Advertising space may be sold by Valley Transit, with Valley Transit collecting the revenue. Valley Transit will be responsible for costs associated with installation and removal of the advertisements.

VEHICLE MAINTENANCE REQUIREMENTS

The Provider shall ensure that all vehicles assigned to the Dial-A-Ride service meet all Local, state and Federal regulations. Copies of vehicle registrations and inspections must be sent to the Valley Transit's office at minimum once per year or upon request. Removal of any vehicle from service under this section does not constitute a waiver of the Provider's requirement to supply an equivalent replacement vehicle to provide the services required by this contract.

The Provider shall be responsible for the proper use, care and maintenance of all vehicles and equipment required to adequately fulfill the responsibilities associated with the provision of services as described herein. The Provider shall implement and follow its preventive maintenance program described in the RFP submittal for the duration of the agreement. The maintenance program must be fully detailed and maintained in a Maintenance Procedure Manual.

Preventive Maintenance Program: The Provider is required to follow a preventive maintenance program. The preventive maintenance program, at a minimum, must conform to the vehicle manufacturer's recommended warranty and maintenance requirements for commercial use of the vehicle, and any local, State or Federal regulations, and must include record keeping for any vehicle providing services under this agreement. Providers must also develop a more detailed periodic maintenance program involving close inspection and repair/replacement of major vehicle components/systems at least annually. Such a program must be fully described in the proposal.

Pre/post Trip Inspections: The Provider must establish and follow a pre-trip/post-trip inspection program involving a "walk around" exterior inspection and a "walk through" interior inspection of the vehicle before its service tour and again after it returns to the garage. These inspections must include, at a minimum:

- Checks of all fluid levels
- Visual inspection of the belt/hoses
- Visual checks of passenger seats/wheelchair positions, securement straps, seatbelts and shoulder belts
- Test and cleaning, as required, of all lights
- Visual check and operating test of doors
- Visual check, cleaning, as required, of all windows and test of windshield wiper/washer system
- Visual inspection of all emergency equipment and operation as applicable (exits, fire extinguishers, warning devices, first aid kits, etc.)
- Rolling test of braking system
- Visual inspection and cycling of wheelchair lift
- Visual inspection and physical testing of all tires, wheels, lug nuts
- Visual check of exhaust system

- Visual inspection, cleaning as required, and adjustment of all mirrors
- Sound check of all warning systems (horn and back up alarms)
- Inspection for body damage, corrosion and normal wear and tear
- Test of radio functioning
- Climate control systems
- Driver identification name plate

In addition to the defects or problems discovered in these inspections, any problems or defects detected and reported by drivers or clients while the vehicles are in service must be noted and recorded in a written defect reporting system.

A complete record of all repairs performed on each vehicle must be maintained. This information must be included in the service history of each vehicle. It is the Providers responsibility to establish arrangements for all service repairs required for compliance under this agreement. Valley Transit is not responsible for any service or repair claims.

The Provider is required to provide, install, and maintain a voice communication system for communication with the fleet. This system must be sufficiently powerful to reach all areas covered by the service. The dispatcher must be capable of contacting any vehicle at any time using this system. A system with “flat” spots in the service area is not acceptable. At no time may a vehicle be out of communication range with the dispatcher. If the radio system will not provide adequate coverage, the Provider must supply a supplemental means of communication for all “dead” coverage areas.

Valley Transit or a designated representative shall, at all times, have the authority to inspect any vehicle utilized for the provision of service under this agreement. This authority shall include the ability to direct the immediate withdrawal from service of any vehicle determined by Valley Transit to be unsafe. Removal of any vehicle from service under this paragraph does not constitute a waiver of the Provider’s requirement to supply an equivalent replacement vehicle to provide the services required by this contract.

The Provider shall properly maintain operating heating and air-conditioning systems on all vehicles. Maintenance check-ups will be conducted by the Provider to ensure these systems are operational at the appropriate times of the year. No vehicle shall be operated in service for longer than one day without properly functioning heating or air-conditioning systems.

Vehicle Cleanliness/Appearance: All vehicles used in provision of this service must be clean and free of all dirt and litter. Drivers and passengers will not be permitted to eat, drink, or smoke in vehicles. The interior of each vehicle must be cleaned at least once per week. Vehicle exteriors must be washed at least once per week, including during frigid winter months, or more frequently if needed.

Through the course of the contract, Valley Transit will conduct safety audits (ride checks) in the areas of defensive driving, passenger relations, on-time performance, and scheduling. Any performance problems discovered during these audits shall be addressed by the Provider to Valley Transit’s satisfaction.

