



Finance Committee

Nick Graff – Chairman
James Carius Community Room
101 S. Capitol Street
Pekin, Illinois 61554

Tuesday, March 19, 2024

immediately following Property Committee

- I. Roll Call
- II. Approve the minutes of the February 20, 2024 meeting and the February 28, 2024 in-place meeting
- III. Public Comment
- IV. New Business
 - F-24-08 A. Recommend to approve budget transfer for Building Administration
 - F-24-09 B. Recommend to Adopt the Federal Transit Administration (FTA) Procurement Policy for Procurements Made Using Federal and State Transit Grant Funds
 - F-24-10 C. Recommend to approve purchase of server and networking hardware and support
 - F-24-11 D. Recommend to approve managed IT services and technology updates agreement with Heart Technologies
 - F-24-12 E. Recommend to approve budget transfer for County Clerk
- V. Unfinished Business
- VI. Reports and Communications
 - A. Revenue Update Report
 - B. Treasurer's Report
 - C. Public Safety Sales Tax Report
- VII. Recess

Members: Chairman Nick Graff, Max Schneider, Bill Atkins, Michael Deppert, Sam Goddard, Mike Harris, Randi Krehbiel, Greg Longfellow, Greg Menold, Dave Mingus, Nancy Proehl, Tammy Rich-Stimson

Minutes pending committee approval



Finance Committee

James Carius Community Room
Tuesday, February 20, 2024 – 4:19 p.m.

Committee Members Present: Chairman Nick Graff, Bill Atkins, Nancy Proehl, Mike Harris, Greg Longfellow, Greg Menold, Tammy Rich-Stimson, Max Schneider

Committee Members Absent: Michael Deppert, Samuel Goddard, Randi Krehbiel, Dave Mingus

Others Attending: Mike Deluhery, County Administrator

MOTION **MOTION BY MEMBER MENOLD, SECOND BY MEMBER HARRIS** to approve the minutes of the January 23, 2024

On voice vote, **MOTION CARRIED UNANIMOUSLY.**

MOTION
F-24-05 **MOTION BY MEMBER SCHNEIDER, SECOND BY MEMBER RICH-STIMSON** to recommend to approve replacement purchase of a squad car funded by Risk Management

Human Resources Director Angela Hutton stated that a squad car was totaled, and approval is being requested to purchase a replacement squad car.

On voice vote, **MOTION CARRIED UNANIMOUSLY**

MOTION
F-24-06 **MOTION BY MEMBER HARRIS, SECOND BY MEMBER PROEHL** to recommend to approve budget transfer for Circuit Clerk

Caleb Zobrist stated that a technology modernization grant came out in early January and will be utilized for the Circuit Clerk's technology upgrades including the purchase additional cameras in the courtrooms, additional infrastructure of wifi capabilities, and digitation of old case files.

On voice vote, **MOTION CARRIED UNANIMOUSLY**

DISCUSSION: Energy Transition Community Grant Program

County Administrator Deluhery stated that early last year the County was notified of a new grant that was available due to the closing of the Powerton plant. He

stated that last year, we submitted for the grant and received approval for \$461,000. Administrator Deluhery discussed the prior year's request and recommendation process. There was consensus to follow the same process.

RECESS

Chairman Graff recessed the meeting at 4:28 p.m.

(transcribed by S. Gullette)



In-Place Finance Committee

James Carius Community Room Wednesday,
February 28, 2024 – 6:33 p.m.

Committee Members Present: Chairman Nick Graff, Bill Atkins, Sam Goddard, Michael Deppert, Nancy Proehl, Mike Harris, Greg Longfellow, Randi Krehbiel, Greg Menold, Dave Mingus, Tammy Rich-Stimson

Committee Members Absent: Vice Chairman Max Schneider

Others Attending: Mike Deluhery, County Administrator

MOTION

F-24-07

MOTION BY MEMBER KREHBIEL, SECOND BY MEMBER S. GODDARD to recommend to approve purchase of Microsoft service licenses.

County Administrator Mike Deluhery stated this service license was a 3 year license that would use both grant funding and a portion of the IT budget.

On voice vote, **MOTION CARRIED UNANIMOUSLY.**

RECESS

Chairman Graff recessed the meeting at 6:34 p.m.

(transcribed by M. Kreiter)

Mr. Chairman and Members of the Tazewell County Board:

Your Finance Committee has considered the following RESOLUTION and recommends that it be adopted by the Board:

RESOLUTION

WHEREAS, the County's Finance Committee recommends to the County Board to authorize Budget Transfers for Building Administration:

- Transfer \$302,000 from Building Improvements Line Item (270-630-5530) to Demolition and Abatement (270-630-5294); and

WHEREAS, this is the remaining amount to be paid for the demolition and abatement of the Arcade and Tobin Buildings (Project 23-P-05); and

WHEREAS, this transfer is necessary to cover all FY24 costs for this project which was expected to be completed in FY23.

THEREFORE BE IT RESOLVED that the County Board approve the transfer of funds.

BE IT FURTHER RESOLVED that the County Clerk notifies the County Board Office, Finance, and the Auditor of this action.

PASSED THIS 27th DAY OF MARCH, 2024.

ATTEST:

Tazewell County Clerk

Tazewell County Board Chairman

Tazewell County

Project #2023-P-05

Building Abatement and Demolition of the Arcade Building (11 S. Capitol) and Tobin Building (1 S. Capitol) in Pekin, Illinois

Contract Price Approved on June 28, 2023 via Resolution P-23-08 **\$ 730,000.00**

Add:

River City Demolition Change Order #1 9/1/23 for Addt'l Abatement of Arcade Bldg by M&O Environmental 17,600.00

747,600.00

Less:

River City Demolition Pay App #1 9/25/23 205,600.00
River City Demolition Progress Billing - October 2023 150,000.00
River City Demolition Progress Billing - November 2023 90,000.00
River City Demolition Progress Billing - Dec 2023 & Jan 2024 185,000.00

630,600.00

Remaining Balance Due on Project 117,000.00

River City Demolition Progress Billing - Dec 2023 & Jan 2024 185,000.00

Amount to be tranferred from 270-630-5530 to 270-630-5294 to cover all FY24 costs for this project which was expected to be completed in FY23 **302,000.00**

COMMITTEE REPORT

Mr. Chairman and Members of the Tazewell County Board:

Your Finance Committee has considered the following RESOLUTION and recommends that it be adopted by the Board:

RESOLUTION

WHEREAS, the Finance Committee recommends to the County Board to approve the attached Federal Transit Administration (FTA) Procurement Policy for Procurements Made Using Federal and State Transit Grant Funds; and

WHEREAS, Tazewell County receives rural transportation dollars and is required to adopt guidelines for use of the Federal Transit Administration (FTA) Funds; and

WHEREAS, it is the intent of Tazewell County to adopt the Federal Transit Administration (FTA) Procurement Policy for Procurements Made Using Federal and State Transit Grant Funds.

THEREFORE BE IT RESOLVED THAT the Tazewell County Board hereby authorizes and adopts the Federal Transit Administration (FTA) Procurement Policy for Procurements Made Using Federal and State Transit Grant Funds

BE IT FURTHER RESOLVED that the County Clerk notifies the County Board Office, the Finance Department, Tazewell County PCOM, WeCare, Inc., and the Auditor of this action.

PASSED THIS 27th OF MARCH, 2024.

ATTEST:

Tazewell County Clerk

Tazewell County Board Chairman

**Tazewell County
Federal Transit Administration (FTA)
PROCUREMENT POLICY**

February 1, 2024

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Appendix A: Federal Third-Party Clauses

1. INTRODUCTION

1.1. Purpose

This policy establishes guidelines and minimum standards that Tazewell County will use in the management of its third-party contracts. This manual is intended to ensure that Tazewell County complies with Federal Transit Administration (FTA) and the Illinois Department of Transportation's standards to ensure full and open competition and equitable treatment of all potential sources for all purchases made with funding derived from the Federal, state, and local governments. In all purchasing activity, the goal of Tazewell County is to ensure maximum open and free competition consistent with:

- FTA Circular 4220.1F "Third Party Contracting Guidance" or latest version thereof;
- 2 CFR § 200.317 – 200.326

1.2. Applicability

This manual applies to all procurements undertaken and financed, in whole or in part, with FTA financial assistance provided to Tazewell County to support **open market procurements**. An open market solicitation is used to purchase a good or service 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; and
- Intergovernmental Agreements.

The goal of this procurement policy is to provide an atmosphere in which all procurement transactions will be conducted in a manner providing full and open competition. Tazewell County will avoid the following situations considered to be restrictive of competition:

- Application of unreasonable requirements placed on firms in order for them to qualify to do business;
- Imposition of geographic preference standards in the selection of vendors;
- Imposition of unnecessary experience and excessive bonding requirements;
- Use of noncompetitive pricing practices between firms or between affiliated companies;
- Employment of noncompetitive awards to any person or firm on retainer contracts;
- Failure to recognize 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;
- Use of "brand name" specifications without listing its salient characteristics and not allowing "an equal" product to be offered; and
- Any arbitrary action in the procurement process.

Tazewell County will conduct procurements in a manner that does not give in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. This does not pre-empt Illinois licensing laws from being considered in those disciplines that are regulated by the State of Illinois. Geographic location may be a selection criterion in procurements for architectural and engineering (A&E) services if an appropriate number of qualified firms, given the nature and size of the project, are able to compete for the contract.

1.3. Third-Party Contracting Capacity

FTA regulations (2 CFR § 200.319(c) and FTA Circular 4220.1F, Chapter III, § 3a) requires Tazewell County to have written procurement procedures. This policy is designed to meet FTA and IDOT's requirements in this regard.

1.4. Relationship to Other Not-For-Profit Coporation Policies

The purpose of these purchasing policies and procedures are two-fold. First, the Not-For-Profit Coporation has established these policies and procedures to conform to the provisions of Federal procurement regulations that govern the Not-For-Profit Coporation's use of FTA and IDOT funds. Second, these policies and procedures assure that materials, supplies, services and equipment required for efficient and effective operation of the transit program are procured with regard to an analysis of price, quality, quantity, terms and delivery specifications. These policies and procedures pertain only to the Not-For-Profit Coporation's purchases made with FTA funds for the transit program; purchases with local funds and for purposes other than transit should follow the applicable Illinois law.

These policies may not answer all questions related to purchasing; if any employee of Tazewell County has a question regarding these procedures, IDOT should be contacted for clarification and guidance.

When Tazewell County undertakes any purchase utilizing FTA funds, this policy shall supersede any existing purchasing policy promulgated by the Not-For-Profit Coporation. When any conflict exists between this policy and the existing policies of the Not-For-Profit Coporation, the procedures in this policy shall prevail. If any employee of Tazewell County determines that a conflict exists between these policies and state and local law, Tazewell County shall contact IDOT and communicate the conflict.

2. CODE OF ETHICS AND CONFLICT OF INTEREST POLICY

2.1. Purpose

Federal grant management rules (2 CFR § 200.318(c)(1)) require each recipient to maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. This policy must address:

- Personal conflicts of interest
- Gifts; and
- Violations.

2.2. Definition of Key Terms

As used herein, the following definitions apply:

Conflict of Interest – A situation in which an employee, TCRC Board Member, officer, or agent has a private or personal interest sufficient to appear to influence the objective exercise of his or her official duties. A conflict of interest represents a divergence between a person covered by this policy and their private interests and their professional obligations to the Tazewell County such that an independent observer might reasonably question whether the individual’s professional actions or decisions are determined by considerations of personal gain, financial or otherwise.

Financial Interest – An officer, agent, TCRC Board Member, his or her partner, employee, or their immediate family, is considered as having a financial interest in a company if: they receive more than \$10,000 in consulting income, salaries, or equity in the company; they have more than 5 percent equity in the company; they have intellectual property rights in or receive royalties from the company; or they serve as a director, officer, partner, trustee, manager or employee of the company.

Immediate Family – Immediate family includes an employee’s spouse, grandparent, parent, brother, sister, child, or grandchild, his or her partner.

2.3. Applicability

No employee, elected official, agent, or other individual under an employment contract with Tazewell County or his or her immediate family member, partner, or organization that employs or is about to employ any of the foregoing may participate in the selection, award, or administration of a contract supported with FTA assistance if a conflict of interest, real or apparent, would be involved.

Such a conflict would arise when any of those previously listed individuals has a financial or other interest in the firm selected for the award.

2.4. Gifts

Any contractor, subcontractor, or supplier who has a contract with the Not-For-Profit Corporation; has performed under such a contract within the past year; or anticipates bidding on such a contract in the future shall be prohibited from making gifts or to providing favors to any individual defined in Section 2.2. who is charged with the duty of:

- Preparing plans, specifications, or estimates for public contract; or
- Awarding or administering public contracts; or
- Inspecting or supervising construction.

Tazewell County also prohibits all covered individuals defined in Section 2.2. who perform the functions listed above from receiving or accepting any such gift or favor.

2.5. Employee Conflicts of Interest

2.5.1. Conflicts of Interest

It shall be a breach of ethical standards for any Tazewell County employee to participate directly or indirectly in a procurement when the employee knows:

- The employee or any member of the employee's immediate family, County Board Member, officer, agent, his or her partner, has a financial interest pertaining to the procurement;
- A business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement; or
- Any other person, business, or organization with whom the employee or any member of employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.

2.5.2. Discovery of Actual or Potential Conflict of Interest (Disqualification and Waiver)

Upon discovery of an actual or potential conflict of interest, an employee participating directly or indirectly in a procurement shall:

- Promptly file a written statement of disqualification with the County Administrator; and
- Withdraw from further participation in the procurement.

The employee may, at the same time, request from the County Administrator an advisory opinion as to what further participation, if any, the employee may have in the procurement. It shall be at the sole discretion of the County Administrator to determine if the employee may have any further participation in the procurement and, if so, the extent to which the employee may participate. Any employee who fails to comply with the provisions of this paragraph may be subject to disciplinary action.

2.5.3. Employee Disclosure Requirements

A Tazewell County employee, who has reason to believe that he/she or his/her immediate family have an interest that may be affected by his/her official acts or actions as a Tazewell County employee or by the official acts or actions of Tazewell County shall disclose the precise nature and value of such interest in a written disclosure statement to the County Administrator. The employee's disclosure statement will be reviewed by the County Administrator and the County Administrator will respond to the employee in writing with an opinion as to the propriety of said interest.

In the event that the County Administrator has reason to believe that he/she or his/her immediate family has an interest that may be affected by his/her official acts or actions as a Tazewell County employee or by the official acts or actions of Tazewell County he/she shall disclose the precise nature and value of such interest in a written disclosure statement to the Board Chairman.

2.5.4. Confidential Information

A Tazewell County employee may not directly or indirectly make use of, or permit others to make use of, for the purpose of furthering a private interest, confidential information acquired by virtue of their position or employment with Tazewell County.

2.5.5. Solicitation Provision

Tazewell County shall insert the following provisions in all formal competitive solicitation documents for products and services:

These policies shall apply to Tazewell County employees involved in procurement. It is a breach of ethical standards for any Tazewell County employee to participate directly or indirectly in a procurement when the employee knows:

- *The employee or any member of the employee's immediate family has a financial interest pertaining to the procurement;*
- *A business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement; or*
- *Any other person, business, or organization with whom the employee or any member of employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.*

In addition, any persons acting as members of an evaluation committee for any procurement shall, for the purposes of the procurement, be bound by conditions of this Section. Throughout the bid/proposal evaluation process and subsequent contract negotiations, offerors shall not discuss or seek specific information about this procurement, including but not limited to, the contents of submissions, the evaluation process, or the contract negotiations, with members of any evaluation committee, the County Board, or other Tazewell County employees other than the designated procurement officer."

2.6. Organizational Conflicts of Interest

The procurement officer and technical personnel are encouraged to work closely with the Legal Counsel to review all situations that appear to have the potential for an organizational conflict of interest.

