



Biddeford Saco Old Orchard Beach Transit Committee

AGENDA

Saco Transportation Center

July 27, 2023

4:00 PM – 5:30 PM

Agenda Item	Responsibility	Action or Information
1.) Call to Order	Chair	Action
2.) Roll Call / Ascertain Quorum	Chair	Action
3.) Public Comment	Chair	Information
4.) Approval of Previous Minutes <ul style="list-style-type: none"> • May and June 2023 	Chair	Action
5.) Financial Subcommittee Report	Subcommittee Chair	Information
6.) Ratification of FY24 Preliminary Budget	Chair	Action
7.) Approve Revised 2023 Procurement Policy and Guidelines	Chair	Action
8.) Executive Director Report <ul style="list-style-type: none"> • Ridership • Funding considerations 	Chad Heid	Information
9.) Executive Session – Executive Director Contract <i>The committee will vote to enter into executive session to discuss status of the Executive Director contract pursuant to 1 MRSA Section 405 (6) (A).</i>	Chair	Action
10.) Administrative Discussion Items <ul style="list-style-type: none"> • Upcoming Meetings: Committee Meeting, August 24th, 4p 	Staff	Information
11.) New Business	Chair	Information
12.) Adjournment	Chair	Action



Biddeford Saco Old Orchard Beach Transit Committee
Meeting Minutes
May 25, 2023
4:00 PM
Saco Transportation Center

- 1. Call to Order** – Chairman Kenny Blow called the meeting of May 25, 2023 to order at 4:05pm.
- 2. Roll Call** –Members present: Kenny Blow, Phil Hatch, Bryan Kaenrath, Tim Fleury, Eric Freeman, Curt Koehler, Maya Atlas. Absent: Doris Ortiz, Jean Saunders.
Staff present: Chad Heid, Rod Carpenter, Caroline FreeSpirit, Anne Austin

3. Public Comment – None.

4. Approval of the Previous Meeting Minutes –

Motion by Curt Koehler to approve the Transit Committee meeting minutes of March 23, 2023 and to note the April 27, 2023 meeting notes on file. Eric Freeman seconded. No discussion. Phil Hatch, Bryan Kaenrath, Curt Koehler, Eric Freeman, Maya Atlas, and Tim Fleury all voted in favor. None opposed. Motion passed unanimously. Minutes approved.

5. Financial Subcommittee Report – Caroline FreeSpirit, Finance Manager, reviewed the financial position as of April 30, 2023.

- It is the 10th month of the year, agency tracking approximately 83% through operating expenses.
- Fuel at 70%.
- End of CARES funding this coming year.
- FY24 budget will require use of accumulated funds.
- Intercity service- funding will be put out to bid by MDOT. There are approximately six months of sufficient funds in the new budget year. If we win the bid, MDOT will provide additional funding.
- We will be seeking an operating reserve fund to allow us to balance the budget in the upcoming year.
- RFPs have been issued for auditing services and security fencing.
- Staff is in final phase of developing an RFP for banking services.

6. Saco Transportation Center Lease Update – Chad Heid reviewed the background of the current lease agreement between the City of Saco and BSOOB Transit.

- Lease will end August 31, 2023.
- BSOOB Transit is seeking to extend the agreement and is engaging the City of Saco to discuss the terms involving leased office space, cost, common area responsibilities, security, cost sharing, parking, plowing, custodial service, etc.



Chad Heid, Executive Director, proposed to the Committee direction as to advancing with permitted use and on-route charger installation project or, if that is not the desirable outcome, that BSOOB Transit begins to seek alternative areas to install the chargers.

Chad reviewed the financial impacts under different scenarios of the lease agreement. The current agreement is for an annual expense of \$4,200; \$3,000 for rent, \$1,200 for the shared cost of utilities. Assuming the \$12/sq. ft. rate, and considering the variables below, the annual lease rates will increase as stated:

Scenario	Sq. Ft.	Annual Expense	% Increase from Current
All Admin Space, w/ 50% share of back closet	1074.5 sq. ft.	\$12,894	207%
Admin Space, less no back closet, no corner office, 50% cost of hallway	628 sq. ft.	\$7,536	79%
Only lease bathroom, customer window office, kitchen/breakroom, and back office	386 sq. ft.	\$4,632	10%
BSOOB Transit responsible for 50% of custodial expense for common space	N/A	\$25,000 <i>(proposed by City)</i>	495%

BSOOB Transit is awaiting a proposal from the City regarding permitted use expenses. Financial and operational impacts will be discussed at the May Finance Subcommittee and Transit Committee meetings. It is recommended that alternatives be considered, both short-term and long-term, noting the timing of any alteration will have impacts elsewhere. Staff will gather feedback from the Committee, the City of Saco, and draft an alternative approach as directed.

Discussion ensued regarding cost sharing of custodial services, security and possible alternatives for the staff currently located at the Saco Transportation Center to operate elsewhere, as well as the possibility of moving the on-route chargers. Halting the engineering until decisions are finalized was discussed.

Committee members discussed opinions and ideas for useful services at the Saco Transportation Center to best serve the community.

Chad will keep the Committee updated.

7. Executive Director Report – Chad shared his presentation slides.

- Ridership updates- 2023 is doing well. Fixed route ridership increasing month after month.
- Legislative updates -Funding Requests – some promise but not fulfilled.



Budget bill working through committee could commit up to \$2 million in new State funding in FY23-24.

Policy and Performance Changes - LD 1559- Public Transit Advisory Committee (PTAC) – to meet three times a year.

LD 1796- Supporting transit worker safety.

- Public Meetings are scheduled regarding service changes as follows:
McArthur Library on 5/16 in Biddeford, Dyer Library on 5/23 in Saco, and Libby Library on 5/30 in Old Orchard Beach. Changes will be implemented on 6/25/23 pending final meeting and public input.
- Proterra Performance – Chad presented the electric bus performance for the period of use from 6/22 – 5/23 as follows:

Total Miles Operated: 37,693	Current Diesel Contract: \$3.623/gallon
Total Charger Utility Cost: \$19,718.32	Fixed Route Fleet: 5 MPG
Cost / Mile: \$0.523	Cost / Mile: \$0.725

Discussion ensued regarding peak rate, non-peak rate, chargers and the battery life.

- Budget Update – The Municipal City Council are in the process of approving the budgets. PACTS FYCOP 5307 was approved. Assumptions that will be made:
 - 5311 Funding for routes #60 and #70 (out of contract/change in match)
 - Maintaining service levels
 - CBA terms
 - June Finance Committee Proposal
 - June Full Committee

8. Upcoming Meetings –

Finance Subcommittee will meet Monday, June 19 at 12:00pm, Saco Transportation Center.

Transit Committee will meet Thursday, June 22 at 4:00pm, Saco Transportation Center.

9. New Business – None at this time.

10. Adjournment – Phil Hatch motions to adjourn. Curt Koehler seconded. Meeting adjourned at 5:15pm.



Biddeford Saco Old Orchard Beach Transit Committee

Meeting Notes

June 26, 2023

4:00 PM

Remote Only – Zoom meeting

- 1. Call to Order** – Vice Chair Doris Ortiz called the meeting to order at 4:00pm. Note that there is not a quorum. Action items will be pushed to the July 2023 meeting. The primary item of importance is the approval of the FY'24 Budget Proposal.
- 2. Roll Call/ Ascertain Quorum** - Members present: Doris Ortiz, Curt Koehler, Tim Fleury, Maya Atlas, Eric Freeman. Absent: Kenny Blow, Bryan Kaenrath, Jean Saunders, Phil Hatch.
Staff present: Chad Heid, Rod Carpenter, Caroline FreeSpirit, Anne Austin
No quorum.
- 3. Public Comment** – None.
- 4. Approval of the Previous Meeting Minutes** – Meeting minutes for May 25, 2023 will be tabled until the July meeting.
- 5. Financial Subcommittee Report** – Tabled.
- 6. Approve FY24 Preliminary Budget Proposal** – Chad Heid reviewed in detail the four focus areas of the Preliminary Budget Plan for FY'24 which include costs of labor/ employee compensation, non-capital expenses, projected revenues, and the FY'24 capital program.
 - Employee Compensation
 - Wage increases of 4% for the represented workforce per CBA.
 - Same for compensation for non-represented.
 - Programming to add Staff Accountant, (as separation from City of Biddeford in the future), Transportation Supervisor, and Mechanic II.
 - Non-capital expenses include:
 - Strategic and Organizational Investments: Decrease for Legal services, decrease of outside consultants with onboard of IT Tech. SMART Grant. Increase budgeted for Rental and Lease expenses in Saco.
 - Essential Adjustments: Increase for uniforms, Industry Engagement Activities, new Audit Services, Admin and Support services and Vehicle Insurance.
 - Projected Revenues:
 - Significantly grant funded.
 - This Preliminary budget assumes continued service for the Intercity and Zoom Express.
 - No change to Local Municipal funding
 - Projected Fare Revenue of 10%.
 - Strategic Partnerships – reduction due to ending maintenance of YCCAC vehicles.
 - BSOOB Transit “Reserves”.



- FY'24 Capital Program – projects to be completed in upcoming fiscal year with many carried over from past years. Many of these projects delayed by supply chain, contractor turnover, etc.

Due to a lack of quorum, and being mindful of the need to authorize spending authority for the agency by the beginning of the new fiscal year starting July 1, 2023, the Transit Committee recommends that Management Staff prepare an email poll of all Committee Members, asking the following:

The Transit Committee approve the FY24 budget as presented for expenditures beginning July 1, with the expectation that Management Staff will present a revised FY24 budget by September 30, and that this email poll of the members will be followed up by a vote in the July Committee meeting to approve of this authorization.

There were no objections by the members present.

The email poll was sent on the eve of Monday, June 26, 2023 after the meeting. The results of the email poll requesting an authorization vote of the preliminary FY24 budget, as stated above, were as follows:

Transit Committee Member Name	YES vote	NO vote
Kenny Blow	X	
Doris Ortiz	X	
Curt Koehler	X	
Maya Atlas	X	
Eric Freeman	X	
Phil Hatch	X	
Tim Fleury	X	
Bryan Kaenrath	X	
Jean Saunders	X	

All Committee Members voted affirmatively.

Upcoming Meetings –

Finance Subcommittee will meet Monday, July 24 at 12:00pm, Saco Transportation Center.

Transit Committee will meet Thursday, July 27 at 4:00pm, Saco Transportation Center.

Meeting ended at 4:28pm.



**BSOOB Transit Finance Subcommittee
Meeting Agenda
Monday, July 24th, 2023
12:00pm – 1:30pm**

Saco Transportation Center

Agenda Item	Responsibility	Action or Information
1.) Call to Order	Chair	Action
2.) Roll Call / Ascertain Quorum	Chair	Action
3.) Public Comment	Chair	Information
4.) Approval of Previous Minutes <ul style="list-style-type: none"> • June Finance 	Chair	Action
5.) June Month End Financial Report	Staff	Information
6.) Future Funding Timelines <ul style="list-style-type: none"> • Legislative and Grant Outcomes • Municipal & Stakeholder Engagement 	Staff	Information
7.) Partnership Updates	Staff	Information
8.) Administrative Discussion Items <ul style="list-style-type: none"> • Upcoming Meetings: • Thursday, July 27, 4p Committee • <i>No August Finance Subcommittee</i> 	Staff	Information
9.) New Business	Chair	Information
10.) Adjournment	Chair	Action



**BSOOB Transit Finance Subcommittee
Meeting Minutes
June 19, 2023
12:00 PM – 1:30 PM
Saco Transportation Center**

- 1. Call to Order** – Phil Hatch called the meeting to order at 12:04 PM.
- 2. Roll Call/ Ascertain Quorum** – Members present: Phil Hatch, Kenny Blow, Doris Ortiz, Curt Koehler. Absent: None. Quorum. Staff present: Chad Heid, Rod Carpenter, Caroline Freespirit.
- 3. Public Comment** – None.
- 4. Approval of April & May Meeting Minutes** –

Motion by Doris Ortiz to approve the April and May Meeting Minutes. Curt Koehler seconded. All members voted in favor. Motion passed.

- 5. May Month End Financial Report** – Caroline Freespirit presented the financial update as of the end of May. Caroline detailed some of the activities related to grant management tasks, noting that there was quite a bit of tension regionally to have all COVID-relief grants obligated and executed before June 1st. The reason for this was due to Federal discussion concerning rescission of unobligated funds. Caroline expressed that all BSOOB Transit related grants were fully obligated before the potential rescission date, and that the Federal Budget bill was passed without that becoming a reality.

Caroline also provided an update on two RFP's, Audit Services and Banking Services, along with staff making an effort to contract with a pre-audit contractor. Phil Hatch asked Caroline to characterize the feedback and competition for the RFPs. Caroline detailed that each RFP has competition and staff are generally happy with the response thus far. Contract awards for Audit Services should come in early-June. Banking services in July.

- 6. FY24 Budget Proposal** – Chad Heid introduced this topic expressing that this budget is a preliminary budget, which given Committee approval, will be implemented effective July, 1, 2023. Chad detailed that the Committee should anticipate a budget revision requirement for Q2 of FY24, noting there are revenue and expense lines tied to partnerships and service programs that are not yet finalized.

Chad presented the content contained within the Budget memo, specifically calling out the comparison between FY23 and FY24 expenses and revenues. The presentation included this information and discussion.

- A balanced budget of \$9,635,756, an increase of \$3,355,109
- An increase of \$436,097 for employee compensation, which includes +3 admin staff roles and no change to the budgeted operator roster, and opportunities to fund new recruitment and retention initiatives. Committee members and staff discussed what these initiatives could look like. Chad noted that the recruitment landscape includes many public/private agencies with significant



signing bonuses, along with where BSOOB Transit wages stand on comparison to similar entities. Committee members encouraged staff to be deliberate and thoughtful in considering increases to bonuses and compensation. Phil Hatch asked that staff continue to keep the Committee up to date on these efforts.

- An increase of \$400,294 for non-capital expenses, which are predominantly tied to the USDOT SMART grant award of \$350,000. Other notable adjustments in this category include reductions to 60301 - Legal Services and 60306 - Other Consultants, and increases for 60302 – Audit Services and 60330-30331 – Rental Expenses, and 60372 – Vehicle Insurances. Phil Hatch noted that with the potential hiring of a staff accountant, as discussed in the previous section, may be able to reduce future expenses related to audit services. Committee Members agreed with this point.
- Grant funding for FY24 will be an increase of \$2,658,679, mostly tied to the upcoming acquisition of two additional Proterra electric buses, and with key assumptions being made about sustained funding levels for both 5311 services, the #60 – Green and #70 – Zoom Express. Staff discussed the history of these funding programs and suggested that discussion related to potential impacts for these scenarios wait until the next agenda item.
- No change for local municipal funding.
- Projected fare revenue increase of \$24,000, with Chad Heid suggesting that ridership continues to increase and that with the new service frequencies it is reasonable to expect this trend to continue regardless of the Fare Deal promotion ending in September 2023.
- A projected decrease of \$37,320 in revenues from strategic partners. Chad detailed that this decrease is directly related to a change in the arrangement between BSOOB Transit and YCCAC.
- The FY24 budget will use \$709,750 from designated and undesignated reserve funds. \$340,000 is for capital projects that will be carried over from previous years, and that the Committee designated as a Capital Reserve Fund. A portion of this increase is also tied to unfunded match for 5311 services and the local match for the Proterra purchase. Phil Hatch asked if there was any progress on doing a ridership survey for #70 – Zoom riders, specifically to see if there are partnership options available. Chad responded that it is known that a significant portion of riders on this service are MaineHealth employees, but there is not much known about other riders. He suggested that a rider survey will be possible in the fall. Phil proposed that the expenses associated with this route, and this service altogether may be the low-hanging fruit if and when there is a funding challenge. He also requested that staff consider the impacts for fare increases on this route.