PAYMENTS

Valley Transit will make monthly payments based on specific contract terms and conditions. Billings must be itemized and totaled by day showing the total cost, fares, and net cost, as well as the following:

- Number of regular riders
- Number of No Show riders
- Number of Heritage Area riders
- Number of additional or group riders (if resulting contract contains separate pricing for such trips)

LIQUIDATED DAMAGES

FTA and Valley Transit recognize that liquidated damages requirements are appropriate if the parties to a contract may reasonably expect to incur damages in the form of increased Project costs resulting from the late completion of the contract and if the extent or amount of such damages would be difficult or impossible to determine after the delay has occurred. Accordingly, Valley Transit agrees to comply with the following requirements:

- General Restrictions. Valley Transit agrees that any liquidated damage clauses it might impose must comply with the following restrictions:
 - 1) The assessment for damages shall be at a specific rate per day for each day of overrun in contract time; and
 - 2) The rate must be specified in the third party contract.
- Special Restrictions. Valley Transit agrees to comply with any other special liquidated damages restrictions FTA might impose.
- Disposition of Liquidated Damages. Valley Transit agrees that any liquidated damages recovered shall be credited to the Project account involved unless the Federal Government permits otherwise.

GENERAL REQUIREMENTS

The following requirements and conditions shall be considered an essential part of the specifications and proposal. Quotations will be submitted in accordance with the requirements of the following terms and conditions and technical specifications.

- All Providers must conform to the final approved specifications as are included in the proposal documents.
- Providers must have a quality assurance program in place and shall be prepared to provide documentation of such if so requested by Valley Transit.
- Valley Transit is exempt from the payment of Federal, State, and local taxes. Taxes must not be included in proposal prices. Valley Transit will furnish necessary exemption certificates upon request. Any fuel surcharge or any other surcharge, sales tax, use tax, imposts, revenues, excise, or other taxes which are not, or which may hereafter be imposed by Congress, the State of Wisconsin, or any other political subdivision thereof and applicable to the sale of material delivered as a result of the Providers proposal, and which, by terms of the tax law, may be passed directly to Valley Transit, will be paid by Valley Transit.
- The price quoted in any proposal shall include all terms of items of labor, material, tools, equipment, and other costs necessary to fully complete the contract.
- Provider agrees not to subcontract for any of the services it is obligated to perform under this proposal without the advance written consent of Valley Transit.

- Valley Transit shall not in any manner be answerable or accountable for any loss or damage that shall or may happen to the said works, or any part or parts thereof respectively, or for any of the materials or other things used and employed in finishing and completing the same.
- The Provider shall be responsible for all OSHA safety requirements. Failure of the Provider to follow OSHA requirements may result in a stop work order from Valley Transit until the violation is corrected, or termination of the contract, at Valley Transit's option. Provider shall not be entitled to any additional compensation, over the original contract amount, or additional time to complete the project, for any delay resulting from a sanction pursuant to this section.
- The Provider shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the contract. The Provider shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to 1) all employees on the project and all other persons who may be affected thereby, 2) all of the work and materials and equipment to be incorporated in the project and 3) other property at the site or adjacent thereto. The Provider shall comply with all applicable laws, ordinances, rules, regulations and orders of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. All damage or loss to any property caused in whole or in part by the Provider or any subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, shall be remedied by the Provider.
- Quality of Materials and Workmanship: All materials will be of good quality. Except as to any supplies and components which the specification schedule specifically provides need not be new, the Provider represents that the supplies and components to be provided under this contract are new (not used or reconditioned, and not of such age or so deteriorated as to impair their usefulness or safety). If at any time during the performance of this contract, the Provider believes that furnishing of supplies or components that are not new is necessary or desirable, he shall notify Valley Transit in writing, including the reasons. Valley Transit will authorize the use of such supplies if deemed desirable with an appropriate price adjustment. Workmanship quality will be sufficient to assure compliance with technical specifications.
- Communications: Communications in connection with this contract shall be in writing and shall be delivered personally or by fax; or by email; or by regular, registered, or certified mail addressed to the officer(s) or employee(s) of Valley Transit and of the Provider designated to receive such communications. Telephone calls may be used to expedite communications but shall not be official communication unless confirmed in writing.
- Official Receipt - Communications shall be considered received at the time actually received by the addressee or designated agent.
- This proposal shall at all times be subject to the rules and regulations of the Wisconsin Department of Transportation (WDOT) and FTA (Federal Transit Administration) under the provisions of the Federal Transit Act of 1964, as amended.
- This contract is subject to a financial assistance contract between Valley Transit and the U.S. Department of Transportation - Federal Transit Administration (FTA), and this procurement will be done in accordance with their requirements.

- Provider agrees to indemnify, defend and hold harmless the City of Appleton and its officers, officials, employees and agents from and against any and all liability, loss, damage expense, costs, including attorney fees arising out of the work performed as described herein, caused in whole or in part by any negligent act or omission of the provider any subcontractor, anyone directly or indirectly employed by any of them or anyone whose acts any of them may be liable, except where caused by the sole negligence or willful misconduct of the City.

INSURANCE

INSURANCE REQUIREMENTS FOR CITY OF APPLETON "LARGE EXPOSURE JOBS" w/\$2 mil umbrella

It is hereby agreed and understood that the insurance required by the City of Appleton is primary coverage and that any insurance or self-insurance maintained by the City of Appleton, its officers, council members, agents, employees or authorized volunteers will not contribute to a loss. All insurance shall be in full force prior to commencing work and remain in force until the entire job is completed or the length of time that is specified in the contract.