Organizational conflicts of interest may result in bias and potentially provide an unfair competitive advantage to a potential offeror. An organizational conflict of interest occurs due to the type of work to be performed under a third-party contract, or because of other activities or relationships such as:

- A contractor is unable, or potentially unable, to render impartial assistance or advice to the Not-For-Profit Corporation;
- A contractor's objectivity in performing contract work is or might otherwise be impaired; or
- A contractor has an unfair competitive advantage.

Bias arises when a contractor is placed in a situation where there may be an incentive to distort advice or decisions. Whenever a contract is awarded that involves the rendering of advice, the question must always be asked as to whether the potential for a conflict of interest exists for the contractor rendering the advice. Tazewell County will utilize a "Conflict of Interest Disclosure Statement," in its solicitation when contracting for services of this nature.

3. Tazewell County RESPONSIBILITIES UNDER FEDERAL LAW

3.1. Third Party Contracting Capacity

Tazewell County must maintain adequate technical capacity to carry out its FTA assisted projects and comply with Federal rules. Tazewell County's third party contracting capability must be adequate to undertake its procurements effectively and efficiently in compliance with applicable Federal, state, and local requirements.

3.2. Contract Administration System

Tazewell County must maintain a contract administration system to ensure that it and its third-party contractors comply with the terms, conditions, and specifications of their contracts or purchase orders and applicable Federal, state, and local requirements.

3.2.1. Written Procurement Procedures

Tazewell County must maintain and follow written procurement procedures that address:

- (a) Solicitations – Requirements for Tazewell County solicitations are addressed in Section 5.
- (b) Necessity – Requirements related to Tazewell County's need for products or services are addressed in Section 3.2.2.
- (c) Lease Versus Purchase – Requirements related to the use of lease or purchase alternatives to achieve an economical and practical procurement are addressed in Section 3.2.2
- (d) Metric Usage – Requirements related to the acceptance of products and services dimensioned in the metric system of measurement are addressed in Section 3.5.2.
- (e) Environmental and Energy Efficiency Preferences – Requirements related to preference for products and services that conserve natural resources, protect the environment, and are energy efficient are addressed in Sections 3.4.3 and 3.4.4.
- (f) Procurement Methods – Descriptions of the procurement methods that Tazewell County may use are included in Section 5.
- (g) Legal Restrictions – Descriptions of Federal and state restrictions on Tazewell County's acquisitions are included in Section 5.
- (h) Third Party Contract Provisions – Specific third-party contract provisions required for each third-party contract and flow down requirements to subcontracts are included in Section 3.1 through 3.7.
 - (1) Sources – Descriptions of the availability and use of various sources of products and services are addressed in Section 4.

- (2) Resolution of Third-Party Contracting Issues – Procedures related to the resolution of third-party contracting issues are included in Section 6.8.

3.2.2. Adequate Third-Party Contract Provisions

Tazewell County must include provisions in all its third-party contracts that are adequate to form a sound and complete agreement.

3.2.3. Industry Contracts

Tazewell County shall not use an industry developed contract or a contract that is provided by a bidder or offeror unless it has first evaluated the benefits of the contract. Tazewell County shall ensure that such contracts include all required Federal provisions but do not include terms and conditions that may be unfavorable to Tazewell County.

3.2.4. Revenue Contracts

Tazewell County may enter a revenue contract with a third party to generate revenues in connection with a transit related activity, or to create business opportunities utilizing an FTA funded asset. Any such said contract opportunity will follow competitive selection procedures and principles outlined herein.

3.2.5. Record Keeping

Tazewell County must prepare and maintain adequate and readily accessible project performance and financial records, covering procurement transactions as well as other aspects of project implementation. Tazewell County must maintain these records for five (5) years after Tazewell County and its subrecipients, if any, have made final payment and all other pending matters are closed. Specific record keeping requirements include:

- (a) Written Record of Procurement History – Tazewell County must maintain and make available to IDOT and FTA written records detailing the history of each procurement. For all procurements above the micro-purchase level Tazewell County must maintain records relating to:
- (1) Procurement Method – Tazewell County must provide its rationale for the method of procurement it used for each contract, including a sole source justification for any acquisition that does not qualify as competitive;
 - (2) Contract Type – Tazewell County must state the reasons for selecting the contract type it used;
 - (3) Contractor Selection – Tazewell County must state its reasons for contractor selection or rejection;
 - (4) Contractor Responsibility – Tazewell County must provide a written determination of responsibility for the successful contractor;
 - (5) Cost or Price – Tazewell County must evaluate and state its justification for the contract cost or price; and
 - (6) Reasonable Documentation – Tazewell County must retain documentation commensurate with the size and complexity of the procurement.

- (7) Vendor Verification – Tazewell County must include verification of acceptance with a selected vendor/supplier/manufacturer through the Federal System of Award Management (SAM) for each project and associated project file.

- (b) Access to Records – Tazewell County must provide FTA and IDOT officials, the Comptroller General, or any of their representatives, access to and the right to examine and inspect all records, documents, and papers, including contracts, related to any FTA project financed with Federal assistance.

- (c) Use of Technology/Electronic Commerce – Tazewell County may use an electronic commerce system to conduct third party procurements. If Tazewell County uses an electronic commerce system, then the following requirements apply:
 - (1) Sufficient System Capacity – Tazewell County's system must have sufficient system capacity necessary to accommodate all Federal requirements for full and open competition.
 - (2) Written Procedures – Before any solicitation takes place, Tazewell County must establish adequate written procedures to ensure that all information FTA/IDOT requires for project administration is entered into the system and can be made readily available to IDOT as needed.

3.3. Determination of Needs

Tazewell County must maintain and follow adequate procedures for determining the types and amounts of products and services it needs to acquire. Tazewell County shall comply with the following requirements when determining the types and amounts of products and services it needs to acquire:

3.4. Eligibility

All products and services to be acquired with FTA funds must be eligible under the Federal law authorizing the FTA assistance award and any regulations thereunder. All products and services to be acquired with FTA funds must also be eligible for support within the scope of the underlying grant or cooperative agreement from which the FTA assistance to be used is derived.

3.5. Necessity

Tazewell County shall adhere to the following standards for avoiding the purchase of duplicative and/or unnecessary products and services it does not need.

3.5.1. Unnecessary Reserves

Tazewell County shall limit the acquisition of Federally assisted property and services to the amount it needs to support its operations.

3.5.2. Acquisition for Assignment Purposes

Tazewell County shall contract only for its current and reasonably expected public transportation needs and shall not add quantities or options to third party contracts solely to permit assignment to another party at a later date. These limits on assignments, however, do not preclude joint procurements that are entered into simultaneously by two or more parties to obtain advantages unavailable for smaller procurements.

- (a) General Prohibition – Tazewell County may contract only for its current and reasonably expected public transportation needs and may not add quantities or options to third party contracts solely to permit assignment to another party at a later date.
- (b) Changes in the Recipient’s Needs – IDOT and FTA recognize that the quantity of property or services a recipient reasonably believes it may need at the time of contract award may change. Tazewell County's later needs might decrease due to changed circumstances or honest mistakes. In those situations, Tazewell County may assign its unneeded contract authority to another entity that would like to acquire the property or services.
- (c) Exceptions – These limits on assignments, however, do not preclude:
 - (1) Joint Procurements – Tazewell County and one or more other FTA recipients may enter a single procurement at the same time to obtain advantages unavailable for smaller procurements.
 - (2) Participation in IDOT Sponsored Vehicle Procurements – Tazewell County may enter contracts developed by the State of Illinois to acquire vehicles.
- (d) Procurement Size – For every procurement, Tazewell County shall consider whether to consolidate or break out the procurement to obtain the most economical purchase. Absent efforts to foster greater opportunities for Disadvantaged Business Enterprises (DBEs), small and minority firms and women’s business enterprises, Tazewell County shall not split a larger procurement merely to gain the advantage of micro-purchase or small purchase procedures.
- (e) Options – Tazewell County shall justify, as needed, all option quantities included in every solicitation and contract. An option is a unilateral right in a contract by which, for a specified time, Tazewell County may acquire additional equipment, supplies, or services than originally procured. An option may also extend the term of the contract.
- (f) Lease Versus Purchase – Tazewell County shall review lease versus purchase alternatives for acquiring property and shall prepare or obtain an analysis to determine the most economical alternative. If Tazewell County chooses to lease an asset then it must prepare a written comparison of the cost of leasing the asset compared with the cost of purchasing or constructing the asset.
- (g) Specifications – Tazewell County's procurement specifications shall clearly describe the products or services to be procured and shall state how the proposals will be evaluated.

Tazewell County 's procurement specifications shall not be exclusionary, discriminatory, unreasonably restrictive, or otherwise in violation of Federal or Illinois laws or regulations.

3.6. Contractor Responsibilities

Tazewell County, in awarding contracts, financed in whole or in part, with FTA financial assistance, shall follow guidance in this section to evaluate contractor capabilities to perform the contract.

In addition to the Federal rules (2 CFR § 200.318(h)) that require contract awards be made only to responsible contractors, Federal transit law at 49 U.S.C. § 5325(j) limits third party contractor awards to those contractors capable of successfully performing under the terms and conditions of the proposed contract. Before selecting a contractor for award, Tazewell County must consider such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

3.6.1. Debarment and Suspension

Debarment and suspension regulations and guidance include the following provisions.

3.6.1.1. DOT Debarment and Suspension Regulations

U.S. Department of Transportation (DOT) regulations, “Nonprocurement Suspension and Debarment,” 2 CFR Part 1200 apply to each third party contract at any tier of \$25,000 or more, to each third party contract at any tier for a federally required audit (irrespective of the contract amount), and to each third party contract at any tier that must be approved by an FTA official irrespective of the contract amount (2 CFR § 1200). Tazewell County shall apply DOT’s debarment and suspension requirements to itself and each third-party contractor at every tier to the extent required by DOT’s regulations that incorporate the requirements of Office of Management and Budget (OMB), “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)” (2 CFR § 180).

3.6.1.2. System for Award Management

The System for Award Management (SAM) combines Federal procurement systems and the Catalog of Federal Domestic Assistance into one new system. SAM includes the functionality from the following systems:

- Central Contractor Registry (CCR)
- Federal Agency Registration (Fedreg)
- Online Representations and Certifications Application
- Excluded Parties List System (EPLS)

At its discretion, Tazewell County may collect a debarment and suspension certification from the prospective third-party contractor or include a clause in the third-party contract requiring

disclosure. Additionally, it shall be the policy of Tazewell County to verify that the prospective third-party vendor is not listed as a debarred contractor on SAM.

3.6.2. Lobbying Certification and Disclosure

If a third-party contract will exceed \$250,000, before awarding the contract, Tazewell County will obtain a lobbying certification, and if applicable, a lobbying disclosure from a prospective third party contractor (see DOT regulations, “New Restrictions on Lobbying,” 49 CFR Part 20, modified as necessary by 31 U.S.C. Section 1352).

3.6.3. Additional Requirements

In addition to the requirements outlined above, there are various requirements that may apply to Tazewell County's third-party contracts, depending upon the type of procurement and the anticipated dollar value of said contract. It is the responsibility of Tazewell County to assess each procurement and determine the applicable FTA third party terms and conditions that should be included in the solicitation and contract documents. FTA Circular 4220.1F, Appendix D, has a matrix stipulating these conditions. These conditions may include:

- Federal Civil Rights Laws and Regulations
 - Federal Equal Employment Opportunity (EEO) Requirements
 - Nondiscrimination on the Basis of Sex
 - Nondiscrimination on the Basis of Age
 - Nondiscrimination in Federal Public Transportation Programs
 - Title VI of the Civil Rights Act
 - Environmental Justice
 - Limited English Proficiency (LEP)
 - Nondiscrimination on the Basis of Disability
- Socio-Economic Development Regulations
 - Disadvantaged Business Enterprises (DBE)
 - Small and Minority Firms and Women’s Business Enterprises
 - Sensitive Security Information
 - Seat Belt Use
- Socio-Economic Requirements for the Acquisition of Property and Services
 - Labor Regulations
 - Wage and Hour Requirements
 - Fair Labor Standards
- Environmental Protections
 - Environmental Mitigation
 - National Environmental Policy Act (NEPA)
 - Protections for Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites
 - Clean Air
 - Clean Water
 - Recycled Products
 - Other Federal Environmental Protection Requirements

- Energy Conservation
- Preference for U.S. Property--Buy America
- Trafficking in Persons
- Federal Tax Liability and Recent Felony Convictions
- Shipments of Property--U.S. Flag Requirements
 - Shipments by Ocean Vessel
 - Shipments by Air Carrier
 - Project Travel--Use of U.S. Flag Air Carriers
- Technical Restrictions on the Acquisition of Property and Services
 - Intelligent Transportation Systems (ITS)
 - Metric Measurements
 - Use of \$1 Coins
- Rolling Stock--Special Requirements
 - Accessibility
 - Transit Vehicle Manufacturer Compliance with DBE Requirements
 - Minimum Service Life
 - Spare Ratios
 - Air Pollution and Fuel Economy
 - Pre-award and Post Delivery Review
 - Bus Testing
 - In-State Dealers
 - Basis for Contract Award
 - Five-Year Limitation
- Public Transportation Services—Special Requirements
 - Protections for Public Transportation Employees
 - Drug and Alcohol Testing
 - Accessibility
 - Charter Service Restrictions
 - School Bus Restrictions
- Construction – Special Requirements
 - Bonding
 - Bid Guarantee
 - Performance Bond
 - Payment Bond
 - Anti-Kickback
 - Construction Safety
 - Labor Neutrality
 - Prevailing Wages

3.7. Bonding

Some procurements may require Tazewell County to require the vendor to submit a bid bond, performance bond, or payment bond (typically construction projects). When bonding is required, the following conditions will apply.

3.7.1. Thresholds

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, IDOT may accept the bonding policy and requirements of the Not-For-Profit Corporation provided that IDOT has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

3.7.1.1. Bid Guarantee

A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must 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 the bid, execute such contractual documents as may be required within the time specified.

3.7.1.2. Performance Bond

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.

3.7.1.3. Payment Bond

A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

3.7.2. Acceptable Sureties

Federal rules for non-governmental recipients requires the non-governmental recipient to obtain construction bonds from companies holding certificates of authority as acceptable sureties under Department of the Treasury regulations, “Surety Companies Doing Business with the United States,” (31 CFR Part 223). For a current list of approved sureties, see Department of the Treasury’s Listing of Approved Sureties (Department Circular 570). As FTA encourages governmental recipient to require similarly acceptable sureties, it shall be the policy of Tazewell County to such accept sureties.

3.7.3. Reduced Bonding

Tazewell County recognizes that bonding costs can be expensive. Tazewell County will accept a local bonding policy that conforms to the minimums described in Section 3.4.1. If bonding levels are sought at levels less than these amounts, Tazewell County must obtain the prior approval of IDOT/FTA. IDOT/FTA shall approve such requests only if it determines that Tazewell County's bonding policy adequately protects the Federal interest in the project.

3.7.4. Excessive Bonding

Tazewell County will adhere to FTA’s rules on excessive bonding requirements (FTA Circular 4220.1F, Chapter IV, § 2h(1)(f)). However, if Tazewell County determines it has a material risk of loss because of a

failure of the prospective contractor, bonding requirements may exceed those outlined in Section 3.7.1 only with the prior approval of IDOT/FTA.

3.8. Veterans Preference

As provided by 49 U.S.C. § 5325(k), Tazewell County shall ensure that contractors working on a capital project funded using Federal financial assistance give a hiring preference, to the extent practicable, to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform the construction work required under the contract. This subsection 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 of any racial or ethnic minority, female, an individual with a disability, or former employee.