Chad concluded this discussion noting that this upcoming fiscal year is a transformational year for the agency and municipalities served. The approach taken this year to leverage reserve funds to fill the revenue gaps that may be present are not sustainable long-term. He acknowledged that there will be a need to work closely with the municipal stakeholders and general public to evaluate scenarios, tradeoffs, and exceptions that may be necessitated by external funding outcomes.

Kenny Blow noted his appreciation for the presentation and the proposal at large. He recommended that staff advance the effort for reducing services and programs, specifically beginning the development of financial scenarios and community impacts that can be shared with City Councils and stakeholders. He also suggested that staff take a hard look at the need to increase administrative staff if service



contraction is likely. Phil Hatch noted that if there was a loss of supportive grant funds to operate services, there would be a net reduction for maintenance, which could reduce a potential financial burden. Kenny also suggested that if there is a future need for reductions, staff consider making them over a period of years, not months. Chad appreciated the feedback and acknowledged staff will consider all of these considerations.

Motion by Curt Koehler to recommend that the full Committee approve the preliminary budget as proposed, with the expectation that an updated budget will be presented by staff by the end of September. Doris Ortiz seconded. All members voted in favor. Motion passed.

- 7. MaineDOT Intercity Services RFP** – Chad Heid provided an update on the status of the MaineDOT Intercity Services RFP process. He detailed that the agency will submit a proposal to sustain the existing services between Saco and Portland via Route #60 – Green Line. As discussed in the previous agenda item, the grant awards are expected in September, 2023. The agency projects to have funding that will allow the agency to operate the service until February, 2024, and the Committee will have to evaluate funding and service scenarios later this fall. Committee members had discussion on the possible implications that will come from this grant award outcome.
- 8. Administrative Discussion Items** – Chad Heid noted the schedule for upcoming meetings in late June and July.
- 9. Executive Session** – *The Finance Committee went into Executive session to discuss the Executive Director contract.*
- 10. New Business** – It was recognized by staff and Committee Members that there will not be a quorum on Thursday, June, 22nd, and Kenny Blow directed staff to submit a poll to Committee Members to reschedule before the end of June to advance the preliminary budget discussion with a quorum.
- 11. Adjournment** – The meeting was adjourned at 1:58pm



Memorandum

5/19/23

To: BSOOB Transit Committee Members
From: Caroline Freespirit, Finance Manager
Subject: Review of Financial Position as of 6/30/23

Month End Details:

June is the final month of the fiscal year and will be closed out with financial reports as part of the annual audit process. We are using Berry Dunn for our pre auditing service, and RHR Smith as the Auditing company. The regular month end financial reporting for June will be available by the August meeting.

Future Considerations:

This has been a busy month working on getting new grants entered into TRAMS and setting up to be available for drawdowns. There are a few remaining grants in the process of being available to make drawdowns from. They are the FY24 5307 Grant, the LONO III Electric Bus Award, and the 5310 Regional Transit Stop Access Project. Our Region 1 contact, Ari Ofsevit has assured us that Region 1 will process these grants and give us time to process through the DOL review before the shutdown in September. We have been in weekly contact with Ari expressing our sense of urgency that the FY24 53507 grant is approved on time as it is needed to fund ongoing operations. We are normally covered at the start of the fiscal year by the contributions of the municipalities to provide cash flow to cover us while the grants become available for drawdown. This year, Saco has only agreed to make the contribution on a quarterly schedule rather than the one-time annual payment that has historically been the case.

We have started reconciling the Inventory account and there has been a large reduction in Inventory of approx. \$170k. We are removing all the old obsolete Inventory from our Dossier Inventory Management software in preparation of a major upgrade in the software. This amount will represent all the inventory that we had purchased over the past 25 years that is parts for buses that we no longer own and that are not transferrable to any buses that we do own. As well, in that number, is \$10k of inventory that was used to support the buses of YCCAC. We will be selling those parts to YCCAC.

Good progress has been made in reconciling the AR accounts. 10162 is reconciled, and 10179, Grants Receivable has only a few items still remaining to clear up, from previous year and before.

Grant	Scope	Suffix	Comments	Amount Spent	Balance Remaining	Local Match Still Required	Match Percent	Original Grant	Original Total Budget
FTA: ME-2020-031-01-00			5307 Funds FY21	FTA: ME-2020-031-01-00		Start Date 8/21/20 - End Date 6/30/23			
	117	A2	Preventive Maintenance	163,560.00	0.00	-	#DIV/0!	163,560.00	204,450.00
	114	A4	Cap-Surv/Security	59,315.00	36,685.00	9,171.25	20%	96,000.00	120,000.00
	117	A2	Mobility Management	51,660.00	0.00	-	20%	51,660.00	64,575.00
	441	A3	Planning Consultant	2,799.00	14,801.00	3,700.25	20%	17,600.00	22,000.00
FTA: ME-2021019			5307 Funds FY22	FTA: ME-2021019		Start Date 8/23/21 - End Date 6/30/24			
	300	A1	Service Operations	728,810.00	0.00	0.00	#DIV/0!	728,810.00	1,457,620.00
	117	A4	Preventive Maintenance	163,784.00	3,047.00	761.75	20%	166,831.00	167,592.75
	114	A3	Cap-Surv/Security	0.00	60,000.00	15,000.00	20%	60,000.00	75,000.00
	114	A3	2 Support Vehicles	84,290.00	54,710.00	13,677.50	20%	139,000.00	152,677.50
	111	A5	Replacement VANS	77,786.00	3,214.00	803.50	20%	81,000.00	81,803.50
	117	A4	Mobility Management	42,228.00	8,960.00	2,240.00	20%	51,188.00	53,428.00
	441	A2	Planning Consultant	0.00	19,200.00	4,800.00	20%	19,200.00	24,000.00
FTA: ME-2023-016-00			ARPA FY23						
			Route 111 Enhancements	0.00	600,000.00	\$ -		600,000.00	600,000.00
			Bus Stop Improvement	0.00	75,000.00	\$ -		75,000.00	75,000.00
			Regional Signage Project	0.00	15,500.00	\$ -		15,500.00	15,500.00
			Half Fare Promotion	12,850.00	77,150.00	\$ -		90,000.00	90,000.00
CARES AVL-APC			CARES AVL-APC						
			AVL - APC	67,088.00	50,088.00	\$ -	0%	117,176.00	117,176.00
FTA: ME-2023-006-00			5307 Funds FY23			Start Date 8/23/21 - End Date 6/30/24			
	300	A1/A8	Service Operations	753,843.00	104,157.00	104,157.00	50%	858,000.00	1,716,000.00
	117	A2/A7	Preventive Maintenance	0.00	170,168.00	42,542.00	20%	170,168.00	212,710.00
	114	A4/A5	AVL	144,000.00	0.00	-		144,000.00	144,000.00
	xx	B3/B2	Improve Shelters	0.00	40,000.00	10,000.00	20%	40,000.00	50,000.00
	xx	A4/A5	Harness System for Safety	0.00	68,000.00	17,000.00	20%	68,000.00	85,000.00
	xx	A9/B1	Onroute Charger Overage	0.00	104,047.00	26,011.75	20%	104,047.00	130,058.75
	117	A4/A4	Mobility Management	0.00	52,211.00	13,052.75	20%	52,211.00	65,263.75
	441	A2/A2	Planning Consultant	0.00	20,800.00	5,200.00	20%	20,800.00	26,000.00
								1,457,226.00	

Grant	Scope	Suffix	Comments	Amount Spent	Balance Remaining	Local Match Still Required	Match Percent	Original Grant	Original Total Budget
FTA: ME-7126-223-4			5307 Funds FY24						
						Start Date 7/1/23 - End Date 6/30/26			
	300	xx	Service Operations	0.00	906,142.00	906,142.00	50%	906,142.00	1,812,284.00
	117	xx	Preventive Maintenance	0.00	300,000.00	75,000.00	20%	300,000.00	375,000.00
	114	xx	ERP FINANCE	0.00	28,000.00	7,000.00	20%	28,000.00	35,000.00
	114	xx	BUS WASH	0.00	68,000.00	17,000.00	20%	68,000.00	85,000.00
	114	xx	Facilities	0.00	100,000.00	25,000.00	20%	100,000.00	125,000.00
	117	xx	Mobility Management	0.00	53,256.00	13,314.00	20%	53,256.00	66,570.00
	441-80	xx	Planning Consultant	0.00	22,400.00	5,600.00	20%	22,400.00	28,000.00
								1,477,798.00	

FTA: ME-2020-022-00			Zoom Coaches	FTA: ME-2020-022-00					
	111	A1	Zoom Coaches	854,154.00	191,306.00	47,826.50	20%		

FTA: ME-2022-007-01-00			CARE 5307 Funds PHASE V						
			All Covid	679,933.00	112,540.00			792,473.00	

FTA: ME- 2023-007-00			FTA: ME- 2023-007-00	0.00	1,224,531.00				
			MEDOT CSN 43211	0.00	136,059.00				
			Total Project	0.00	1,360,590.00				
					1,224,531.00	0%		1,224,531.00	

FTA: ME-2019-020-00			FTA: ME-2019-020-00	1,016,453.00	128,547.00	10,919.74		1,145,000.00	1,204,225.00
			MEDOT CSN 42857	1,500,000.00	0.00			1,500,000.00	1,500,000.00

Grant	Scope	Suffix	Comments	Amount Spent	Balance Remaining	Local Match Still Required	Match Percent	Original Grant	Original Total Budget
MDOT: ME-2018-024-00, CSN 41564			Intercity 2020-2 Intercity 2020-2		MDOT: ME-2018-024-00, CSN 41564 119,121.08	384,331.92	384,331.92	50%	50% covered by Greyhound
	Intercity CARISSA		Intercity CARISSA Intercity CARISSA		1/1/21 through 6/30/2023 700,000.00	(0.00)			
	Intercity ARPA		Intercity ARPA Intercity ARPA		7/1/22 through 12/31/2023 339,315.45	692,685	0	0%	1,032,000
									1,032,000
MDOT: ME-2019-019-00, CSN 40774			Zoom 2020 Operating	132,069.13	39,930.87	39,930.87	50%	50% covered by MTA in the past, but that is uncertain now	
MDOT: ME-2020-027, CSN 45327			ZOOM 2023 Operating Prev Maint	0.00 0.00	137,000.00 31,000.00	137000 7750	50% 20%		
MDOT: ME-2021-005-00, CSN 43013			ZOOM Carissa ZOOM Carissa	550,000.00	150,000.00	0	0%		
MDOT: ME-2022-006-00, CSN 44083			ZOOM ARPA ZOOM ARPA	176,833.33	14,166.67				\$187,500 has been added to help us through t
Assignment Letter 25 CSN 44162			Urban State 2023	110,622.36	9,934.64	0			Supplements 5307 funds and silver line for 3 years, this is t

BSOOB Transit Agenda Action Proposal

Agenda Item:

Approve Revised 2023 Procurement Policy and Guidelines

Subcommittee: N/A

Committee Meeting Date: June 26, 2023

Transit Committee Action Date: June 26, 2023

Staff Resource: Chad Heid

Purpose:

The Transit Committee will review and consider adoption of the 2023 revised Procurement Policy and Guidelines. This policy applies to all procurements undertaken and financed, in whole or in part, with FTA financial assistance provided to BSOOB Transit to support open market procurements.

Background:

This agency policy was developed in 2016. The revisions included in this policy document have been developed to consider changes to FTA regulations. As the agency concludes the FTA Triennial Review and Audit, this revised document will be submitted to conform to current Federal requirements.

Attachments:

- BSOOB Transit Procurement Policy & Guidelines - 2023

Financial Impact and Source of Funds:

None.

Recommendation:

The Transit Committee approves and adopts the revised agency Procurement Policy and Guidelines.

Prepared by: Chad Heid

Procurement Policy and Guidelines



BSOOB Transit

"To provide safe, clean, reliable and affordable local public transportation for all."

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Statement of Purpose

This policy applies to all procurements undertaken and financed, in whole or in part, with FTA financial assistance provided to Biddeford, Saco, Old Orchard Beach Transit Committee (BSOOB Transit) to support open market procurements. An open market solicitation is used to purchase goods and/or services by soliciting from any available source. Most grantee procurement activity will be undertaken on the open market. Open market procurements exclude:

- Employment Contracts
- Real Estate Contracts
- Intergovernmental Agreements

BSOOB Transit will avoid the following situations considered to be restrictive of competition:

- Unreasonable requirements placed on firms in order for them to qualify to do business
- Unnecessary experience and excessive bonding requirements
- Noncompetitive awards to any person or firm on retainer contracts
- Organizational conflicts of interest, which means that because of other activities, relationships, or contracts, a contractor is unable, or potentially unable, to render impartial assistance or advice to the grantee; a contractor's objectivity in performing the contract work is or might be otherwise impaired; or a contractor has an unfair competitive advantage
- The specification of only a "brand name" product without listing its salient characteristics and not allowing "an equal" product to be offered
- Any arbitrary action in the procurement process.

Authority

This procedure manual derives its authority from *BSOOB Transit Procurement Policy* and in accordance with the laws and regulations that form that policy.

Delegation of Authority

BSOOB Transit makes awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. The responsibility determination will be documented in the procurement file. BSOOB Transit prohibits any arbitrary action in the procurement process (e.g., in the competitive selection of contractors). BSOOB Transit does not place unreasonable requirements on firms in order for them to qualify to do business with BSOOB Transit (i.e., unnecessary experience or excessive bonding requirements). BSOOB Transit will analyze each planned acquisition in order to identify and evaluate potential organizational conflicts of interest as early in the acquisition process as possible, and avoid, neutralize, or mitigate potential conflicts before contract award.

Authority to carry out the procurement functions is allocated between the Board of Trustees and Executive/Deputy Director as follows:

1. Transit Board

- Set procurement policy

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- Board will approve purchases above \$750,000 through meeting minutes

2. Executive / Deputy Director

- Award contracts which cost less than \$750,000
- Execute contracts
- Execute purchase orders
- Designate appropriate staff to execute purchase orders

3. Supervisors

- Prepare purchase orders for Executive/Deputy Director's signature using the appropriate procurement method described below
- Procure items specific to the job duties of their respective departments as needed, not to exceed \$3,500 which may include approving specifications.

As a practical manner, the Executive Director has charged the following staff with responsibility for following these procurement procedures in their respective areas.

4. Finance Manager:

- Sign purchase orders in the absence of the Executive/Deputy Director
- Sign routine office and computer supplies purchase orders
- Oversee all formal competitive purchases (over \$150,000)
- Review bids to determine lowest, responsive, responsible bidder or most advantageous proposer.

5. Fleet Services:

- Prepare and sign purchase orders for equipment and inventory parts for vehicles and building maintenance (micro purchases) not to exceed \$7,500.

Delivery Point

All items delivered to BSOOB Transit, must be received at the fleet service storeroom, or in the case of office supplies, to the office. The inventory manager (or receptionist for office supplies) will acknowledge receipt on the packing slip, or prepare a receiving memo for all items received, when a packing slip is not provided. Such packing slip/receiving memo shall become part of the final payment transaction and be present in the file when payment is made.

This policy governs the actions of the BSOOB Transit in the administration of its third-party contracting actions.

A contract is defined as a mutually binding legal relationship obligating the seller to furnish the supplies or services, including construction, and BSOOB Transit is required to pay for them. Contracts include bilateral instruments, awards and notices of awards; job orders or task assignment letters issued under basic ordering agreements; letter contracts, orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance, and bilateral contract modifications.

The parties to a contract must possess the legal capacity to enter into the contract, and they must assent to the terms of the contract. The terms of the agreement must not require the performance of an illegal act by the parties. Contracts may be either verbal or written in form.

Federal Transit Administration procedures are identified in FTA Circular 4220.1F entitled "Third Party Contracting Guidelines" and as further modified.

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Provider Responsibilities

It is the provider's responsibility to ensure that any contract/purchase for a capital item, including E-Commerce, purchase orders, credit card charges, is performed by an authorized representative of BSOOB Transit. Any other party acting on behalf of the grantee (including a provider that is not the grantee) must get written approval and authorization of the grantee prior to initiating any capital purchase.