1. GENERAL LIABILITY COVERAGE

- A. Commercial General Liability
 - (a) \$1,000,000 general aggregate – per project
 - (b) \$1,000,000 products - completed operations aggregate
 - (c) \$1,000,000 personal injury and advertising injury
 - (d) \$1,000,000 each occurrence limit
- B. Claims made form of coverage is not acceptable.
- C. Insurance must include:
 - (a) Premises and Operations Liability
 - (b) Contractual Liability including coverage for the joint negligence of the City of Appleton, its officers, council members, agents, employees, authorized volunteers and the named insured
 - (c) Personal Injury
 - (d) Products/Completed Operations
 - (e) The general aggregate must apply separately to this project/location

2. BUSINESS AUTOMOBILE COVERAGE

- A. \$1,000,000 Combined Single Limit for Bodily Injury and Property Damage each accident
- B. Must cover liability for "Any Auto" - including Owned, Non-Owned and Hired Automobile Liability

3. WORKERS COMPENSATION AND EMPLOYERS LIABILITY - If required by Wisconsin State Statute or any Workers Compensation Statutes of a different state.

- A. Must carry coverage for Statutory Workers Compensation and Employers Liability limit of:
 - \$100,000 Each Accident
 - \$500,000 Disease Policy Limit
 - \$100,000 Disease - Each Employee

4. UMBRELLA COVERAGE

- A. Limits - \$2,000,000 each occurrence/\$2,000,000 aggregate
- B. Claims made coverage is not acceptable
- C. Must be no less broad than underlying coverages

5. ADDITIONAL PROVISIONS

*** Additional Insured - On the General Liability Coverage, Business Automobile Coverage, Aircraft Liability, Umbrella Coverage and Automobile Pollution Liability. City of Appleton, and its officers, council members, agents, employees, and authorized volunteers shall be Additional Insureds.**

*** Endorsement -**

The Additional Insured Policy endorsement must accompany the Certificate of Insurance.

*** Certificates of Insurance -**

A copy of the Certificate of Insurance must be on file with the City Clerk.

*** Notice -**

NOTE: City of Appleton requires 30 day written notice of cancellation, non-renewal or material change in the insurance coverage.

***The insurance coverage required must be provided by an insurance carrier with the "Best" rating of "A-VII" or better. All carriers shall be admitted carriers in the State of Wisconsin.**

BID PROTEST PROCEDURES

For the purposes of this section, the following definitions apply:

- “Days” refers to the working days of the Federal Government.
- “Files” or “submit” refers to the date of receipt by Valley Transit.
- “Interested party,” means an actual or prospective bidder, offeror, subcontractor, or supplier whose direct economic interest would be affected by the award of the contract or by failure to award the contract.
- “Bid” includes the term “offer” or “proposal” as used in the context of negotiated procurements.”
- “Federal law or regulation” means the violation of any valid requirement imposed by Federal statute or regulation governing contracts awarded pursuant to a grant agreement. This includes the requirements as stated in FTA Circular 4220.1E.

SUBMISSION OF PROTEST

Any interested party who wishes may file a protest at any point in the procurement process, evaluation, award, or post-award.

The protest must contain the name of the protestor, solicitation/contract number or description of the project, and a detailed statement of grounds for protest with any supporting documentation available. Protests must completely and succinctly state each and every ground for protest in detail, its legal authority for each protest allegation, and the factual basis for such protest. The protest must include all factual and legal documentation in sufficient detail to establish the merits of the protest. Items that are not included shall be deemed waived and uncontested.

All protests must be submitted in writing to:

General Manager
Valley Transit
801 Whitman Avenue
Appleton, WI 54914

Time for Filing

Protests relating to the procurement solicitation must be submitted in writing no later than five (5) working days from the date of the first published advertisement.

Protests relating to the evaluation process must be submitted in writing no later than five (5) working days from the postmarked date of written evaluation correspondence sent by the General Manager to the Provider.

Protests relating to the award must be submitted in writing no later than five (5) working days from the date of the award.

Protests relating to post-award issues must be submitted in writing no later than five (5) working days from the date that the protestor verbalizes the concern to the General Manager.

Requests for reconsideration (if data becomes available that was not previously known, or there has been an error of law or regulation) or appeal to a higher level must be submitted in writing no later than seven (7) working days from the date of the initial determination.

General Manager Response

Upon receipt of a written protest, the General Manager will meet with the protestor within five (5) working days and attempt to resolve the matter informally. If information provided at the conference is to be considered in the protest decision it must be submitted in writing within three (3) days of the conference. The General Manager will respond in writing within five (5) working days of the meeting to each substantive issue raised in the written protest.

If the protestor is not satisfied and indicates an intention to appeal to the next step, the General Manager will temporarily suspend the procurement process, provided that the protest has been timely filed before award, unless it is determined that:

- a. the items to be procured are urgently required;
- b. delivery or performance will be unduly delayed by failure to make the award promptly; or
- c. failure to make prompt award will otherwise cause harm to Valley Transit.

Each prospective Provider will be advised of the pending protest if the protest is filed before award.