3.9. Preference for U.S. Property—Buy America

Buy America regulations require that all iron, steel, and manufactured products used in an FTA-funded project be produced in the United States. Rolling stock is included in the category of manufactured products. Originally, the iron and steel requirements applied to all construction materials made primarily of iron or steel used in infrastructure projects.

On November 15, 2021, President Biden signed the Infrastructure Investment and Jobs Act (IIJA or the Bipartisan Infrastructure Law), Pub. L. No. 117-58, which includes the Build America, Buy America Act (BABA). Specifically, BABA expands the coverage of Buy America preferences to all manufacturing processes for construction materials used in federally assisted infrastructure projects.

3.10. Accessibility

Facilities to be used in public transportation service must comply with 42 U.S.C. Sections 12101 *et seq.* and DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 CFR § 37; and Joint ATBCB/DOT regulations, “Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 CFR § 1192 and 49 CFR § 38. Notably, DOT incorporated by reference the ATBCB’s “Americans with Disabilities Act Accessibility Guidelines” (ADAAG), revised July 2004, which include accessibility guidelines for buildings and facilities, and are incorporated into Appendix A to 49 CFR Part 37. DOT also added specific provisions to Appendix A modifying the ADAAG, with the result that buildings and facilities must comply with both the ADAAG and amendments thereto in Appendix A to 49 CFR Part 37.

4. SOURCES OF ACQUISITIONS

4.1. Force Account

Force account means use of Tazewell County's own labor forces and equipment to undertake a project (typically construction, renovation, or repair). The use of force account labor is a project management function, rather than a procurement and contract administration function, except in the general sense of the Not-For-Profit Corporation's ability to perform work with its own forces rather than contracting with another entity to acquire the property or services it needs, and the cost implications of the recipient's decision. Tazewell County does not charge force account labor to its FTA grants.

4.2. Joint Procurements

Tazewell County may participate in joint procurements whereby Tazewell County and one or more other entities agree from the outset to use a single solicitation document and enter into a single contract with a vendor for delivery of products or services. The following requirements apply to Tazewell County's participation in joint procurements:

- Solicitation documents may not be drafted for the purpose of accommodating the needs of other parties that may later want to participate in the benefits of the contract.
- Tazewell County is responsible for ensuring that the joint procurement solicitation and contract complies with all Federal requirements and that the solicitation document and contract includes all required clauses and certifications.

4.3. State or Local Government Purchasing Schedules or Purchasing Contracts

4.3.1. Definition

FTA uses the term "state or local government purchasing schedule" to mean an arrangement that a State or local government has established with several or many vendors in which those vendors agree to provide essentially an option to the State or local government, and its subordinate government entities, to acquire specific property or services in the future at established prices. These arrangements are somewhat similar to the General Services Administration's (GSA) Cooperative Purchasing Program available for Federal Government use.

4.3.2. Applicability of Federal Provisions

When obtaining property or services in this manner, Tazewell County must ensure all Federal requirements, required clauses, and certifications (including Buy America) are properly followed and included, whether in the master intergovernmental contract or in the recipient's purchase document. While IDOT takes all precautions to ensure that such provision is in the original solicitation and contract

documents, it is ultimately Tazewell County's responsibility to ensure such documents and certifications are obtained.

If such requirements, clauses, and certifications were not included in the original purchase solicitation and contracts, Tazewell County may request the vendor to append the required Federal clauses in the purchase order or other document that effects the Tazewell County's procurement. When this method is used, Tazewell County shall obtain Buy America certification before entering the purchase order. This method cannot be used to circumvent FTA's Buy America requirements.

4.3.3. Federal Supply Schedules

Purchases by Tazewell County from Federal Supply Schedules established by the U.S. General Services Administration (GSA) are limited to the purchase of information technology (IT) products and to products and services to facilitate recovery from a major disaster. The following requirements apply to Tazewell County purchases from GSA schedules:

- Tazewell County is authorized to use GSA schedules for purchases of products and services to facilitate recovery from a major disaster that is declared by the President of the United States. Upon declaration of a major disaster by the President, Tazewell County may purchase products and services from GSA schedules both in advance and in the aftermath of the emergency event. Tazewell County shall be responsible for ensuring that the products and services acquired will only be used for recovery.
- Tazewell County must ensure that all Federal requirements, required clauses and certifications are properly followed and included, whether in the master intergovernmental contract or Tazewell County's purchase document.
- Tazewell County is required to evaluate the reasonableness of prices obtained from GSA schedules. GSA schedule pricing may not be used as a sole or single source for procurement. Tazewell County may only use GSA schedule pricing as one of multiple pricing sources solicited in accordance with its requirements for small purchases described in Section 5.

4.3.4. Existing Contracts

Tazewell County may use existing contract rights as an acquisition source. An "existing contract" means a contract that, when formed, was intended to be limited to the original parties thereto.

4.3.4.1. Permissible Actions

Within the conditions set forth below, Tazewell County may use existing contract rights held by another recipient of FTA assistance:

- (a) Exercise of Options – Tazewell County may use contract options held by another recipient of FTA assistance with the following limitations:

- (1) Consistency with the Underlying Contract – Tazewell County must ensure that the terms and conditions of the option it seeks to exercise are substantially similar to the terms and conditions of the option as stated in the original contract at the time it was awarded.

- (2) Price – Tazewell County may not exercise an option unless it has determined that the option price is better than prices available in the open market, or that when it intends to exercise the option, the option is more advantageous.
 - (3) Awards Treated as Sole Source Procurements – The following actions constitute sole source awards:
 - i. Failure to Evaluate Options Before Awarding the Underlying Contract – If a contract has one or more options and those options were not evaluated as part of the original contract award, exercising those options after contract award will result in a sole source award.
 - ii. Negotiating a Lower Option Price – Exercising an option after Tazewell County has negotiated a lower or higher price will also result in a sole source award unless that price can be reasonably determined from the terms of the original contract, or that price results from Federal actions that can be reliably measured.
- (b) Assignment of Contract Rights (“Piggybacking”) – If Tazewell County finds that it has inadvertently acquired contract rights in excess of its needs, it may assign those contract rights to another IDOT subrecipient if the original contract contains an assignability provision that permits the assignment of all or a portion of the specified deliverables under the terms originally advertised, competed, evaluated, and awarded, or contains other appropriate assignment provisions. Tazewell County may use contractual rights through assignment from another recipient of FTA assistance after first determining the contract price remains fair and reasonable, and the contract provisions are adequate for compliance with all Federal requirements. Tazewell County need not perform a second price analysis if a price analysis was performed for the original contract; however, Tazewell County must determine whether the contract price or prices originally established are still fair and reasonable before using those rights. Tazewell County shall be responsible for ensuring the contractor’s compliance with FTA’s Buy America requirements and execution of all the required pre-award and post-delivery Buy America review certifications. Before proceeding with the assignment, however, Tazewell County shall review the original contract to be sure that the quantities the assigning recipient acquired, coupled with the quantities that Tazewell County seeks, do not exceed the amounts available under the assigning recipient’s contract.

4.3.4.2. Impermissible Actions

Tazewell County may not use Federal assistance to finance:

- (a) Improper Contract Expansion – A contract has been improperly expanded when it includes a larger scope, greater quantities, or options beyond the recipient’s reasonably anticipated needs. A contract has also been improperly expanded when excess capacity has been added primarily to permit assignment of those contract rights to another entity.
- (b) Cardinal Changes – A significant change in contract work that causes a major deviation from the original purpose of the work or the intended method of achievement, or

causes a revision of contract work so extensive, significant, or cumulative that, in effect, the contractor is required to perform very different work from that described in the original contract, is a cardinal change or “tag-on”. A change within the scope of the contract is not a cardinal change or “tag-on”.

4.4. The Open Market

Tazewell County will acquire most of the property and services it needs through procurements in the open market using procedures described in Section 5 of this Manual.

5. PROCEDURES FOR OPEN MARKET PROCUREMENTS

5.1. Solicitation of Competitive Price Quotes, Bids or Proposals

Compliance with the solicitation procedures described in Section 5.4 below will fulfill FTA requirements for “full and open competition.”

5.2. Receipt and Evaluation of Unsolicited Proposals

Tazewell County may enter into contracts based on an unsolicited proposal when authorized by applicable State law or regulation. Receipt of an unsolicited proposal does not, by itself, justify contract award without providing for full and open competition. Unless the unsolicited proposal offers a proprietary concept that is essential to contract performance, Tazewell County must seek competition. To satisfy the requirement for full and open competition, Tazewell County must take the following actions before entering into a contract resulting from an unsolicited proposal:

- Publicize its receipt of the unsolicited proposal;
- Publicize an adequate description of the products or services offered without improperly disclosing proprietary information or disclosing the originality of thought or innovativeness of the products or services sought;
- Publicize its interest in acquiring the products or services described in the proposal;
- Provide an adequate opportunity for interested parties to comment or submit competing proposals; and
- Publicize its intention to award a contract based on the unsolicited proposal or another proposal submitted in response to the publication.

If it is impossible to describe the products or services offered without revealing proprietary information or disclosing the originality of thought or innovativeness of the products or services sought, Tazewell County may make a sole source award to the offeror. A sole source award may not be based solely on the unique capability of the offeror to provide the specific products or services proposed.

5.3. Prequalification

Tazewell County may prequalify bidders, offerors, and products for procurement purposes; however, Tazewell County is not required to do so. The decision of whether to require prequalification for eligibility to participate in procurement shall be made separately for every procurement and shall be approved by the Procurement Officer.

If Tazewell County opts to prequalify bidders, offerors, and products for procurement purposes, the following conditions apply:

- Tazewell County must ensure that all prequalification lists it uses are current;
- Tazewell County must ensure that all prequalification lists it uses include enough qualified sources to provide maximum full and open competition; and

- Tazewell County must permit potential bidders or offerors to qualify during the solicitation period (from the issuance of the solicitation to its closing date). Tazewell County is not required to hold a particular solicitation open to accommodate a potential supplier that submits products for approval before or during that solicitation nor must Tazewell County expedite or shorten prequalification evaluations of bidders, offerors, or products presented for review during the solicitation period.

5.4. Solicitation Requirements and Restrictions

Every procurement solicitation that Tazewell County issues above the micro-purchase level (currently established in Federal guidance at \$10,000), must include the following information and be advertised in a manner that ensures adequate and open competition.

5.4.1. Statement of Federal Assistance

Pursuant to Circular 4220.1F, Chapter III, § 3e, all RFPs, solicitations, press releases or other publications involving FTA assistance must state that FTA is or will be providing Federal assistance for the project, the amount of the assistance FTA has provided or expects to provide, and the Catalogue of Federal Domestic Assistance (CFDA) Number of the program that authorizes Federal assistance. Note: this notification requirement applies only to States and their subrecipients, lessees, and third-party contractors. The current Master Agreement will define the notification requirements that are currently in effect, as they may change from year to year.

5.4.2. Description of the Property or Services

The solicitation and the contract awarded thereunder must include a clear and accurate description of Tazewell County's technical requirements for the products or services to be acquired in a manner that provides for full and open competition.

5.4.2.1. Descriptive Elements

Tazewell County will prepare descriptions of property, goods, or service in terms of functions to be performed or level of performance required, including the range of acceptable characteristics or minimum acceptable standards. Detailed product specifications should be avoided if at all possible; however, there is no prohibition against their use when appropriate.

5.4.2.2. Quantities

Additional quantities or options above Tazewell County's needs at the time of acquisition may not be added to contracts solely to allow assignment of those quantities or options at a later date.

5.4.2.3. Brand Name or Equal

When it is impractical or uneconomical to provide a clear and accurate description of the technical requirements of the property to be acquired, a "brand name or equal" description may be used

to define the performance or other salient characteristics of a specific type of property. The salient characteristics of the named brand that bidders or offerors must provide must be identified.

5.4.2.4. Prohibited Practices

Solicitations with requirements that contain features that unduly restrict competition may not be used. Tazewell County shall not:

- Impose unreasonable business requirements for bidders or offerors.
- Impose unnecessary experience requirements for bidders and offerors.
- Use prequalification procedures that conflict with the prequalification standards described in Section 5.3.
- Make a noncompetitive award to any person or firm on a retainer contract with Tazewell County if that award is not for the property or services specified for delivery under the retainer contract.
- Impose unreasonable restrictive bonding requirements on bidders and offerors in excess of FTA and state requirements.
- Specify only a “brand name” product without allowing offers of an “equal” product or allowing an “equal” product without listing the salient characteristics that the “equal” product must meet to be acceptable for award.
- Specify in-state or local geographical preferences or evaluating bids or proposals in light of in-state or local geographic preferences, even if those preferences are imposed by State or local laws or regulations. The only exception expressly mandated or encouraged by Federal law that may be applicable to Tazewell County is the procurement of Architectural and Engineering (A&E) Services. Geographic location may be a selection criterion in the procurement of A&E services if an appropriate number of qualified firms are eligible to compete for the contract in view of the nature and size of the project.
- Engage in practices that result in organizational conflicts of interest. An organizational conflict of interest occurs when any of the following circumstances arise:
 - Lack of Impartiality or Impaired Objectivity – When the bidder or offeror is unable, or potentially unable, to provide impartial and objective assistance or advice to Tazewell County Transit due to other activities, relationships, contracts, or circumstances.
 - Unequal Access to Information – When the bidder or offeror has an unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier contract.
 - Biased Ground Rules – When during the conduct of an earlier procurement, the bidder or offeror has established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents.
- Support or acquiesce in noncompetitive pricing practices between firms or between affiliated companies.
- Take any arbitrary action in the procurement process.

5.4.3. Evaluation Factors.

All solicitations issued by shall identify all factors to be used in evaluating bids or proposals. At the discretion of Procurement Officer, the relative order of importance and/or weights may be communicated to prospective offerors.

5.4.4. Permissible Contract Types

Tazewell County shall state the type of contract that will be awarded in all solicitation documents. The following types of contracts will typically be executed with the successful vendor:

5.4.4.1. Firm Fixed Price

A firm fixed price contract includes a price that remains fixed irrespective of the contractor's cost experience in performing the contract. A firm fixed price contract may include an economic price adjustment provision, incentives, or both.

5.4.4.2. Cost Reimbursement

A cost-reimbursement contract provides for payment of the contractor's allowable incurred costs, to the extent prescribed in the contract. Allowable costs may include incentives if the recipient believes they can prove helpful. Cost-reimbursement contracts are suitable for use only when uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed price contract.

5.4.5. Prohibitive or Restricted Contract Types

The following contract types are prohibited or restricted:

5.4.5.1. Cost Plus Percentage of Cost

Cost plus Percentage of Cost type contracts are prohibited.

5.4.5.2. Time and Materials

Time and Materials type contracts may be used only after a written determination is made that no other contract type is suitable. In addition, the contract between Tazewell County and the Contractor must specify a ceiling price that the Contractor may not exceed except at its own risk.

5.4.6. Other Federal Requirements Affecting the Property or Services to be Acquired

The solicitation and resulting contract must identify those Federal requirements that will affect contract scope and performance.

5.4.7. Other Federal Requirements Affecting the Bidder or Offeror and the Contractor

The solicitation and resulting contract must identify all Federal requirements that a bidder or offeror must fulfill before and during contract performance.

5.4.8. Reservation of Right to Award to Other Than the Low Bidder or Offeror

The solicitation must specifically reserve Tazewell County right to award a contract to other than the low bidder or offeror. If the solicitation documents do not specify this right, Tazewell County will be obligated to award the contract to the low bidder.

5.4.9. Reservation of Right to Reject All Bids or Offers

The solicitation must specifically reserve Tazewell County's right to reject all bids or offers.

5.5. Methods of Procurement

Tazewell County shall use competitive procedure(s) appropriate for the acquisition undertaken. The procedures used must comply with Illinois and local law as well as with Federal requirements. Federal restrictions vary with the type of procurement method used. The following guidance is based on the requirements of 2 CFR § 200.318 – 200.326, supplemented by FTA policies that address the needs of FTA recipients.