Length of Contract

Contract term limitation for rolling stock and replacement parts shall not exceed BSOOB Transit needs for rolling stock and replacement parts within five (5) years inclusive of options when FTA funds are involved. For all other types of contracts with contract terms of greater than five (5) years, the contract file contains evidence that the contract term is based upon sound business judgment.

Prohibition Against Geographic Preference

All procurements shall be conducted in a manner that prohibits the use of statutorily or administratively imposed geographical preference in the evaluation of bids or proposals. However, geographic location may be a selection criterion in procurements for architectural and engineering services provided its application leaves an appropriate number of qualified firms to compete for the contract.

Responsive Bidder

A responsive bidder is a contractor, supplier or vendor who meets all the basic procurement specification requirements.

Responsible Bidder

A responsible bidder is a contractor, supplier or vendor who has the ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as the firm's integrity, compliance with public policy, record of past performance, and financial and technical resources.

"Buy America, Build America"

"Buy America" requirements shall be followed for all applicable federally funded projects (*i.e.*, Section 5307, 5311 operating assistance). The Buy America requirements apply to all contracts for rolling stock, steel, iron, or manufactured products with a value greater than \$150,000. The FTA Pre-Award and Post-Delivery Handbook provides detailed guidance on Buy America requirements for rolling stock procurements, available here: <https://www.transit.dot.gov/regulations-and-guidance/buy-america/buy-america-handbook-conducting-pre-award-and-post-delivery>

Build America, Buy America Act. Construction materials used in FTA funded projects are subject to the domestic preference requirement of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 – 70927 (2021), as implemented from time to time by the U.S. Office of Management and Budget, the U.S. Department of Transportation, and FTA. The CONTRACTOR acknowledges that this agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).

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Code of Conduct

It is the policy of BSOOB Transit that its employees and members of the governing board observe the highest standards of ethics.

Code of Conducts and Ethics

1. Every Director, officer and employee shall comply, uphold and follow the Constitution of the United States, policies of BSOOB Transit, regulations and laws of the State of Maine and Federal laws and regulations applicable to federally funded projects.
2. No Director, employee, officer, agent of BSOOB Transit or immediate family member, shall participate in the selection, award or administration of a contract supported by federal, state, or local funds (including without limitation funds of BSOOB Transit or FTA grant funds) if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when a financial or other interest in the firm selected for award is associated by any of the following:
 - the employee, officer, agent, or Director
 - any member of their immediate family
 - their business or domestic partner, or
 - an organization that employs, or is about to employ, any of the above.
3. Every Director, officer and employee shall give to the performance of the duties of the office or position held, their earnest effort and best thought.
4. Every Director, officer and employee shall expose the misuse of public funds or corruption in the performance of one's duties wherever discovered.
5. No Director, officer or employee shall discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for enumeration or not.
6. No Director, officer or employee of BSOOB Transit shall ask for or accept any gift, favor, service or other item of value under circumstances from which it might be reasonably inferred that such gift, service or other thing of value was given or offered for the purpose of influencing them in the discharge of their duties. Unsolicited gifts of intrinsic nominal value of less than \$50 that do not infer reciprocal action may be accepted.
7. No Director, officer or employee of BSOOB Transit shall ask for or receive from any other officer or employee any BSOOB Transit materials, equipment, or services, for personal benefit or gain to themselves or any other person.
8. No Director, officer or employee shall accept outside employment furnishing advice or services to a firm bidding on, or planning to bid on, a contract with BSOOB Transit, or which is doing business with BSOOB Transit.
9. No Director, officer or employee of BSOOB Transit shall transact any BSOOB Transit business with any private entity of which the Director, officer, employee, agent, immediate family member, or partner

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holds a financial interest or in which such Director, officer, employee, agent, immediate family member, or partner is an owner, officer, employee, agent, or representative.

10. No Director, officer or employee of BSOOB Transit shall disclose confidential information acquired in the course of their association or employment with BSOOB Transit for the purpose of personal benefit or gain.
11. No Director, officer or employee of BSOOB Transit shall interfere with the employment of any person outside the established personnel employment policy.

Nothing herein shall prohibit an applicant for employment from submitting written recommendations from an officer(s) or employee(s).

Should a full-time applicant be related by reason of blood, marital relationship or domestic partnership to the hiring authority, the hiring authority shall remove themselves from the hiring process and the Executive Director shall make the hiring decision. Everyone recognizes that certain standards of conduct are necessary to maintain a positive, healthy and productive work environment.

Disclosure

When a Director, officer, or employee determines that they have a conflict of interest with regard to a particular matter, they should immediately remove themselves from any discussion, vote or decision-making regarding the matter.

Discipline

Violation of this policy will lead to discipline up to and including discharge.

Failure of employees in disclosing conflicts of interest as described above shall result in disciplinary action in accordance with the written standards of BSOOB Transit. These actions may include discipline leading up to and including termination. In the event BSOOB Transit determines the ethical breach to be a violation of Federal or state law, BSOOB Transit will contact the appropriate authorities for civil or criminal action.

In the event a member of the Board of Directors violates the standards of conduct in this section, the matter will be referred to the Board for disposition. Disciplinary actions may lead action up to and including removal from the Board.

Any contract awarded following disclosure of an ethical violation will be reviewed to determine whether the violation resulted in an unfair competitive advantage for the selected firm. The contracting official shall have the right to terminate such contracts for convenience in the event of such disclosures.

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Methods of Procurement

BSOOB Transit will in its procurement planning determine the most appropriate method of procurement for all purchases of goods and services. The agency will follow adopted procedures in all procurement actions. Prior to every procurement, BSOOB Transit will determine the most appropriate method of procurement and type of contract and use the Procurement Memorandum form, Appendix A, to document this in the procurement file. The Executive/Deputy Director will ensure that all procurements are designed to avoid purchase of unnecessary or duplicative items or examining with the primary procurement officer should consolidate or break out items in the good or service to be purchased to obtain a more economical process. When purchasing items available at lease, BSOOB Transit will conduct an analysis of purchase costs versus lease costs to ensure the most economical approach.

Micro Purchases

This method of procurement may be used for all purchases where the agency's price estimate for the goods or services to be procured is under \$10,000. Micro purchases may be made without obtaining competitive quotations so long as the price is fair and reasonable as evidenced by minimal supporting documentation (i.e., catalogue or price lists). Micro purchases are exempt from the Buy America Requirements. BSOOB Transit will make all efforts to equitably distribute such purchases among qualified suppliers in the local area. Purchases will not be split to avoid the requirements for competitive quotes for purchases above the threshold.

BSOOB Transit shall maintain written documentation on micro-purchase procurements. This documentation shall consist of:

- A determination that the price is fair and reasonable; and
- How this determination was derived.

Small Purchases

Small purchases are relatively simple and informal purchases involving the acquisition of services, supplies or other property that cost between \$10,000 and \$250,000. For *Buy America* purposes, the small purchase amount is established at \$150,000 in FTA's statute at 49 U.S.C. 5323 (j)(13) and is no longer tied to the simplified acquisition threshold.

In all small purchases, BSOOB Transit shall receive bids or quotes from a minimum of two sources. When the vendor list involves multiple sources for a small purchase, purchases should be equitably distributed among qualified suppliers in the local area. BSOOB Transit must document that the price is fair and reasonable.

Verbal quotes shall be documented in writing by the appropriate staff on a standard quotation form such as the Standard Phone Quote Form, Appendix L, and be part of the permanent file documentation for all small purchases. Written quotations may be obtained electronically, through the mail, or obtained directly from the vendor. For each quote, either obtained verbally or in writing, the following information must be obtained:

1. Name, address, telephone number
2. Description of the offered item(s)
3. Unit price and total price
4. Discount terms

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5. Delivery terms
6. DBE information, if applicable
7. Person who provided the quote
8. Time and date of the quote

Competitive Procurement Methods

Competitive procurement methods include sealed bids, sometimes referred to as an “Invitation for Bid” (IFB) and competitive proposal or a “Request for Proposal” (RFP). Sealed bid is the generally preferred method of procurement for equipment and construction, provided the following conditions can be met:

- A complete, adequate, and realistic specification or purchase description is available
- Two or more responsible bidders are willing and able to compete effectively for the business
- The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price
- No discussion with bidders is needed

If these conditions cannot be met, the competitive proposal method will be used.

Sealed Bids

General Conditions

When BSOOB Transit determines that conditions for a Small Purchase can be met, the agency will follow these procedures in the conduct of the procurement:

1. The IFB will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time to prepare bids prior to the date set for opening the bids. Generally, a minimum of thirty (30) days will be provided unless BSOOB Transit determines that less time is required. In no instance shall the period of advertisement be less than 14 days.
2. The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services sought in order for the bidder to properly respond.
3. All the bids will be publicly opened at the time and place prescribed in the invitation for bids.
4. A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. When specified in bidding documents, factors such as discounts, transportation costs, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually implemented.
5. Any or all bids may be rejected if there is a sound documented business reason.
6. Prior to award to the selected bidder, a price analysis should be conducted to verify that the price quotes are fair and reasonable.

In order to preserve the integrity of the competitive bid system, after bids are opened, award will be made to the responsible bidder whose bid conforms to the IFB and whoever will be the most advantageous to BSOOB Transit considering only price and price related factors included in the invitation, unless there is a compelling reason to reject all bids and cancel the invitation.

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BSOOB Transit will make every effort to anticipate changes in the solicitation prior to the date of bid opening and to notify prospective bidders of any modification or cancellation through a formal written amendment to the solicitation, thereby permitting bidders to change their bids without the exposure of bid prices.

Bid Preparation

The bid documents will identify the procurement, the agency name, and the contact person(s) and contain simple, clear instructions for preparing an offer. The IFB will clearly state the time and manner for submitting the offer and the length of time for which the offer must remain firm (not subject to withdrawal).

Bid Contents

The IFB will be based on a clear and accurate description of the technical requirements for the material, product, or service to be procured. This is in keeping with a goal of maximum contractor responsibility and minimum risk to the buying agency. It may be necessary, however, to use design-type descriptions (as for components, tolerances, etc.) in certain situations, such as the need for standardization. The description will not contain, in competitive procurements, features that unduly restrict full and open competition.

The "brand name or equal" description may only be used when an adequate specification cannot be provided without performing an inspection and analysis in time for the acquisition under consideration. If brand names are used the minimum needs must be carefully identified and the salient physical and functional characteristics of the brand name product must be clearly stated in the solicitation.

The specification will include a description of the product and also include reliability and quality assurance requirements. Criteria for inspecting, testing, and accepting products will be included in the specification. Preservation, packaging, packing, and marking requirements will be addressed.

Bid Advertisement

The Bid Advertisement will be publicized through distribution to prospective bidders, advertising in websites, newspapers and/or trade journals, and such other means as may be appropriate, in sufficient time to enable bidders to prepare and submit their best bids before the time set for public opening of bids.

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Competition

The IFB, including specifications and attachments, will permit full and open competition consistent with the requirement for the property or services to be procured. This requirement will represent BSOOB Transit's minimum needs and be sufficiently described to promote full and open competition.

Pre-Bid Conference

At the discretion of the procurement officer, BSOOB Transit may hold a pre-bid conference as a means of briefing prospective offerors and explaining complicated specifications and requirements. BSOOB Transit will permit potential respondents to address ambiguities in the solicitation documents that may require clarification. If such a conference is held, notice of the conference shall be included in the solicitation at the time of issuance.

When such conferences are held, they shall be conducted at least two (2) weeks prior to the scheduled bid opening in order to permit time to prepare formal responses to questions and/or issue any necessary bid addenda.

Bid Amendments

BSOOB Transit shall reserve the right to amend bid documents. Amendments will be used to correct problems in standard terms and conditions, changes in quantity, the technical specifications, delivery schedules, opening dates, and/or drawings. Amendments will also be used to correct ambiguous provisions or to resolve conflicting provisions in the bid package. In issuing the amendment, BSOOB Transit will (1) document the change in writing so there are no misunderstandings; and (2) provide the changes to offerors who were not at the conference.

Bid amendments will contain the following elements:

1. Identify the solicitation number of the original solicitation
2. Identify the amendment number
3. Identify the contact person and phone number within your department for further information
4. Indicate whether or not the time and date specified in the original solicitation is changed as a result of the amendment
5. Advise offerors of the need to and how they should acknowledge receipt of the amendment
6. Advise offerors what the changes are; and
7. Have the amendment signed by the appropriate procurement official, most frequently the contracting officer.

Amendments will be advertised in the same manner as the original solicitation.

Bid Opening and Tabulation

All bids will be opened publicly at the time and place stated in the IFB. The bid opening is a public event; guest, visitors, and vendors will be permitted to witness the opening. BSOOB Transit shall appoint a staff person, other than the contracting officer, to serve as the official supervising and conducting the opening. BSOOB Transit shall collect all bids, verifying that agency post office boxes, mail room, reception areas where express deliveries are received and checked as close to the time of bid receipts as possible.

At that time, the designated agency official will personally and publicly open the bids, read the bids aloud (if practical) to those persons present, and have the bids recorded. The bids will be recorded on a "Bid Opening" form

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(Appendix D) provided by the agency and this document will be available for public inspection and distribution after completion of the reading of bids.

Bid Withdrawal

Bids may be modified or withdrawn through a written statement sent by certified mail or email with receipt. The notice must be received in the place designated in the IFB not later than the exact time set for bid opening. A withdrawal or modification by mail or email should be considered if the message is received by BSOOB Transit no later than the time set for bid opening, and confirmed as being received.

Modifications received by email will be printed and placed in a sealed envelope with the following written thereon: the date, time of receipt and by whom, the IFB number and recipient signature. Information contained therein should not be disclosed before the time set for bid opening.

A bid may be withdrawn, in person, by a bidder or his authorized representative provided:

- The bidder identity is made known
- The bidder signs a receipt for the bid
- The withdrawal is prior to the exact time set for bid opening.

Contract Award

Contracts will be awarded to the most responsive and responsible bidder with the lowest price, which is determined on the basis of the evaluation criteria set forth in the IFB. If an offer conforms in all material aspects to the requirements of the solicitation at the scheduled time of submission and does not require further discussions with the offeror, the offer will be determined to be responsive.

Competitive Proposals - RFP

General Conditions

When BSOOB Transit determines that conditions for an IFB cannot be met, competitive proposals will be used. The following requirements will be incorporated into the conduct of the procurement.

1. The Request for Proposal (RFP) will be publicly advertised. All evaluation factors to be used in the review of proposals will be identified, along with their relative importance.
2. Proposals will be solicited from an adequate number of qualified sources.
3. BSOOB Transit will have a method in place for conducting technical evaluation of the proposals received and for selecting the awardee.
4. BSOOB Transit will make an award to the responsible offeror whose proposal is most advantageous to BSOOB Transit with price and other identified selection factors considered.

In determining which proposal is most advantageous, BSOOB Transit will consider which proposal offers the greatest business value to the agency based upon an analysis of a tradeoff of the technical factors and price/cost to derive the proposal that represents the best value.

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Proposal Preparation

The bid documents will identify the nature of the procurement, the agency name, and the contact person(s) and contain simple, clear instructions for preparing an offer. The RFP will clearly state the time and manner for submitting the offer and the length of time for which the offer must remain firm (not subject to withdrawal).

Proposal Contents

The proposal documents may vary in construction depending upon the nature of the competitively negotiated procurement and whether or not Federal funds are used in the financing of the procurement activity.

The following general format will be used by BSOOB Transit:

1. RFP Advertisement
2. A description of the item or statement of work specifications
3. A description of the requested scope of services, including the requested schedule for completion
4. Sufficient background information on the need for the work in order to allow potential offerors sufficient information to formulate a proposal
5. Standard terms and conditions
6. Instructions for construction (*e.g.*, organization, required submissions, etc.) and submission (*e.g.*, date, time, and place) of the proposal response
7. Cost and pricing data requirements
8. Standard forms and certifications that must be completed by the respondent
9. An identification of the proposal evaluation factors and the specific weights that will be assigned to each criterion.