Decision on Protest

The General Manager will issue a written decision regarding the protest within thirty (30) days after the filing of the detailed statement of protest.

Local Appeal Procedure

If the protestor makes a timely appeal of the General Manager's decision the matter will be forwarded to the Fox Cities Transit Commission or the Board of Public Works (for construction contracts) for their review.

The protestor will be notified in writing of the date that the appeal will be heard.

The recommendation of the appropriate body will then be forwarded to the Appleton Common Council for ultimate local disposition of the protest.

Additional Appeals

If the protest alleges that Valley Transit has failed to follow its written bid protest procedures, the protestor may ask that FTA review the protest in accordance with FTA C 4220.1E.

If the protest alleges violation of a specific Federal requirement that provides an applicable complaint procedure, it may be submitted and processed in accordance with the provisions of that particular regulation.

Alleged violations on all other grounds are under the jurisdiction of the appropriate State or local administrative or judicial authorities and remedy may be sought through them.

PROPOSAL REQUIREMENTS

GENERAL REQUIREMENTS

Submission of Proposals. Proposals shall be submitted in accordance with the instructions found on the cover sheet of this document. Proposals submitted via fax will not be accepted. Reliance upon public carriers for delivery of proposals is at bidder's risk. *Late proposals will not be accepted.* The cost proposal must be signed by an individual authorized to contractually obligate your firm and placed in a separately sealed envelope with its contents not disclosed or revealed elsewhere within the submitted RFP package.

Firms interested in submitting a proposal must submit one (1) original and four (4) copies **by 1:00 PM CST, Friday, November 18, 2016**, to the following address:

Valley Transit
Amy Erickson, Paratransit Coordinator/Operations Supervisor
801 Whitman Avenue
Appleton, WI 54914

The proposal must be clearly marked on the outside of the package:

NORTHERN WINNEBAGO DIAL-A-RIDE SERVICE PROPOSAL

The proposals must be on file at Valley Transit no later than **1:00 PM CST, Friday, November 18, 2016**.

Inquiries. Inquiries concerning the proposal must be made in writing and received no later than 1:00 PM CST on Friday, November 4, 2016. All inquiries received will be made available to all interested proposers on file and should be directed to:

Valley Transit
Amy Erickson, Paratransit Coordinator/Operations Supervisor
801 South Whitman Avenue
Appleton, WI 54914
Amy.erickson@appleton.org

Service Level. Proposals must be submitted to include the complete level of service as described in the RFP.

Proposal Costs. Proposal costs must be in a separate sealed envelope and submitted as shown in the RFP submittal form. All other evaluation criteria will be scored prior to opening the cost proposals.

General Requirements. To assist prospective carriers in assessing their own qualifications for purpose of this solicitation, the following is a list of some of the specific qualifications that a potential contractor must have:

- Financial capability to establish and maintain service during the contracting period.
- Interest and ability to provide service to the general public, as well as the elderly and disabled.
- Ability to efficiently schedule vehicle routings for advanced reservation service, as well as to provide service on demand.

- Ability to maintain records of trips, passengers, and revenues related to the contracted service.
- Ability to secure minimum requirements for automobile and general liability insurance.
- Willingness to comply with federal and state requirements concerning equal employment opportunities, discrimination, disadvantaged business, and drug and alcohol testing.

Proposal Selection.

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

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

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

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

Evaluation Criteria. Each proposal will be evaluated and rated based on the following criteria:

<u>Experience</u> – The extent to which the firm has personnel with the necessary experience and training to perform the work.	10%
<u>Professional Competence</u> – The extent to which the firm has demonstrated competence in performing similar work and/or the extent of former client satisfaction.	20%
<u>Capacity</u> – The extent to which the firm has the ability to provide personnel, equipment and facilities to perform the scope of work.	30%
<u>Proposals</u> – The extent to which the firm’s proposal is complete and demonstrates a thorough understanding of the scope of the undertaking and its contribution to the transit system.	20%
<u>Price</u> – The competitiveness of price.	20%

Proposal Rejection. Valley Transit reserves the right to waive any minor proposal informalities or irregularities received which do not go to the heart of the proposal or prejudice other proposers, or to reject, for good and compelling reasons, any and all proposals submitted. Conditional proposals will be considered non-responsive and will be rejected.

Single Proposal Response. If only one proposal is received in response to the request for proposals, a detailed cost break-down may be requested of the single proposer. A cost/price analysis and evaluation and/or audit may be performed of the cost break-down in order to determine if the price is fair and reasonable.

Proposal Withdrawal. After the proposals are opened, proposals may not be withdrawn for 90 calendar days. Prior to the date/time set for proposal opening, however, proposals may be modified or withdrawn by the proposer's authorized representative in person, or by written notice. If proposals are modified or withdrawn in person, the authorized representative shall make his identity known and shall sign a receipt for the proposal. Written notices shall be received in the office where proposal was submitted no later than the exact date/time for proposal opening.

Award Procedure. Within 90 calendar days after the proposal opening, the General Manager shall deliver the executed contract documents. Delivery of contract documents shall be determined by the Provider signature on the return receipt request.