5.5.1. Micro-Purchases

5.5.1.1. Definition

Micro-purchases are those purchases of products and services that cost \$10,000 or less, as defined by 2 CFR §200.67 (or current threshold established by Federal Acquisition Regulations (FAR)); for purposes of this policy, Tazewell County will use \$10,000 as the threshold for relatively simple purchases as a means to expedite the completion of its lowest-dollar small purchase transactions and minimize the associated administrative burden and cost.

5.5.1.2. Approval Authority

Micro-purchases must be approved in writing by one of the following Tazewell County employees:

- Chief Operating Officer; or
- Procurement Officer.

5.5.1.3. Competition

Tazewell County may acquire products and services valued at less than \$10,000 without obtaining competitive quotations. Micro-purchases should be distributed equitably among qualified suppliers.

Micro purchases are exempt from FTA's Buy America requirements. Davis-Bacon prevailing wage requirements, however, will apply to construction contracts exceeding \$2,000, even though the recipient uses micro-purchase procurement procedures.

5.5.1.4. Prohibited Divisions

The size or dollar value of procurements may not be divided or reduced merely to come within the micro purchase limit. The only allowable exception to this restriction is for the express purpose of fostering greater participation of DBEs, small and minority firms and women's business enterprises in Tazewell County's Federally assisted procurements.

5.5.1.5. Documentation

Every micro-purchase must be accompanied by a written determination that the price is fair and reasonable and a description of how that determination was made.

5.5.2. Small Purchases

5.5.2.1. Definition

FTA defines small purchases are those purchases of products and services, including construction services, that cost greater than \$10,000 but not more than \$250,000. For purposes of this policy, Tazewell County must also follow IDOT regulations, which limit small purchases to those from \$10,000 to no more than \$100,000. Tazewell County will consider small purchases those that cost greater than \$10,000 but not more than \$100,000.

5.5.2.2. Approval Authority

Small purchases must be approved in writing by one of the following Tazewell County employees:

- Chief Operating Officer; or
- Procurement Officer.

5.5.2.3. Required Competition

Price or rate quotations must be obtained from an adequate number of qualified sources. It is the responsibility of Tazewell County to ensure that an adequate number of quotations, bids, or proposals are received.

5.5.2.4. Prohibited Divisions

The size or dollar value of procurements may not be divided or reduced merely to come within the small purchase limit. The only allowable exception to this restriction is for the express purpose of fostering greater participation of DBEs, small and minority firms and women's business enterprises in Tazewell County's Federally assisted procurements

5.5.2.5. Documentation

Every small purchase must be documented in the grantee's written procurement history file. The level of documentation is stipulated in Section 6.6.1.

For small purchases, price quotations may be oral or written.

5.5.2.6. Special Considerations

Tazewell County may acquire products and services directly from State contract vendors in lieu of competitively procuring such products and services itself through the small purchase method of procurement.

Tazewell County reserves the right to use formal purchase methods, even if small purchase thresholds are met, if the Procurement Officer believes it is in the best interests of the Tazewell County to do so.

5.5.3. Formal Purchases

5.5.3.1. Definition

Pursuant to IDOT regulations, and for purposes of this policy, Tazewell County will use formal procedures for all purchases over \$100,000.

5.5.3.2. Approval Authority

Large purchases must be approved in writing by the following Tazewell County employees or officials:

- Chief Operating Officer; or
- Procurement Officer.

No further delegation of approval authority for large purchases may be made.

Additionally, IDOT is currently considering new regulations which would require IDOT concurrence on any formal purchases (\$100,000 or more). The agency will follow developments on this front and will comply with any forthcoming IDOT guidance.

5.5.3.3. Procurement Methods

There are two primary methods of procurement for large purchases of products and services:

- Sealed Bid method; and
- Competitive Proposal method.

5.5.3.4. Required Competition

Formal bids and competitive proposals must be publicly advertised.

For formal purchases by the sealed bid method of procurement, two or more responsible bidders must be willing and able to compete effectively for the business.

For formal purchases by the competitive proposal method of procurement, two or more offerors must be willing and able to submit an offer or proposal.

5.5.3.5. Required Documentation

Every formal purchase must, at a minimum, be supported by a written independent cost estimate, formal bids or proposals, a written cost or price analysis as appropriate, a written justification and detailed rationale for contractor selection (including application of evaluation criteria) and a written determination of the responsibility of the contractor. Additional documentation requirements are dependent upon the formal procurement method that is utilized to make the purchase.

5.5.3.6. Special Considerations

Tazewell County may acquire products and services via state contract in lieu of competitively procuring such products and services itself through the sealed bid and competitive proposal methods of procurement.

5.5.3.7. Procedural Methods for Sealed Bids

The sealed bid method of procurement is a formal method in which bids are publicly solicited and a firm fixed price contract is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the Invitation for Bids (IFB), is lowest in price. The vehicle through which bids are solicited is an IFB. The IFB document contains technical specifications for the product or service to be purchased, a description of the procedures for submitting a bid, and the forms on which bids must be submitted.

(a) When Appropriate – The sealed bid method of procurement is the preferred method for acquiring products and services that, including construction services, cost greater than \$250,000. The sealed bid method of procurement may also be used for small purchases if it is determined to be appropriate. The sealed bid method of procurement is appropriate if the following conditions apply:

- (1) Precise Specifications – A complete, adequate, precise, and realistic specification or purchase description is available.
- (2) Adequate Sources – Two or more responsible bidders are willing and able to compete effectively for the business.
- (3) Fixed Price Contract – The procurement generally lends itself to a firm fixed price contract.

- (4) Price Determinative – The successful bidder can be selected on the basis of price and those price-related factors listed in the solicitation including, but not limited to, transportation costs, life cycle costs, and discounts expected to be taken. Apart from responsibility determinations, contractor selection may not be determined on the basis of other factors whose costs cannot be measured at the time of award.
 - (5) Discussions Unnecessary – Discussions with one or more bidders after bids have been submitted are expected to be unnecessary as award of the contract will be made based on price and price-related factors alone.
- (b) Requirements for Sealed Bids – The following requirements apply to the sealed bid method of procurement:
- (1) Publicity – The Invitation for Bids must be publicly advertised.
 - i. The Procurement Officer shall ensure that sufficient time is allowed to prepare bids before the date of bid opening.
 - ii. Notice of bidding opportunities may be provided in other ways in addition, but not as a substitute, to a published notice. The methods may include, but not necessarily be limited to:
 - a. Direct notice, based on compiled vendor lists or from pre-qualification list, sent to prospective offerors; or
 - b. Use of advertisement by electronic means.
 - (2) Adequate Sources – Bids must be solicited from an adequate number of known suppliers.
 - (3) Adequate Specifications – The Invitation for Bids, including any specifications and pertinent attachments, must describe the property or services sought in sufficient detail that a prospective bidder will be able to submit a proper bid.
 - (4) Sufficient Time – Bidders must be allowed sufficient time to prepare bids before the date of bid opening.
 - (5) Public Opening – All bids must be publicly opened at the time and place prescribed in the Invitation for Bids.
 - (6) Fixed Price Contract – A firm fixed price contract must be awarded in writing to the lowest responsive and responsible bidder unless the Invitation for Bids specifically allowed for award of a fixed price incentive contract or the inclusion of an economic price adjustment provision.
 - (7) Rejection of Bids – Any or all bids may be rejected if there is a sound, documented business reason.

5.5.3.8. Competitive Proposals

The competitive proposal method of procurement is a formal method in which written proposals are publicly solicited and a contract is awarded to the responsible offeror whose proposal, taking into consideration price and other factors, is considered to be the most advantageous to Tazewell County or that is considered to be the “best value” to Tazewell County. The vehicle through which proposals are solicited is Request for Proposals (RFP). The RFP document contains technical specifications for the product or service to be purchased, a

description of the procedures for submitting a proposal and the forms on which proposals must be submitted, if applicable.

- (a) When Appropriate – The competitive proposal method of procurement is appropriate for the acquisition of products and services that cost greater than \$250,000 when the nature of the procurement does not lend itself to sealed bidding and Tazewell County expects that more than one source will be willing and able to submit a proposal. The competitive proposal method of procurement may also be used for small purchases if it is determined to be appropriate. The competitive proposal method of procurement may not be used for the procurement of construction services. The competitive proposal method of procurement is appropriate when any of the following circumstances are present:
- (1) Type of Specifications – The products or services to be acquired are described in a performance or functional specification, or if described in detailed technical specifications, other circumstances such as the need for discussions or the importance of basing contract award on factors other than price alone are present.
 - (2) Uncertain Number of Sources – Uncertainty about whether more than one bid will be submitted in response to an Invitation for Bids.
 - (3) Price Alone Not Determinative – Due to the nature of the procurement, contract award need not be based exclusively on price or price-related factors.
 - (4) Discussions Expected – Separate discussions with individual offerors are expected to be necessary after they have submitted their proposals.
- (b) Requirements for Competitive Proposals – The following requirements apply to the competitive proposal method of procurement:
- (1) Publicity – The Request for Proposals must be publicly advertised.
 - (2) Evaluation Factors – All evaluation factors and their relative importance must be specified in the solicitation, but numerical or percentage ratings or weights need not be disclosed.
 - (3) Adequate Sources – Proposals must be solicited from an adequate number of qualified sources.
 - (4) Evaluation Method – A specific method must be established and used to conduct technical evaluations of the proposals received and to determine the most qualified offeror.
 - (5) Price and Other Factors – An award must be made to the responsible offeror whose proposal is most advantageous to Tazewell County or that represents the “best value” to Tazewell County with price and other factors considered.
 - (6) Best Value – Tazewell County may award a contract to the offeror whose proposal provides the greatest value to Tazewell County. To do so, the solicitation must inform potential offerors that the award will be made on a “best value” basis and identify what factors will form the basis for award. Tazewell County must base its determination of which proposal represents

the “best value” on an analysis of the tradeoff of qualitative technical factors and price or cost factors.

5.5.3.9. Two-Step Procurements

Tazewell County may use two-step procurement procedures in both sealed bid and competitive proposal procurements, provided the opportunity for full and open competition is retained.

- (a) Review of Technical Qualifications and Approach – The first step is a review of the prospective contractors’ technical approach to Tazewell County's request and their technical qualifications to carry out that approach followed by the establishment of a competitive range consisting of prospective contractors that demonstrate a technically satisfactory approach and have satisfactory qualifications.
- (b) Review of Bids and Proposals Submitted by Qualified Prospective Contractors – The second step consists of soliciting and reviewing complete bids or proposals, including price, submitted by each prospective contractor determined to be qualified. Absent exceptional circumstances, bids or proposals must be solicited from at least three qualified prospective contractors.

5.5.3.10. Architectural and Engineering (A&E) Services and Other Services

FTA’s enabling legislation at 49 U.S.C. § 5325(b)(1) requires the use of the qualifications-based procurement procedures contained in the “Brooks Act,” 40 U.S.C. § 1101 through 1104, to acquire A&E services.

- (a) Qualifications-Based Procurement Procedures Required – Tazewell County must use qualifications-based procurement procedures to acquire architectural and engineering (A&E) services as well as certain other services that are directly in support of, directly connected to, directly related to, or lead to construction, alteration, or repair of real property. In addition to A&E services, other services that must be procured by qualifications-based procurement procedures include:

- Program management;
- Construction management;
- Feasibility studies;
- Preliminary engineering;
- Design, architectural, engineering;
- Surveying, mapping; and
- Other related services.

The nature of the work to be performed and its relationship to construction, not the nature of the prospective contractor, determine whether qualifications-based procurement procedures may be used.

- (b) Qualifications-Based Procurement Procedures Prohibited – Unless FTA determines otherwise in writing, qualifications-based procurement procedures may not be used to acquire other types of services if those services are not directly in support of, directly connected to, directly related to, or do not lead to construction, alteration, or repair of real property. Qualifications-based procurement procedures may not be used for actual construction, alteration, or repair to real property.

- (c) Qualifications-Based Procurement Procedures – The following procedures apply to qualifications-based procurements:
 - (1) Qualifications – Unlike other two-step procurement procedures in which price is an evaluation factor, an offeror’s qualifications are evaluated to determine contract award.
 - (2) Price – Price is excluded as an evaluation factor.
 - (3) Most Qualified – Price negotiations are first conducted with only the most qualified offeror.
 - (4) Next Most Qualified - Only after failing to agree on a fair and reasonable price may negotiations be conducted with the next most qualified offeror. Then, if necessary, negotiations with successive offerors in descending order may be conducted until contract award can be made to the offeror whose price the recipient believes is fair and reasonable.

5.6. Procurement by Other Than Full and Open Competition

Normally, Tazewell County must provide for full and open competition when soliciting bids or proposals. Federal regulations at 2 CFR § 200.320(f)(1) – (4), however, acknowledges that under certain circumstances, a recipient may conduct procurements without providing for full and open competition.

5.6.1. When Appropriate

Noncompetitive procurement procedures may only be used when the procurement is inappropriate for small purchase procedures, sealed bids, or competitive proposals, and at least one of the following circumstances are present:

5.6.1.1. Competition Adequacy

After soliciting several sources and receiving an inadequate response, Tazewell County shall review its specifications to determine if they are unduly restrictive or if changes can be made to encourage submission of more price quotes, bids or proposals. If Tazewell County determines that the specifications are not unduly restrictive and changes cannot be made to encourage greater competition, Tazewell County may determine the original competition adequate and complete the purchase from among the sources that submitted a price quote, bid or proposal. A cost analysis must be performed in lieu of a price analysis when this situation occurs.

5.6.1.2. Sole Source

When Tazewell County requires products or services available from only one responsible source, and no other products or services will satisfy its requirements, Tazewell County may make a sole source award. In addition, when Tazewell County requires an existing contractor to make a change to its contract that is beyond the scope of that contract, Tazewell County will consider the change a sole source award that must be justified. Sole source awards are only appropriate when one of the following conditions apply:

- (a) Unique Capability or Availability – The products or services are available from only one source if one of the conditions described below is present:
 - (1) Unique or Innovative Concept – The offeror demonstrates a unique or innovative concept or capability not available from another source. Unique or innovative concept means a new, novel, or changed concept, approach, or method that is the product of original thinking, the details of which are kept confidential or are patented or copyrighted, and is available to Tazewell County only from one source and has not in the past been available to Tazewell County from another source.
 - (2) Patents or Restricted Data Rights – Patent or data rights restrictions preclude competition.
 - (3) Substantial Duplication Costs – In the case of a follow-on contract for the continued development or production of highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in substantial duplication of costs that are not expected to be recovered through competition.
 - (4) Unacceptable Delay – In the case of a follow-on contract for the continued development or production of a highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in unacceptable delays in fulfilling Tazewell County's needs.

- (b) Single Bid or Proposal – Upon receiving a single bid or proposal in response to a solicitation, Tazewell County should determine if competition was adequate. This should include a review of the specifications for undue restrictiveness and might include a survey of potential sources that chose not to submit a bid or proposal.
 - (1) Adequate Competition – Competition is adequate when the reasons for a single response were caused by conditions beyond Tazewell County's control.
 - (2) Inadequate Competition – Competition is inadequate when the reasons for a single response were caused by conditions within Tazewell County's control.

- (c) Unusual and Compelling Urgency – Tazewell County may limit the number of sources from which it solicits bids or proposals when Tazewell County has such an unusual and urgent need for the products or services that Tazewell County would be seriously injured unless it were permitted to limit the solicitation. Tazewell County may also limit the solicitation when the public exigency or emergency will not permit a delay resulting from competitive solicitation for the products or services.