Some examples of commonly used evaluation factors used are: experience, qualifications of the submitting firm, experience and qualifications of proposed staff to be used, level of effort (hours of professional labor), proposed methodology, quality of the proposal, responsiveness to the requirements of the RFP, price, proposed quality control procedures, technical support, location of contractor's office(s), and other factors uniquely associated with each procurement. Not all factors will be necessary in every procurement and will be used accordingly. All factors utilized will be included in each RFP. BSOOB Transit will also determine the relative importance of each evaluation factor, expressed as a percentage of the total score. This relative importance of evaluation criteria should be included in the RFP.

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Proposal Advertisement

The proposal advertisement will be publicized through distribution to prospective proposers, advertising in newspapers, websites and/or trade journals, and such other means as may be appropriate, in sufficient time to enable potential offerors time to prepare and submit their proposals before the specified due date and time.

Competition

The RFP will permit full and open competition consistent with the requirement for the services to be procured. This requirement will represent BSOOB Transit's minimum needs and be sufficiently described to promote full and open competition.

Pre-Proposal Conference

At the discretion of the procurement officer, BSOOB Transit may hold a pre-proposal conference as a means of briefing prospective offerors and explaining agency goals and expectations for the project. If such a conference is held, notice of the conference shall be included in the RFP at the time of issuance.

When such conferences are held, they shall be conducted with sufficient time prior to the deadline for the submission of proposals in order to permit time to prepare formal responses to questions and/or issues raised at the conference.

Proposal Changes / Addenda

BSOOB Transit reserves the right to amend proposal requirements and/or change any requirement in the proposal. Amendments will be communicated to prospective offerors through an addendum to the proposal.

Amendments will also be to communicate clarifications in the scope of work, changes in submittal procedures, clarify standard terms and conditions, amend the proposed period of performance, correct unintended omissions, or change the proposal due date. In issuing the proposal addendum, BSOOB Transit will (1) document the change in writing so there are no misunderstandings; and (2) provide the changes to offerors who were not at the conference.

Proposal addenda will contain the following elements:

1. The solicitation number of the original solicitation
2. The addenda number
3. An indication as to whether or not the time and date for submission of proposals contained in the original RFP is changed as a result of the amendment
4. A form that must be signed by the offeror acknowledging receipt of the proposal addendum to be included in the proposal response
5. A statement of the changes to the RFP

Proposal addenda will be advertised in the same manner as the original solicitation.

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Late Proposals

All proposals must be received by BSOOB Transit no later than the date and time specified in the proposal documents. Late proposals will remain unopened and will be returned to the offeror. Such proposals will be considered “late” proposals and will not be considered by the evaluation committee.

Proposal Review and Evaluation – Appendix O

Time Period for Evaluation

The primary procurement officer will distribute copies of the proposal, along with an evaluation form, to each member of the proposal review committee. The timetable for review will be established by the primary procurement officer and may vary depending upon the complexity of the procurement.

Evaluation Procedures

The primary procurement officer will determine the most appropriate means of evaluation. In a simple evaluation process, price is included in the list of evaluation factors identified in the RFP and is considered in the evaluation of the proposal. In qualifications-based evaluation process, costs will be submitted by the proposers in a separate, sealed envelope and will not be considered by the evaluation committee until the firm or firms most qualified to perform the work is determined.

Simple Evaluation

Depending on the complexity and scale of the procurement, the primary procurement officer, with the concurrence of the Executive/Deputy Director, may elect to follow simple evaluation procedures. Price is a component of the proposer’s submission and is considered, along with other factors, in the evaluation of proposals.

Each evaluation committee member shall receive an evaluation tabulation sheet, listing the specific factors, scores, and/or weights to be used in the evaluation of proposals. Each committee member shall receive a copy of all proposals and sufficient evaluation sheets to conduct the review. Committee members shall review proposals in private, independent from other staff and/or evaluation committee members. Reviewers will not discuss their evaluation with any other person.

Completed and signed evaluation forms will be submitted to the primary procurement officer. The primary procurement officer will tabulate all reviews, summarizing the individual score for each evaluation factor and the total proposal score judged by each reviewer.

A meeting will be held following individual proposal scoring. All members of the evaluation committee will discuss the scoring, and based on the numerical scores, concur in the ranking of submissions, from first to last.

If, in the opinion of a majority of the members of the evaluation committee, the highest ranked proposal is sufficiently distinguished from other submissions, no further evaluation may be needed. In this case, the primary procurement officer will prepare a written recommendation for award of the contract to the highest ranked proposer. After the concurrence of the Executive Director the contract will be awarded.

In event of a tie, or in the event the evaluation committee is unable to reach agreement on the highest ranked firm, the evaluation committee may determine that interviews with the top ranked firms within the competitive range are necessary in order to make a final decision.

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Qualifications Based Evaluation

When the procurement of professional services involves architectural/engineering services as defined in 40 U.S.C. §541 and 49 U.S.C. §5325(d), BSOOB Transit will use a qualification-based proposal evaluation method. This method of procurement will be used for all construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, and related professional services.

In this method of evaluation, BSOOB Transit will follow the procedures outlined below:

1. The RFP shall specifically state that the BSOOB Transit will use a qualification-based evaluation process consistent with the requirements of the Brooks Act. The RFP will include the evaluation criteria and document how the proposals will be ranked.
2. BSOOB Transit will solicit proposal responses that requires potential respondents to offer only their technical approach and qualifications to undertake the project. Price will be excluded as an evaluation factor.
3. BSOOB Transit will evaluate the proposal submissions consistent with the established review timeline and evaluation procedures listed in this policy. *Appendix O*
4. The evaluation committee will identify the top ranked firm.
5. The Executive Director will begin price negotiation with the top ranked firm. If these negotiations are successful, the recommendation to award the contract to the top ranked firm will be awarded.
6. If negotiations with the top ranked firm fail to reach an acceptable price, the Executive Director will begin negotiation with the next highest ranked proposer. The process will continue with successively ranked proposer until such time as a satisfactory price is negotiated.

Proposal Negotiation

BSOOB Transit may accept one of the initial proposals if it can be clearly demonstrated that acceptance of the most favorable initial proposal without discussion would result in a fair and reasonable price. The RFP will contain a notice that award may be made without discussion of proposals received, and that proposals should be submitted initially on the most favorable terms possible, from a price and technical standpoint.

BSOOB Transit may elect to enter into negotiations with offerors whose proposal is found to be in the competitive range. Negotiation is a procedure that permits bargaining and usually affords offerors an opportunity to revise their offers before award of a contract. If negotiation is used, any verbal or written discussion/communication between the primary procurement officer and the offeror will be documented in writing. Discussions with offerors may:

- involve information essential for determining the acceptability of a proposal; or
- provide the offeror an opportunity to revise or modify its proposal.

The purpose of the negotiation is to ensure that the best offer is provided to BSOOB Transit. All responsible offerors whose proposals are determined to be within the competitive range will be included in discussions and negotiations of proposal awards. Only those offerors whose proposals are determined to be deficient or so out of line as to preclude meaningful negotiation need be eliminated from the competitive range.

The competitive range can consist of those offerors whose proposals have a reasonable chance of being selected for award (*i.e.*, proposals that are acceptable as submitted or can be made acceptable through modification in the

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negotiation process). The evaluation committee will be assigned responsibility for determining which proposals are in the competitive range. Cost/price and other technical factors may be used in this determination.

At the conclusion of proposal discussion with offerors found to be in the competitive range, BSOOB Transit will determine whether or not the discussion process has resulted in a material change to the scope of work or that all issues have been resolved to the satisfaction of the evaluation of the committee. At this time, BSOOB Transit will solicit the best and final offer from each proposer. In this process, each proposer in the competitive range will be given the opportunity to submit a revised proposal, or section of proposal affected by the change in scope. These revisions will constitute the proposer's best and final offer. The evaluation process will conclude based on this submission using the original evaluation criteria.

If, during the initial evaluation process, the evaluation committee finds that a proposal contains a minor irregularity, clerical errors, or other minor informality, BSOOB Transit may seek a clarification of the proposal. Clarification of a proposal will be done with only that proposer whose proposal contains the error.

At some point during the negotiation process, a decision is made that all out-standing issues have been resolved to the satisfaction of the parties involved. This is the time to formally conclude the discussions by requesting that each offeror remaining in the competitive range submit its best and final offer.

Proposal Withdrawal

BSOOB Transit will permit proposers to withdraw or modify their proposals up to the date and time stated in the RFP as the deadline for submission of proposals.

After this date and time, proposals are firm and binding and cannot be withdrawn for a period of at least sixty (60) days after submission. This fact will be clearly stated in the RFP.

Notification to Unsuccessful Proposers

Once a contract is awarded to the selected offeror, BSOOB Transit will communicate in writing to all unsuccessful offerors. The communication may include the name of the successful offeror and the rationale for award to that offeror.

Non-Competitive Negotiation or Sole Source Awards

Sole source procurements are the done by soliciting offers from only a single source or, after solicitation from a number of sources, competition is determined inadequate.

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BSOOB Transit will only use this method of procurement under the following circumstances:

1. The item to be procured is determined to only be available from a single source.
2. A public emergency exists that dictates the immediate procurement of the good or service within timeframes that cannot be accomplished using a competitive solicitation.
3. BSOOB Transit is specifically authorized by a grantor agency to use non-competitive negotiation.
4. After solicitation using competitive means, BSOOB Transit determines that there is insufficient competition.
5. The item to be procured is an associated capital maintenance item that is procured directly for the original manufacturer or supplier of the item to be replaced.

In sole source procurement of associated capital maintenance items, BSOOB Transit will document its procurements records specifically noting that the manufacturer or supplier is the only source for the item that the price of the item is no higher than the price paid for the item by similar customers.

When conducting sole source procurements, BSOOB Transit will conduct a cost analysis of the price including profit/fee quoted by the supplier prior to concluding the procurement.

Single Bid

Single bids are special situations that require additional analysis. Single bid situation arises when BSOOB Transit receives only a single offer in response to the solicitation or, after review of multiple bids received, all but one bid is found to be non-responsive to the specifications.

In the event of a single bid arising from either circumstance described above, BSOOB Transit will determine whether or not the price bid in the single bid is fair and reasonable. A cost and profit analysis must be performed when price competition is lacking. If appropriate, a comparison is made of prior proposed and contracted prices with current proposed prices for the same or similar end item. The application of unit costs (*e.g.*, dollars per pound, per horsepower, or other units) may be used to highlight significant inconsistencies that warrant additional pricing inquiry. The results of such analysis will be compared with competitive published price lists, published market prices of commodities, similar indexes, and discount or rebate arrangements.

BSOOB Transit will review the bid documents to determine factors leading to receipt of a single bid. Discussions may be held with expected vendors to determine their reasons for not submitting a bid. If there were no restrictions in the bid specifications that deterred or limited competition, and the expected bidders chose not to bid for reasons other than problems with the solicitation, evaluation and award may proceed. If it is determined that the specifications contained restrictive provisions that minimized competition, BSOOB Transit will determine whether or not the public good would be better served by re-bidding the item or whether to award the contract to the single bidder.

If, on the basis of the above analysis, BSOOB Transit is able to document that the price is fair and reasonable, and if the bid is responsive and the bidder responsible, and no restrictive elements were found in the bid that hindered competition, The BSOOB Transit may move forward with the award.

If, on the basis of the above analysis, BSOOB Transit is unable to establish that the price is fair and reasonable, the bid will be rejected and a new solicitation conducted.

Intergovernmental Procurements

BSOOB Transit Procurement Policy and Guidelines 2023

Where feasible, BSOOB Transit will seek to use state purchasing agreements or other type of intergovernmental procurements strategies in the procurement of goods or services.

When such opportunities are found to exist, BSOOB Transit will evaluate the following factors prior to purchase to determine that:

1. The contract is still in effect or can be modified by the awarding agency to permit sufficient lead time to make the required deliveries to BSOOB Transit.
2. The specifications in the existing contract will meet your needs of BSOOB Transit.
3. The terms and conditions of the contract are acceptable to BSOOB Transit with respect to warranty provisions, insurance requirements, etc.
4. The requirements needed by BSOOB Transit are not beyond the scope of the existing contract, creating a sole-source (noncompetitive) add-on to the contract.
5. The contract was awarded competitively, either through sealed bids or competitive proposals. If the original contract was awarded under a sole source procurement, BSOOB Transit will treat the procurement as a sole source and follow the procedures *Non-Competitive Negotiation or Sole Source Awards* detailed in this policy.
6. All required FTA clauses will be added to the purchase order and certifications from contractor obtained if not already completed.
7. BSOOB Transit will perform a market analysis on price and determine that the price is fair and reasonable.

Joint Procurement and Piggybacking

BSOOB Transit may also elect to participate in joint procurements with other recipients of financial assistance awarded under the Federal Transit Administration in order to achieve efficiencies in procurement actions and to obtain better pricing through the purchase of larger quantities. BSOOB Transit will ensure that all Federal requirements, required clauses and certifications are properly followed and included in the resulting joint solicitation and contract documents.

BSOOB Transit may also acquire goods or services from other FTA grantees through the assignment of contractual rights to participate in the contract. If using this process, also known as piggybacking, BSOOB Transit will:

1. Ensure that there are options available to purchase
2. Obtain a copy of the contract and solicitation documents, including the specification and any applicable certifications such as Buy America
3. Review the original contract to confirm that the contract contained an assignment clause and specified a min/max amount which represented the reasonably foreseeable needs of the parties in the contract
4. Ensure all applicable FTA clauses were included in the original contract
5. Obtain a copy of the evaluation of bids or proposals
6. Obtain a copy of the cost or price analysis performed by the original contracting agency, and ensure that options were evaluated as part of the contract award decision.
7. Conduct market analysis s to ensure that the price is fair and reasonable.

Copies of the original procurement must be placed into the BSOOB Transit procurement file.

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E-Commerce

BSOOB Transit may utilize electronic methods to conduct all or part of any of its procurement actions. The list of e-commerce strategies includes, but is not necessarily limited to:

1. Transmission of purchase documents, including:
 - Request for quotes
 - Copies of IFBs
 - Copies of RFPs
2. Issuance of clarifications or amendments to the specifications
3. Issuance of pre-bid or pre-proposal conference summaries
4. Source for Independent Cost Estimates
5. Posting RFP, Amendments and Addenda

In all instances of electronic means of communication, BSOOB Transit will ensure that all vendors on the qualifications list, any vendor who requested a copy of the procurement documents, or any vendor who participated in a pre-bid or pre-proposal conference, receives the electronic communication.

Use of e-commerce strategies will not relieve BSOOB Transit from any responsibility of ensure full and open competition in its procurement actions.

Contract Cost and Price Analysis

BSOOB Transit will conduct a cost or price analysis of all its procurement in accordance with the following procedures:

Cost Analysis

A cost analysis entails the review and evaluation of the separate cost elements and the proposed profit/fee of an offeror's cost or pricing data and the judgmental factors applied in estimating the costs. BSOOB Transit will conduct a cost analysis to form an opinion on the degree to which the proposed cost, including profit/fee, represents what the performance of the contract should cost, assuming reasonable economy and efficiency.

Price Analysis

A price analysis involves examining and evaluating a proposed price without evaluating its separate cost and profit elements. Price analysis is based essentially on data that is verifiable independently from the offeror's data.

BSOOB Transit Procurement Policy and Guidelines 2023

Price Analysis for Micro and Small Purchases

For all micro and small purchases, Purchaser will certify, through the use of pre-formatted standard form, *Appendix G*, that the price paid for the good or item is fair and reasonable based on a review of catalog prices (paper documents or web documents), market prices determined from written or oral quotes, regulated prices (e.g., utilities, etc.) or other similar means, including comparison against the independent cost estimate.

Cost or Price Analysis for Competitive Procurements

BSOOB Transit will conduct formal cost or price analyses of all its procurements undertaken through competitive means, *Competitive Procurement Methods*, of this policy. The purpose of this analysis will be to ensure that the agency does not pay excessive or unreasonably high rates for the goods and services being procured. Identification of excessively low costs or prices will be used to determine whether or not an offeror has made a mistake or has misunderstood the specifications.