Amendments. The undersigned acknowledges receipt of the following amendments to the documents:

Amendment No. _____, dated _____
Amendment No. _____, dated _____

Failure to acknowledge receipt of all amendments may cause the proposal to be considered nonresponsive to the solicitation. Acknowledged receipt of each amendment must be clearly established and included with the proposal.

Ineligible Providers. Any name appearing on the U.S. Comptroller General's list of ineligible contractors for federally financed and assisted construction is not an eligible provider and shall not be considered.

Passenger Safety. Proposal must specify the manner in which disabled passengers in wheelchairs are to be secured. Proposals indicating forward facing, two or four point tie down systems will be given preference, all other things being equal.

INFORMATION THAT SHOULD BE SUBMITTED WITH PROPOSAL

General. The following is intended to indicate the minimum requirement for the preparation and submission of proposals. The proposal must comply with the general intent of the format described.

Format. To aid in the evaluation of the proposal, it is required that all Providers use the forms that follow for the actual bid submission.

- Transmittal/Cover Letter containing the statement of performance verification criteria listed below signed by an officer of the responding organization.
 - The information contained in this submission is accurate and complete as of the date of submission
 - The responding organization understands and is willing to comply with all contractual requirements.

- Identification of Provider

- RFP Submittal Form

- Cost Proposal Form

- Amendments (if any)

- Required Certifications

- Submittal Authority and Contact Information

- Federal Certifications

- Certificate of Insurance

VALLEY TRANSIT
NORTHERN WINNEBAGO DIAL-A-RIDE SERVICE PROPOSAL
IDENTIFICATION OF PROVIDER

Name of Organization: _____

Business Address: _____

Telephone No: _____

Facsimile No: _____

e-mail address: _____

Legal status of Organization

____ Sole proprietor

____ For-profit corporation or joint venture corporation

____ For-profit partnership

____ Non-profit corporation

____ Public agency

____ Other: (Identify) _____

Name of Chief Executive Officer (or Administrator) of Organization:

Name of individual designated to represent organization in subsequent discussions or negotiations related to this solicitation:

Name & Title: _____

Telephone No: _____

Business Function:

Describe the major business functions or activities of your organization (attach extra pages, if necessary):

**VALLEY TRANSIT
 NORTHERN WINNEBAGO DIAL-A-RIDE SERVICE PROPOSAL
 RFP SUBMITTAL FORM**

1. Hours of Service: _____ to _____

First Pick-up: _____ A.M. Last Discharge: _____ P.M.

Days of Service: _____

Service Area (if different than listed in RFP):

2. List prior experience and current contracts or agreements:

Company Name	Address	City/State	Yrs. of Experience

6. Describe your scheduling and dispatching process as it will pertain to services provided in this proposal.

Total number of dispatchers during peak periods: _____

Hours/Days of Call-Taking Operations: _____

Number of telephone lines: _____

Other relevant information _____

7. Describe your driver screening and selection policy and also the training provided or required (attach a copy of training plan if available).

8. Drug and Alcohol Testing. Your firm will be required to comply with the following Federal substance abuse regulations:

a. Drug-Free Workplace. U.S. DOT regulations, "Drug-Free Workplace Requirements (Grants), "49 C.F.R. Part 29, Subpart F, as modified by 41 U.S.C. Also "Procedures for Transportation Workplace Drug and Alcohol testing Programs," 49 CFR Part 40

b. Alcohol Misuse and Prohibited Drug Use. FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR Part 644, to the extent applicable.

If awarded this contract, your firm will be required to participate in the drug and alcohol testing consortium administered by WisDOT's approved Third Party Administrator that complies with 49 CFR Part 655. Additionally, your firm will be required to produce any documentation necessary to establish its compliance with Part 655, and permit any authorized representative of the United States Department of Transportation or its authorized agents, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 655 and review the testing process.

Does your firm currently have a Drug and Alcohol testing program that complies with FTA requirements? Yes _____ No _____

If Yes, describe your existing drug and alcohol control program for Safety Sensitive personnel. Include your current policies regarding drug and alcohol testing. Discuss how your program currently meets or will meet the requirements of the Federal Transit Administration's Drug and Alcohol testing Regulations (attach additional sheets and/or documentation if necessary).

9. Specify your key employee responsible for the administration of this service along with a brief description of his/her background and qualifications.

10. List any proposal modifications for us to consider that would lower your cost per trip (for example, providing lower cost per trip rides during parts of the day, defining the service area into zones that are more cost effective to the provider, etc.). All services listed in the scope of services must be provided, but it is possible that more than one provider will be awarded portions of the contract.