- (d) Authorized by IDOT – Tazewell County may request permission from IDOT to allow it to use noncompetitive proposals for a particular procurement.
- (e) When Prohibited – Less than full and open competition is not justified based on:
 - (1) Failure to Plan – Tazewell County's lack of advance planning, resulting in limited competition, is not justification for a sole source or single bid award.
 - (2) Limited Availability of Federal Assistance – Concerns about the amount of Federal assistance available to support the procurement.
- (f) Procurement Procedures – The following requirements apply when Tazewell County completes a procurement utilizing less than full and open competition:
 - (1) Potential Sources – Tazewell County must solicit offers from as many potential sources as is practicable under the circumstances.
 - (2) Sole Source Justification – Tazewell County must justify all sole source procurements in writing. Sole source procurement justifications must describe the reasons for why a sole source procurement is appropriate, state which of the authorized justifications listed in Section 5.6.1.2 are applicable, include a cost analysis and be signed by the Procurement Officer. If Tazewell County decides to solicit an offer from only one source, Tazewell County must justify its decision in writing. The written justification must include the same elements as a sole source justification except that it must state which of the authorized justifications listed in Section 5.6.1.2 are applicable to the sole source purchase.
 - (3) Cost Analysis – Tazewell County must prepare or obtain a cost analysis verifying the proposed cost data, the projections of the data, and the evaluation of the costs and profits. A price analysis shall not be adequate to justify a sole source purchase.
- (g) Exception for Procurement Activities Using Non-FTA Funds – When it is determined by the Procurement Officer to be in the best interest of Tazewell County, noncompetitive procurement procedures may be utilized to acquire professional or other transportation-related services that do not involve the use of FTA financial assistance. Any such determination must be made in writing and signed by the Procurement Officer.

5.7. Evaluation Requirements

The following standards shall apply to all evaluations of bids or proposals conducted by Tazewell County.

5.7.1. General

When evaluating bids or proposals received in response to a solicitation, Tazewell County shall consider all evaluation factors specified in the solicitation documents and shall evaluate the bids or offers

proposals only on the evaluation factors included in those solicitation documents. Tazewell County may not modify its evaluation factors after bids or proposals have been received without re-opening the solicitation.

5.7.2. Options

The following standards shall apply when awarding contracts that include options:

5.7.2.1. Evaluation Required

In general, Tazewell County must evaluate bids or offers for any option quantities or periods contained in a solicitation if it intends to exercise those options after the contract is awarded.

5.7.2.2. Evaluation Not Required

Tazewell County need not evaluate bids or offers for any option quantities when Tazewell County does not intend to exercise those options after the contract is awarded or if it determines that evaluation would not otherwise be in its best interests.

5.7.2.3. Evaluators

In addition to evaluators with experience in technical or public policy matters related to the procurement, other evaluators may also include auditors and financial experts to the extent that the Procurement Officer determines would be necessary or helpful. If Tazewell County lacks qualified personnel within its organization, it may solicit evaluators from other transit organizations or may contract for evaluation services. If it does so, the procurement procedures in this policy will apply to those contracts and to those contractors selected to perform evaluation functions on behalf of the recipient.

5.8. Contract Award Requirements

The following standards shall apply to all contract award decisions made by Tazewell County:

5.8.1. Award to Other Than the Lowest Bidder or Offeror

Tazewell County may award a contract to other than the lowest bidder if the award furthers an objective consistent with the purposes of 49 U.S.C. Chapter 53, including improved long-term operating efficiency and lower long-term costs. Tazewell County may also award a contract to other than the offeror whose price proposal is lowest, when stated in the evaluation factors of the solicitation. In both cases, Tazewell County must include a statement in its solicitation document reserving the right to award the contract to other than the low bidder or offeror.

5.8.1.1. Award Only to a Responsible Bidder or Offeror

Tazewell County may only award contracts to responsible contractors possessing the ability, willingness, and integrity to perform successfully under the terms and conditions of the contract

and who demonstrate that its proposed subcontractors also qualify as responsible. Tazewell County must consider such matters as contractor integrity, compliance with public policy, record of past performance and financial and technical resources when making a determination of contractor responsibility. Tazewell County must also ensure that the contractor is not listed as a debarred or suspended contractor on the System for Award Management (SAM), which is maintained by the General Services Administration (GSA), at the time of contract award. Entities that are listed as debarred or suspended contractors on SAM may not be determined to be responsible contractors by Tazewell County. For every procurement action above the micro-purchase level, Tazewell County must make a written determination of the responsibility of the contractor and include such determination in the applicable contract file (See Section 3.6).

To designate a prospective contractor “responsible” as required by 49 U.S.C. § 5325, Tazewell County, at a minimum, must determine and ensure that the prospective contractor satisfies the following criteria described herein. In addition to being otherwise qualified and eligible to receive the contract award under applicable laws and regulations, a responsible contractor:

- (a) Integrity and Ethics – Has a satisfactory record of integrity and business ethics, in compliance with 49 U.S.C. Section 5325(j)(2)(A).
- (b) Debarment and Suspension – Is neither debarred nor suspended from Federal programs under DOT regulations, “Nonprocurement Suspension and Debarment,” 2 CFR Parts 180 and 1200, or under the FAR at 48 CFR Chapter 1, Part 9.4.
- (c) Affirmative Action and DBE – Is in compliance with the Common Grant Rules’ affirmative action and FTA’s Disadvantaged Business Enterprise requirements.
- (d) Public Policy – Is in compliance with the public policies of the Federal Government, as required by 49 U.S.C. § Section 5325(j)(2)(B).
- (e) Administrative and Technical Capacity – Has the necessary organization, experience, accounting, and operational controls, and technical skills, or the ability to obtain them, in compliance with 49 U.S.C. Section 5325(j)(2)(D).
- (f) Licensing and Taxes – Is in compliance with applicable licensing and tax laws and regulations.
- (g) Financial Resources – Has, or can obtain, sufficient financial resources to perform the contract, as required by 49 U.S.C. Section 5325(j)(2)(D).
- (h) Production Capability – Has, or can obtain, the necessary production, construction, and technical equipment and facilities.
- (i) Timeliness – Is able to comply with the required delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments.

(j) Performance Record – Is able to provide a:

- (1) Current Performance – Satisfactory current performance record; and
- (2) Past Performance – Satisfactory past performance record in view of its records of long-time performance or performance with a predecessor entity, including:
 - i. Sufficient Resources. Key personnel with adequate experience, a parent firm with adequate resources and experience, and key subcontractors with adequate experience and past performance,
 - ii. Adequate Past Experience. Past experience in carrying out similar work with particular attention to management approach, staffing, timeliness, technical success, budgetary controls, and other specialized considerations as described in the recipient’s solicitation, and
 - iii. Any Past Deficiencies Not the Fault of the Bidder or Offeror. A prospective bidder or offeror that is or recently has been seriously deficient in contract performance is presumed to be non-responsible, unless the recipient determines that the circumstances were properly beyond the bidder or offeror’s control, or unless the bidder or offeror has taken appropriate corrective action. Past failure to apply sufficient tenacity, perseverance, and effort to perform acceptably is strong evidence of non-responsibility. Failure to meet the quality requirements of a contract is a significant factor to consider in determining satisfactory performance. IDOT expects Tazewell County to consider the number of the bidder or offeror’s contracts involved and the extent of deficient performance in each contract when making this determination.

5.8.1.2. Rejection of Bids and Proposals

Tazewell County may reject all bids or proposals submitted in response to an Invitation for Bids or Request for Proposals. Tazewell County must include a statement in its solicitation document reserving the right to reject all bids or proposals.

- (a) Extent and Limits of Contract Award – The selection of a contractor to participate in one aspect of a project does not, by itself, constitute a sole source selection of the contractor’s wholly owned affiliates to perform other work in connection with the project.

5.9. Independent Cost Estimate and Cost and Price Analysis

5.9.1. Independent Cost Estimate

For every procurement, Tazewell County shall make a written independent estimate of cost prior to receiving price quotes, bids, or proposals.

5.9.2. Cost or Price Analysis

Tazewell County shall perform a cost or price analysis in connection with every procurement over \$250,000 and for all contract modifications.

5.9.2.1. Price Analysis

If Tazewell County determines that competition was adequate, a written price analysis, rather than a cost analysis, is required to determine the reasonableness of the proposed contract price.

5.9.2.2. Cost Analysis

Tazewell County must perform or obtain a cost analysis when:

- (a) A price analysis will not provide sufficient information to determine the reasonableness of the contract cost.
- (b) When the offeror submits elements of the estimated cost.
- (c) When only a sole source is available, even if the procurement is a contract modification.
- (d) In the event of a change order.

5.9.3. Approval of Contracts

All contracts must be signed by the Chief Operating Officer or the Chief Executive Officer.

6. CONTRACT ADMINISTRATION REQUIREMENTS AND CONSIDERATIONS

6.1. Tazewell County Staff Responsibilities

Prior to execution of third party contracts, Tazewell County shall designate a Project Manager to serve as Tazewell County's principal contact with the contractor and as the primary administrator of the contract. The designated Project Manager for each contract shall have responsibility for directing and overseeing the work performed by the contractor; reviewing and approving deliverables and invoices from the contractor; determining percentage of contract completion for progress payments (if applicable); making recommendations on the exercise of contract options (if applicable); recommending contract changes; preparing justifications for contract changes; performing independent cost estimates and cost or price analyses for contract changes; making recommendations on approval or rejection of subcontractors; assisting with the resolution of contract disputes; making recommendations on contract termination or other contractor disciplinary actions; maintaining complete contract files; and other contract administration duties that may be necessary.

6.2. Administrative Restrictions on the Acquisition of Property and Services

The following Federal laws and regulations impose administrative requirements, many of which will affect specific third-party procurements.

6.2.1. Legal Eligibility

The property or services acquired must be eligible for support under the restrictions accompanying the Federal statute authorizing the Federal assistance to be used.

6.2.2. Scope of the Project

The property or services acquired must be eligible for support within the scope of the underlying grant or cooperative agreement from which the Federal assistance to be used is derived.

6.2.3. Period of Performance

Tazewell County will use sound business judgment and be judicious in establishing and extending a contract's period of performance.

6.2.3.1. General Standards

The period of performance generally should not exceed the time necessary to accomplish the purpose of the contract. Tazewell County will also consider competition, pricing, fairness, and public perception. Tazewell County's procurement files will document its rationale for determining the performance period designated for each contract.

6.2.3.2. Time Extensions

Consistent with the general tone of FTA Circular 4220.1F, contract time extensions shall be considered in light of whether they are permissible changes or impermissible cardinal changes. Once Tazewell County awards a third-party contract, an extension of the contract term length that amounts to a cardinal change will require a sole source justification.

6.2.3.3. Authority to Extend

The Chief Operating Officer or the Chief Executive Officer has the sole authority to approve and execute contract modifications. The Procurement Officer for the contract shall recommend all contract time; prior to making a recommendation for a contract time extension. The Procurement Officer shall prepare a written justification and cost analysis (if applicable) for the contract time extension and shall negotiate the appropriate contract modification with the contractor.

6.3. Federal Cost Principles

Federal rules require project costs to conform to applicable Federal cost principles for allowable costs. In general, costs must be necessary and reasonable, allocable to the project, authorized or not prohibited by Federal law or regulation, and must comply with Federal cost principles applicable to the recipient.

OMB guidance for grants and agreements, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 CFR § 200, applies to project costs incurred Tazewell County.

6.4. Payment Provisions

Tazewell County will follow the provisions of this section when using FTA funds to support its third-party contracts.

6.4.1. Financial Support for the Project

Costs may only be incurred by Tazewell County if IDOT has awarded a financial assistance contract to Tazewell County.

6.4.1.1. Progress Payments

Progress payments are payments for contract work that has not been completed. Tazewell County may use IDOT assistance to support progress payments provided the recipient obtains adequate security for those payments and has sufficient written documentation to substantiate the work for which payment is requested.

6.4.1.2. Adequate Security for Progress Payments

Adequate security for progress payments may include taking title or obtaining a letter of credit or taking equivalent measures to protect the recipient's financial interest in the progress

payment. Adequate security should reflect the practical realities of different procurement scenarios and factual circumstances. Tazewell County should always consider the costs associated with providing security (for example, the recipient may need to acquire bonds or letters of credit in the commercial marketplace) and the impact of those costs on the contract price, as well as the consequences of incomplete performance.

6.4.1.3. Adequate Documentation

Sufficient documentation is required to demonstrate completion of the amount of work for which progress payments are made.

6.4.1.4. Percentage of Completion Method

Federal rules require that any progress payments for construction contracts be made on a percentage of completion method described therein. Tazewell County, however, may not make progress payments for other than construction contracts based on this percentage method.

6.5. Protections Against Performance Difficulties

Tazewell County shall include provisions in its third-party contracts that will reduce potential problems that might occur during contract performance, as follows:

6.5.1. Changes

Tazewell County shall include provisions that address changes and changed conditions in all third-party contracts except for routine supply contracts.

6.5.2. Remedies

Tazewell County shall include provisions that address remedies in its third-party contracts. Provisions related to remedies may include provisions for:

6.5.2.1. Liquidated Damages

Tazewell County may use liquidated damages if Tazewell County reasonably expects to suffer damages through delayed contract completion, or if weight requirements are exceeded, and the extent or amount of such damages are uncertain and would be difficult or impossible to determine. Rate and measurement standards must be calculated to reasonably reflect Tazewell County's costs should the standards not be met and must be specified in the solicitation and contract. The assessment for damages may be established at a specific rate per day for each day beyond the contract's delivery date or performance period. A measurement other than a day or another period of time, however, may be established if that measurement is appropriate, such as weight requirements in a rolling stock purchase. The contract file must include a record of the calculation and rationale for the amount of damages established. Any liquidated damages recovered must be credited to the project account.

6.5.2.2. Violation or Breach

Third party contracts exceeding \$250,000 must include administrative, contractual, or legal remedies for violations or breach of the contract by the third-party contractor.

6.5.2.3. Suspension of Work

Tazewell County may include provisions pertaining to suspension of work in its third-party contracts.

6.5.2.4. Termination

Termination for cause and termination for convenience provisions must be included in third party contracts exceeding \$10,000.

6.6. Contents of Complete Contract Files

The following documents shall comprise the contents of a complete contract file for procurements above the micro-purchase level:

6.6.1. Written Record of Procurement History

Tazewell County shall maintain written records detailing the history of the procurement, including records relating to:

6.6.1.1. Procurement Method

Tazewell County must provide its rationale for the method of procurement it used for each contract, including a sole source justification for any acquisition that does not qualify as competitive.

6.6.1.2. Contract Type

Tazewell County must state the reasons for selecting the contract type it used.

6.6.1.3. Contractor Selection

Tazewell County must state its reasons for contractor selection or rejection, including written justification and evaluation documents.

6.6.1.4. Contractor Responsibility

Tazewell County must provide a written determination of responsibility for the successful contractor.

6.6.1.5. Cost or Price

Tazewell County must evaluate and state its justification for the contract cost or price, including the independent cost estimate and cost or price analysis.

6.6.1.6. Reasonable Documentation

Tazewell County must retain documentation commensurate with the size and complexity of the procurement, including documents related to solicitation, receipt, and evaluation of offers, and contract award, negotiation, and execution.

6.7. Access to Records

Federal rules (49 U.S.C. § 5325(g)) provide FTA and IDOT officials, the Comptroller General, or any of their representatives, access to and the right to examine and inspect all records, documents, and papers, including contracts, related to any FTA project financed with Federal assistance authorized by 49 U.S.C. Chapter 53.

6.8. Contract Administration and Close-Out Documents

Tazewell County shall maintain written records detailing the performance and close-out of the contract, including records relating to:

6.8.1. Contractor Performance

Tazewell County must maintain documents related to contractor adherence to budget and schedule, compliance with contract terms and conditions, DBE participation, progress reports, disputes, and disciplinary actions.

6.8.2. Contract Deliverables

Tazewell County must maintain copies of all contract deliverables and records relating to approval, rejection and requested modifications of contract deliverables.