Independent Cost Estimate (ICE) Procedures

Prior to undertaking the procurement above the micro-purchase threshold, BSOOB Transit will develop an independent estimate of the proper price level for the supplies or services to be purchased. The estimate can range from a simple estimate to a complex estimate based on inspection of the product itself and review of such items as drawings, specifications, and prior data (such as cost data from prior procurements). The estimate can then assist in a determination of reasonableness or unreasonableness of price. *Appendix C*

Price Analysis Procedures

Prior to undertaking the procurement above the micro-purchase threshold, BSOOB Transit will develop an independent estimate of the proper price level for the supplies or services to be purchased. The estimate can range from a simple estimate to a complex estimate based on inspection of the product itself and review of such items as drawings, specifications, and prior data (such as cost data from prior procurements). The estimate can then assist in a determination of reasonableness or unreasonableness of price.

In addition to comparison with the price estimate, BSOOB Transit will use the following additional factors to evaluate the reasonable of the proposed price:

1. Comparison of proposed prices received in response to the solicitation
2. Comparison with competitive, published price lists, published market price of commodities, similar indexes, and discount or rebate arrangements
3. Comparison of prices received with prior procurement actions for the same or similar end items. BSOOB Transit may acknowledge prior price comparisons may be affected by:
 - changes in economic conditions between the times of the two procurements
 - differences in quantities
 - inclusion of nonrecurring cost in the prices, such as design, capital equipment, production facilities, etc. (to make a fair comparison, nonrecurring costs can be removed from both prices)

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Cost Analysis Procedures

BSOOB Transit will conduct a cost analysis if the procurement requires the offeror to submit the elements of the estimated cost (e.g., professional services contracts, A/E contracts, change orders, sole source procurements, contract changes and modifications). The goal of the cost analysis is to determine whether the offeror's estimate contains an accurate and reasonable prediction of the cost incurred during performance. The contract price will be figured by adding a rate of profit that is determined to be fair.

BSOOB Transit may use the following common cost analysis techniques to conduct this analysis:

1. Verification of cost or pricing data and evaluation of cost elements, examining the following:
 - Necessity for and reasonableness of proposed costs, including allowances for contingencies
 - Projection of offeror's cost trends on the basis of current and historical cost or pricing data
 - Technical appraisal of estimated labor, material, tooling, facilities requirements and reasonableness of scrap and spoilage factors
 - Application of audited or negotiated indirect cost rates, labor rates, etc.
2. Evaluation of the effect of the offeror's current practices on future costs. This ensures that the effects of inefficient or uneconomical past practices are not projected into the future.
3. Comparison of the individual cost elements proposed with the following:
 - Actual costs previously incurred by the same offeror
 - Previous cost estimates from the offeror or other offerors for the same or similar items
 - Other cost estimates received in response to a specific request by BSOOB Transit
 - Elements of the independent cost estimates by BSOOB Transit; verification that the offeror's cost elements are in accordance with Federal cost principles and procedures as found in Federal Acquisition Regulations (FAR) 31.

To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

Cost Analysis for Sole Source and Single Bid Procurements

The procedures outlined in *Cost Analysis Procedures* will be used in any sole source procurement or when BSOOB Transit determines there is inadequate price competition after the conduct of a competitive procurement.

Use of Federal Cost Principles

In conducting cost or price analyses, the costs considered must conform to the principles for allow-ability established under FAR as defined in 49 CFR part 18.22 and 49 CFR part 18.31.

Contract Actions

Offer and Acceptance

When BSOOB Transit is in full agreement with all of the terms and conditions of the offer, an offer and acceptance form may be used as the awarding document. The offer and acceptance form will be signed and dated by an individual authorized to contractually bind the agency to a contract agreement. Offer and acceptance procedures are generally appropriate for competitive bidding and competitive negotiation procurements where no changes to the offeror's proposal were made.

Bilateral Contract

In cases where there were changes to the RFP terms or the proposal terms during the course of discussions and negotiations with the offerors, BSOOB Transit will develop and issue a written notice of award by letter to the successful offeror and indicate that bilateral contract document will be forthcoming. The bilateral contract would incorporate the final negotiated terms and conditions, including price, specifications, warranty provisions, etc. BSOOB Transit and the successful offeror will sign and date the agreement.

Standard Provisions in All Contracts

BSOOB Transit will develop the bilateral contract document. The document will be sufficiently detailed to include all provisions to define a sound and complete agreement. All bilateral contracts developed will contain provisions relative to the resolution of administrative, contractual, or legal remedies where contractors violate or breach the terms and conditions of the contract and what sanctions and/or penalties may be rendered for such breach. Additionally, all contracts executed in excess of \$10,000 shall include termination for cause and for convenience clauses and the basis for settlement of claims in the event of termination.

BSOOB Transit shall include all appropriate FTA third party terms and conditions in all contracts.

Contract Options

BSOOB Transit may elect, when in the best interest of the agency, to include options in its procurement contracts. An option permits BSOOB Transit the right to purchase additional equipment, supplies, or services called for under the terms and conditions of the contract, or to extend the term of the contract. When options are used, BSOOB Transit will follow these procedures:

1. Option quantities and the time period in which to use options will be clearly specified in procurement documents and in the contract.
2. Exercise of an option will be done in accordance with all the terms and conditions of the initial contract.
3. BSOOB Transit has determined that the option price is better than prices available in the marketplace at the time the option is being considered.
4. The option price should be evaluated as part of the price analysis before award. If the options were not evaluated as part of the award, the exercise of the options is considered a sole-source procurement.

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Payment Provisions

BSOOB Transit will make payments to contractors following completion or delivery of the good or service to be provided. Payment following delivery of goods is subject to the inspection and acceptance of the good prior to issuance of payment. BSOOB Transit will not issue advance payments to contractors.

For professional services contracts, BSOOB Transit may render milestone payments to the contractor based on a payment schedule mutually agreed upon by the BSOOB Transit and the professional services firm. Acceptable basis for determining the amount of the milestone payment may include:

- Actual cost incurred during the period.
- Percentage of satisfactory completion of the technical elements of the scope of work, based on the level of effort required for each work element.

Progress payments on construction contracts will only be made when adequate progress is documented, in the form of completed products or by submission and acceptance of written progress reports demonstrating effort on the project. Adequate security for progress payments may include taking title, letters of credit or equivalent means to protect the interest of BSOOB Transit.

Prohibited or Restricted Contract Types

The following contract types are prohibited or restricted:

Cost plus Percentage of Cost

BSOOB Transit will not use “cost plus percentage of cost” or “percentage of construction costs” as a payment mechanism or mechanism to render payments to contractors.

Time and Materials

Time and Materials type contracts may be used only after a written determination is made by the procuring officer, and agreed by the Executive/Deputy Director that no other contract type is suitable. In addition, the contract between BSOOB Transit and the Contractor must specify a ceiling price that the Contractor may not exceed except at their own risk.

Procurement Documentation

BSOOB Transit will maintain a written history of every procurement action. At a minimum, the following items will be documented in the procurement file:

- Rationale for the method of procurement chosen.
- Selection of the contract type.
- Reasons for the contractor selection/rejection.
- Basis for the contract price.

Disputes

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BSOOB Transit will work with contractors and vendors to resolve disputes arising from its procurement of goods and services. If such disputes cannot be resolved through negotiation between the vendor and the Executive Director, The Board may render a decision on the matter.

Nothing in this policy mitigates the right of the vendor to seek legal remedy in a court of competent jurisdiction.

Biddeford, Saco, OOB Transit Committee may seek the assistance of the grantor agency in resolving disputes

Protests

Protests will only be accepted by BSOOB Transit from prospective bidders or bidders whose direct economic interest would be affected by the award of a contract or refusal to award a contract. BSOOB Transit will consider all such protests, whether submitted before or after the award of a contract. All protests must be in writing and conform to the following requirements:

1. Be concise and legally arranged.
2. Provide name, address and telephone numbers of protestor.
3. Identification of the solicitation or contract number.
4. Provide a clear and detailed statement of the legal and factual grounds of the protest including copies of all relevant documents.
5. Provide a statement as to what relief is requested.

BSOOB Transit will notify FTA about protests on FTA funded procurements in the next quarterly Milestone Progress Report.

When BSOOB Transit receives a bid protest involving FTA funding, BSOOB Transit will inform the FTA Regional Administrator or the FTA Associate Administrator for the program office about the status of the protest.

Protests Prior to Award

Protests before award must be submitted within the time frame specified below. If the written protest is not received by the time specified, the bid or evaluation process shall continue.

Protests addressing the adequacy of the Invitation to Bid or request for proposal, including the pre-award procedure, the Instruction to Bidders, General terms and conditions, specifications and scope of work, must be filed with BSOOB Transit not less than fourteen (14) full working days before bid opening or date of receipt for proposals. Thereafter, all issues and appeals are deemed waived by all interested parties.

Upon receipt of the written protest, Biddeford, Saco, OOB Transit Committee will determine if the bid opening or date of receipt for proposals should be postponed. If the bid opening or due date is postponed, an appropriate addendum will be issued regarding a rescheduling of the bid opening.

Any protest may be withdrawn at any time before BSOOB Transit has issued its decision.

Protests After Bid Opening/Receipt of Proposals

Any party aggrieved by an award of a contract may protest to BSOOB Transit, in writing, within seven days after such aggrieved party knew or should have known of the facts giving rise thereto. Such protest shall include the detailed facts leading up to the protest. The Chairman of the BSOOB Transit Board is authorized to settle and resolve any protest relating to the solicitation or contract award. Protests received later than 30 days after bid opening or the receipt of proposals shall not be considered.

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In the absence of a settlement, the Chairman shall make their own decision known, in writing, within one week of receipt of the protest. Such decision shall respond, in detail, to each substantive issue raised in the protest.

The written decision of the Chairman shall be final, binding, and conclusive on the parties.

Protests should be sent to:

Chairman
BSOOB Transit Committee
13 Pomerleau Street
Biddeford, Me 04005

Protests will only be entertained by the Federal Transit Administration if the aggrieved party is alleging that BSOOB Transit does not have, or is failing to follow, written protest procedures. The protester must deliver its appeal to the FTA Regional Administrator for the region administering its project or the FTA Associate Administrator for the program office administering its project within five (5) working days of the date when the protester has received actual or constructive notice of the recipient's final decision. Likewise, the protester must provide its appeal to the FTA Regional Administrator for the region administering its project or the FTA Associate Administrator for the program office administering its project within five (5) working days of the date when the protester has identified other grounds for appeal to FTA.

Bonding Requirements

For all construction of facility projects that are projected to be in excess of \$100,000, BSOOB Transit will require:

1. A bid bond or other suitable guarantee from each bidder equivalent to five (5%) percent of the bid price. The "bid guarantee" will consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
2. A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
3. A payment bond on the part of the contractor. A payment bond is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts required from contractors are as follows:
 - 50% of the contract price if the contract price is not more than \$1 million;
 - 40% of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
 - \$2.5 million if the contract price is more than \$5 million.

Liquidated Damages

BSOOB Transit will assess the impact of each contract and the consequences for failure of a contractor to complete the project if it is determined the agency will suffer damages and the extent or value of damages would be difficult or impossible to determine. The assessment of damages will be set at a specific rate per day for each day overrun in the contract period of performance or other justifiable lack of performance. The Executive Director will determine the level of damages to be assessed per day, based on the scope of the project. This determination will be documented in the procurement file. Any damages recovered must be credited to the project involved unless the FTA permits otherwise.

Contract Administration

Each department head will be responsible for the contract administration of procurements made by their respective department. This includes maintaining oversight of the contractor to ensure performance in accordance with the terms, conditions, and specifications of their contracts or purchase orders by assuring that:

- The supplier performs the work for which the contract calls
- Satisfactory quality
- Timeliness of performance
- Performance within available funds
- Ensuring BSOOB Transit has documented history of the contracting activities
- Ensuring receipt, inspection, acceptance and final certification for payment

A department head that finds a contractor out of compliance with the contract should attempt to remediate the deficiency with the contractor, documenting the effort for potential remedial action. Documentation of the efforts and resolution should be forwarded to the Executive/Deputy Director. Contractors that remain out of compliance should be brought to the attention of the Executive/Deputy Director to make a final decision regarding the appropriate measures, up to, and including, termination of the contract and pursuing legal action.

Acceptance of Payment

Payment for delivered items or completed services shall only be made when each of the following steps is completed:

1. The item was received, inspected and accepted by the Department Head to ensure compliance with specifications and that all spare parts, manuals and training are received, or
2. The service was invoiced and approved by the Department Head who ordered the same to ensure that the service was performed in compliance with the scope of work and all deliverable received, and the purchase order, packing slip/receiving memo, and signed invoice was delivered to the office of the Director of Finance.

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Change Orders

All change order will be:

- Numbered and in writing
- Signed by the Executive/Deputy Director, or designee;
- Quoted or treated as a sole source procurement (see Sole Source Procurement) including the development of an Independent Cost Estimate and
- Include a cost analysis with supporting documentation.

Tag-on

The use of tag-Ons is prohibited. A tag-on is defined as the addition of work (supplies, equipment or services) that is beyond the scope of the original contract that amounts to a cardinal change and is subject to non-competitive procurement procedures.

References

In addition to this policy, Biddeford, Saco, OOB Transit Committee will consult with the following documents to obtain additional details and procedures, policies, and practices governing procurement actions:

1. FTA Circular 4220.1F, dated July 1, 2010
2. FTA Master Agreement 30 (FY23)
3. FTA 2 CFR 200
4. Best Practices Procurement & Lessons Learned Manual October 2016
5. Biddeford Saco Old Orchard Beach Transit Committee Procurement Policy and Guidelines 11/22/2016

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Appendix A – Page 1: Procurement Summary Memorandum

Date:	Completed by
PO/Contract No.	Funding Source
Reason for Procurement:	
Justification if Non-Competitive:	

Method of Procurement

Micro Purchase < \$10,000	RFP #	IFB #
Small Purchase \$10,000-\$250,000	A&E Services	Sole Source
Design Bid Build		

Contract Type

Rationale for Contract Type	
Reason for Selection	
Accepted Proposed Pricing	Negotiated Pricing
Attach RFP Evaluation Results (Appendix O)	
Additional Information	

Cost/Price Analysis

Price accepted is within _____% of ICE	Competitive Price range is in the range \$ _____ to \$ _____
Variance range between offers	
Price discrepancies between offers is attributed to:	

Appendix A – Page 2

Summary of Responsibility and Responsiveness Checks

Contractor Responsibility:
Contractor Responsiveness:

Award

Date of Contract Award:
Board Approval Date:

Change Orders: Identify each and summarize reason for change, dates, cost analysis, time impact, and modification number.

Attachments:

- RFP Evaluation Forms
- Board Meeting Minutes with Approval for Procurement
- Change Order Documents
- Any additional explanations needed or Forms required
- Approval of Federal Clauses by Contractor
- ICE
- Rolling stock purchase must complete DBE survey within 30 days of contact award:
<https://www.surveymonkey.com/r/vehicleawardreportsurvey>

Appendix B: Single Bid Analysis

Complete this form when only one bid is received in response to an IFB or RFP.

<p>Solicitation Number: _____</p> <p>Product/Service to be Purchased: _____ _____</p> <hr/> <p>Bid or Proposal Due Date: _____</p> <p>Number of Solicitations Requested: _____</p> <hr/> <p>Number of Bids Received: _____</p> <p>Reasons for lack of Competition (based on supplier contracts)</p> <ul style="list-style-type: none"> • Lack of competency • Lack of available resources • Poor timing • Short response due date • Other _____ _____ 	<p>Action Plan:</p> <ul style="list-style-type: none"> • Award Contract Basis _____ • Extend Deadline / modify solicitation: New Due Date _____ <p>Re-procure:</p> <ul style="list-style-type: none"> • New Solicitation Due to be Completed: _____ • Projected Due Date: _____ <hr/> <p>Signed: _____</p> <p>Title: _____</p> <p>Date: _____</p>
--	---

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Appendix C: Independent Cost Estimate

Contract Type: _____ Estimate Date: _____

Description of Goods / Services _____

Method of Obtaining the Estimate:

_____ Published Price List / Past pricing date _____

_____ Engineering or Technical estimate

_____ Independent Third-Party estimate

_____ Other (specify) _____

Cost Estimate Details:

Through the method stated above it was determined that the total cost of the goods/services is expect to be: \$_____. Details are shown below.