11. Provide or describe any additional information that you believe may be relevant to the evaluation of your organization's qualifications. You need not use this area. Items may include but are not limited to: general experience in transportation service delivery, experience and background to provide the requested services, familiarity with the service area, dispatcher experience and qualifications, specific experience in shared-ride taxi service, qualifications and experience of key project personnel, driver qualifications, drug and alcohol control program, financial stability, fleet management capability, vehicle maintenance capability, vehicle dispatching capability, record keeping, capability and experience, how proposed price represents fair market value for the services requested:

**VALLEY TRANSIT
 NORTHERN WINNEBAGO DIAL-A-RIDE SERVICE PROPOSAL
 COST PROPOSAL FORM**

Proposed charges are as follows:

	Single Ride Cost Per Trip	Multi-Ride Cost Per Trip ^A	Extended Service Area^B
Daily Service			

^AMulti-ride quotes would apply if a lower rate cost applies when two or more people travel from the same origin to the same destination.

^BExtended Service Area quotes would apply if an additional cost will be incurred by the passenger for trips to destinations outside of the zone.

Please list any other costs not included above:

Specify Service Type	\$
_____	_____
_____	_____
_____	_____

Proposers may have alternative ideas that would reduce the cost of the proposed project. Valley Transit welcomes any cost saving ideas you may have. Please explain your proposed alternative below.

Required Certifications

1. PARENT COMPANY AND EMPLOYER IDENTIFICATION NUMBER

The Provider represents that the company [] is, [] is not owned or controlled by a parent company. For this purpose a parent company is defined as one which either owns or controls the activities and basic business policies of the Provider. To own another company means the parent company must own at least a majority, *i.e.*, more than 50%, of the voting rights in that company. To control another company, such ownership is not required; if another company is able to formulate, determine or veto basic business policy decisions of the Provider, such other company is considered the parent of the proposer. This control may be exercised through the use of dominant minority voting rights, use of proxy voting, contractual arrangements or otherwise.

If the Provider is owned or controlled by a parent company, insert in the space below the name and address of the main office of the parent company.

Name _____ Address _____

If the Provider has no parent company, he shall provide in the applicable space below his own Employer's Identification Number (E.I. No.), *i.e.*, Federal Social Security Identification Number used on Federal Tax Returns, or, if he has a parent company, the E.I. No. of his parent company.

Provider's E.I. Number _____

Parent Company's E.I. Number _____

2. NON-COLLUSION BIDDING CERTIFICATE

By submission of this proposal, each Provider and each person signing on behalf of the Provider certifies, and in the case of a joint proposal, each party certifies as to its own organization, under penalty of perjury, that to the best of knowledge and behalf:

1. The prices in this proposal have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition as to any other matter relating to such prices with any other proposer or with any other competitor.
2. Unless otherwise required by law, the prices which have been quoted in this proposal have not been knowingly disclosed by the Provider and will not knowingly be disclosed by the Provider prior to opening, directly or indirectly, to any other proposer or to any competitor; and,
3. No attempt has been made or will be made by the Provider to induce any other person, partnership, or corporation to submit or not to submit a proposal for the purpose of restricting competition.

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

3. AFFIDAVIT AND STATEMENT ON PLANS AND SPECIFICATIONS

It is hereby expressly agreed that Valley Transit and Outagamie County has the right to reject any and all proposals.

Providers should not add any conditions or qualifying statements to this proposal or otherwise the proposal may be declared irregular as being not responsive to the request for proposals.

I hereby certify that all statements herein are made on behalf of _____
(Name of Corporation, Partnership, or Person submitting proposal) a corporation organized and existing under the laws of the City of _____;
of the State of _____ .

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

SUBMITTAL AUTHORITY AND CONTACT INFORMATION

I hereby certify that I am authorized to make this offer on behalf of the named company and to bind said company to all conditions of this proposal.

Company Name

Address

City/State/ZIP

Signature

Name (Print)

Title

Telephone Number

Fax Number

E-Mail Address

Date Submitted

FEDERAL TRANSIT ADMINISTRATION

Federally Required Contract Clauses

PROVIDER CERTIFICATION OF COMPLIANCE WITH FTA CONTRACT CLAUSES

This document is part of the proposal. Failure to return it along with the other required documents will render the proposal unresponsive. All vendors shall provide the information requested.

Federal regulations state that recipients (and their contractors) of specific FTA funds are required to comply with the established FTA Access to Records and Reports Requirements. **The CITY OF APPLETON, Valley Transit will not contract with any agency that does not comply with FTA regulations.**

_____ certifies that it complies with the following
FTA
(Name of company)
regulations on the _____ day of _____, 2012.

Fly America Requirements
49 U.S.C 40118 41 CFR Part 301-10

Signature

Charter Bus Requirements
49 U.S.C. 5323(d) 49 CFR Part 604

Signature

School Bus Requirements
49 U.S.C. 5323(F) 49 CFR Part 605

Signature

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

Signature

Clean Water requirements
33 U.S.C. 1251

Signature

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

Signature

Access to records and reports
49 U.S.C. 5325 18 CFR 18.36 (i) 49 CFR 633.17

Signature

Federal Changes
46 U.S.C. 1241 46 CFR Part 381

Signature

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

Signature

CONTRACTOR CERTIFICATION OF COMPLIANCE WITH FTA CONTRACT CLAUSES
(continued)