6.8.3. Contract Changes

Tazewell County must maintain copies of all contract modifications, including documentation related to the determination of need, written justification and rationale, cost analysis, negotiation, and execution.

6.8.4. Contract Payments

Tazewell County must retain documentation of invoices, approval of payments, requests for modifications to invoices, determination of percentage of contract completion for partial payments (if applicable), and ownership of title to partial work products.

6.8.5. Contract Close-Out

Tazewell County must retain documentation related to contractor performance and evaluation, approval of final deliverables and payments, transfer of title to complete work products to Tazewell County, and contract audit and final reconciliation.

6.9. Protest Procedures

6.9.1. Statement of Policy

Tazewell County is responsible for resolving all contractual and administrative issues, including protests of evaluations and contract awards, arising out of its third-party procurements using good administrative practices and sound business judgment.

In general, IDOT will not substitute its judgment for that of Tazewell County unless the matter is primarily a Federal concern. Nevertheless, IDOT and FTA can become involved in Tazewell County's administrative decisions when a Tazewell County protest decision is appealed to IDOT.

Tazewell County shall give timely notification to IDOT when it receives a third-party procurement protest and will keep FTA informed about the status of any such protest. Tazewell County shall disclose all information about any third-party procurement protest to IDOT upon request.

Tazewell County's procedure for addressing third party procurement protests is described in Paragraph 6.9.2 below. Tazewell County shall insert its protest procedure in all solicitation documents for products and services having an estimated value of \$100,000 or greater.

6.9.2. Tazewell County Staff Responsibilities

The following staff responsibilities shall be assigned in all protests:

- Procurement Officer – Responsibilities include: ensuring that the Tazewell County Protest Procedure is included in all solicitation documents; and providing information to and assisting the Chief Operating Officer or the Chief Executive Officer and Legal Counsel with the resolution of protests.
- Legal Counsel – Responsibilities include: reviewing all procurement protests; and advising and assisting the Tazewell County as needed with the resolution of all procurement protests.

6.9.3. Solicitation Provision

Tazewell County shall insert the following provision in all solicitation documents:

6.9.3.1. Pre-Proposal Protests

All protests concerning solicitation specifications, criteria and/or procedures shall be submitted in writing (defined as being sent or received via letter or facsimile on official firm/agency

letterhead or by electronic mail) to the Procurement Officer as specified below not later than ten (10) business days prior to the deadline for submission of bids/proposals.

The Procurement Officer may, within his or her discretion, postpone the deadline for submission of bids/proposals, but in any case, shall provide a written response to all protests not later than five (5) business days prior to the deadline for submission of bids/proposals. If the deadline for submission of bids/proposals is postponed by the Procurement Officer as the result of a protest the postponement will be announced through an addendum to the solicitation.

The decision by the Procurement Officer shall be the final agency decision on the matter but shall be subject to judicial review as set forth by FTA below.

6.9.3.2. Pre-Award Protests

With respect to protests made after the deadline for submission of bids/proposals but before contract award by Tazewell County, protests shall be limited to those protests alleging a violation of Federal or State law, a challenge to the bids/proposals evaluation and award process, Tazewell County's failure to have or follow its protest procedures or its failure to review a complaint or protest. Such protests shall be submitted in writing (defined as being sent or received via letter or facsimile on official firm/agency letterhead or by electronic mail) to the Procurement Officer as specified below not later than five (5) business days after the Recommendation for Contract Award announcement by Tazewell County.

The Procurement Officer may, within his or her discretion, postpone the award of the contract, but in any case, shall provide a written response to all protests not later than three (3) business days prior to the date that Tazewell County shall announce the contract award.

The decision by the Procurement Officer shall be the final agency decision on the matter but shall be subject to judicial review as set forth or review by IDOT as specified below.

6.9.4. Requirements for Protests

All protests must be submitted to Tazewell County in writing (defined as being sent or received via letter or facsimile on official firm/agency letterhead or by electronic mail), with sufficient documentation, evidence and legal authority to demonstrate that the Protestor is entitled to the relief requested. The protest must be certified as being true and correct to the best knowledge and information of the Protestor and be signed by the Protestor. The protest must also include a mailing address to which a response should be sent.

Protests received after the deadlines for receipt of protests specified above are subject to denial without any requirement for review or action by Tazewell County.

All protests must be directed in writing (defined as being sent or received via letter or facsimile on official firm/agency letterhead or by electronic mail) to the Procurement Officer at the address shown in the solicitation documents.

6.9.5. Protest Response

The Procurement Officer shall issue written responses to all protests received by the required protest response dates. All protest responses shall be transmitted by first-class U.S. Postal Service to the address indicated in the protest letter.

For convenience, Tazewell County will also send a copy of the response to a protest to the Protester by facsimile and/or electronic mail if a facsimile number and/or electronic mail address are indicated in the protest letter. The protest response transmitted by U.S. Postal Service shall be the official Tazewell County response to the protest and Tazewell County will not be responsible for the failure of the Protester to receive the protest response by either facsimile or electronic mail.

6.9.6. Review of Protests by IDOT

All protests involving contracts financed with Federal assistance shall be disclosed to IDOT. Protesters shall exhaust all administrative remedies with Tazewell County prior to pursuing protests with IDOT. IDOT limits its reviews of protests to: a grantee's failure to have or follow its protest procedures; a grantee's failure to review a complaint or protest when presented an opportunity to do so; or violations of Federal law or regulation. Appeals to IDOT must be received within five (5) working days of the date the Protester has received actual or constructive notice of Tazewell County final decision or within five (5) working days of the date the Protester has identified other grounds for appeal to IDOT.

Appendix A: Federal Third-Party Clauses

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ACCESS TO RECORDS AND REPORTS

a. Record Retention. The Contractor will retain and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, leases, subcontracts, arrangements, other third-party Contracts of any type, and supporting materials related to those records.

b. Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.334. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.

c. Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract in accordance with 2 CFR § 200.337.

d. Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract in accordance with 2 CFR § 200.337.

AMERICANS WITH DISABILITIES ACT (ADA)

The contractor agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act, and with the Architectural Barriers act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act. In addition, the contractor agrees to comply with any and all applicable requirements issued by the FTA, DOT, DOJ, U.S. GSA, U.S. EEOC, U.S. FCC, any subsequent amendments thereto and any other nondiscrimination statute(s) that may apply to the Project.

BOND REQUIREMENTS

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must 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 the bid, execute such contractual documents as may be required within the time specified.

(b) 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 requirements under such contract.

(c) A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

It is also understood and agreed that if the bidder should withdraw any part or all of their bid within [90] days after the bid opening without the written consent of the Agency, or refuse or be unable to enter into this Contract as provided above, or refuse or be unable to furnish adequate and acceptable Performance and Payment Bonds, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, it shall forfeit its bid guaranty to the extent Agency’s damages occasioned by such withdrawal, or refusal, or inability to enter into a Contract, or provide adequate security thereof.

It is further understood and agreed that to the extent the defaulting bidder's bid guaranty shall prove inadequate to fully recompense Agency for the damages occasioned by default, then the bidder agrees to indemnify Agency and pay over to Agency the difference between the bid guarantee and Agency’s total damages so as to make Agency whole.

The bidder understands that any material alteration of any of the above or any of the material contained herein, other than that requested will render the bid unresponsive.

Performance Guarantee. A Performance Guarantee in the amount of 100% of the Contract value is required by the Agency to ensure faithful performance of the Contract. Either a Performance Bond or an Irrevocable Stand-By Letter of Credit shall be provided by the Contractor and shall remain in full force for the term of the Contract. The successful Bidder shall certify that it will provide the requisite Performance Guarantee to the Agency within ten (10) business days from Contract execution. The Agency requires all Performance Bonds to be provided by a fully qualified surety company acceptable to the Agency and listed as a company currently authorized under 31 C.F.R. part 22 as possessing a Certificate of Authority as described hereunder. Agency may require additional performance bond protection when the contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The Agency may secure additional protection by directing the Contractor to increase the amount of the existing bond or to obtain an additional bond.

If the Bidder chooses to provide a Letter of Credit as its Performance Guarantee, the Bidder shall furnish with its bid, certification that an Irrevocable Stand-By Letter of Credit will be furnished should the Bidder become the successful Contractor. The Bidder shall also provide a statement from the banking institution certifying that an Irrevocable Stand-By Letter of Credit for the action will be provided if the Contract is awarded to the Bidder. The Irrevocable Stand-By Letter of Credit will only be accepted by the Agency if:

1. A bank in good standing issues it. The Agency will not accept a Letter of Credit from an entity other than a bank.
2. It is in writing and signed by the issuing bank.
3. It conspicuously states that it is an irrevocable, non-transferable, "standby" Letter of Credit.
4. The Agency is identified as the Beneficiary.
5. It is in an amount equal to 100% of the Contract value. This amount must be in U.S. dollars.
6. The effective date of the Letter of Credit is the same as the effective date of the Contract
7. The expiration date of the Letter of Credit coincides with the term of the contract.
8. It indicates that it is being issued in order to support the obligation of the Contractor to perform under the Contract. It must specifically reference the Contract between the Agency and the Contractor the work stipulated herein.

The issuing bank's obligation to pay will arise upon the presentation of the original Letter of Credit and a certificate and draft to the issuing bank's representative at a location and time to be determined by the parties. This documentation will indicate that the Contractor is in default under the Contract.

Payment Bonds. A Labor and Materials Payment Bond equal to the full value of the contract must be furnished by the contractor to Agency as security for payment by the Contractor and subcontractors for labor, materials, and rental of equipment. The bond may be issued by a fully qualified surety company acceptable to (Agency) and listed as a company currently authorized under 31 C.F.R. part 223 as possessing a Certificate of Authority as described thereunder.

BUS TESTING

The Contractor [Manufacturer] agrees to comply with the Bus Testing requirements under 49 U.S.C. 5318(e) and FTA's implementing regulation at 49 C.F.R. part 665 to ensure that the requisite testing is performed for all new bus models or any bus model with a major change in configuration or components, and that the bus model has achieved a passing score. Upon completion of the testing, the contractor shall obtain a copy of the bus testing reports from the operator of the testing facility and make that report(s) publicly available prior to final acceptance of the first vehicle by the recipient.

BUY AMERICA REQUIREMENTS

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661 and 2 CFR § 200.322 Domestic preferences for procurements, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7.

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 by the U.S. Office of Management and Budget, the U.S. Department of Transportation, and FTA. The Recipient acknowledges that this agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).

Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C), 49 U.S.C. § 5323(u) and 49 C.F.R. § 661.11. Domestic preferences for procurements

The bidder or offeror must submit to the Agency the appropriate Buy America certification. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive. For more information, please see the FTA's Buy America webpage at: <https://www.transit.dot.gov/buyamerica>

RESTRICTIONS ON LOBBYING

Conditions on use of funds.

(a) No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay 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 any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(b) Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement shall file with that agency a certification, that the person has not made, and will not make, any payment prohibited by paragraph (a) of this section.

(c) Each person who requests or receives from an agency a Federal contract, grant, loan, or a cooperative agreement shall file with that agency a disclosure form if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (a) of this section if paid for with appropriated funds.

(d) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a statement, whether that person has made or has agreed to make any payment to influence or attempt 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 that loan insurance or guarantee.

(e) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a disclosure form if that person has made or has agreed to make any payment to influence or attempt 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 that loan insurance or guarantee.

Certification and disclosure.

(a) Each person shall file a certification, and a disclosure form, if required, with each submission that initiates agency consideration of such person for:

(1) Award of a Federal contract, grant, or cooperative agreement exceeding \$100,000; or

(2) Award of a Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000.

(b) Each person shall file a certification, and a disclosure form, if required, upon receipt by such person of:

(1) A Federal contract, grant, or cooperative agreement exceeding \$100,000; or

(2) A Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000,

Unless such person previously filed a certification, and a disclosure form, if required, under paragraph (a) of this section.

(c) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraphs (a) or (b) of this section. An event that materially affects the accuracy of the information reported includes:

(1) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or,

(3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(d) Any person who requests or receives from a person referred to in paragraphs (a) or (b) of this section:

(1) A subcontract exceeding \$100,000 at any tier under a Federal contract;

(2) A subgrant, contract, or subcontract exceeding \$100,000 at any tier under a Federal grant;

(3) A contract or subcontract exceeding \$100,000 at any tier under a Federal loan exceeding \$150,000; or,

(4) A contract or subcontract exceeding \$100,000 at any tier under a Federal cooperative agreement,

Shall file a certification, and a disclosure form, if required, to the next tier above.

(e) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraphs (a) or (b) of this section. That person shall forward all disclosure forms to the agency.

(f) Any certification or disclosure form filed under paragraph (e) of this section shall be treated as a material representation of fact upon which all receiving tiers shall rely. All liability arising from an erroneous representation shall be borne solely by the tier filing that representation and shall not be shared by any tier to which the erroneous representation is forwarded.

Submitting an erroneous certification or disclosure constitutes a failure to file the required certification or disclosure, respectively. If a person fails to file a required certification or

disclosure, the United States may pursue all available remedies, including those authorized by section 1352, title 31, U.S. Code.

(g) For awards and commitments in process prior to December 23, 1989, but not made before that date, certifications shall be required at award or commitment, covering activities occurring between December 23, 1989, and the date of award or commitment. However, for awards and commitments in process prior to the December 23, 1989 effective date of these provisions, but not made before December 23, 1989, disclosure forms shall not be required at time of award or commitment but shall be filed within 30 days.

(h) No reporting is required for an activity paid for with appropriated funds if that activity is allowable under either subpart B or C.

CARGO PREFERENCE REQUIREMENTS

The contractor agrees:

a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, 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;

b. 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 the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA Recipient (through the contractor in the case of a subcontractor's bill-of-lading.); and

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

CHARTER SERVICE

The contractor agrees to comply with 49 U.S.C. 5323(d), 5323(r), and 49 C.F.R. part 604, which provides that Recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except as permitted under:

1. Federal transit laws, specifically 49 U.S.C. § 5323(d);
2. FTA regulations, “Charter Service,” 49 C.F.R. part 604;
3. Any other federal Charter Service regulations; or
4. Federal guidance, except as FTA determines otherwise in writing.

The contractor agrees that if it engages in a pattern of violations of FTA’s Charter Service regulations, FTA may require corrective measures or impose remedies on it. These corrective measures and remedies may include:

1. Barring it or any subcontractor operating public transportation under its Award that has provided prohibited charter service from receiving federal assistance from FTA;
2. Withholding an amount of federal assistance as provided by Appendix D to part 604 of FTA’s Charter Service regulations; or
3. Any other appropriate remedy that may apply.

The contractor should also include the substance of this clause in each subcontract that may involve operating public transit services.

CIVIL RIGHTS LAWS AND REGULATIONS

The following Federal Civil Rights laws and regulations apply to all contracts.

1. Federal Equal Employment Opportunity (EEO) Requirements. These include, but are not limited to:

a) Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity.

b) Prohibition against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order No. 11246, “Equal Employment Opportunity,” September 24, 1965, as amended, prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.

2. Nondiscrimination on the Basis of Sex. Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq. and implementing Federal regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 C.F.R. part 25 prohibit discrimination on the basis of sex.

3. Nondiscrimination on the Basis of Age. The “Age Discrimination Act of 1975,” as amended, 42 U.S.C. § 6101 et seq., and Department of Health and Human Services implementing regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et seq., and Equal Employment Opportunity Commission (EEOC) implementing regulations, “Age Discrimination in Employment Act,” 29 C.F.R. part 1625, also prohibit employment discrimination against individuals age 40 and over on the basis of age.

4. Federal Protections for Individuals with Disabilities. The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 et seq., prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

Civil Rights and Equal Opportunity

The Agency is an Equal Opportunity Employer. As such, the Agency agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the Agency agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications. Under this Contract, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

1. Nondiscrimination. In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

2. Race, Color, Religion, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and

Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or 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 Contractor agrees to comply with any implementing requirements FTA may issue.