A. Cost of Standard Items

Product	Cost Delivered \$	No Freight	Notes / Data Source

B. Cost of Services, Repairs, or Non-Standard Items

Item/Task	Other Direct Costs	Labor (rate/hours)	Labor Class	Allocated overhead	SG&A	Profit	Total
Materials							

Prepared By:

Signature _____ Date _____

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Appendix D: Bid Opening Form

Public Bid Opening

Date: _____

Address _____

Grantee Estimate: \$ _____

Witness by:

Checked By: _____

Bid Content		Documentation Required (Check Boxes)								
Contractor	Proposed Contract Prices	1	2	3	4	5	6	7	8	9

1. Acknowledgment of Addenda
2. Commitment of Surety
3. Certification pertaining to ineligible contractors
4. Certification of Dumping facilities
5. Certification of Examination of Available Subsurface Data
6. Bid Signatures including EEO certification
- 7. Acknowledgement of FTA Terms and Clauses**
8. BOND requirement
9. Right-To-Know Law

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Appendix E: Sole Source Justification Form

Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and at least one of the following circumstances applies:

Check One:

<input type="checkbox"/>	The item is available only from a single source (sole source justification is attached).
<input type="checkbox"/>	The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation (documented emergency condition is attached).
<input type="checkbox"/>	FTA authorizes noncompetitive negotiations (letter of authorization is attached).
<input type="checkbox"/>	After solicitation of a number of sources, competition is determined inadequate (record of source contacts is attached).
<input type="checkbox"/>	The item is an associated capital maintenance item as defined in 49 U.S.C. §5307(a)(1) that is procured directly from the original manufacturer or supplier of the time to be replaced (price certification attached).

Comments:

<input type="checkbox"/>	Independent Estimate and Cost Analysis are attached. Appendix C
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Purchasing Agent Signature

Senior Manager Signature

Date

Date

BSOOB Transit Procurement Policy and Guidelines 2023

Appendix F: Cost Analysis Form

Cost Analysis Summary	Solicitation #
Preparer's Name / Title	Supplies/Services to be provided:
Location for Work to be performed	Approval Signature

1. Direct Material	Vender A Proposal	Vendor B Proposal	Independent Estimate	Analysis
Purchased Parts				
Subcontractor Items				
Other: (1) Raw Material				
(2) Commercial Items				
<i>Total Direct Material</i>				
2. Material Overhead (Rate % x \$Base*)				

3. Direct Labor	Estimated Hours	Rate/Hour	Vendor A \$	Vendor B \$	Independent Estimate	Variance
<i>Total Direct Labor</i>						
4. Labor Overhead						
Overhead Rate						
X Base (labor total above)						
<i>Total Labor Overhead</i>						
5. Other Direct Costs						
<i>Special Tooling/Equipment</i>						

Appendix G: Price Analysis Template

Purchase Order / Contract: _____

The evidence compiled by a price analysis includes:

- Developing and examining data from multiple sources whenever possible that prove or strongly suggest the proposed price is fair
- Determining when multiple data consistently indicate that a given price represents a good value.
- Documenting data sufficiently to convince a third party that the conclusions are valid.

Prepared by: _____

Date: _____

The pricing quoted on the attached sheet(s) is deemed to be fair and reasonable based on the following type of analysis:

	Comparison with competing supplier prices or catalog pricing for the same item. Complete comparison matrix and attach supporting quotes or catalog pages.
	Comparison of proposed pricing with in-house estimate for the same item. Attach signed in-house estimate and explain factors influencing any differences found. Complete summary matrix.
	Comparison of proposed pricing with historical pricing from previous purchases of the same item, coupled with market data such as Producer Price Index or Inflation Rate over the corresponding time period. Attach data and historical price record.
	Analysis of price components against current published standards, such as labor rates, dollars per pound etc. to justify the price reasonableness of the whole. Attach analysis to support conclusions.

Summary Matrix

Item	Proposed Pricing	Average Market Price	Competitor A	Competitor B	In-House Estimate	Other

Attachments: _____

Appendix H: Option Analysis Form – Amendment to Contract

Determination to exercise option based on advantageous price is based on:

1. Previous purchase adjusted for inflation

Date of last purchase:	Inflation Rate:
Price Paid:	Adjusted Price:
% difference between past purchase price and option price:	
Explanation / Notes:	

2. Internet search of pricing for same product or services:

Date of search:	Price Found:
Adjusted Price:	% difference between internet price and option price
Different Features /Conditions:	
Explanation / Notes:	

3. Previous purchase from another Agency by phone:

Date Contacted	Date of Last Purchase
Housing Authority / Contact Name	
Price Paid: \$	Adjusted Price: \$
Explanation / Notes:	

Purchasing Agent signature / Date

Appendix I: Change Order Review Checklist

Date	Contract Number
Contractor	
Change Order Number	Contract Title
New Contract Total	Value Increase
Length of Time Extension Granted	New Performance Period End Date
Reviewer	

Change Order Checklist	Category			Comments
	ND	D	NA	
1. In-House estimate prepared				
2. Project Manager Approval				
3. Scope Meeting Held				
4. Work authorized within contract scope				
5. Scope of work adequate for bidding				
6. Contractor proposal includes impact costs, price				
7. Cost Analysis Conducted				
8. If price>10% of ICE, rationale provided				
9. Negotiation Memorandum				
10. Written record Change Documented				
11. Signed modification filed				
12. Board Approval prior to change				
13. Notice to Proceed on file				
14. No Evidence of arbitrary action				

Additional comments:

Appendix J: Piggybacking

Determination for substantiating a piggybacking participation:

Qualification	Yes	No
1. Have you obtained a copy of the contract and the solicitation document, including the specifications and any Buy America Build America Pre-award or Post-Delivery audits?		
2. Does the solicitation and contract contain an express “assignability” clause that provides for the assignment of all or part of the specified deliverables?		
3. Did the Contractor submit the “certifications” required by Federal regulations? BBM Section 4.3.3.2.		
4. Does the contract contain the clauses required by Federal regulation? BPPM Appendix A1		
5. Were the piggyback quantities included in the original solicitation; were they in the original bid and were they evaluated as part of the contract award decision?		
6. If this is an indefinite quantity contract, did the original solicitation and resultant contract contain both a minimum and maximum quantity, and did these represent the reasonably foreseeable needs of the parties to the contract?		
7. If this piggybacking action represents the exercise of an option in the contract, is the option provision still valid or has it expired?		
8. Does Maine law allow for the procedures used by the original contracting agency: negotiations vs. sealed bids?		
9. Was a cost or price analysis performed by the original contracting agency documenting the reasonableness of the price? Obtain a copy for your files. Have you performed a market analysis of the prices to be paid and have you determined the price to be fair and reasonable and in the best interests of the Agency?		
10. If the contract is for rolling stock or replacement parts, does the contract term comply with the five-year term limit established by FTA? FTA Circular 4220.1F, Chapter IV, 2(14)(i)		
11. Was there a proper evaluation of the bids or proposals? Include a copy of the analysis in your files.		
12. If you will require changes to the vehicles (deliverable) are they “within the scope” of the contract or are they “cardinal changes”? BPPM Section 9.2.1		

References: FTA Administrator’s “Dear Colleague” letter of 10/1/98; **Best Practices Procurement Manual**, Section 6.3.3-*Joint Procurements of Rolling Stock and Piggybacking* and **FTA Circular 4220.1F**

Appendix K: Request for Proposals Amendment

RFP Number and Title	
RFP Amendment Number	
Amendment Date	
Proposal Due Date	
RFP Issued By:	
Proposal Due To:	
Description of Changes to RFP:	
Revised Language in RFP	
Unless specifically addressed, all other provisions and clauses of the RFP remain unchanged.	

Appendix L: Standard Phone Quote Form

BSOOB Transit Standard Phone Quote Form				
1. Vendor Name	Contact	Phone	Date	Time
Item Description	Unit Price	Discount Terms	Delivery Terms	DBE Y/N
2. Vendor Name	Contact	Phone	Date	Time
Item Description	Unit Price	Discount Terms	Delivery Terms	DBE Y/N
3. Vendor Name	Contact	Phone	Date	Time
Item Description	Unit Price	Discount Terms	Delivery Terms	DBE Y/N
Recommendations:				
Approver:				
Procurement Agent:				

Appendix M: Responsibility Determination Form

Bid/RFP No.			
Supplier			
Date			
<p>For each of the areas describe below, check that the appropriate research has been accomplished and provide a short description of the research and the results.</p>			
Evaluation Required	Evaluation or reviewed as part of Technical Evaluation		Comment / Documentation
	Yes	No	
1. Appropriate financial, equipment, facility, and personnel			Can review standard ratios on submitted financial reports.t
2. Ability to meet the delivery schedule			Conduct an analysis of the offeror’s technical approach
3. Satisfactory period of performance			Tied to reference check.
4. Satisfactory record of integrity, not on declined or suspended listings			Attach the results from checking the Excluded Parties website at www.sam.gov
5. Ability to get bonding and insurance			Evaluation insurance certificate and assurances from Bonding Company _____

Appendix N: Reference Documentation for Potential Vendors

RFP No. or Purchase	Date
Potential Vendor Name	BSOOB rep conducting interview
Reference Organization Name	Name / Title of interviewee

Tell us about your experience with this vendor:		
How responsive was the organization to your concerns?		
Overall, how helpful were they?		
Did the vendor stay on schedule?		
Did you pay extra for services beyond what was anticipated? How much (%)?		
Would you use them again?	Yes	No
Comments:		

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Appendix O: Sample RFP Evaluation Form

BSOOB Transit RFP Evaluation for RFP #				Date
Weights	Criteria	Vendor 1	Vendor 2	Vendor 3
%				
	Completeness of Response			
	Staff Expertise			
	Experience with Transit			
	Ability to Meet Deadlines			
	Completeness of Workplan			
	Adequacy of Time Budgets			
	References			
	Financial Solvency			
	DBE Qualification			
	Fee Summary			
	Total			

This is a guideline: adjust the evaluation form to match criteria within the RFP

Appendix P: Federal Clauses - Applicability of Third-Party Contract Provisions

Summary of FTA List of Federal Clauses

A more detailed description of FTA Clauses follows the Summary list.

These clauses are required because this procurement is funded in whole or in part by the United States Department of Transportation (USDOT), Federal Transit Administration. The requirements in these clauses are in addition to and, unless inconsistent and irreconcilable, do not supplant requirements found elsewhere in a BSOOB Transit Contract. If any requirements in these clauses are inconsistent with a provision found elsewhere in a Contract and is irreconcilable with such provision, the requirement in these clauses shall prevail.

1. Article FTA-2. Access to Records, Access to Construction Site, and Maintenance of Records
2. Article FTA-3. Buy America, Build America Act
3. Article FTA-4. Cargo Preference Act
4. Article FTA-5. Employee Protections
5. Article FTA-6. Debarment, Suspension, Ineligibility, and Voluntary Exclusion
6. Environmental Standards and Practices:
 - a. Clean Water Act
 - b. Clean Air Act
 - c. Energy Policy and Conservation Act
 - d. Recovered Materials
 - e. Air Pollution and Fuel Economy
7. Article FTA-8. Lobbying Restrictions
8. Article FTA-10. National Intelligent Transportation Systems Architecture and Standards
9. Article FTA-11. Program Fraud and False or Fraudulent Statements or Related Acts
10. Article FTA-12. Civil Rights
11. Article FTA 13. General Provisions
 - a. Federal Changes
 - b. No Obligation by the Federal Government
 - c. Incorporation of FTA Terms
12. Article FTA 14. Disadvantaged Business Enterprise (DBE) with Goal
 - a. Nondiscrimination
 - b. Prompt Payment
 - c. DBE Good Faith Efforts
 - d. Reporting
 - e. Review of Good Faith Efforts
 - f. Administrative Sanctions
13. Article FTA-15. Veterans Preference
14. Article FTA-16. Executive Order-Special Department of Labor Equal Employment Opportunity for Construction Projects
15. Article FTA-17. Intellectual Property Rights
16. Article FTA-18 Safe Operation of Motor Vehicles
 - a. Seat Belt Use
 - b. Distracted Driving, Including Text Messaging While Driving

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- 17. Article FTA -19. Telecommunications Certification
- 18. Article FTA-20 Resolution of Disputes, Breaches, or Other Litigation
 - a. Notification to FTA; Flow Down Requirement
 - b. Right of Federal Government to Terminate

NOTE: *Not all of the above listed clauses are necessarily applicable to this purchase.*
See BSOOB Transit website for full details(<https://bsoobtransit.org/>)

Regulations governing purchases such as this may be found in the Code of Federal Regulations, online in 2 CFR Part 200.326 and Appendix II to 2 CFR Part 200 and Master Agreement, Title 5, 49CFR, 2CFR Part 180 & 1200, and 49 USC.

Acknowledgement of all FTA Clauses regarding BSOOB Transit Procurement:

The Contractor must acknowledge FTA clauses with a signature from an authorized representative of the firm.

Company Name

Printed Name & Title

Signature

Date

FEDERAL TRANSIT ADMINISTRATION (FTA) CLAUSES

These clauses are required because this procurement is funded in whole or in part by the United States Department of Transportation (USDOT), Federal Transit Administration. The requirements in these clauses are in addition to and, unless inconsistent and irreconcilable, do not supplant requirements found elsewhere in a BSOOB Transit Contract. If any requirements in these clauses are inconsistent with a provision found elsewhere in a Contract and is irreconcilable with such provision, the requirement in these clauses shall prevail.

ARTICLE FTA-1. DEFINITIONS

- 1.1 C.F.R.** : The acronym referring to the United States Code of Federal Regulations, which contains regulations applicable to FTA grant recipients and their Vendors and subcontractors.
- 1.2 DOT** : The acronym referring to the United States Department of Transportation. Also represented as USDOT.
- 1.3 EPA** : The acronym referring to the United States Environmental Protection Agency. Also represented as USEPA.
- 1.4 FTA** : The acronym referring to the Federal Transit Administration, a public transit regulatory unit of the USDOT, formerly known as the Urban Mass Transit Administration.
- 1.5 U.S.C.** : The acronym referring to the United States Code.

ARTICLE FTA-2. ACCESS TO RECORDS, ACCESS TO CONSTRUCTION SITE, AND MAINTENANCE OF RECORDS

- 2.1** *Access to Records.* The VENDOR agrees to provide sufficient access to FTA and its Subcontractors to examine, inspect, and audit records and information related to performance of this Contract as reasonably may be required.
In accordance with 49 U.S.C. section 5325(g), the VENDOR agrees to provide the Council, the Secretary of Transportation, the FTA Administrator, the Comptroller General of the United States, and any of their authorized representatives access to any books, documents, papers, and records of the VENDOR which are directly pertinent to this Contract for the purposes of making audits, examinations, inspections, excerpts, and transcriptions
The VENDOR also agrees, pursuant to 49 C.F.R. section 633.15, to provide the FTA Administrator or the Administrator's authorized representatives, including any project management oversight ("PMO") Vendor, access to the VENDOR's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. section 5302(a)(1), which is receiving federal financial assistance through the programs described at 49 U.S.C. sections 5307, 5309, or 5311
- 2.2** *Access to the Sites of Performance.* The VENDOR agrees to permit FTA and its Vendors access to the sites of performance under this Contract as may reasonably be required
- 2.3** *Reproduction of Documents.* The VENDOR will retain, and will require its subcontractor at all tiers to retain, complete and readily accessible records related in whole or in part to this Contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontractor, arrangements, other third-party agreements of any type, and supporting materials related to those records.