Signature or indicate NA when Not

Applicable

No Government Obligation to third parties

Signature

Program fraud and false or fraudulent statements

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

Signature

Termination

42 U.S.C. Part 18 FTA Circular 4220.1E

Signature

Government-wide debarment and suspension

Signature

Privacy Act

5 U.S.C. 552

Signature

Civil rights requirements

29 U.S.C 623, 42 U.S.C 2000, 6102, 12112, 12132

Signature

Breaches and dispute resolution

49 CFR Part 18 FTA Circular 4220.1E

Signature

Transit employee protective agreements

49 U.S.C. 5310 & 5311 and 5333, 29 CFR Part 215

Signature

Disadvantaged business enterprise (DBE)

49 CFR Part 26

Signature

Incorporation of Federal Transit Administration (FTA) Terms

FTA Circular 4220.1E

Signature

Drug and Alcohol Testing

49 U.S.C. 5331 49 CFR Parts 653 and 654

Signature

FLY AMERICA REQUIREMENTS

49 U.S.C. § 40118

41 CFR Part 301-10

Applicability to Contracts

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

Flow Down Requirements

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

Fly America Requirements

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

CHARTER BUS REQUIREMENTS

49 U.S.C. 5323(d)

49 CFR Part 604

Applicability to Contracts

The Charter Bus requirements apply to the following type of contract: Operational Service Contracts.

Flow Down Requirements

The Charter Bus requirements flow down from FTA recipients and subrecipients to first tier service contractors.

Charter Service Operations - The contractor agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.

SCHOOL BUS REQUIREMENTS

49 U.S.C. 5323(F)

49 CFR Part 605

Applicability to Contracts

The School Bus requirements apply to the following type of contract: Operational Service Contracts.

Flow Down Requirements

The School Bus requirements flow down from FTA recipients and subrecipients to first tier service contractors.

School Bus Operations - Pursuant to 49 U.S.C. 5323(f) and 49 CFR Part 605, recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles, or facilities.

ENERGY CONSERVATION REQUIREMENTS

42 U.S.C. 6321 et seq.

49 CFR Part 18

Applicability to Contracts

The Energy Conservation requirements are applicable to all contracts.

Flow Down

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

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

CLEAN WATER REQUIREMENTS

33 U.S.C. 1251

Applicability to Contracts

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

Flow Down

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

Clean Water - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The

Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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

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

Applicability to Contracts

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

Flow Down

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

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

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

Certification for Contracts, Grants, Loans, and Cooperative Agreements

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

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

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

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or

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

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

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

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

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

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

ACCESS TO RECORDS AND REPORTS

49 U.S.C. 5325

18 CFR 18.36 (i)

49 CFR 633.17

Applicability to Contracts

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

Flow Down

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

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

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide the Purchaser,

the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.

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

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

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

6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than seven years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

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

Requirements for Access to Records and Reports by Types of Contract

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

Sources of Authority:

¹ 49 USC 5325 (a)

² 49 CFR 633.17

³ 18 CFR 18.36 (i)

FEDERAL CHANGES
49 CFR Part 18

Applicability to Contracts

The Federal Changes requirement applies to all contracts.

Flow Down

The Federal Changes requirement flows down appropriately to each applicable changed requirement.

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

CLEAN AIR

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

Applicability to Contracts

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

Flow Down

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

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

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

NO GOVERNMENT OBLIGATION TO THIRD PARTIES

Applicability to Contracts

Applicable to all contracts.

Flow Down

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

No Obligation by the Federal Government.

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

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

**PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS
AND RELATED ACTS**
**31 U.S.C. 3801 et seq.
49 CFR Part 31 18 U.S.C. 1001
49 U.S.C. 5307**

Applicability to Contracts

These requirements are applicable to all contracts.

Flow Down

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

Program Fraud and False or Fraudulent Statements or Related Acts.

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

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

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

TERMINATION
49 U.S.C. Part 18
FTA Circular 4220.1E

Applicability to Contracts

All contracts (with the exception of contracts with nonprofit organizations and institutions of higher education,) in excess of \$10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement. (For contracts with nonprofit organizations and institutions of higher education the threshold is \$100,000.) In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

Flow Down

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

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

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

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

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

If Contractor fails to remedy to Valley Transit's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from Valley Transit setting forth the nature of said breach or default, Valley Transit 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 Valley Transit from also pursuing all available remedies against Contractor and its sureties for said breach or default.

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

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

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

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

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

GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Background and Applicability

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

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

Grantees, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) they propose to contract or subcontract with is not excluded or disqualified. They do this by (a) Checking the Excluded Parties List System, (b) Collecting a certification from that person, or (c) Adding a clause or condition to the contract or subcontract. This represents a change from prior practice in that certification is still acceptable but is no longer required. 49 CFR 29.300.

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

Suspension and Debarment

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

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

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

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

The _____ hereby certifies that it [] is, [] is not included in the U.S. Comptroller General's Consolidated List of Firms Currently Debarred for Violations of Various Public Contracts Incorporating Labor Standards Provisions.

The _____ hereby certifies that it [] is, [] is not included on any current list for debarred or ineligible contractors for Federal contracts. The Provider further certifies that it will not award any subcontract to any firm on any current list for debarred or ineligible contractors for Federal contracts.