3. **Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 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. § 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. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any Implementing requirements FTA may issue.

4. **Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

5. **Promoting Free Speech and Religious Liberty.** The Contractor shall ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401-7671q) and the Federal Water Pollution Control

Act as amended (33 U.S.C. § 1251-1387). Violations must be reported to FTA and the Regional Office of the Environmental Protection Agency. The following applies for contracts of amounts in excess of \$150,000:

Clean Air Act

- (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- (2) The contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

Federal Water Pollution Control Act

- (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- (2) The contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.”

CONFORMANCE WITH ITS NATIONAL ARCHITECTURE

Intelligent Transportation Systems (ITS) projects shall conform to the National ITS Architecture and standards pursuant to 23 CFR § 940. Conformance with the National ITS Architecture is interpreted to mean the use of the National ITS Architecture to develop a regional ITS architecture in support of integration and the subsequent adherence of all ITS projects to that

regional ITS architecture. Development of the regional ITS architecture should be consistent with the transportation planning process for Statewide and Metropolitan Transportation Planning (49 CFR Part 613 and 621).

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

- a. Applicability: This requirement applies to all FTA grant and cooperative agreement programs.
- b. Where applicable (see 40 U.S.C. § 3701), all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II.
- c. Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer 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.
- d. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- e. The regulation at 29 C.F.R. § 5.5(b) provides the required contract clause concerning compliance with the Contract Work Hours and Safety Standards Act:

Compliance with the Contract Work Hours and Safety Standards Act.

(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 (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 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. The agency 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 paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.”

DAVIS BACON ACT AND COPELAND ANTI-KICKBACK ACT

For all prime construction, alteration, or repair contracts in excess of \$2,000 awarded by FTA, the Contractor shall comply with the Davis-Bacon Act and the Copeland “Anti-Kickback” Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction.” In accordance with the statute, the Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor agrees to pay wages not less than once a week. The Contractor shall also comply with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States.” The Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair

of public work, to give up any part of the compensation to which he or she is otherwise entitled.

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

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

The certification in this clause is a material representation of fact relied upon by the AGENCY. If it is later determined by the AGENCY that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the AGENCY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

(Does not apply to projects fully funded by the Tribal Transportation Program (TTP).)

It is the policy of the Agency and the United States Department of Transportation (“DOT”) that Disadvantaged Business Enterprises (“DBE’s”), as defined herein and in the Federal regulations published at 49 C.F.R. part 26, shall have an equal opportunity to participate in DOT-assisted contracts.

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Agency deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

Prime contractors are required to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the Agency makes to the prime contractor. 49 C.F.R. § 26.29(a).

Finally, for contracts with defined DBE contract goals, each FTA Recipient must include in each prime contract a provision stating that the contractor shall utilize the specific DBEs listed unless the contractor obtains the Agency’s written consent; and that, unless the Agency’s consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

ENERGY CONSERVATION

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6201).

EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or

pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

NOTICE TO THIRD PARTY PARTICIPANTS

Federal requirements that apply to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto may change due to changes in federal law, regulation, other requirements, or guidance, or changes in the Recipient's Underlying Agreement including any information incorporated by reference and made part of that Underlying Agreement; and

Applicable changes to those federal requirements will apply to each Third-Party Agreement and parties thereto at any tier.

FLY AMERICA

a)Definitions. As used in this clause—

1) “International air transportation” means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

2) “United States” means the 50 States, the District of Columbia, and outlying areas.

3) “U.S.-flag air carrier” means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

b) When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, Agencies, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.

d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

Statement of Unavailability of U.S.-Flag Air Carriers

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. [State reasons]:

e) Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The provisions within include, in part, certain Standard Terms and Conditions required under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR § 200), whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, detailed in 2 CFR § 200 or as amended by 2 CFR § 1201, or the most recent version of FTA Circular 4220.1 are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any request which would cause a violation of the FTA terms and conditions.

NO GOVERNMENT OBLIGATION TO THIRD PARTIES

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

NOTIFICATION TO FTA

If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third-Party Agreements and must require each Third-Party Participant to include an equivalent provision in its subagreements at every tier, for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.

(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.

(2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.

(3) The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third-Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient.

PATENT RIGHTS AND RIGHTS IN DATA

Intellectual Property Rights

This Project is funded through a Federal award with FTA for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this Contract. The Contractor shall grant the Agency intellectual property access and licenses deemed necessary for the work performed under this Contract and in accordance with the requirements of 37 C.F.R. part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by FTA or U.S. DOT.

The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Contract and shall, at a minimum, include the following restrictions:

Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of FTA, until such time as FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution.

For purposes of this Contract, the term “subject data” means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of “subject data” include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.

1. The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for “Federal Government Purposes,” any subject data or copyright described below. For “Federal Government Purposes,” means use only for the direct purposes of the Federal Government. Without the copyright owner’s consent, the Federal Government may not extend its Federal license to any other party.

a. Any subject data developed under the Contract, whether or not a copyright has been obtained; and

b. Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part by the FTA.

2. Unless FTA determines otherwise, the Contractor performing experimental, developmental, or research work required as part of this Contract agrees to permit FTA to make available to the public, either FTA’s license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.

3. Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and

employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. The Contractor shall not be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

4. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

5. Data developed by the Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying Contract is exempt from the requirements herein, provided that the Contractor identifies those data in writing at the time of delivery of the Contract work.

6. The Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

PRE-AWARD AND POST-DELIVERY AUDITS OF ROLLING STOCK PURCHASES

(Does not apply to projects fully funded by the Tribal Transportation Program (TTP).)

The Contractor agrees to comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 C.F.R. part 663. The Contractor shall comply with the Buy America certification(s) submitted with its proposal/bid. The Contractor agrees to participate and cooperate in any pre-award and post-delivery audits performed pursuant to 49 C.F.R. part 663 and related FTA guidance.

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.

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

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

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

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

PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

- 1) Procure or obtain;

2) Extend or renew a contract to procure or obtain; or

3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

b) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

c) See Public Law 115-232, section 889 for additional information.

d) See also § 200.471.

PROMPT PAYMENT

(Does not apply to projects fully funded by the Tribal Transportation Program (TTP).)

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

The contractor must promptly notify the Agency, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the Agency.

PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS

The Contractor agrees to comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):

1. U.S. DOL Certification. Under this Contract or any Amendments thereto that involve public transportation operations that are supported with federal assistance, a certification issued by U.S. DOL is a condition of the Contract.

2. Special Warranty. When the Contract involves public transportation operations and is supported with federal assistance appropriated or made available for 49 U.S.C. § 5311, U.S. DOL will provide a Special Warranty for its Award, including its Award of federal assistance under the Tribal Transit Program. The U.S. DOL Special Warranty is a condition of the Contract.

3. Special Arrangements. The conditions of 49 U.S.C. § 5333(b) do not apply to Contractors providing public transportation operations pursuant to 49 U.S.C. § 5310. FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate, and, in those instances, any special arrangements required by FTA will be incorporated herein as required.

SAFE OPERATION OF MOTOR VEHICLES

Seat Belt Use

The Contractor is encouraged to adopt and promote 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. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or Agency.

Distracted Driving

The Contractor 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 Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract.

SCHOOL BUS OPERATIONS

The contractor agrees to comply with 49 U.S.C. 5323(f), and 49 C.F.R. part 604, and not engage in school bus operations using federally funded equipment or facilities in competition with private operators of school buses, except as permitted under:

1. Federal transit laws, specifically 49 U.S.C. § 5323(f);
2. FTA regulations, “School Bus Operations,” 49 C.F.R. part 605;
3. Any other Federal School Bus regulations; or
4. Federal guidance, except as FTA determines otherwise in writing.

If Contractor violates this School Bus Agreement, FTA may:

1. Bar the Contractor from receiving Federal assistance for public transportation; or
2. Require the contractor to take such remedial measures as FTA considers appropriate.

When operating exclusive school bus service under an allowable exemption, the contractor may not use federally funded equipment, vehicles, or facilities.

The Contractor should include the substance of this clause in each subcontract or purchase under this contract that may operate public transportation services.

SEISMIC SAFETY

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

SIMPLIFIED ACQUISITION THRESHOLD

Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. § 1908, or otherwise set by law, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. (Note that the simplified acquisition threshold determines the procurement procedures that must be employed pursuant to 2 C.F.R. §§ 200.317–200.327. The simplified acquisition threshold does not exempt a procurement from other eligibility or processes requirements that may apply. For example, Buy America’s eligibility and process requirements apply to any procurement in excess of \$150,000. 49 U.S.C. § 5323(j)(13).)

SPECIAL DOL EEO CLAUSE

The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

SPECIAL NOTIFICATION REQUIREMENTS FOR STATES

Applies to States –

a. To the extent required under federal law, the State, as the Recipient, agrees to provide the following information about federal assistance awarded for its State Program, Project, or related activities:

(1) The Identification of FTA as the federal agency providing the federal assistance for a State Program or Project;

(2) The Catalog of Federal Domestic Assistance Number of the program from which the federal assistance for a State Program or Project is authorized; and

(3) The amount of federal assistance FTA has provided for a State Program or Project.

b. Documents - The State agrees to provide the information required under this provision in the following documents: (1) applications for federal assistance, (2) requests for proposals or solicitations, (3) forms, (4) notifications, (5) press releases, and (6) other publications.

SUBSTANCE ABUSE REQUIREMENTS

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. part 655, produce any documentation necessary to establish its compliance with part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency, or Agency, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. part 655 and review the testing process. The Contractor agrees further to certify annually its compliance with part 655 and to submit the Management Information System (MIS) reports to the Agency.

TERMINATION

Termination for Convenience (General Provision)

The Agency may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Agency's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination.

The Contractor shall promptly submit its termination claim to Agency to be paid the Contractor. If the Contractor has any property in its possession belonging to Agency, the Contractor will account for the same, and dispose of it in the manner Agency directs.

Termination for Default [Breach or Cause] (General Provision)

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the Agency may terminate this contract for default. Termination shall be effected by serving a Notice of Termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will be paid only the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the Agency that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the Agency, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

Opportunity to Cure (General Provision)

The Agency, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to Agency's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [10 days] after receipt by Contractor of written notice from Agency setting forth the nature of said breach or default, Agency shall have the right to terminate the contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude Agency from also pursuing all available remedies against Contractor and its sureties for said breach or default.

Waiver of Remedies for any Breach

In the event that Agency elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by Agency shall not limit Agency's remedies for any succeeding breach of that or of any other covenant, term, or condition of this contract.

Termination for Convenience (Professional or Transit Service Contracts)

The Agency, by written notice, may terminate this contract, in whole or in part, when it is in the Agency's interest. If this contract is terminated, the Agency shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

Termination for Default (Supplies and Service)

If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

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

Termination for Default (Transportation Services)

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

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

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

Termination for Default (Construction)

If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will ensure its completion within the time specified in this contract or any extension or fails

to complete the work within this time, or if the Contractor fails to comply with any other provision of this contract, Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Agency may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Agency resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Agency in completing the work.

The Contractor's right to proceed shall not be terminated nor shall the Contractor be charged with damages under this clause if:

1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of Agency, acts of another contractor in the performance of a contract with Agency, epidemics, quarantine restrictions, strikes, freight embargoes; and

2. The Contractor, within [10] days from the beginning of any delay, notifies Agency in writing of the causes of delay. If, in the judgment of Agency, the delay is excusable, the time for completing the work shall be extended. The judgment of Agency shall be final and conclusive for the parties, but subject to appeal under the Disputes clause(s) of this contract.

3. If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of Agency.

Termination for Convenience or Default (Architect and Engineering)

The Agency may terminate this contract in whole or in part, for the Agency's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Agency's Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. Agency has a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, all such data, drawings, specifications, reports, estimates, summaries, and other information and materials.

If the termination is for the convenience of the Agency, the Agency's Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the Agency may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Agency.

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

Termination for Convenience or Default (Cost-Type Contracts)

The Agency may terminate this contract, or any portion of it, by serving a Notice of Termination on the Contractor. The notice shall state whether the termination is for convenience of Agency or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the Contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from

the Agency, or property supplied to the Contractor by the Agency. If the termination is for default, the Agency may fix the fee, if the contract provides for a fee, to be paid the Contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the Agency and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of Agency, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a Notice of Termination for Default, the Agency determines that the Contractor has an excusable reason for not performing, the Agency, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

VETERANS HIRING PREFERENCE

Veterans Employment - Recipients and subrecipients of Federal financial assistance shall ensure that contractors working on a capital project funded using such assistance give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

VIOLATION AND BREACH OF CONTRACT

Disputes:

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

Performance During Dispute:

Unless otherwise directed by the agencies authorized representative, contractor shall continue performance under this contract while matters in dispute are being resolved.

Claims for Damages:

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

Remedies:

Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the agencies authorized representative and contractor arising out of or

relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the Agency is located.

Rights and Remedies:

Duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Agency or contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

TRAFFICKING IN PERSONS

The contractor agrees that it and its employees that participate in the Recipient's Award, may not:

- (a) Engage in severe forms of trafficking in persons during the period of time that the Recipient's Award is in effect;
- (b) Procure a commercial sex act during the period of time that the Recipient's Award is in effect; or
- (c) Use forced labor in the performance of the Recipient's Award or subagreements thereunder.

FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS

(1) The contractor certifies that it:

(a) Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and

(b) Was not convicted of felony criminal violation under any Federal law within the preceding 24 months.

If the contractor cannot so certify, the Recipient will refer the matter to FTA and not enter into any Third-Party Agreement with the Third-Party Participant without FTA's written approval.

(2) Flow-Down. The Recipient agrees to require the contractor to flow this requirement down to participants at all lower tiers, without regard to the value of any subagreement.

SEVERABILITY

The Contractor agrees that if any provision of this agreement or any amendment thereto is determined to be invalid, then the remaining provisions thereof that conform to federal laws, regulations, requirements, and guidance will continue in effect.

SAFE OPERATION OF MOTOR VEHICLES

Seat Belt Use

The Contractor is encouraged to adopt and promote 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. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or Agency.

Distracted Driving

The Contractor 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 Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract.

Mr. Chairman and Members of the Tazewell County Board:

Your Finance Committee has considered the following RESOLUTION and recommends that it be adopted by the Board:

RESOLUTION

WHEREAS, the Finance Committee recommends to the County Board to approve the selection of Heart Technologies for the replacement of the core server and storage environment; and

WHEREAS, Tazewell County was hit by a cyber attack in November 2023, which significantly impacted the organization; and

WHEREAS, Tazewell County contracted with Heart Technologies to conduct major IT upgrades to the Microsoft Windows domain service, implementing Office 365, and providing managed IT security services in resolution E-23-156; and

WHEREAS, Heart Technologies has reviewed the core server and storage hardware environment used by Tazewell County and has recommended major upgrades to the hardware due to the age and design of the environment; and

WHEREAS, the State of Illinois has an approved cooperative purchasing agreement with Midwestern Higher Education Compact for the purchase of HPE products; and

WHEREAS, with Heart Technologies' status as HPE partner, Heart Technologies has been able to secure discounted pricing competitive with what is provided in the cooperative purchasing agreement; and

WHEREAS, this purchase is not conducive to competitive bidding based on the following:

1. the existing contractual relationship with Heart Technologies to implement major technology improvements that directly relate to the server and storage hardware, as well as managing the security environment,
2. preparing a proposal requires detailed knowledge of Tazewell County's IT environment, which takes significant time to evaluate, and the release of the information would jeopardize the security of the system, making it exempt from disclosure under Section 7(1)(o) of the Freedom of Information Act,
3. Heart Technologies' hardware costs being competitive with the Illinois-approved cooperative purchasing agreement pricing and with Heart Technologies being able to obtain additional discounts from HPE as our primary representative, which can allow for discounts that may not be available to other vendors, and
4. the continued need for urgency in improving Tazewell County's IT environment

to have the ability to prevent and mitigate future cyber events; and

WHEREAS, the purchase would necessitate the use of the General Fund contingency funds, which would include the following budget transfer to the Information Technology department:

\$343,416 from Contingency (100-610-5999) to Technology Infrastructure Improvements (100-611-5549); and

WHEREAS, after the transfer, \$1,541,011 would remain in the General Fund contingency account; and

WHEREAS, additional hardware/technology improvements may be recommended to improve the connectivity between the buildings, which will be evaluated by Heart Technologies and will be brought forward if necessary.