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- 2.4** *Retention Period.* The VENDOR agrees to comply with the record retention requirements in accordance with 2 C.F.R section 200.333. The VENDOR shall maintain all books, records, accounts, and reports required under this Contract for a period of not less than 3 years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims, or exceptions related thereto.
The expiration or termination of this Contract does not alter the record retention or access requirements of this Section

Applicability

This article applies to all federally funded purchase orders over \$3,000.

ARTICLE FTA-3. BUY AMERICA, BUILD AMERICA

These provisions of this Article FTA-3 apply if the value of this Contract (including the value of any amendments) exceeds \$150,000.

- 3.1** *Buy America Provision.* The VENDOR agrees to comply with 49 U.S.C section 5323(j) and 49 C.F.R. part 661, which provide that Federal funds may not be obligated unless iron, steel, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. §section 661.7.

Build America, Buy America Act. Construction materials used in the Project are subject to the domestic preference requirement of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 – 70927 (2021), as implemented from time to time by the U.S. Office of Management and Budget, the U.S. Department of Transportation, and FTA. The CONTRACTOR acknowledges that this agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).

Applicability

This article applies to all federally funded rolling stock purchases, construction contracts; and contracts for material and supplies for steel, iron or manufactured products over \$100,000.

ARTICLE FTA-4. CARGO PREFERENCE

- 4.1** *Cargo Preference–Use of United States-Flag Vessels* The VENDOR agrees:

- 4.1.1 To use privately owned United States-Flag commercial vessels to ship at least 50 % of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying Contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
- 4.1.2 To furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, “on-board” commercial ocean bill-of-lading in English for each shipment of cargo described in Section 4.1.1 above to the Division of National Cargo, Office of Market

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Development, Maritime Administration, Washington, DC 20590 and to the COUNCIL; (through the VENDOR in the case of a lower-tier participating Subcontractor's bill of lading); and

4.1.3 To include these requirements in all subcontracts issued pursuant to this Contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

Applicability

This article applies to all federally funded rolling stock purchases, construction contracts; and contracts for material and supplies which may be transported by ocean vessels.

4.2 Fly America Requirements

The VENDOR agrees to comply with 49 U.S.C. 40118 (the "Fly America Act") in accordance with the General Services Administration's regulations at 41 C.F.R part 301-10, which provide that recipients and subrecipients of Federal funds and their Vendors 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 VENDOR 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 VENDOR agrees to include the requirements of this section FTA-4.2 in all subcontracts that may involve international air transportation.

Applicability

This article applies to all federally funded if the purchase order is over \$3,000; contracts; or subcontracts may involve the international transportation of goods, equipment or personnel by air.

ARTICLE FTA-5. EMPLOYEE PROTECTIONS

—

Certain employee protections apply to all FTA-funded contracts with particular emphasis on construction related projects. The CONTRACTOR will comply with all federal laws, regulations, and requirements, including:

5.1 *Davis-Bacon and Copeland Anti-Kickback Acts* (40 U.S.C. §3141-3146, 29 CFR §5.1-5.33, 18 U.S.C. §874, 29 CFR Part 3) This article applies to all federally funded construction contracts over \$2,000.

5.2 *Contract Work Hours and Safety Standards Regulations.*

5.2.1 Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701-3708; and supplemented by Department of Labor (DOL) regulations, 29 C.F.R. part 5; and

5.2.2 U.S. DOL regulations, "Safety and Health Regulations for Construction," 29 C.F.R. part 1926.

5.3 *Flow Down.* These requirements extend to all third-party contractors and their contracts at every tier. The Contract Work Hours and Safety Standards Act applies to all FTA funded contracts in excess of \$100,000 that involve the employment of mechanics or laborers.

5.4 *Withholding* - BSOOB TRANSIT shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under

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this Contract or any other Federal contract with the same prime contractor, or any other federally assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Contract, BSOOB TRANSIT may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

- 5.5** *Subcontracts* - The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

Contract termination: debarment - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the Contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12

Certification of eligibility - (i) By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

- 5.6** *Contract Work Hours and Safety Standards*. For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, the CONTRACTOR shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the DOL regulations at 29 C.F.R. part 5. Under 40 U.S.C. § 3702 of the Act, the CONTRACTOR shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.

In the event of any violation of the clause set forth herein, the CONTRACTOR and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the CONTRACTOR and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by this clause.

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The FTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the CONTRACTOR or any subcontractor under any such contract or any other Federal contract with the CONTRACTOR, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the CONTRACTOR, such sums as may be determined to be necessary to satisfy any liabilities of the CONTRACTOR or any subcontractor for unpaid wages and liquidated damages as provided in this section. Non-Construction Services

The CONTRACTOR or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The CONTRACTOR shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this agreement.

Applicability

This article applies to all federally funded purchase orders over \$3,000 and contracts for transit operations unless otherwise stated.

ARTICLE FTA-6. DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION

- 6.1** The VENDOR agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200 during the term of this Contract. By signing this Contract, the Consultant certifies that neither it nor its principals, affiliates, or subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded, or disqualified from participation in this Contract by any Federal department or agency. This certification is a material representation of fact upon which the Council relies in entering this Contract. If it is later determined that the VENDOR knowingly rendered an erroneous certification, in addition to other remedies available to the Council, the Federal Government may pursue available remedies, including suspension or debarment or both. The VENDOR shall provide to the Council immediate written notice if at any time the VENDOR learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. The VENDOR will include a provision requiring such compliance in its lower tier covered transactions.

Applicability

This article applies to all federally funded purchase orders over \$25,000 and contracts.

ARTICLE FTA-7. ENVIRONMENTAL STANDARDS AND PRACTICES

- 7.1** *Clean Water Act.* For any project of \$150,000 or more, the VENDOR 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. sections 1251-1387. The VENDOR agrees to report each violation to the COUNCIL and understands and agrees that the COUNCIL will, in turn, report each violation as required to assure notification to FTA and the appropriate Environmental Protection Agency (“EPA”) Regional Office. The VENDOR also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

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- 7.2 Clean Air Act Compliance.** For any project of \$150,000 or more, the VENDOR agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. sections 7401-7671q. The VENDOR agrees to report each violation to COUNCIL and understands and agrees that COUNCIL will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The VENDOR also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.
- 7.3 Energy Conservation.** The VENDOR 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 Federal Energy Policy and Conservation Act.

Applicability:

This article applies to all federally funded purchase orders over \$3,000 and contracts.

- 7.4 Solid Wastes.** A Recipient that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of **Section 6002** include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

The VENDOR agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with all the requirements of Section 6002 of the Resource Conservation and Recovery Act ("RCRA") as amended (42U.S.C. section 6962) and U.S. Environmental Protection Agency, "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247.

Applicability

This article applies to federally funded operations/management, construction, or materials and supplies purchase orders or contracts for items designated by the Environmental Protection Agency, when procuring \$10,000 or more per year.

ARTICLE FTA-8. LOBBYING RESTRICTIONS

For any project of \$100,000 or more, the VENDOR is required to make the following certifications. The VENDOR must also require its Vendors or subcontractors to make the following certification in any Contracts or subcontracts valued at or above \$100,000.

- 8.1 Certification of Restrictions on Lobbying; Disclosure.** The VENDOR certifies, to the best of its knowledge and belief, that no Federal appropriated funds have been paid or will be paid by or on behalf of the VENDOR 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

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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.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement, the VENDOR shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The VENDOR 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 COUNCIL has relied to enter this Contract. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. section 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.

By its signature on a Contract, the VENDOR certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, VENDOR understands and agrees that the provisions of 31 U.S.C. Section 3801, *et seq.*, apply to this certification and disclosure, if any.

ARTICLE FTA-9. SEISMIC SAFETY

Any new building or addition to an existing building will be designed and constructed in accordance with the National Earthquake Hazards Reduction Program Reauthorization Action of 2004 and its regulations. The Contractor will certify to compliance to the extent required by the regulations. The Contractor also agrees to ensure that all work performed under this Contract including work performed by a subcontractor is in compliance with the Act and its regulations and the certification of compliance issued on the Project.

ARTICLE FTA-10. NATIONAL INTELLIGENT TRANSPORTATION SYSTEMS ARCHITECTURE AND STANDARDS

- 10.1** *National Intelligent Transportation Systems Architecture and Standards.* To the extent applicable, the VENDOR agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by section 5206(e) of TEA-21, 23 U.S.C. §section 502 note, and to comply with FTA Notice, "FTA National ITS Architecture Policy on Transit Projects" 66 Fed. Reg. 1455 *et seq.*, January 8, 2001, and other Federal requirements that may be issued.

Applicability

This article applies to all federally funded purchase orders over \$3,000 and contracts.

ARTICLE FTA-11. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

- 11.1** *Program Fraud and False or Fraudulent Statements or Related Acts.* The VENDOR acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. section 3801 *et seq.*, and USDOT regulations, "*Program Fraud Civil Remedies*," 49 C.F.R. part 31, apply to its actions pertaining to this Contract. Upon execution of this Contract, the VENDOR certifies or affirms the truthfulness and

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accuracy of any statement is has made, it makes, it may make, or causes to be made, pertaining to this Contract or the FTA-assisted project for which this work is being performed. In addition to other penalties that may be applicable, the VENDOR 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 VENDOR to the extent the Federal Government deems appropriate.

The VENDOR 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. chapter 53, the Federal Government reserves the right to impose the penalties of 18 U.S.C. section 1001 and 49 U.S.C. section 5323(l) on the VENDOR, to the extent the Federal Government deems appropriate.

The VENDOR agrees to include the above language in each subcontract under this contract, modified only to identify the Subcontractor that will be subject to the provisions.

Applicability

This article applies to all federally funded purchase orders over \$3,000 and contracts.

ARTICLE FTA-12. CIVIL RIGHTS

Under this Contract, the VENDOR shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part hereof.

12.1 Nondiscrimination.

12.1.1 Nondiscrimination in Employment. 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 VENDOR agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex (including gender identity), age, or disability. In addition, the VENDOR agrees to comply with applicable federal implementing regulations and other implementing requirements FTA may issue.

12.1.2 Nondiscrimination in Contracting. The VENDOR agrees and assures that it will abide by the following conditions, and that it will include the following assurance in every sub-agreement and third-party contract it signs: (1) The VENDOR must not discriminate on the basis of race, color, national origin, or sex in the award and performance of any FTA or U.S. DOT-assisted sub agreement, third party contract, or third party subcontract, as applicable, and the administration of its DBE program or the requirements of 49 C.F.R. part 26; and (2) the VENDOR must take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of U.S. DOT-assisted sub-agreements, third party contracts, and third party subcontracts, as applicable.

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12.2 *Equal Employment Opportunity.* The following equal employment opportunity requirements apply to this Contract:

12.2.1 *Race, Color, Religion, National Origin, Sex.* In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. section 200e et seq., and federal transit laws at 49 U.S.C. § 5332, the VENDOR 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. chapter 60, and Executive Order No. 11246, “Equal Employment Opportunity in Federal Employment,” September 24, 1965, 42 U.S.C. section 2000e note, as further amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. section 2000e note. The VENDOR agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, 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 VENDOR agrees to comply with any implementing requirements FTA may issue.

12.2.2 *Age.* In accordance with the Age Discrimination in Employment Act, 29 U.S.C. sections 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, “Age Discrimination in Employment Act,” 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. section 6101 et seq., U.S. Health and Human Services regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. part 90 and Federal transit law at 49 U.S.C. section 5332, the VENDOR agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the VENDOR agrees to comply with any implementing requirements FTA may issue.

12.2.3 *Disabilities.* In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. section 794, the Americans with Disabilities Act, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. section 4151 et seq., and Federal transit law at 49 U.S.C. section 5332, the VENDOR agrees that it will not discriminate against individuals on the basis of disability. In addition, the VENDOR agrees to 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, and any implementing requirements FTA may issue. The VENDOR will also ensure that accessible facilities (including vehicles and buildings) and services are made available to individuals with disabilities in accordance with the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. section 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. section 4151 et seq., and any applicable implementing regulations.

12.3 *Inclusion in Subcontracts.* The VENDOR agrees to include the requirements of this article FTA-12 in each subcontract under this contract, modified only to identify the Subcontractor that will be subject to the provisions.

Applicability

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This article applies to all federally funded purchase orders over \$3,000 and contracts for architectural & engineering, operations/management, rolling stock purchases and construction contracts.

ARTICLE FTA-13. GENERAL PROVISIONS

- 13.1** *Federal Changes.* The VENDOR shall comply with the required FTA clauses set forth in this contract and with all applicable FTA regulations, policies, procedures and directives including, without limitation, those listed directly or by reference in the agreement between the COUNCIL and FTA. The VENDOR's failure to comply with applicable FTA regulations, policies, procedures, and directives, as they may be amended or promulgated from time to time during the term of this contract, shall constitute a material breach of this contract.
- 13.2** *No Obligation by the Federal Government.* The COUNCIL and the VENDOR acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this 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 COUNCIL, VENDOR, or any other party (whether or not a party to the Contract) pertaining to any matter resulting from this Contract.

The VENDOR agrees to include the preceding clause in each subcontract under this Contract, modified only to identify the Subcontractor that will be subject to the provisions.

- 13.3** *Incorporation of FTA Terms.* Specific provisions in this Contract include, in part, certain Standard Terms and Conditions required by USDOT, whether or not expressly set forth in the contract provisions. All contractual provisions required by USDOT, as set forth in the most recent addition and any revisions of FTA Circular 4220.1 "Third Party Contracting Guidance," to the extent consistent with applicable federal laws, and in Appendix II of 2 C.F.R. part 200 are hereby incorporated by reference. Notwithstanding anything to the contrary in this contract, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this contract. The VENDOR shall not perform any act, fail to perform any act, or refuse to comply with any COUNCIL requests which would cause the COUNCIL to be in violation of the FTA terms and conditions.

Applicability

This article applies to all federally funded purchase orders over \$3,000.

ARTICLE FTA-14. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

- 14.1** *Nondiscrimination.* Pursuant to 49 CFR part 26, the VENDOR, sub-recipient or Subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The VENDOR shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the VENDOR to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the COUNCIL deems appropriate. The VENDOR shall include this requirement in all subcontracts pursuant to this contract.
- 14.2** *Prompt Payment.*

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14.2.1 Reserved.

14.2.2 The VENDOR agrees to pay Subcontractors within ten (10) calendar days of the VENDOR's receipt of payment from the COUNCIL for undisputed services provided by the Subcontractor. The VENDOR agrees to pay Subcontractors all undisputed retainage payments within ten (10) calendar days of completion of the work regardless of whether the VENDOR has received any retainage payment from the COUNCIL. The VENDOR shall not postpone or delay any undisputed payments owed Subcontractors without good cause and without prior written consent of the COUNCIL.

14.2.3 The VENDOR shall not, by reason of said payments, be relieved from responsibility for Work done by the Subcontractor and shall be responsible for the entire Work under this contract until the same is finally accepted by the COUNCIL.

14.2.4 The VENDOR agrees to include in all subcontracts a provision requiring the use of appropriate alternative dispute resolution mechanisms to resolve payment disputes.

14.2.5 The VENDOR will not be reimbursed for work performed by Subcontractors unless and until the VENDOR ensures that Subcontractors are promptly paid for work, they have performed. Failure to comply with the provisions of this section FTA-14.2 may result in the COUNCIL finding the VENDOR in noncompliance with the DBE provisions of this Contract.

14.3 *DBE Good Faith Efforts* During the term of this contract, the VENDOR will continue to make good faith efforts to ensure that DBEs have maximum opportunity to successfully perform under the contract, and that the VENDOR meets its DBE commitment as set forth in its bid. These efforts shall include, without limitation, the following:

14.3.1 If the VENDOR requests substitution of a DBE subcontractor or supplier listed in its **Disadvantaged Business Enterprise Information and Certifications** form, the VENDOR shall exert good faith efforts to replace the DBE firm with another DBE firm subject to approval of the COUNCIL.