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

PRIVACY ACT
5 U.S.C. 552

Applicability to Contracts

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

Flow Down

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

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

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

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

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

CIVIL RIGHTS REQUIREMENTS

29 U.S.C. § 623, 42 U.S.C. § 2000

42 U.S.C. § 6102, 42 U.S.C. § 12112

42 U.S.C. § 12132, 49 U.S.C. § 5332

29 CFR Part 1630, 41 CFR Parts 60 et seq.

Applicability to Contracts

The Civil Rights Requirements apply to all contracts.

Flow Down

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

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

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

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

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from

discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

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

BREACHES AND DISPUTE RESOLUTION

49 CFR Part 18

FTA Circular 4220.1E

Applicability to Contracts

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

Flow Down

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

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of Valley Transit. 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 Valley Transit. 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 Valley Transit shall be binding upon the Contractor and the Contractor shall abide by the decision.

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

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

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between Valley Transit 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 Valley Transit is located.

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 Valley Transit, (Architect) or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS
49 U.S.C. § 5310, § 5311, and § 5333
29 CFR Part 215

Applicability to Contracts

The Transit Employee Protective Provisions apply to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator. (Because transit operations involve many activities apart from directly driving or operating transit vehicles, FTA determines which activities constitute transit "operations" for purposes of this clause.)

Flow Down

These provisions are applicable to all contracts and subcontracts at every tier.

Transit Employee Protective Provisions. (1) The Contractor agrees to comply with applicable transit employee protective requirements as follows:

(a) General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

(b) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit

operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

(c) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

(2) The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

DISADVANTAGED BUSINESS ENTERPRISE (DBE)
49 CFR Part 26

Background and Applicability

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

The DBE program applies to all DOT-assisted contracting activities. A formal clause such as that below must be included in all contracts above the micro-purchase level. The requirements of clause subsection b flow down to subcontracts.

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

Disadvantaged Business Enterprises

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is 1.18%. A separate contract goal has not been established for this procurement.

b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as Valley Transit deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)).

The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

c. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from Valley Transit. In addition, is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.

e. The contractor must promptly notify Valley Transit, 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 Valley Transit.

INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS
FTA Circular 4220.1E

Applicability to Contracts

The incorporation of FTA terms applies to all contracts.

Flow Down

The incorporation of FTA terms has unlimited flow down.

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

DRUG AND ALCOHOL TESTING
49 U.S.C. §5331
49 CFR Parts 653 and 654

Applicability to Contracts

The Drug and Alcohol testing provisions apply to Operational Service Contracts.

Flow Down Requirements

Anyone who performs a safety-sensitive function for Valley transit or a subrecipient is required to comply with 49 CFR 653 and 654, with certain exceptions for contracts involving maintenance services. Maintenance contractors for non-urbanized area formula program grantees are not subject to the rules. Also, the rules do not apply to maintenance subcontractors.

Introduction

FTA's drug and alcohol rules, 49 CFR 653 and 654, respectively, are unique among the regulations issued by FTA. First, they require recipients to ensure that any entity performing a safety-sensitive function on the recipient's behalf (usually subrecipients and/or contractors) implement a complex drug and alcohol testing program that complies with Parts 653 and 654. Second, the rules condition the receipt of certain kinds of FTA funding on the recipient's compliance with the rules; thus, the recipient is not in compliance with the rules unless every entity that performs a safety-sensitive function on the recipient's behalf is in compliance with the rules. Third, the rules do not specify how a recipient ensures that its subrecipients and/or contractors comply with them.

How a recipient does so depends on several factors, including whether the contractor is covered independently by the drug and alcohol rules of another Department of Transportation operating administration, the nature of the relationship that the recipient has with the contractor, and the financial resources available to the recipient to oversee the contractor's drug and alcohol testing program. In short, there are a variety of ways a recipient can ensure that its subrecipients and contractors comply with the rules.

Therefore, FTA has developed three model contract provisions for recipients to use "as is" or to modify to fit their particular situations.

Drug and Alcohol Testing

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of Wisconsin, or the City of Appleton, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The Contractor is required to maintain records relating to pre-employment testing, employee hiring and termination actions related to drug and alcohol testing, random and reasonable suspicion testing documentation, post-accident documentation and testing decisions, employee training and other documents for the time periods specified in the retention schedules in 49 CFR part 654 and 653. The Contractor agrees further to certify annually its compliance with Parts 653 and 654 before December 1 and to submit the Management Information System (MIS) reports before February 15 to Administrative Services Manager, 801 Whitman Avenue, Appleton, WI 54914. To certify compliance the Contractor shall use the "Substance Abuse Certification" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

Contractor will provide Valley Transit a copy of its Drug and Alcohol Policy and Procedures.

The Contractor will maintain the confidentiality of any information regarding program participants that may be obtained from any source associated with this program, other than that information necessary for the performance of service under this contract. The Contractor is prohibited from using program participant information other than for legitimate needs related to providing trips or billing for services provided.