THEREFORE BE IT RESOLVED that the County Board approves the recommendation and authorizes the County Board Chairman to sign an agreement with Heart Technologies in an amount not to exceed \$343,415.23.

BE IT FURTHER RESOLVED that the County Board authorizes the transfer of funds as recommended.

BE IT FURTHER RESOLVED that the County Clerk notifies the County Board Office, Finance Office, Treasurer, and Auditor of this action.

PASSED THIS 27TH DAY OF MARCH, 2024.

ATTEST:

Tazewell County Clerk

Tazewell County Board Chairman



We have prepared a quote for:

Tazewell County Government

Servers and Storage Project

Quote # ME010989EP Version 2

Prepared by:

Matt Eppel

Engineered by:

Tim Perry

All Flash SAN

Description	Qty
HPE Alletra 6010 Base Array	1
HPE Alletra 6000 2x10GbE 4p FIO Adapter Kit	1
HPE NEMA 5-15P-C13 1.8m US FIO Power Cord	4
HPE Alletra 6000 92TB 24x3.84TB FIO Bundle	1
HPE Alletra Tier 1 Storage Array	1
HPE Alletra 6000/H 4x800W FIO Power Suply Kit	1
HPE Tier 1 Storage OS Default FIO Software	1
HPE Alletra 6000 Software/Support SaaS 3yr Subscription	265
HPE 3Y Tech Care Essential Service	1
HPE Alletra 6000 2x10GbE 4p Kit Support	1
HPE Alletra 6010 Base Array Support	1
HPE Alletra 6000 AF 92TB 3.84 Flash Support	1

Servers

Description	Qty
HPE ProLiant DL380 Gen11	3
HPE ProLiant Intel Xeon-G 6426Y 2nd CPU for HPE	3
HPE 32GB (1x32GB) Dual Rank x8 DDR5-4800 Memory Kit (512 MB Per Server)	45
HPE 800W Redundant Power Supply	3
HPE 1.83m 10A C13-UL Power Cord	6
HPE iLO Advanced 1-server License with 1-Year Support	3
HPE DL380 G11 2U High Performance Fan Kit	3
HPE NS204i-u Gen11 Hot Plug Boot Option Kit	3
HPE DL380 G11 High Performacne 2U Heat Sink Kit	3
HPE DL380 G11 NS204i-u Internal Cable Kit	3

Servers

Description	Qty
HPE BCM 57412 10GbE 2p SFP+ Adapter	6
HPE 3-Year Tech Care Essential Service	1
HPE iLO AdvPack NonBL Support	3
HPE DL380 Gen11 Support	3

Network Switching

Description	Qty
Ruckus 48-port ICX7650 Switch - 24-port 100MbE/1GbE/2.5GbE/5GbE/10GbE - 24-port 10MbE/100MbE/1GbE PoE+ - 4xQSFP	2
Ruckus ICX 7650 airflow fan kit with front to back airflow	4
Ruckus ICX 7650 4-port 1/10GbE SFP+ Module	2
Ruckus ICX7650 AC Power Supply Unit	4
Ruckus WatchDog Remote Support ICX 7650	2
Ruckus ICX 8200 Switch - 16x1/10GbE SFP+ ports - 8x25 GbE SFP28 stacking/uplink-ports	2
Ruckus ICX 8200 Power Cord - USA NEMA5-15/C13	6
Ruckus Switch management license for Virtual SmartZone Controller - 1 Ruckus ICX switch	4
Direct Attach QSFP+ to QSFP+ Active Optical Cable 10m	1
Ruckus 10GbE Direct Attach SFP+ to SFP+ Active copper cable, 3 m	20
1ft Cat6 Gigabit Snagless Molded Patch Cable	20
3ft Cat6 Gigabit Snagless Molded Patch Cable	20



Servers and Storage Project

Prepared by:

Heart East Peoria

Matt Eppel
(309) 427-7267
meppel@heart.net
3105 N Main St.
East Peoria, IL 61611

Prepared for:

Tazewell County Government

Mike Deluhery
(309) 478-5701
MDeluhery@tazewell-il.gov
101 S. Capitol
Pekin, IL 61554

Quote Information:

Quote #: ME010989EP

Version: 2
Delivery Date: 02/29/2024
Expiration Date: 05/10/2024

Quote Summary

Description
Servers and Storage Project

Total: **\$343,415.23**

Payment Schedule

Description	Payments	Interval	Amount
Purchase Price: 50/30/20			
50% Due on Signing	1	One-Time	\$171,707.62
30% on Receipt of Materials	1	One-Time	\$103,024.57
20% on Completion	1	One-Time	\$68,683.05

Payment Due at Signing

Description	Amount
Purchase Price: 50/30/20: 50% Due on Signing	
Total of 50% Due on Signing Payment	\$171,707.62

Taxes, shipping, handling and other fees may apply. We reserve the right to cancel orders arising from pricing or other errors.

Heart East Peoria

Tazewell County Government

Signature: _____

Signature: _____

Name: _____

Name: Mike Deluhery

Title: _____

Title: _____

Date: _____

Date: _____

Statement of Work

Customer Responsibility

This job will not be taxable. Customer shall provide tax-exempt certificate.

Provide adequate space for equipment in an environment suitable for the required equipment

Provide open access to all wiring closets, panels and work areas.

Heart Technologies, Inc., Responsibility

Labor is included to configure and install the items in this proposal.

A project and planning session will be necessary to determine the details of the configuration(s).

Installation and configuration shall be coordinated with the customer to minimize downtime and will be performed during normal business hours, M-F 8:00 AM - 4:30 PM (Excluding Holidays).

Material Escalation Clause: If, during the performance of this contract, the price of materials increases significantly, through no fault of Heart Technologies, the price of quoted material shall be adjusted accordingly. Where the delivery of the quoted material or product is delayed by either manufacture or distribution supplier, through no fault of Heart Technologies, as a result of the shortage or unavailability of specific products or materials , Heart Technologies shall not be liable for any additional costs or damages associated with such delay(s).

ALL MATERIAL PRICING INCLUDED IN THIS PROPOSAL IS ONLY VALID FOR 30 DAYS.

Customer has reviewed and acknowledged statement of work. _____

Standard Terms and Conditions

1. This proposal is in accordance with our understanding of the requirements of the project and from verbal information which we received from the Customer, or its agent, and if written plans and specifications are furnished by Customer, and HEART Technologies, Inc., (from here on referred to as HEART Technologies, Inc.) interpretation of them. HEART Technologies, Inc. assumes no responsibility as to the accuracy of such plans and specifications. It is further understood and agreed that this proposal and contract does not include any labor or materials not specifically mentioned herein. Any additional work not covered herein shall be billed as time and material.
2. Terms and amount of payment shall be those specified herein. If not specified in the proposal, payment shall be 50% down at contract signing, 30% upon receipt of materials, and the remaining 20% due upon completion of this contract where the work is completed within the same month as the billing period. Where work continues beyond a period of 30 days, or is delayed for reasons beyond the control of HEART Technologies, Inc., monthly progress payments shall be paid in an amount equal to the labor and material on a percentage of completion basis of the job covered by this contract. Payment shall be made to HEART Technologies, Inc. by the 10th of the month following the date of any billing. HEART Technologies, Inc. shall not be required to proceed with the installation of the work if the payments applying on same have not been made as specified in the contract. In the event suit is filed by HEART Technologies, Inc. to collect any Moneys due hereunder or to enforce any other provisions of the contract, the Customer agrees to pay all cost, and the attorney's fees incurred. Past Due balances shall be charged finance charges at a rate of 1.5% per month. Customer agrees to pay these charges, if for any reason payments are not received by due date.
3. Alterations or additional work ordered by Customer or his agent shall constitute an addition to this proposal, and shall be charged for on a time and material basis in accordance with the current prices shown in a locally recognized trade pricing standard, in effect at time of billing. If any additions to the contract are ordered, the amount to be paid for the same shall be determined by the Customer and HEART Technologies, Inc. at the time that they are ordered, and if they do not agree upon an amount to be paid, then the Customer shall pay a reasonable price therefor. If the change requested by the Customer shall reduce the amount of labor or material, or both, that HEART Technologies, Inc. shall furnish to the project, then the Customer and HEART Technologies, Inc. shall agree at the time that the change is requested on the amount of credit that shall be given by HEART Technologies, Inc. to the Customer, and if they do not agree upon an amount of credit then the reasonable value of the labor and material shall be credited to the Customer. HEART Technologies, Inc. shall receive written orders for all additional work or changes signed by an authorized person before proceeding with such additions or changes. However, if such written orders are not received this shall not affect the right of HEART Technologies, Inc. to receive payment as outlined above for said labor and materials so furnished. Payments for additions or changes shall be made under the same terms and conditions as are embodied in the original proposal and contract.
4. All prices quoted herein are firm upon acceptance of this proposal, and are subject to correction prior to acceptance. All written proposals are conditioned upon acceptance within time limit specified on the face of this proposal. Verbal quotations are subject to immediate acceptance and terminate the day they are made.
5. It is a condition of this proposal that all materials or devices which are supplied by HEART Technologies, Inc. for installation will be of a type that is approved for the purpose. It is further stipulated that the Customer will assume the same responsibility for any material or equipment not furnished by HEART Technologies, Inc..
6. This proposal including any plans, specifications, drawings or engineering data are furnished by HEART Technologies, Inc. to Customer in trust for determining the scope of the work to be performed and shall remain the property of HEART Technologies, Inc.. They shall be immediately returned to HEART Technologies, Inc. in the event it is not awarded the contract to perform such work. If such plans, specifications or other data are used for the purpose of obtaining other bids or in connection with the installation, the Customer shall pay HEART Technologies, Inc. for all expense in preparing such plans or other data on an engineering fee basis.
7. Unless otherwise provided herein, the amount of any present or future sales or other tax, Federal, State or City, which we now, or hereafter shall be required to pay, either on our own behalf or on behalf of the Customer, or otherwise, with respect to any labor or material covered by this proposal shall be added to the prices quoted herein and paid by the Customer in the same manner and with the same effect as if originally added hereto.
8. If the Customer shall enter into a sale or shall sell all or any part of the premises herein involved, the full amount remaining unpaid on this contract becomes due and payable within 48 hours after date of such sale or agreement of sale at the option of HEART Technologies, Inc.. Title to any of the material sold or installed hereunder by HEART Technologies, Inc. shall remain HEART Technologies, Inc. until all the terms hereof have been complied, with, and in the event such materials are affixed to realty, it is expressly understood and agreed that they shall remain personal property subject to removal by HEART Technologies, Inc. The owner, buyer and Customer hereby waive any and all claims for damage to said realty or buildings caused by the removal of said materials or any part thereof.
9. This proposal is contingent upon approval by the authority having jurisdiction. Should additions or modifications be recommended by the authority having jurisdiction, or should the scope of protection change, this proposal will be adjusted accordingly.
10. We represent that the products listed within this quotation are free from defects in material or workmanship. Any product or part, thereof, which proves to be defective in workmanship or material during a period equal to manufacturer's warranty but not to exceed twelve (12) months from the date of purchase (unless otherwise stated in the proposal) shall be replaced at no charge during normal working hours.
11. Any repairs or modifications of the system as installed by the owner, owner's representative or any third party will void the warranty as stated herein.
12. HEART Technologies, Inc. maintains the capability to service your system using our factory-trained technicians from our nearest service facility on a 24-hour emergency basis.
13. The price has been determined on the basis of straight time and normal work week. No overtime will be worked unless ordered by Customer or his representative. In the event overtime is worked, the overtime premium rates plus HEART Technologies, Inc. regular mark-up for overhead and profit will be paid as an extra.
14. Upon acceptance, it is understood and agreed that this contract cannot be canceled except by mutual consent, and then only after payment to HEART Technologies, Inc. for all labor, material and job costs plus his regular mark-up for overhead and profit.
15. This agreement, and any issues arising in connection with it, shall be governed by, and construed in accordance with, the laws of the State of Illinois.
16. This agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior proposals and all previous negotiations and agreements, representations and warranties, written or oral.

Authorization to proceed with work or issuance of purchase orders by Customer to HEART Technologies, Inc. accepting any or all parts of this proposal shall be subject to the foregoing conditions.

It is the policy of HEART Technologies, Inc. to provide equal opportunity in employment for all qualified persons and to prohibit discrimination in employment on the basis of race, creed, color, sex, age, national origin, religion, disability or veteran status.

Mr. Chairman and Members of the Tazewell County Board:

Your Finance Committee has considered the following RESOLUTION and recommends that it be adopted by the Board:

RESOLUTION

WHEREAS, the Finance Committee recommends to the County Board to approve an agreement with Heart Technologies for the telephone system; and

WHEREAS, Tazewell County used a consultant to facilitate a competitive bidding process and entered into an agreement for a Mitel telephone system with Heart Technologies in May 2017, as amended in November 2018; and

WHEREAS, Tazewell County desires to continue to use a Mitel system provided by Heart Technologies; and

WHEREAS, the proposed five-year Heart Technologies agreement maintains the same pricing of \$7,383.16 per month with 24-hour 7 days a week support; and

WHEREAS, the State of Illinois has an approved cooperative purchasing relationship with the Sourcewell cooperative purchasing group that allows for discounted pricing; and

WHEREAS, the pricing discounts provided by Heart Technologies meet and/or exceeds the discounts provided in the Sourcewell cooperative purchasing group agreement over the course of the five-year agreement's resulting HEARTsmart monthly payment; and

WHEREAS, this purchase is not conducive to competitive bidding based on the following:

1. changing systems and providers would create significant hardship on the Information Technology department at a time when the department is focused on major technology updates to prevent and mitigate future cyber events; and
2. changing systems and providers would likely lead to additional time and costs with the potential need to hire a consultant as done in 2017, and for networking changes; and
3. Heart Technologies is able to provide discounts that meet and/or exceed the Sourcewell cooperative purchasing group agreement; and
4. Continuing to partner with Heart Technologies will provide better support to the organization with Heart Technologies having direct access to the technology environment through the existing managed network security contract.

THEREFORE BE IT RESOLVED that the County Board approves the attached agreement with Heart Technologies and authorizes the County Board Chairman to sign the agreement.

BE IT FURTHER RESOLVED that the County Clerk notifies the County Board Office and the Auditor of this action.

PASSED THIS 27th DAY OF MARCH, 2024.

ATTEST:

Tazewell County Clerk

Tazewell County Board Chairman

Mr. Chairman and Members of the Tazewell County Board:

Your Finance Committee has considered the following RESOLUTION and recommends that it be adopted by the Board:

RESOLUTION

WHEREAS, the County's Finance Committee recommends to the County Board to authorize Budget Transfers for County Clerk & Recorder of Deeds as outlined on the attachment to this Resolution; and

- Transfer \$4,000 from Contingency (100-610-5999) to (100-602-5541); and

WHEREAS, the transfer of funds is to replace a Copy Machine/Printer (\$3,700) plus shipping costs (\$300) for the Print Shop division.

THEREFORE BE IT RESOLVED that the County Board approve the transfers of funds.

BE IT FURTHER RESOLVED that the County Clerk notifies the County Board Office, Finance Office, the Treasurer and the Auditor of this action.

PASSED THIS 27th DAY OF MARCH, 2024.

ATTEST:

Tazewell County Clerk

Tazewell County Board Chairman