14.3.2 The VENDOR shall not terminate for convenience any DBE Subcontractor or supplier listed in its **Disadvantaged Business Enterprise Information and Certifications** form (or an approved substitute DBE firm) and then perform the work itself or with its affiliates without prior written consent of the COUNCIL.

14.3.3 If a DBE subcontractor or supplier is terminated or fails to complete its work on the contract for any reason, the VENDOR shall make good faith efforts to find another DBE firm to substitute for the original DBE firm.

14.3.4 The dollar amount of amendments or any other contract modifications will be entered into the DBE Contract Monitoring System (CMS).

14.3.5 The VENDOR will identify a "DBE and Workforce Liaison" who will serve as a single point of contact for all VENDOR DBE and Workforce issues.

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14.3.6 Failure to comply with the provisions of this section FTA-14.3 may result in the COUNCIL finding the VENDOR in noncompliance with the DBE provisions of this Contract and the imposition of Administrative Sanctions described in section FTA-14.6.

14.4 *Reporting.*

14.4.1 The VENDOR will submit monthly progress reports to the Council reflecting its DBE participation through the CMS.

14.4.2 Upon award of a contract a representative from the Council will assign the DBE and Workforce Liaison a CMS user account and provide a CMS User Manual detailing the following guidelines.

14.4.3 All committed DBE Subcontractors to be used on the contract must be entered into the CMS system.

14.4.4 All DBE billing, submitted during the reporting period, must be finalized and entered into CMS prior to submission of the VENDOR'S payment application.

14.4.5 Any changes to the DBE Subcontractor list or their amounts must be entered into CMS. Changes include; DBE firms removed, DBE firms added, changes to subcontract amounts, and DBE credit adjustments.

14.4.6 All payments made to DBE firms must be finalized and entered into CMS within 10 days of receipt of payment from the Council.

14.4.7 Failure to submit this report in a timely manner will result in a penalty of \$10 per late day per report and may also result in the imposition of Administrative Sanctions under section FTA-14.6, pursuant to the Council's DBE policy and USDOT regulations. For the purposes of this section FTA-14.4, timely submittal means receipt in the contract compliance function of the Council's Office of Diversity and Equal Opportunity by the close of business on the fifteenth (15th) of the following month.

14.5 *Review of Good Faith Efforts.*

14.5.1 The COUNCIL'S Office of Equal Opportunity will review the VENDOR'S DBE progress reports to monitor and determine whether the utilization of DBE firms is consistent with the commitment of the VENDOR as stated in its bid.

14.5.2 If it is determined that the VENDOR'S DBE utilization under the contract is not consistent with its commitment, the VENDOR will be requested, in writing, to submit evidence of its good faith efforts to meet the commitment. The VENDOR shall be given ten (10) working days to submit this documentation. Failure to respond shall place the VENDOR in non-compliance and subject to imposition of Administrative Sanctions as described in section FTA- 14.6.

14.5.3 The VENDOR'S good faith efforts documentation will then be reviewed for accuracy, sufficiency and internal consistency. COUNCIL staff shall make a determination as to the adequacy of the VENDOR'S good faith efforts documentation and so inform the VENDOR. If it is determined that

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the VENDOR's good faith efforts documentation is acceptable, the VENDOR will be deemed to be in compliance with the DBE program.

14.5.4 If it is determined that the VENDOR's good faith efforts documentation is not acceptable, the VENDOR will be notified and be deemed to be in non-compliance with the DBE program.

14.5.5 Non-compliance by the VENDOR with the requirements of federal DBE regulations (49 CFR part 26) constitutes a breach of contract and may result in imposition of Administrative Sanctions as described in section FTA-14.6.

14.6 Administrative Sanctions.

14.6.1 If the COUNCIL deems the VENDOR to be in non-compliance with the DBE requirements of this contract, the COUNCIL will inform the VENDOR in writing, by certified mail, that sanctions shall be imposed for failure to meet DBE utilization goals and/or failure to submit documentation of good faith efforts. The notice will state the specific sanction to be imposed.

14.6.2 The VENDOR has five (5) working days from the date of the notice to file a written appeal to the COUNCIL's Regional Administrator. Failure to respond within the five (5) day period shall constitute a waiver of appeal. The Regional Administrator or designee, at his or her sole discretion, may schedule a hearing to gather additional facts and evidence and shall issue a final determination on the matter within five (5) working days of receipt of the written appeal. There shall be no right of appeal to the COUNCIL's governing board.

14.6.3 Sanctions may include, without limitation: suspension of any payment or part due to the VENDOR for work that was identified to be performed by a DBE at the time of contract award, or of any monies held by the COUNCIL as retained on the contract; denial to the VENDOR (including its principal and key personnel) of the right to participate in future contracts of the COUNCIL for a period of up to three years; and/or termination of the contract for cause

Applicability

This article applies to all federally funded purchase orders over \$3,000 and contracts.

ARTICLE FTA-15. VETERANS PREFERENCE

Contractors working on a federally funded project give a hiring preference, to the extent practicable, to veterans (as defined in 5 USC §2108) who have the requisite skills and abilities to perform the construction work required under the contract. This provision shall not be understood, construed, or enforced in any manner that would require an employer to give preference to any veteran over any equally qualified applicant who is a member any racial or ethnic minority, female, an individual with a disability, or former employee.

ARTICLE FTA-16. EXECUTIVE ORDER – SPECIAL DEPARTMENT OF LABOR EQUAL EMPLOYMENT OPPORTUNITY FOR CONSTRUCTION PROJECTS

This article applies to all federally funded construction contracts, rolling stock purchases and operations/management contracts (except transportation services) over \$100,000.

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1. *Overtime requirements* - No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment **of laborers or mechanics** shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. *Violation; liability for unpaid wages; liquidated damages* - In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
3. *Withholding for unpaid wages and liquidated damages* – BSOOB TRANSIT shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the *Contract Work Hours and Safety Standards Act*, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
4. *Subcontracts* - The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.
5. *Disputes* - Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and BSOOB TRANSIT, the U.S. Department of Labor, or the employees or their representatives.
6. *Bonding*. The Recipient agrees to comply with the following bonding requirements and restrictions as provided in federal regulations and guidance:
 - a. *Construction*. As provided in federal regulations and modified by FTA guidance, for each Project or related activities implementing the Underlying Agreement that involve

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construction, it will provide bid guarantee bonds, contract performance bonds, and payment bonds.

- b. Activities Not Involving Construction. For each Project or related activities implementing the Underlying Agreement not involving construction, the Recipient will not impose excessive bonding and will follow FTA guidance.

ARTICLE FTA-17. INTELLECTUAL PROPERTY RIGHTS

Patent Rights.

1. Depending on the nature of the Underlying Agreement, the Federal Government may acquire patent rights when the Recipient or Third-Party Participant produces a patented or patentable invention, improvement, or discovery;
2. The Federal Government's rights arise when the patent or patentable information is conceived or reduced to practice with federal assistance provided through the Underlying Agreement; or
3. When a patent is issued or patented information becomes available as described in the preceding section 17(a)(2) of this Master Agreement, the Recipient will notify FTA immediately and provide a detailed report satisfactory to FTA

Federal Rights. The Recipient agrees that:

1. Its rights and responsibilities and each Third-Party Participant's rights and responsibilities in that federally assisted invention, improvement, or discovery will be determined as provided in applicable federal laws, regulations, requirements, and guidance, including any waiver thereof; and
2. Unless the Federal Government determines otherwise in writing, irrespective of its status or the status of any Third Party Participant as a large business, small business, state government, state instrumentality, local government, Indian tribe, nonprofit organization, institution of higher education, or individual, the Recipient will transmit the Federal Government's patent rights to FTA, as specified in 35 U.S.C. § 200, et seq., and U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.

License Fees and Royalties. Consistent with the applicable U.S. DOT Common Rules, the Recipient agrees that license fees and royalties for patents, patent applications, and inventions produced with federal assistance provided through the Underlying Agreement are program income, and must be used in compliance with applicable federal requirements.

Rights in Data and Copyrights

ARTICLE FTA-18. SAFE OPERATION OF MOTOR VEHICLES

- 18.1** *Seat Belt Use.* The VENDOR agrees to implement Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. § 402 note, (62 Fed. Reg. 19217), by:

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(1) Adopting and promoting on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles; and

(2) Including a "Seat Belt Use" provision in each third-party agreement related to this Contract.

18.2 *Distracted Driving, Including Text Messaging While Driving.* The VENDOR agrees to implement Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. § 402 note, (74 Fed. Reg. 51225); U.S. DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009; and U.S. DOT Special Provision pertaining to Distracted Driving by:

(1) The VENDOR agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle the VENDOR owns, leases, or rents, or a privately-owned vehicle when on official business in connection with this Contract or when performing any work for or on behalf of this Contract.

(2) The VENDOR agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

(3) The VENDOR agrees to include the preceding "Distracted Driving, Including Text Messaging While Driving" provisions in each third-party agreement related to this Contract

Applicability

This article applies to all federally funded purchase orders over \$3,000 and contracts for transit operations.

ARTICLE FTA-19. TELECOMMUNICATIONS CERTIFICATION

The VENDOR certifies through the signing of this contract that, consistent with Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232 (Aug. 13, 2018), the VENDOR does not and will not use any equipment, system, or service that uses "covered telecommunications equipment or services" (as that term is defined in Section 889 of the Act) as a substantial or essential component of any system or as critical technology as part of any system. The VENDOR will include this certification as a flow down clause in any contract related to this Contract.

ARTICLE FTA-20. RESOLUTION OF DISPUTES, BREACHES, OR OTHER LITIGATION

20.1 When applicable contracts in excess of \$175,000, and all non-procurement transaction, as defined in 2 C.F.R. §§ 180.220 and 1200.220, in excess of \$25,000 will contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where VENDORS 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. Specific language for dispute resolution will be provided in any resultant contract of the successful proposer.

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20.2 *Notification to FTA; Flow Down Requirement.* If a current or prospective legal matter that may affect the Federal Government emerges, the VENDOR must promptly notify the Council and FTA's Region 1 Office's FTA Chief Counsel and Regional Counsel. The VENDOR must include these requirements as a flow down clause in any subcontract related to this Contract.

20.2.1 The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.

Right of the Federal Government to Terminate.

1. *Justification.* After providing written notice to the Recipient, the Recipient agrees that the Federal Government may suspend, suspend then terminate, or terminate all or any part of the federal assistance for the Award if:
 - a. The Recipient has failed to make reasonable progress implementing the Award
 - b. The Federal Government determines that continuing to provide federal assistance to support the Award does not adequately serve the purposes of the law authorizing the Award; or
 - c. The Recipient has violated the terms of the Underlying Agreement, especially if that violation would endanger substantial performance of the Underlying Agreement.
2. *Financial Implications.* In general, termination of federal assistance for the Award will not invalidate obligations properly incurred before the termination date to the extent that those obligations cannot be canceled. The Federal Government may recover the federal assistance it has provided for the Award, including the federal assistance for obligations properly incurred before the termination date, if it determines that the Recipient has misused its federal assistance by failing to make adequate progress, failing to make appropriate use of the Project property, or failing to comply with the Underlying Agreement, and require the Recipient to refund the entire amount or a lesser amount, as the Federal Government may determine including obligations properly incurred before the termination date.
3. *Expiration of the Period of Performance.* Except for a Full Funding Grant Agreement, expiration of any period of performance established for the Award does not, by itself, constitute an expiration or termination of the Award; FTA may extend the period of performance to assure that each Formula Project or related activities and each Project or related activities funded with "no year" funds can receive FTA assistance to the extent FTA deems appropriate.
4. *Uniform Administrative Requirements.* These termination rights are in addition to and in no way limit the Federal Government's rights to terminate described in 2 CFR § 200.340.

Applicability

This article applies to all federally funded purchase orders over \$10,000 and contracts.

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State of Maine Procurement Information

Maine's Freedom of Access Act (FOAA). Under this law, BSOOB Transit is required to make public information that we receive in the solicitation of proposals. FOAA does, however have an exception applicable to proprietary information. In the event that you believe that the proposal you submit such information in a separate sealed envelope to BSOOB Transit along with your sealed proposal. The outside of this email must be identified as "Proprietary Information/Confidential." Such proprietary information will only be reviewed by BSOOB Transit, and only on a "need to know" basis. BSOOB Transit will not disclose such information to a third party without your consent, unless it determines that such disclosure is required by law. Prior to disclosing such information, BSOOB Transit will provide you with a reasonable opportunity to seek an injunction or other court order, at your own expense, to prevent such disclosure. BSOOB Transit will not be liable to any proposer or any third party for any disclosure of confidential information.

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FTA Clauses Matrix 2023

Applicability of Third-Party Contract Provision

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

Includes provisions from 2 CFR 200, Master Agreement 30 (FY23) and Circular 4220.1F

Type of Procurement					
Provision	Professional Services / A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
No Federal Govt Obligations to 3 rd Parties (use disclaimer)	All	All	All	All	All
False Statements or Claims Civil and Criminal Fraud	All	All	All	All	All
Access to 3 rd Party Contract Records	All	All	All	All	All
Changes to Federal Requirements	All	All	All	All	All
Termination	>\$10,000	>\$10,000	>\$10,000	>\$10,000	>\$10,000
Civil Rights (Title VI, ADA, EEO except Special DOL EEO Clause for construction)	All	All	All > \$10,000	All	All
Special DOL EEO clause for construction projects				>\$10,000	
Veteran's Employment Preference				All	
Disadvantaged Business Enterprises (DBEs)	All	All	All	All	All
Prompt Payment to Subcontractors (if not part of DBE clause)	All	All	All	All	All
Incorporations of FTA clause	All	All	All	All	All
Debarment and Suspension	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000
Buy America			>150,000 49USC 5323 (j)(13)	>150,000 49USC 5323 (j)(13)	>150,000 49USC 5323 (j)(13)
Resolution of Disputes, Breaches, or Other Litigation- Notification of Contracts and/or Subcontractor to Agency and Agency notification to FTA	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000
Lobbying	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Air	>\$150,000	>\$150,000	>\$150,000	>\$150,000	>\$150,000
Clean Water	>\$150,000	>\$150,000	>\$150,000	>\$150,000	>\$150,000
Cargo Preference			Transport by ocean vessel	Transport by ocean vessel	Transport by ocean vessel
Fly America	Foreign air transp./travel	Foreign air transp./travel	Foreign air transp./travel	Foreign air transp./travel	Foreign air transp./travel
Davis-Bacon Act				>\$2,000 (also ferries)	

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Provision	Professional Services / A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
Contract Work Hours and Safety Standards Act		>\$100,000 (transportations services excepted)	>\$100,000	>\$100,000	
Copeland Anti-Kickback Act Section 1 Section 2				All >\$2,000	
Bonding				>\$250,000	
Seismic Safety	A&E for new buildings & additions			New buildings & additions	
Transit Employee Protective Arrangements		Transit operations			
Charter Service Operations		All			
School Bus Operations		All			
Drug Use and Testing		Transit operations			
Alcohol Misuse and Testing		Transit operations			
Patent Rights	R & D				
Rights in Data and Copyrights	R & D				
Rights to Inventions Made Under a Contract or Agreement	R & D with Small Business or Non-Profit				
Energy Conservation	All	All	All	All	All
Recycled Products		EPA -selected items \$10,000 or more annually		EPA -selected items \$10,000 or more annually	EPA - selected items \$10,000 or more annually
Conformance with ITS National Architecture	ITS Projects	ITS Projects	ITS Projects	ITS Projects	ITS Projects
ADA Access	A&E	All	All	All	All
Notification of Federal Participation for States	Limited to States	Limited to States	Limited to States	Limited to States	Limited to States
Safe Operation of Motor Vehicles 1. Seat Belt Use 2. Distracted Driving	All	All	All	All	All
Prohibition on certain telecommunications and video surveillance services or equipment	All	All	All	All	All